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<u>**By email only**</u>

Senior Tax Authorities
of the federal states

<u>for information:</u> Federal Central Tax

Office

Subject: Investment Tax Act;
Questions regarding the application of the Investment Tax Act in the version applicable from 1 January 2018 ( ) (InvStG)
Investment Tax Act
Reference: Letter from the Federal Ministry of Finance dated 21 May 2019, BStBl I p. 527; Letter from the Federal Ministry of Finance dated 17 October 2025
- IV C 1 - S 1980/00206/032/029 - Ref: IV C 1 -
S 1980/00206/032/046 Doc:
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(please quote Ref. No. and Doc. No. in your reply)

With reference to the outcome of discussions with the supreme tax authorities of the federal states, the BMF letter of 21 May 2019, BStBl I p. 527, last amended by the BMF letter of 18 November 2024, BStBl I p. 1547, is amended as follows:

I. The table of contents is amended as follows:

1. The summary under 2.7a is worded as follows:

"2.7a. Property and shareholdings in property companies or foreign property companies not to be included for the purposes of the property fund and foreign property fund quotas (Section 2(9a) of the Investment Income Tax Act) 2

a. General remarks on Section 2(9a) of the InvStG 3

b. Real estate held directly by the investment fund that is not to be included (Section 2(9a), first sentence, InvStG) 3

c. Participations in property companies or foreign property companies that are themselves liable to tax for income tax purposes and are not to be included in the tax base (Section 2(9a), second sentence, InvStG) 5

d. Participations in real estate companies or foreign real estate companies that are not to be recognised, where the income of such companies is attributed to the investment fund as their shareholders (Section 2(9a), third sentence, InvStG) 6

e. Transitional provision 6

2. In the summary of 2.8, the reference to "Section 2(9a)" is replaced by the reference to "Section 2(9b)"

3. The summary for 36.3 is worded as follows:

"36.3 Other income (Section 36(3) InvStG) 12

a. Definition of other income (Section 36(3), first sentence, InvStG)..12

b. Classification of income from private disposal transactions regardless of the holding period (Section 36(3), second sentence, InvStG) 12

c. Definition of other income eligible for tax-free retention (Section 36(3), third sentence, InvStG).............13

d. Corresponding application of the rules for tax-exempt capital gains that may be retained (Section 36(3), fourth sentence, InvStG) 14

4. The summary of 38.3a is worded as follows:

“38.3a. Exception to accrual accounting in the case of uncertain inflows 14"

II. After paragraph 2.41, the following headings and paragraphs are inserted:

<u>“2.7a. Property and shareholdings in property companies or foreign property companies not to be included for the purposes of the property fund and foreign property fund quotas (Section 2(9a) of the Investment Income Tax Act)</u>

a. General comments on Section 2(9a) of the InvStG

2.41a The provisions of section 2(9a) of the Investment Income Tax Act (InvStG), introduced by the Growth Opportunities Act of 27 March 2024 (Federal Law Gazette I 2024, No. 108) and applicable from 1 January 2025 pursuant to section 57(8), fourth sentence, of the Investment Income Tax Act (InvStG), aim to exclude a partial exemption for domestic or foreign property if, due to tax exemption provisions, there is no or only a minimal prior tax burden (BT-Drs. 20/8628, p. 207). The decisive factor is the actual tax burden on income from a property. If there is no actual taxation solely because no surpluses were generated, the decisive factor is whether any surplus would have been taxed. Taxation is also to be assumed if a surplus is not taxable due to general allowances or exemption thresholds that do not apply exclusively to investment funds. By contrast, it is irrelevant for the application of Section 2(9a) of the Investment Fund Tax Act (InvStG) whether the income from a property in a direct investment would be exempt under a double taxation agreement.

b. Real estate held directly by the investment fund that is not to be included (Section 2(9a) sentence 1 of the InvStG)

Section 2(9a), first sentence, of the InvStG excludes real estate from being taken into account for the purposes of the real estate fund ratio and the foreign real estate fund ratio if the income from the letting or leasing of the property or its disposal is not subject to taxation at the level of the investment fund or is more than 50% exempt from taxation. The property is therefore regarded as an other asset that does not qualify for a partial exemption at investor level if an investment fund derives income from a property held directly which is not subject to taxation in the country where the property is situated or is predominantly tax-exempt. This exclusion applies to personal or material tax exemptions of the investment fund. However, this does not apply to cases where no actual taxation occurs due to a lack of surpluses in the assessment period, or due to the offsetting of surpluses against losses from previous years, or due to a loss carryback. In this context, it is irrelevant if the losses from previous years originate from periods prior to the entry into force of Section 2(9a) of the Investment Fund Tax Act (InvStG).

2.41b

The exclusion from the property fund quota or the foreign property fund quota applies if the non-taxation or the predominant tax exemption relates

- only the income from letting or leasing, or
- only the gains from the disposal of the property, or
- both the income from letting or leasing and the gains from the sale of the property

. If, for example, in the country where the property is situated, only income from letting is taxed, but gains from the sale of the property are not subject to taxation, then the property is not to be taken into account. In this context, it is irrelevant whether capital gains actually arose during the relevant tax assessment period; rather, the decisive factor is whether the applicable legal situation in the country where the property is situated provides for sufficient taxation of capital gains

2.41c

. There is no sufficient taxation of capital gains if the country in which the property is situated does not subject the property's capital appreciation to taxation, but merely reverses the depreciation allowances taken into account as tax deductions when taxing income from letting or leasing (so-called claw-back taxation, see Federal Fiscal Court (BFH) judgment of 15 November 2017, I R 55/15, BStBl II 2018, 287).

2.41d The phrase 'not subject to taxation' should only be assumed where there is a complete personal or material tax exemption. In particular, there is no taxation if the country in which the property is situated, provided certain criteria are met (e.g. energy efficiency standards for buildings or rent control), completely waives taxation of income from letting or leasing or from the sale of the property. By contrast, generally low tax rates or a reduced tax rate on the income of an investment fund do not result in exclusion from the property fund or foreign property fund quota.

When determining whether income from letting or leasing or from the sale of the property is not subject to taxation or is more than 50% exempt from taxation, the investment fund must be regarded as the taxpayer. If, under foreign law, the manager of the investment fund is treated as the taxpayer for the income of the investment fund, but the tax burden is borne economically by the investment fund, the assessment in this respect must be based on the manager of the investment fund.

2.41e If an investment fund is not subject to taxation in the country where the property is situated, but both the income from letting or leasing and from the sale of the property is taxable for the investors, then, for reasons of fairness, the property in question is deemed to be sufficiently taxed if the investment fund is obliged to pay tax of at least 15% on at least 50% of the income from the letting or leasing as well as from the sale of the property on behalf of its investors. By contrast, properties are disregarded under the property fund or foreign property fund quota if foreign law does not ensure that taxation actually takes place at the level of the investors. This is to be assumed in particular where investors are taxed only if an allowance or exemption threshold is exceeded, or where the identity of the investors is unknown to the foreign state and the taxation of income from letting or leasing or from the sale of the property effectively depends solely on the investor filing a tax return.

2.41f

c. Investments in property companies or foreign property companies that are themselves liable to tax for income tax purposes and are therefore not to be included (section 2(9a), second sentence, of the Investment Tax Act)

Pursuant to Section 2(9a), second sentence, of the InvStG, holdings in real estate companies and foreign real estate companies held
directly or indirectly via partnerships are disregarded for the purposes of the real estate fund ratio and the foreign real estate fund ratio
2.41g if more than 50% of the income of the real estate company or the foreign real estate companyfrom the letting or leasing of property or
from the sale of property is exempt from taxation to an extent of more than 50%. This exclusion covers personal or in-kind tax
exemptions of the real estate company or the foreign real estate company. The comments in margin note 2.41c apply here mutatis
mutandis. The provision of Section 2
(9a) sentence 2 of the InvStG, however, does not apply if the real estate company or the foreign real estate company is liable to tax but
no actual taxation takes place due to a lack of surpluses in the assessment period, or due to the offsetting of surpluses against losses
from previous years, or due to a loss carryback.

Section 2(9a), second sentence, of the InvStG applies to real estate companies or foreign real estate companies that are themselves treated as taxable persons for the purposes of income taxation. This is regularly the case for corporations. However, depending on the structure of tax law in the respective country of location, partnerships may also be subject to income tax themselves. For tax-transparent real estate companies or foreign real estate companies, the provision of Section 2(9a), third sentence, of the InvStG applies (see margin note 2.41l).

An investment fund must assess whether its holdings in real estate companies and foreign real estate companies, held directly or
indirectly via partnerships, are generally subject to prior taxation or fall under the conditions of section 2(9a), second sentence, of
the InvStG. When determining whether more than 50% of the income of the real estate company or the foreign real estate company
2.41h from the letting or leasing of, or the sale of, real estate is exempt from taxation, the real estate company or the foreign real estate
company must be regarded as the taxpayer. Provided that the conditions of section 2(9a), second sentence, of the InvStG are met,
these holdings may not be classified as real estate companies or foreign real estate companies for the purposes of the real estate
fund ratio and the foreign real estate fund ratio.

The provision in section 2(9), sentence 6, of the InvStG regarding the treatment of shares in REIT entities, associations of persons or asset pools takes precedence as lex specialis over section 2(9a), sentence 2, of the InvStG. This means that a holding in a tax-exempt REIT continues to be treated as real estate if the REIT's distributions are subject to sufficient taxation.

Furthermore, for reasons of equity, the income of a tax-exempt property company or foreign property company from the letting or

2.41i

2.41j

2.41k

or the sale of real estate is deemed to be sufficiently taxed if the real estate company or foreign real estate company is required to distribute at least 90% of its income, or if a tax exemption is contingent upon the distribution of income, and the distribution to the investment fund is subject to withholding tax of at least 15% and the investment fund is not exempt from it. Consequently, a holding in such a real estate company or foreign real estate company may be taken into account for the purposes of the real estate fund ratio and the foreign real estate fund ratio.

d. Participations in property companies or foreign property companies that are not to be taken into account, where the income of such companies is attributed to the investment fund as their shareholder (section 2(9a), third sentence, of the Investment Fund Tax Act)

2.41 l Pursuant to section 2(9a), third sentence, of the Investment Fund Tax Act (InvStG), holdings in property companies and foreign property companies are not taken into account for the purposes of the property fund ratio and the foreign property fund ratio if the income of the property company or foreign property company is attributed to the investment fund as its shareholder and this income is not subject to taxation by the investment fund (see margin note 2.41d) or are more than 50% exempt from taxation. This exclusion applies to personal or in-kind tax exemptions of the investment fund. The comments in margin note 2.41c apply here mutatis mutandis. This rule excludes partial exemption under special tax regimes, such as the participation of investment funds in Finnish Oy MREC, where there is also no prior tax liability. However, it does not cover cases where no actual taxation takes place due to a lack of surpluses in the assessment period, or due to the offsetting of surpluses against losses from previous years, or due to a loss carryback.

e. Transitional provision

2.41m The application of the provisions of Section 2(9a) of the Investment Fund Tax Act (InvStG), as amended by the Growth Opportunities Act and applicable from 1 January 2025 pursuant to Section 57(8), fourth sentence, of the InvStG, may result in existing property funds and foreign property funds falling below the propertyor foreign property fund ratio, which – subject to the provisions in margin note 2.41 in conjunction with 2.18 – may result in a change to the applicable partial exemption rate within the meaning of section 22(1), first sentence, of the InvStG. In order to grant investment funds a transitional period to adapt to the new regulations and to clarify any points of doubt, it is not to be regarded as a material breach of the requirements for the composition of assets within the meaning of
margin note 2.41 in conjunction with 2.18 if the provisions of Section 2(9a) of the InvStG, as amended by the Growth Opportunities Act, which are applicable from 1 January 2025 pursuant to Section 57(8), fourth sentence, of the InvStG, are not taken into account until 1 January 2026.”

III. In the heading to point 2.8 and in paragraphs 2.42, 2.43 and 26.32, the reference "Section 2(9a)" is replaced by "Section 2(9b)".

IV. Paragraph 6.27 is worded as follows, and the following paragraph 6.27a is inserted after paragraph 6.27:

6.27 "Domestic property income comprises, pursuant to Section 6(4), first sentence, items 1 and 2 of the Investment Income Tax Act (InvStG), income from letting and leasing as well as gains from the disposal of land or rights equivalent to land situated in Germany.

6.27a With the Annual Tax Act 2024 (JStG 2024) of 2 December 2024 (Federal Law Gazette I 2024, No. 387), the scope of taxation was extended to include other income from letting and leasing pursuant to Section 49(1)(6) of the Income Tax Act (EStG) (Section 6(4), first sentence, point 3 of the InvStG). This provision essentially covers domestic income from the sale of rent and lease receivables, as well as from the letting and leasing of tangible assets and the temporary transfer of rights. Section 6(4), first sentence, item 3 of the InvStG applies to income accruing to an investment fund in a financial year beginning after 31 December 2024 (Section 57(10), item 3 of the InvStG). This is merely a new classification of this income, as it was previously already taxable as other domestic income under Section 6(5), first sentence, point 1 of the InvStG in conjunction with Section 49(1), point 6 of the EStG."

V. Paragraph 6.37 is worded as follows, and the following paragraphs 6.37a to 6.37c are inserted after paragraph 6.37:

6.37 "Domestic income pursuant to section 49(1)(2)(e) of the Income Tax Act (EStG) (disposal of a shareholding within the meaning of section 17 EStG in a domestic corporation) is explicitly excluded from the scope of application of section 6(5)(1) of the Investment Income Tax Act (InvStG) where the disposal takes place before 28 March 2024. For disposals taking place after 27 March 2024, only domestic income pursuant to Section 49(1)(2)(e)(aa) and (bb) of the Income Tax Act (EStG) is explicitly excluded from the scope of application of Section 6(5)(1) of the Investment Income Tax Act (InvStG).

6.37a For disposals after 27 March 2024 (see Section 57(8), second sentence, of the InvStG), profits from the disposal of shares in domestic and foreign corporations, where the value of the shares was, at any time during the last 365 days prior to the disposal, based directly or indirectly on domestic immovable property to an extent exceeding 50% (domestic real estate corporations), pursuant to Section 6(5), first sentence, point 1 of the InvStG in conjunction with Section 49(1)(2)(e)(cc) of the Income Tax Act (EStG) to other domestic income without tax deduction. However, this applies only insofar as the gains are based on changes in value occurring after 27 March 2024 (Section 57(8), second sentence, of the InvStG).

The income under Section 6(5), first sentence, point 1 of the InvStG in conjunction with Section 49(1), point 2, letter e, sub-letter cc of the EStG must be determined by the investment fund itself and declared to the competent tax office during the assessment procedure.

6.37b For reasons of simplification, it is not objectionable if an investment fund, in the case of shares in corporations that are admitted to trading on a stock exchange or an organised market and whose business activities are not predominantly aimed at generating income from letting and leasing and/or the sale of real estate, assumes that the conditions of Section 49(1)(2)(e)(cc) of the Income Tax Act (EStG) are not met. Furthermore, it is generally not objectionable if, for corporations in which the investment fund holds less than 25% of the nominal capital, the real estate ratio under Section 49(1)(2)(e)(cc) of the German Income Tax Act (EStG) is assessed solely on the basis of the statement of assets in the corporation's most recently audited and publicly available annual financial statements.

6.37c If an investment fund with limited tax liability holds a stake in a domestic real estate corporation (see margin note 6.37a) and this corporation disposes of domestic real estate holdings, with the result that the value of the units in this corporation is based on domestic immovable property within the meaning of Section 49(1)(2)(e)(cc) of the German Income Tax Act (EStG) by only 50% or less is attributable to domestic immovable assets within the meaning of Section 49(1)(2)(e)(cc) of the Income Tax Act (EStG), the Federal Republic of Germany's right to tax the gain from the disposal of the holding in the domestic real estate corporation is excluded, so that the holding in the domestic real estate corporationis deemed to have been disposed of by the investment fund with limited tax liability at the time the relevant value threshold within the meaning of Section 49(1)(2)(e)(cc) of the German Income Tax Act (EStG) is breached (Section 12(1), first sentence, first half-sentence of the German Corporation Tax Act (KStG); so-called 'exit taxation'). Section 12 of the Corporation Tax Act (KStG) is to be applied on grounds of equity only to the extent that the investment fund with limited tax liability actually disposed of the shareholding in the domestic real estate company within 365 days of the disposal of the domestic real estate holding which led to the relevant value threshold within the meaning of Section 49(1)(2)(e)(cc) of the Income Tax Act, within 365 days of the disposal of the domestic real estate property (retroactive event within the meaning of Section 175(2)(2) of the Fiscal Code).

VI. The following paragraphs 17.3a and 17.3b are added after paragraph 17.3:

17.3a "Notwithstanding margin 17.3, Section 17 of the Investment Fund Tax Act (InvStG) may apply despite the absence of redemption prices if, in the event of the suspension of unit redemptions, the publication of redemption prices is discontinued but the valuation price resulting from the prudentially recognised valuation of the investment fund at the end of the year is published by the fund management company or its tax representative. In such cases, the valuation price shall take the place of the redemption price.

17.3b If a special investment fund holds a stake as an investor in an investment fund in liquidation and, due to the suspension of

suspension of unit redemptions, but the valuation prices resulting from the prudentially recognised valuation of the investment fund are published by the fund management company or its tax representative, then, when determining the income of the special investment fund in accordance with
Sections 37 et seq. of the Investment Income Tax Act (InvStG), it is not objectionable to proceed as follows: The positive difference between the valuation price resulting from the last prudentially recognised valuation of the investment fund prior to the distribution and published, and the amortised cost may be recognised as investment income, and the amount of the distribution exceeding this may be recognised as a capital repayment. In the event of a negative difference, the full amount of the distribution may be recognised as a tax-free capital repayment."

VII. The heading before paragraph 17.25 and paragraph 17.25 are worded as follows:

"f. Time limit on the liquidation phase (Section 17(1), fourth sentence, InvStG)

17.25 Section 17(1), fourth sentence, of the InvStG limits the possibility of tax-neutral capital repayments within a liquidation phase to a maximum period of ten calendar years following the calendar year in which the liquidation commences. The liquidation phase relevant under Section 17(1), first sentence, of the InvStG extends from the start of liquidation (Section 17(2) of the InvStG) to the end of the ten-year period and may therefore exceed ten years, but may not exceed eleven years if the start of liquidation is dated 1 January. If, for example, the liquidation begins on 30 June 2025, the ten-year period does not end until 31 December 2035. The liquidation phase relevant for the application of section 17(1), first sentence, of the InvStG thus covers the period from 30 June 2025 until, at the latest,
31 December 2035. The maximum period under section 17(1), fourth sentence, of the InvStG was originally five years, but was extended to ten years under the JStG 2024, and the extension is to be applied in all pending cases from 6 December 2024 onwards pursuant to section 57(10)(1).

VIII. In margin note 23.2, the words "at the end of the investment fund's financial **year" are deleted.**

IX. Paragraph 31 is amended as follows:

1. **In margin number 31.2c, the date** "1 January 2026" **is replaced by** "1 January 2027" **and the date** "31 December 2025" **is replaced by** "31 December 2026**".**

2. **In paragraph 31.2d, the date** “1 January 2026” **is replaced by** “1 January 2027**”.**
3. **In paragraph 31.2e, the words** “31 December 2025” **are replaced by the words** “31 December **2026”.**
4. **In paragraph 31.4, the date** “1 January 2026” **is replaced by** “1 January 2027” **and the reference to** “31 December 2025” **is replaced by** “31 December 2026**”.**
5. **In paragraph 31.11, the reference** to “31 December 2025” **is replaced by the reference** “31 December **2026”.**

X. The following paragraphs 33.35a and 33.35b are inserted after paragraph 33.35:

33.35a “Other domestic income also includes capital gains from domestic real estate corporations within the meaning of section 6(5), first sentence, number 1 of the Investment Income Tax Act (InvStG) in conjunction with section 49(1), number 2, letter e, sub-letter cc of the Income Tax Act (EStG) (see margin note 6.37a). If the special investment fund exercises the option to deduct tax under Section 33(1) (in conjunction with paragraph 4, first sentence) of the InvStG, the special investment fund is exempt from corporation tax in respect of capital gains from domestic real estateand the gains are to be classified as capital gains subject to the partial income procedure or Section 8b of the Corporation Tax Act (KStG) within the framework of income determination under Sections 37 to 41 of the Investment Fund Act (InvStG) in category 10.
Since the capital gains from domestic real estate corporations not taxed by the special investment fund itself also constitute income within the meaning of Section 33(2) to (4) of the InvStG, the income contained therein within the meaning of section 33(2) to (4) of the InvStG must be declared in the tax return in addition to the distributed and distribution-equivalent income of category 10, if the investors are investors with limited tax liability, investment funds or umbrella special investment funds. The option to deduct tax may also be validly exercised if, due to existing regulations on the waiver of capital gains tax deduction, no capital gains tax is payable on capital gains from domestic real estate corporations in relation to the individual investor (see margin note 33.10).

33.35b If the special investment fund does not exercise the option to deduct tax pursuant to section 33(1) (in conjunction with paragraph 4, first sentence) of the InvStG, capital gains from domestic real estate corporations are subject to corporation tax at the level of the special investment fund, and the gains must be recorded in category 6 when determining income in accordance with Sections 37 to 41 of the InvStG. Upon receipt by the investor of capital gains from domestic real estate corporations, which have been taxed at fund level, in the form of distributed or distribution-equivalent income, the fund share gain must be reduced by the corresponding amount, so that double taxation is excluded.”

XI. The following paragraph 36.12a is inserted after paragraph 36.12:

36.12a “The 2024 Supplementary Budget Act (JStG 2024) extended the scope of application of section 36(1), first sentence, point 2 of the Investment Income Tax Act (InvStG) to all income from letting and leasing within the meaning of section 21 of the Income Tax Act (EStG). Essentially, section 36(1), first sentence, point 2 of the InvStG now covers, in addition to income from theand the sale of land and rights equivalent to land, income from the sale of rent and lease receivables, as well as from the letting and leasing of tangible assets and the temporary transfer of rights. Pursuant to Section 57(10)(4) of the InvStG, the legislative amendment is to apply to income accruing to a special investment fund in a financial year commencing after 31 December 2024.”

XII. Rz. 36.15 is worded as follows:

“Other income is defined in Section 36(3), sentences 1 and 2, of the InvStG (margin note 36.39) and other income that may be retained tax-free is defined in Section 36(3), sentence 3, of the InvStG (margin note 36.40c).”

XIII. Paragraph 36.18a is worded as follows, and the following paragraphs 36.18b and 36.18c are
36.15 inserted after paragraph 36.18a:

“Forward currency transactions (forward exchange transactions) fall within the definition of forward transactions within the meaning of Section 20(2), first sentence, number 3, letter a of the Income Tax Act (EStG) if the taxpayer receives a settlement of the difference or a sum of money or benefit determined by the value of a variable reference quantity. By contrast, forward foreign exchange transactions aimed at the actual (physical) delivery of the currency (forward foreign exchange delivery transactions) are generally subject to taxation under section 23(1), first sentence, point 2 or 3 of the German Income Tax Act (EStG) and consequently constitute other income within the meaning of section 36(3) of the German Investment Fund Tax Act (InvStG).

36.18a

In the case of a forward foreign exchange delivery transaction where the binding contract was legally concluded in a financial year of the special investment fund commencing after
31 December 2024, the tax treatment is governed by margin 36.40c et seq.
For forward foreign exchange delivery transactions where the binding contract was legally concluded in financial years beginning before 1 January 2025, there is no objection if the special investment fund treats the forward foreign exchange delivery transactions as forward transactions
within the meaning of section 20(2), first sentence, number 3(a) of the Income Tax Act (EStG).

For further explanations on the distinction between Section 20(2), first sentence, item 3(a) of the Income Tax Act (EStG) and Section 23(1), first sentence, item 2 or 3 of the Income Tax Act (EStG), see margin note 38 of the Federal Ministry of Finance (BMF) letter
36.18b dated
14 May 2025 (BStBl I p. 1330).”

36.18c

XIV. Paragraph 36.3 is worded as follows:

"36.3 Other income (Section 36(3) of the Investment Income Tax Act ( ))

a. Definition of other income (Section 36(3), first sentence, InvStG)

36.39 The provision contains a legal definition of the term 'other income'. Other income comprises income that does not fall under Sections 20, 21 and 23(1), first sentence, point 1 of the Income Tax Act (EStG). This may include, in particular, the following types of income:

- shares of profits, including capital gains from commercial partnerships (Section 15(1), first sentence, No. 2 of the Income Tax Act (EStG), where applicable in conjunction with Sections 15(3),

  16 EStG) and

- income from private disposal transactions pursuant to Section 23(1), first sentence, points 2 and 3 of the Income Tax Act (EStG).

36.40 Profit shares and capital gains from commercial and commercially oriented partnerships cannot be retained tax-free as other income within the meaning of Section 36(3) of the Investment Income Tax Act (InvStG). This also applies in cases where the profit shares or capital gains from commercial and commercially oriented partnerships are based on types of capital income that may be retained tax-free within the meaning of Section 36(2) of the Investment Income Tax Act (InvStG). Insofar as the profit shares and capital gains from commercial and commercially oriented partnershipscontain capital gains within the meaning of Section 43(1), first sentence, number 9 of the Income Tax Act (EStG) (essentially gains on the disposal of shares) to which the partial income procedure or Section 8b of the Corporation Tax Act (KStG) applies, these are to be allocated to income category 10a. No objection is raised if, in financial years of the special investment fund ending before 1 January 2022, the tax-exempt capital gains eligible for retention contained in the profit shares and capital gains from commercial and commercially oriented partnerships – by way of derogation from sentence 1 – are allocated to tax-exempt capital income retained within the meaning of section 36(2) of the Investment Fund Tax Act (InvStG) rather than to income equivalent to distributions.

For the distinction in foreign exchange forward transactions between forward transactions within the meaning of section 20(2), first sentence, number 3 of the Income Tax Act (EStG) and private disposal transactions within the meaning of section 23(1), first sentence, numbers 2 and 3 of the Income Tax Act (EStG), see margin numbers 36.18a et seq. and 36.40c.

b. Allocation of income from private disposals regardless of the holding period (Section 36(3), second sentence, of the Investment Income Tax Act (InvStG))

36.40a Prior to the introduction of Section 36(3), second sentence, of the Investment Income Tax Act (InvStG) by the 2024 Annual Tax Act (JStG), income from the disposal of other assets within the meaning of Section 23(1), first sentence, point 2, of the Income Tax Act (EStG) was classified as other income only if the asset had been acquired and

36.40b

. Under Section 36(3), second sentence, of the Investment Income Tax Act (InvStG), income from private disposals within the meaning of Section 23(1), first sentence, point 2, of the Income Tax Act (EStG) is now uniformly classified as other income, irrespective of the holding period. This applies both to the one-year holding period in Section 23(1), first sentence, point 2, first sentence of the Income Tax Act (EStG) and to the ten-year holding period in Section 23(1), first sentence, point 2, fourth sentence of the Income Tax Act. Section 36(3), second sentence, of the Investment Income Tax Act (InvStG) applies to disposal transactions in which the assets are acquired in financial years of the special investment fund commencing after 31 December 2024 on the basis of a binding contract or equivalent legal act concluded with legal effect after that date (Section 57(10)(6) of the Investment Fund Tax Act). Provided that no significant losses (e.g. from the disposal of crypto-assets) have arisen, there is generally no objection to income from the disposal of another asset within the meaning of Section 23(1), first sentence, point 2 of the Income Tax Act (EStG) was uniformly allocated to other income.

c. Definition of other income eligible for tax-free retention (Section 36(3), third sentence, of the Investment Income Tax Act (InvStG))

36.40c Other income eligible for tax-free retention comprises gains from the disposal of currencies where the underlying mandatory transactions provide for deferred settlement but which are not forward transactions within the meaning of Section 20(2), first sentence, point 3 of the Income Tax Act (EStG) (Section 36(3), third sentence of the Investment Income Tax Act (InvStG)). Forward transactions in currencies (forward foreign exchange transactions) which are not geared towards the actual (physical) delivery of the currency, but in which a difference settlement or a monetary amount determined by the value of a variable reference parameter is obtained, are classified as tax-exempt capital income subject to reinvestment pursuant to Section 36(2)(2) of the Investment Income Tax Act (InvStG) in conjunction with Section 20(2) sentence 1, item 3 of the Income Tax Act (EStG), to tax-exempt capital gains that may be retained. By contrast, forward foreign exchange transactions aimed at the actual (physical) delivery of the currency (forward foreign exchange delivery transactions) – since the applicability of Section 36(3), second sentence, of the InvStG as amended by the JStG 2024 (see margin note 36.40b) – generally constitute other income within the meaning of Section 36(3), first and second sentences, of the InvStG in conjunction with Section 23(1), first sentence, number 2, of the EStG and, pursuant to Section 36(3), third sentence, of the InvStG, constitute other income eligible for tax-free retention. The tax treatment as tax-exempt, reinvestable other income is limited to gains from the sale of currencies with deferred settlement, where the binding contract is legally concluded in financial years of the special investment fund commencing after 31 December 2024 (Section 57(10)(5) of the InvStG). For forward foreign exchange delivery transactions where the binding contract was legally concluded in financial years beginning before 1 January 2025, the tax treatment is governed by margin number 36.18a et seq.

36.40d The underlying asset of a forward foreign exchange delivery transaction is currency. The term ‘currency’ refers to means of payment issued or guaranteed by a central bank or a public authority and which have the legal status of legal tender.
In contrast to the concept of ‘money in the institutional sense’, which refers to ‘cash as legal tender’ – that is, the total of coins and banknotes in circulation – the concept of ‘money in the functional sense’ also encompasses book money or scriptural money and thus the entire monetary system of an economic area. By contrast, the term ‘currency’

abstractly to the conceptual unit of a monetary system specifically created by a state and recognised by the state through its respective monetary constitution.

36.40e If crypto-assets such as Bitcoin (BTC), Ethereum (ETH) or Tether (USDT) are "virtual currencies", this is more of a colloquial term, as crypto-assets created by private parties are not legally considered to be currency. Section 1(11), fourth sentence, of the German Banking Act (KWG) defines a crypto-asset as a digital representation of value that has not been issued or guaranteed by any central bank or public authority and does not possess the legal status of a currency or money, but which is accepted by natural or legal persons as a medium of exchange or means of payment on the basis of an agreement or actual practice, or serves investment purposes, and which can be transferred, stored and traded electronically. Although there are now individual countries in which Bitcoin is legal tender, this does not mean that it constitutes a currency, as it lacks the characteristic of being issued or guaranteed by a central bank or a public authority. Capital gains from crypto-assets therefore do not fall under Section 36(3), third sentence, of the Investment Income Tax Act (InvStG) and cannot be retained tax-free.

d. Corresponding application of the rules for tax-free retained capital gains (Section 36(3), fourth sentence, of the InvStG)

36.40f The provisions applicable to tax-free retained capital gains are to be applied mutatis mutandis to other income eligible for tax-free retention pursuant to Section 36(3), fourth sentence, of the InvStG.
Other income that may be retained tax-free is to be recorded in income category 8."

XV. The following heading and paragraph 38.12a are inserted after paragraph 38.12:

"38.3a. Exception to accrual-based recognition in the event of uncertain receipt

38.12a The accrual of income in accordance with the accounting period pursuant to Section 38(2) and (3) of the InvStG may be waived if

- due to exceptional circumstances, such as the sanctions against Russia, it is unclear whether and when the special investment fund will actually be able to access these revenues,
- these revenues are therefore not recognised in the annual financial statements under investment law or in the redemption price, and
- the auditor of the special investment fund has been informed of this approach and this has not led to any qualification or refusal of the audit opinion in this regard during the audit."

XVI. The following sentences are added to paragraph 48.62:

"Payments made by a domestic real estate corporation within the meaning of section 6(5), first sentence, point 1 of the Investment Income Tax Act (InvStG) in conjunction with section 49(1), point 2, letter e, sub-letter cc of the Income Tax Act (EStG) constitute income for the recipient under section 20(1), point 1 of the Income Tax Act (EStG). Profits from the disposal and unrealised changes in value of shares in domestic real estate corporations are therefore also to be included in the fund share profit."

XVII. In Annex 1 (Income Categories), categories 6, 7, 8, 10 and 20 are worded as follows:

"Category 6: Domestic property income within the meaning of Section 6(4) in conjunction with Section 42(5) of the Investment Income Tax Act (InvStG) and other domestic income within the meaning of Section 6(5) in conjunction with Section 42(5) of the Investment Income Tax Act (InvStG)	Category 6 essentially comprises domestic rental income and domestic capital gains on the disposal of land, as well as selected domestic income within the meaning of Section 49(1) of the Income Tax Act (EStG), in particular capital gains from domestic real estate companies within the meaning of Section 6(5), first sentence, point 1 of the InvStG in conjunction with Section 49 (1) No. 2 letter e sub-letter cc of the Income Tax Act (EStG), which the special investment fund itself pays tax on. Separate category required due to tax exemption under Section 42(5) of the InvStG Domestic property income and other domestic income not taxed by the special investment fund must be allocated to the other categories depending on their nature.
Category 7: Income within the meaning of Section 33(2) to (4) of the InvStG	Domestic property income and other domestic income not subject to tax deduction upon receipt are generally to be allocated to Category 7 if the (target) special investment fund does not pay tax on this income itself and its investors are investors with limited tax liability, investment funds or umbrella special investment funds. An exception to this, capital gains from

	domestic real estate corporations within the meaning of section 6(5), first sentence, number 1 of the Investment Fund Tax Act (InvStG) in conjunction with Section 49(1)(2)(e)(cc) of the Income Tax Act (EStG), which have not been taxed by the special investment fund, are to be allocated to Category 10 (see margin note 33.35a). If the investor is an umbrella special investment fund that does not exercise the property transparency option under section 33(2), third sentence, of the InvStG, the income of the target special investment fund allocated to category 7 falls into category 6 at the level of the umbrella special investment fund upon retention or distribution by the target special investment fund. If the umbrella special investment fund exercises the real estate transparency option, real estate imputed amounts arise at the level of the umbrella special investment fund upon retention or distribution by the target special investment fund. If the target special investment fund initially reinvests the domestic property income and only distributes it in a subsequent year, these distributions constitute non-taxable income equivalent to distributions from previous years.
Category 8: - Option premiums within the meaning of Section 20(1)(11) of the Income Tax Act (EStG), - Capital gains not subject to the partial income procedure or Section 8b of the Corporation Tax Act - Profits from forward transactions within the meaning of Section 20(2), first sentence, item 3 of the Income Tax Act	Income within the meaning of Section 36(2)(1) of the Investment Income Tax Act in conjunction with Section 20(1)(11) of the Income Tax Act (option premiums)

- Gains from the disposal of other capital claims of any within the meaning of section 20(2), first sentence, No. 7 EStG,	Gains within the meaning of Section 36(2)(2) of the Investment Income Tax Act (InvStG) in conjunction with Section 20(2), first sentence, point 1 of the Income Tax Act (EStG) from the disposal of shareholdings in tax-neutral corporations, associations of persons or asset pools (Section 42(3) of the Investment Income Tax Act) and profits within the meaning of Section 36(2)(2) of the Investment Income Tax Act (InvStG) in conjunction with Section 20(2), first sentence, point 3 (profits from forward transactions) and Section 7 of the Income Tax Act (profits from the disposal of other capital claims of any kind)
- profits from the disposal of investment units in (other) investment funds without partial exemption	Gains within the meaning of Section 36(2)(3) the InvStG from the disposal of investment units (investment income within the meaning of Section 16(1)(3) of the InvStG), where no partial exemption applies
- profits from the disposal of target special investment units, insofar as these are not attributable to categories 9 or 10 (i.e. in Category 8 includes the full taxable and, in category 9 or 10 the tax-privileged portions of the capital gain) and	taxable portions of the profits within the meaning of Section 36 paragraph 2, item 3 of the InvStG from the disposal of special investment units (Section 20(1)(3a) of the EStG in conjunction with Section 34 InvStG)
- gains from the disposal of currencies where the underlying underlying mandatory transactions deferred settlement but which are not forward transactions within the meaning of Section 20(2) sentence 1, item 3 of the Income Tax Act (tax-exempt) other income eligible for retention	within the meaning of section 36(3), third sentence, of the Investment Income Tax Act (InvStG) from forward exchange contracts which are based on actual (physical) delivery of the (forward foreign exchange delivery transactions)

within the meaning of section 36(3), third sentence, of the Investment Income Tax Act (InvStG).	

	For the purposes of allocating general costs, it is not objected to in categories 8 and 9 if, when calculating balances in accordance with Section 40(3) and (4) of the InvStG, the allocation basis for the second level and the proportional calculation for the third level are uniformly based on entities within the meaning of Section 20(1) within the meaning of section 20(1) of the InvStG, the allocation is uniformly based on corporations within the meaning of section 20(1), third sentence, of the InvStG (see paragraphs 40.27a and 40.37a). This category must be determined on an investor-by-investor basis, as the portions of the profits from the disposal of target special investment fund units to be recognised vary depending on the type of investor. If, at the level of the umbrella special investment fund, the relevant type of investor cannot be determined beyond doubt (in particular in the case of higher-tier umbrella special investment funds, affiliated companies within the meaning of section 14(1), first sentence, of the Corporation Tax Act (KStG) and partnerships as investors), the umbrella special investment fund must determine this category for each of the .

Category 10: - Capital gains which the the partial income method or Section 8b of the Corporation Tax Act (KStG) and - investor share gains of a special-purpose umbrella fund investment funds from	Profits within the meaning of section 36(2)(2) the InvStG in conjunction with Section 20(2), first sentence, point 1 Income Tax Act (EStG), to which both Section 3(40) of the Income Tax Act (EStG) as to which § 8b KStG also applies, and investor share gains included in the gains from the disposal of target special investment fund units capital gains from domestic real estate companies within the meaning of Section 6(5), first sentence, point 1 of the Investment Income Tax Act

disposal of target special investment units	in conjunction with Section 49(1)(2)(e) Subparagraph cc of the Income Tax Act (EStG), which the special fund does not tax itself (see margin note 33.35a). If the investor is a special investment fund of funds that exercises the property transparency option under section 33(2), third sentence, of the InvStG, the capital gains from domestic real estate capital companies, upon distribution by the target special investment fund or a notional inflow after 15 financial years at the level of the umbrella special investment fund in category 6. If the umbrella special investment fund exercises the property transparency option, then the following applies at the level of the umbrella special investment in the event of a distribution by the target Special Investment Fund or a notional inflow after 15 financial years "Real estate allocation amounts."

Category 20: Income within the meaning of section 43(2) of the Investment Fund Act (old version) in conjunction with Section 3(41)(a) of the Income Tax Act	The original additional amount is recorded in Category 1. Category 20 is used to record distributions from the intermediate company that are tax-exempt under Section 3(41)(a) of the Income Tax Act (EStG). For corporation tax purposes, this must be recorded separately, as 5% non-deductible business expenses are applied here. This category is to be applied for the last time for the 2021 assessment period (Section 57(5) of the Investment Income Tax Act).

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