



# Rules of Use for the Registration of Tax Data

Pursuant to the Ordinance on the Registration of Fund  
Data (Fonds-Melde-Verordnung - FMV) 2015

Version 2.0 / May 2018

This document is a translation of the German-language original and is provided solely for readers' convenience. In the event of dispute, the German version of the Rules of Use prevails.

**CAPITAL MARKET  
SERVICES**

**CeKB** 

Oesterreichische Kontrollbank AG



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## Definitions / Abbreviations

For the purposes of the present Rules of Use the following definitions and abbreviations apply:

<b>Notification Office (Meldestelle)</b>	Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") in its capacity as Notification Office (Meldestelle) pursuant to section 12 para 1 sentence 1 of the Austrian Capital Markets Act (Kapitalmarktgesetz - "CMA")
<b>AIFM</b>	Alternative-Investment-Funds-Manager
<b>AIFMA</b>	Alternative-Investment-Funds-Manager-Act, Federal Law Gazette I no. 135/2013
<b>OeKB</b>	Oesterreichische Kontrollbank Aktiengesellschaft, Bank Routing Code 10000, company seat 1010 Vienna, Am Hof 4, FN (companies register no.) 85749b, Commercial Court Vienna VAT number: ATU 15350402 DVR (data processing register number): 0052019
<b>Service Center Funds</b>	The contact and enquiry office operated by OeKB for, amongst others, the Registration of Fund Data
<b>Management Company</b>	Capital investment companies, AIFM within the meaning of the AIFMA and other legal entities directly managing assets within the meaning of section 188 Investment Funds Act (Investmentfondsgesetz - "IFA") 2011 or section 42 Real Estate Investment Funds Act (Immobilien-Investmentfondsgesetz - "RIFA")
<b>Registrant</b>	A physical or a legal person who has made a Registration (see definition of "Registration")
<b>Registration</b>	Each transmission of a Tax Data Registration to OeKB with the content provided for by annexes 3, 3a and 3b of the FMV 2015 as well as a registration of EU-WHT (withholding tax) data and data on a daily basis concerning the capital gains tax on interest pursuant to section 98 para. 1 no. 5 lit. b Income Tax Act (Einkommensteuergesetz - "ITA") 1988
<b>FMV 2015</b>	Ordinance issued by the Austrian Federal Ministry of Finance on the Registration of Tax-Relevant Data of Investment Funds, Real Estate Investment Funds and AIF (Fonds-Melde-Verordnung (FMV) - Ordinance on the Registration of Fund Data 2015, Federal Law Gazette II No. 167/2015)
<b>Tax-Relevant Data</b>	The data transmitted to the Notification Office by Registrants pursuant to section 186 para. 2 no. 2 lit. a IFA and section 40 para. 2 RIFA, on the basis of which the determination of Income Tax Treatment takes place, as well as the registered EU-WHT data and data on a daily basis concerning the capital gains tax on interest pursuant to section 98 para. 1 no. 5 lit. b ITA 1988
<b>Income Tax Treatment</b>	The income tax treatment (Tax Values) determined in accordance with the determination specifications on the basis of Tax-Relevant Data transmitted to the Notification Office by the Registrants
<b>Tax Data Registration and Tax Values</b>	The Tax-Relevant Data transmitted to OeKB (Tax Data Registration) and the Income Tax Treatment determined by OeKB by applying these data (Tax Values pursuant to section 186 para. 2 no. 2 lit.a IFA and section 40 para. 2 RIFA)
<b>Tax Data Registration with status "FINAL"</b>	Registration of the Tax-Relevant Data that was confirmed with the status "FINAL" by the Notification Office; the Registration is regarded as submitted at the point of time of this confirmation
<b>Fund</b>	Entity pursuant to sections 186 or 188 IFA 2011 or sections 40 or 42 RIFA
<b>Reporting Funds</b>	Funds that have submitted a timely annual registration pursuant to the FMV 2015 or a declaration of intent pursuant to section 5 para. 3 FMV 2015
<b>Fund Upload Client</b>	Web-application of OeKB for the acceptance of Tax Data Registrations
<b>FTP Account</b>	FTP account made available to the Registrant for the transmission of Tax Data Registrations
<b>Journal</b>	Records of the essential information on the Registration of Tax Data Registrations (acts of Registration) maintained by the Notification Office (Meldestelle)

**Data Protection**

OeKB processes personal data in accordance with data protection rules. Further information on data processing according to Art. 13 and 14 GDPR can be found at [www.oekb.at/en/privacy-policy](http://www.oekb.at/en/privacy-policy).

## 1 General Legal Framework

The Notification Office determines the tax treatment of dividends and dividend-like income from investment funds, AIF, real estate funds and AIF in real estate and publishes the determined Tax Values on the basis of the data transmitted to it by tax representatives pursuant to section 186 para 2 no. 2 lit a IFA and section 40 para 2 no. 1 RIFA. In addition, section 7 para 5 European Union Withholding Tax Act (EU-QuStG - "EU-WTA") provides for separate disclosure of European Union Withholding Tax ("**EU-WT**") of certain interest payments. The Ordinance on the Registration of Fund Data (FMV) 2015 issued by the Austrian Federal Ministry of Finance pursuant to section 186 para 2 no. 2 IFA and section 40 para 2 no. 1 RIFA is the basis for the transmission of Tax-Relevant Data, the manner of determination of income, the amount of the accruing capital gains tax, the necessary corrections of acquisition costs for tax purposes as well as the publication by the Notification Office (*Meldestelle*).

The present Rules of Use are the contractual basis for the Registration, the preparation, the circulation to third parties and the publication of Tax Data. They apply between OeKB on the one hand and the Registrants, the Management Companies, for which Registrations of Tax Data are made, and (if applicable) their tax representatives on the other hand at the latest once one of these services of OeKB is used. OeKB expressly reserves its right to modify, to amend and to update the present Rules of Use, including their annexes, which constitute integral parts of the present Rules of Use, in particular for the purpose of taking account of technical and legal developments. The respective current version of the present Rules of Use, including its annexes, will be published by OeKB on its website.

## 2 First Registration and Acceptance of Tax Data Registrations

At least two weeks prior to the first transmission of a Tax Data Registration each Management Company has to register by transmitting the duly completed and signed Registration Statement (annex 1) and is obliged to keep the information submitted continuously updated. In case the Registration Statement is not timely transmitted to OeKB, an effective Tax Data Registration by the respective Management Company is not possible.

Management Companies that were already validly registered at OeKB pursuant to annex 2 of the Ordinance on the Registration of Fund Data, Federal Law Gazette II no. 96/2012 as amended by the ordinance Federal Law Gazette II no. 224/2014, at the date of entry into force of the FMV 2015 do not require a new registration.

OeKB is only obliged to accept and process Tax Data Registrations, provided that a valid Registration Statement with up-to-date master data exists for the respective Management Company.

## 3 Tax Data Registrations

Tax Data Registrations have to be transmitted pursuant to the FMV 2015, exclusively EDP-supported, in a structured form and in accordance with annexes 3, 3a and 3b to the FMV 2015.

### 3.1 Data Format

Tax Data Registrations have to be transmitted to OeKB in electronic form. The files used for Registration have to comply with the data format provided by the FMV 2015 and as specified by OeKB through the Service Center Funds respectively ([www.oekb.at/KESt](http://www.oekb.at/KESt)).

### 3.2 Registration Mode

The files used for Registration have to comply with the “Technical Specifications of the Registration Process” made available by OeKB through the Service Center Funds and have to be registered with OeKB by one of the following modes:

- Fund Upload Client
- FTP Account

## 4 Quality Specifications

### 4.1 Integrity and Authenticity

The Tax-Relevant Data submitted by the Registrants to the Notification Office is accepted by OeKB as it is. Notwithstanding the system-based technical plausibility check of transmitted Tax-Relevant Data that has to take place based on determination specifications of the Federal Ministry of Finance (BMF) and annexes 3, 3a and 3b of the FMV 2015, OeKB checks the Tax-Relevant Data neither with regard to their content nor their authenticity. The responsibility for Tax-Relevant Data, in particular for its accuracy, is according to OeKB's understanding borne solely by the Registrant, but in no case by OeKB.

### 4.2 Records on the Date and Time of Registration

Date and time of each effective Tax Data Registration are electronically recorded by OeKB in intervals of 30 minutes and stored in the Journal. Registrants have access to the time specifications of their transmitted Tax Data Registrations stored in the Journal by way of the Fund Upload Client or the FTP Account.

### 4.3 Recommendation to Review

The processing of Tax Data Registrations by OeKB takes place electronically and automatically according to the determination specifications of the BMF. Due to the high number of Registrations, defects in the processing of Tax Data Registrations may occur. For reasons of due caution, the Registrants are advised to regularly check and review whether Tax Data Registrations transmitted by them and data affecting them otherwise have been correctly processed and published.

By way of the Fund Upload Client and the FTP Account a Journal is available by which the status of processing of Tax Data Registrations may be checked. The accepted and processed data are discernible there, thus allowing Registrants to check whether by acceptance and processing defects have occurred and whether Tax Data Registrations have to be corrected.

## 5 Time of Service

Transmissions of Tax Data Registrations may be made daily from 0:00 to 24:00; their processing by the OeKB takes place on trading days for the spot and futures market at the Wiener Börse between 8:00 and 15:00 hours. Registered Management Companies will be appropriately informed (e.g. by information on OeKB's website, e-mail) about any service interruption and the reopening of the possibility to register (to be provided as soon as possible). In case this has previously been agreed for with the Service Center Funds by e-mail, during a service interruption at OeKB Tax Data Registrations may also be registered in a different way as it is provided by section 3 *Tax Data Registrations*. In this case, however, such Tax Data Registrations must be registered anew immediately after the restoration of the Registration service in the usual electronic form as provided by section 3.1 *Data Format* and section 3.2 *Registration Mode*.

## 6 Reasonable Fees

Pursuant to section 186 para 2 no. 2 lit a IFA 2011 and section 40 para 2 no. 1 lit a RIFA in connection with section 12 para 1 last sentence CMA, OeKB is entitled to charge Registrants reasonable fees for its activity as Notification Office (*Meldestelle*). The current fees for the Registration and publication of Tax Data Registrations are contained in annex 2 of the Rules of Use. These fees shall be borne by the Management Company, for which a transmission and publication of Tax Data Registrations has been made or is planned.

## 7 Deregistration

In case a Management Company does no longer intend to transmit Tax Data Registrations, it has to transmit to OeKB (Service Center Funds) the duly completed Deregistration Statement which is attached to the Rules of Use as annex 3. As long as such deregistration is not made, the basic fee provided for in annex 2 (Fee Rates), which is charged once per year, has to be paid, even in case no Tax Data Registrations are made.

## 8 Publication and Circulation of Data to Third Parties

### 8.1 Publication of Data

Subject to section 8.6 *Special Rules for Certain Data*, the Tax-Relevant Data transmitted to OeKB and the Tax Values determined by OeKB by application of these data are published on OeKB's website under [www.profitweb.at](http://www.profitweb.at). They may be viewed free of charge by everyone.

### 8.2 Circulation of Data to Third Parties

Subject to section 8.6 *Special Rules for Certain Data*, on request the Tax-Relevant Data transmitted to OeKB and Tax Values determined by OeKB by application of these data are structured by OeKB and will be provided for information purposes to commercial/professional third parties. Such third parties are generally data vendors, data centers, banks, Management Companies or professional shareholders, which are provided with data structured by OeKB. This constitutes a fee-based service. The structuring of data is subject to OeKB's discretion. The amount of fees charged for such service by OeKB to the recipients of structured data depends on the complexity involved.

### 8.3 Copyright

Any structuring of Tax Data by OeKB pursuant to section 8.2 *Circulation of Data to Third Parties* is protected by copyright either as compilation (*Sammelwerk*; section 6 Copyright Act (Urheberrechtsgesetz) - "CA") or as database (*Datenbank*; section 40 *et seq.* CA).

### 8.4 Release from Banking Secrecy (Section 38 BA)

The publication of Tax Data (see section 8.1 *Publication of Data*) as well as the circulation of Tax Data to third parties (see section 8.2 *Circulation of Data to Third Parties*) is permitted. In case the provision of section 38 Banking Act (Bankwesengesetz - "BA") applies to data registered and/or processed pursuant to these utilization terms, Registrants, Management Companies, for which a Registration of Tax Data is made, and (if applicable) their tax representatives hereby expressly release OeKB from the obligation to observe the banking secrecy pursuant to section 38 para 2 no. 5 BA. Such release from banking secrecy may be revoked with effect for the future, to the extent that no statutory publication obligation of OeKB exists.

### 8.5 Data Protection

Registrants, Management Companies, for which a Tax Data Registration is made, and (if applicable) their tax representatives hereby expressly consent to the processing and transmission to third parties of transmitted Tax Data Registrations for the purposes of determining the Income Tax Treatment, their provision, the circulation to third parties and the publication. To the extent that this consent is legally necessary and neither an explicit legal authorisation or obligation of OeKB as to the use of the data nor prevailing legitimate interests of OeKB or a third party requiring the use exist, the consent may be revoked at any time pursuant to section 8 para. 1 no. 2 Data Protection Act.



## 8.6 Special Rules for Certain Data

Data on Funds established under Austrian law, which are registered with OeKB without statutory obligation to do so, is circulated by OeKB to third parties only to such extent as notified to it by the respective Management Company in its master data sheet.

# 9 Liability

## 9.1 Liability – Tax Law

Registrants take notice of the fact that there is no tax law liability of OeKB for the deduction and transfer of capital gains tax (KESt) pursuant to section 95 Income Tax Act 1988 (Einkommensteuergesetz, Federal Law Gazette 400/1988 – "ITA") as well as of European Union Withholding Tax ("EU-WT") pursuant to section 8 European Union Withholding Tax Act (EU-QuStG, Federal Law Gazette I 33/2004 – "EU-WTA").

## 9.2 Liability – Civil Law

Registrants have to take care for the completeness and correctness of Tax Data Registrations transmitted to OeKB.

In collecting Tax Data Registrations, the determination of the Income Tax Treatment as well as in generating databases OeKB will act with the care usually exercised by businessmen in the IT service sector. OeKB does not assume any liability whatsoever for the completeness and correctness of Tax Data Registrations registered with OeKB by Registrants as well as for their timely availability.

Pursuant to the regulations of the Public Liability Act (Amtshaftungsgesetz, Federal Law Gazette no. 20/1949), the federation is liable for any damages culpably caused to whomsoever by OeKB (Notification Office - Meldestelle) or by other persons in performing their tasks on behalf of OeKB pursuant to section 186 para. 2 no. 2 lit. a and b IFA or section 40 para. 2 no. 1 RIFA. OeKB (Notification Office - Meldestelle) as well as its corporate bodies and employees are not liable to the damaged party. For actions in connection with the present Rules of Use that OeKB – if at all – performs outside of its activities pursuant to section 186 para. 2 no. 2 lit. a and b IFA or section 40 para. 2 no. 1 RIFA, OeKB only is liable for gross negligence and intent in accordance with statutory law.

In any case OeKB assumes no liability whatsoever for direct or indirect secondary damages or for third party damages.

OeKB is also not liable for the fulfilment in case of deficiencies and delays in cases of force majeure (*vis major*).

Registrants are liable to OeKB for all damages due to culpable breach of this contract by at least gross negligent behaviour. In this case they are obliged to indemnify OeKB and to hold it harmless from and against any claim.

## 10 Duration of Contract and Termination

### 10.1 Duration of Contract

The present Rules of Use are the contractual basis for the transmission, the preparation, the circulation to third parties and the publication of data. They apply between OeKB on the one hand and the Registrants, the Management Companies as well as (if applicable) their tax representatives on the other hand at the latest once a service of OeKB is used. The Rules of Use apply to each registered Management Company from the moment of first Registration (section 2 *First Registration and Acceptance of Tax Data Registrations*) until *Deregistration* (section 7).

### 10.2 Termination and Refusal of Acceptance of Tax Data Registrations

OeKB is entitled to unilaterally terminate with immediate effect the application of the present Rules of Use *vis-à-vis* registered Management Companies, their Registrants and (if applicable) their tax representatives for cause, in particular in the following cases:

- (i) if the registered Management Company is in default during a period of at least six months to pay invoices issued in a total amount in excess of EUR 1,000;
- (ii) if the registered Management Company does not update its master data despite of repeated requests of OeKB to do so (section 2 *First Registration and Acceptance of Tax Data Registrations*).

In these cases OeKB is not obliged to accept Tax Data Registrations.

Moreover, OeKB is entitled to terminate the present Rules of Use at the end of each calendar month observing a termination period of one month in accordance with statutory law.

## 11 Miscellaneous

### 11.1 Applicable Law

The legal relationship between the Registrants, the Management Companies and (if applicable) their tax representatives on the one hand and OeKB on the other hand shall be governed by Austrian law, excluding the rules on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods.

### 11.2 Place of Jurisdiction

For all legal disputes arising out of or in connection with the present Rules of Use, including their applicability, and the transmission of Tax Data Registrations Vienna-Inner City is agreed as exclusive place of jurisdiction in relation to OeKB.

### 11.3 Severability Clause

Should any of the provisions of the present Rules of Use be or become invalid or challengeable, the validity and applicability of the other provisions shall not be affected. Invalid or challengeable provisions shall be interpreted or amended in such a way that their intended purpose is achieved as close as possible.

## Annexes

annex 1: Registration Statement

annex 2: Fees for the Registration of Fund Data

annex 3: Deregistration Statement

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