

WTax Statement on the Draft Government Proposal to Amend Section 20a of the Income Tax Act

To: Ministry of Finance (Valtiovarainministeriö), Finland

Re: Consultation on the draft government proposal to amend Section 20a of the Income Tax Act (Tuloverolaki), published August 2026

From: WTax Shared Services

Date: 14 September 2026

About WTax

WTax is a global withholding tax recovery service provider. We assist institutional and retail investors in obtaining tax relief and retrospective tax recoveries under applicable tax treaties and domestic legislation, reducing dividend and interest withholding tax leakage — which gives us direct, practical visibility into how Section 20a operates in relation to the foreign investment funds on a global scale.

General Remarks

WTax welcomes the opportunity to comment on the Ministry of Finance's draft proposal, published in August 2026, to amend Section 20a of the Income Tax Act, which governs the tax exemption available to investment funds. We support the direction of the proposed amendments as welcome steps towards greater legal certainty and closer alignment with European Union (EU) law and recent Court of Justice of the European Union (CJEU) case law.

In the context of these proposed amendments, we would also like to draw the Ministry's attention to certain aspects of Section 20a that continue to give rise to legal uncertainty and practical challenges for taxpayers. In particular, we believe there is merit in considering the operation of the 30-unitholder requirement and the burden of demonstrating compliance with that requirement, as consideration of these matters may further enhance legal certainty and help ensure that the objectives of the proposed amendments are fully achieved. We further consider that clarification of these matters would support the long-term compatibility of Section 20a with EU law and the Treaty on the Functioning of the European Union (TFEU).

1. The 30 Unitholder Requirement

Comparability and the Objective of Section 20a

The preparatory works to Section 20a indicate that the purpose of the exemption is to ensure tax neutrality between direct investment and investment undertaken through a collective investment vehicle. The minimum unitholder requirement was introduced to ensure genuine collective investment activity and to prevent the use of abusive structures. It is therefore our understanding that the

objective to achieve with this requirement relates to the substantive nature of the investment vehicle rather than to the application of a strict numerical threshold.

In the EU, Undertakings for Collective Investment in Transferable Securities (UCITS) funds are covered by the UCITS Directive 2009/65/EC and must comply with the minimum standards set out in this Directive. The Preamble of the UCITS Directive establishes that UCITS funds may only be used for purposes of collective investment of capital raised from the public according to the rules of the Directive. While the number of unitholders or investors in a UCITS funds is not harmonized at EU level, the collective investment purpose of UCITS funds is harmonized through the regulatory framework established by the UCITS Directive.

Finnish common funds (UCITS) inherently satisfy the 30-unitholder requirement by virtue of domestic regulation, as they are required under the Finnish Income Tax Act to maintain a minimum of 30 unitholders. Comparable foreign UCITS funds may not be subject to an equivalent minimum unitholder requirement despite pursuing the same collective investment objectives within a harmonised regulatory framework. This raises legitimate questions regarding comparability under Article 63 TFEU, particularly where a foreign fund pursues the same, or a substantially similar, collective investment purpose as a Finnish common fund, yet is excluded from the scope of the exemption solely because it does not satisfy, or rather cannot substantiate compliance with, the specific 30-unitholder threshold.

Similar considerations arise in relation to AIFs and comparable third-country funds. Article 63 TFEU protects capital movements involving both Member States and third countries. Accordingly, differences arising solely from diverging regulatory frameworks should be approached with caution where objective comparability exists.

De Facto Discrimination

The CJEU has ruled that the conditions granting tax advantages under their domestic legislation must not restrict free movement of capital. The CJEU has consistently applied this approach to matters involving foreign investment funds and domestic tax advantages, particularly when a condition is automatically satisfied by domestic funds but is difficult or impossible for comparable foreign funds to fulfil. Where a condition is not harmonised at Union level and reflects the specific regulatory choices of a particular Member State, its application as an objective criterion for a tax exemption must be carefully examined in light of Article 63 TFEU. As such, requiring compliance with a formal condition that domestic Finnish funds inherently satisfy through their regulatory framework, such as the 30-unitholder requirement despite the fund having a true collective investment purpose, risks creating a restriction on the free movement of capital and may result in de facto discriminatory treatment of objectively comparable foreign funds.

2. The Evidentiary Burden Associated with the 30-Unitholder Requirement

Practical Challenges in Complying with the 30-Unitholder Requirement

In addition to the minimum unitholder requirement itself, its practical enforcement has become a significant obstacle for foreign funds, particularly for widely held collective investment funds. By their nature, such funds are commonly structured so that investors hold their units through nominees, brokers and other intermediaries, which act as the registered unitholders on behalf of a large number of underlying investors.

The Finnish tax authorities have, in practice, begun to require certification of the exact number of unitholders, confirmation of the calculation methodologies used attested to by intermediaries, and detailed information on both direct and indirect unitholders.

Due to the way in which widely held funds are structured, and given the breadth of their investor base, there are often significant practical challenges in providing the level of evidence required by the Finnish tax authorities. This is particularly so because intermediaries are generally under no legal obligation to provide such information and are often unwilling to certify the accuracy of information relating to the underlying investor count due to potential liability concerns

As such the very funds at which the exemptions contained in section 20a(1) and (2) are aimed are being negatively affected by these evidentiary requirements. The CJEU has ruled in the *Köln-Aktienfonds Deka* case ([C-156/17](#), paragraph 62), and more recently in the *Santander Renta Variable España Pensiones* case (C-525/24, paragraph 53), that “*non-resident tax-payers may not be subject to excessive administrative burdens that make it in fact impossible to benefit from a tax advantage*”. In practice, the burden of proof imposed may be excessively difficult, and in some cases impossible, to satisfy, thereby restricting access to the exemption and giving rise to de facto discriminatory treatment of foreign funds.

WTax would welcome the opportunity to engage further with the FTA on the practical challenges associated with these evidentiary requirements and to discuss workable solutions that would enable legitimate claimants to access the exemption while maintaining the integrity of the regime.

EU Law Principles Governing Evidentiary Burdens

Under EU law, the principles of effectiveness and proportionality govern the procedural requirements and evidentiary burdens that Member States may impose on taxpayers seeking to exercise rights derived from EU law. The principle of effectiveness precludes national rules or administrative practices that render the exercise of EU law rights practically impossible or excessively difficult, while the principle of proportionality requires that measures adopted to achieve legitimate objectives be appropriate and not exceed what is necessary to attain those objectives. Although Member States retain fiscal autonomy in determining the evidence required to support claims for tax benefits, that autonomy must be exercised in accordance with EU law, including the free movement of capital guaranteed by the TFEU.

Consistent CJEU case law confirms that evidentiary requirements must not be applied in an excessively formalistic or disproportionately burdensome manner. In particular, the Court has recognised that tax authorities may request evidence necessary to verify entitlement to a tax benefit, but they may not impose administrative obligations that, in practice, make access to that benefit excessively difficult for non-resident taxpayers. Evidence cannot be rejected solely because it does not conform to a specific domestic format where it nonetheless enables the authorities to verify the relevant conditions. Against this background, requiring foreign collective investment funds to certify the precise number of unitholders, including detailed confirmations from intermediaries and information relating to indirect investors, appears inconsistent with the principles of effectiveness and proportionality. Such requirements impose a disproportionate administrative burden relative to the objective of establishing genuine collective investment activity and may result in discriminatory treatment where the requirement is not proportionate to what is objectively required to confirm compliance with the exemption.

3. Conclusions and Recommendations

WTax supports the Ministry's efforts to amend Section 20a and welcomes the proposed measures aimed at improving legal certainty and aligning Finnish legislation with recent CJEU jurisprudence. In light of these amendments, WTax would also welcome the opportunity to highlight certain remaining practical and legal challenges experienced by industry participants, including concerns relating to the 30-unitholder requirement and the evidentiary burden associated with demonstrating compliance with that requirement. Addressing these issues could further enhance legal certainty and support the effective application of the rules.

The objective underlying the requirement, namely ensuring genuine collective investment activity and preventing abuse, is legitimate. However, the application of a fixed numerical threshold and the increasingly onerous evidentiary requirements imposed on foreign funds may exclude objectively comparable collective investment vehicles that pursue the same investment purpose as Finnish funds. This is particularly relevant where foreign UCITS and comparable AIFs operate within established regulatory frameworks designed to facilitate collective investment and investor protection.

In addition, the practical difficulties faced by widely held foreign funds in obtaining detailed investor information from intermediaries may render compliance with the evidentiary requirements excessively difficult in practice. Such requirements appear to go beyond what is necessary to verify the existence of genuine collective investment activity and risk creating disproportionate obstacles for non-resident funds seeking access to the exemption.

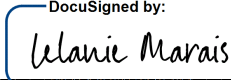
Accordingly, WTax respectfully recommends that the Ministry consider:

1. Reassessing the appropriateness of the 30-unitholder requirement as a standalone criterion for accessing the exemption, particularly where a foreign fund can otherwise demonstrate a genuine collective investment purpose comparable to that of a Finnish investment fund.

2. Providing alternative means by which foreign funds may demonstrate compliance with the objectives underlying the requirement, without requiring strict proof of a specific numerical threshold.
3. Clarifying that tax authorities should accept reasonable and objective evidence of investor diversification and collective investment activity, even where detailed underlying investor information is unavailable.
4. Ensuring that evidentiary requirements imposed on foreign funds are proportionate, practical, and consistent with the principles of effectiveness and proportionality under EU law.
5. Providing administrative guidance on acceptable forms of evidence to reduce uncertainty and ensure consistent application of Section 20a in practice.

By addressing both the substantive 30-unitholder requirement and the evidentiary burden associated with it, the Ministry would further strengthen the compatibility of Section 20a with Article 63 TFEU while preserving the legitimate policy objective of ensuring that the exemption applies only to genuine collective investment vehicles.

Should the Ministry of Finance have any questions about our feedback, please do not hesitate to contact us.

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