

## Operational Tax News

### Netherlands - Lower court requests clarity on case law relating to dividend WHT refunds

**5 September 2016**

A Dutch first instance court has referred two cases involving requests for refunds of Dutch dividend withholding tax to the Dutch Supreme Court for a preliminary ruling. Over the last few years, many foreign companies have filed refund requests on the grounds that the tax was levied contrary to EU law. The Dutch tax authorities have rejected many of these requests, so there now are about 1,500 appeals on the denied requests pending before the Dutch first instance tax court.

The two referred cases involve dividend distributions made by Dutch resident companies to a UK investment fund and a German investment fund. Dutch dividend withholding tax was levied on the distributions and refunds of the tax were denied. The first instance tax court requested a ruling on whether it can rely on the Supreme Court decision of 10 July 2015 in making its own decisions on the cases.

If so, no foreign investment vehicles could benefit from a refund of withholding tax based on the purpose and intent of Dutch law. The first instance tax court, however, appears to have some doubts about such a far-reaching interpretation, so it also has asked whether all of the requirements of the Dutch FII regime must be met (legally or factually) for a non-resident investment vehicle to be deemed comparable to a Dutch FII.

For the complete details, please refer to the alert from Deloitte Netherlands.

#### **Impact for Luxembourg Funds**

This is a positive development for the funds who have filed WHT reclaims in the Netherlands.

Once clarity on the issue is provided by the Dutch Supreme Court, it will be clear whether non-resident investment funds are comparable or not with Dutch FIIs and whether the decision by the Supreme Court of the 10th July 2015 is indeed still applicable, in which case a refund of WHT is much less likely for foreign investment funds.

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