

Operational Tax News

Finland – Refund restriction to non-listed SICAVs

28 February 2017

Current situation

The Finnish Tax Authorities have acknowledged that their legislation was contrary to EU Law and agree to reimburse unduly levied withholding tax to foreign investment funds. However, the Finnish Tax Authorities do not recognize the existence of discrimination and do not accept to refund under the following circumstances: (i) the foreign investment fund is a corporate form (such as SICAV) and (ii) it is not publicly listed.

New confirmation

In a decision dated 19 December 2016, the Finnish Supreme Administrative Court (SAC) confirmed the position of the Finnish Central Tax Board (CTB), considering that portfolio dividends paid by Finnish publicly-listed companies to a Maltese non-listed SICAV are subject to Finnish withholding tax.

The SAC considered that the Maltese SICAV is not comparable to a tax-exempt Finnish investment fund but to a Finnish Limited Liability Company that is taxable in Finland. In the SAC reasoning, the investment of a Finnish investment fund is collectively owned by its investors when a Maltese SICAV, with a separate legal person, owns the investments holds. Furthermore, the SAC argued that the portfolio dividends from Finnish publicly-listed companies are fully taxable if received by a non-listed Finnish Limited Liability Company.

In this decision, the SAC gave legal characteristics of the fund more than functional features to state that a Maltese SICAV is not comparable to Finnish investment funds.

For more details, please refer to the [Tax Alert](#) from Deloitte Finland.

Client impact

As a result of this decision, non-listed SICAVs now have limited opportunities to be comparable to Finnish investment funds and to obtain a full exemption from Finnish withholding tax on portfolio dividends. However, Luxembourg SICAVs are able to reduce the tax rate through the double tax treaty with Finland. Even if the decision especially concerned non-listed SICAVs, refund opportunities may still exist for listed SICAVs.

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