

Operational Tax News

Netherlands - Supreme Court requests preliminary ruling from CJEU on WHT cases for non-resident investment funds

14 March 2017

Current situation

Over the last decade, thousands of claims for refunding of Dutch withholding tax have been filed by foreign investment funds on the grounds that the tax was levied contrary to EU law. The Dutch Tax Authorities have systematically rejected these claims, resulting in approximately 1,500 cases of appeal pending before the Dutch first instance tax court (with many in the previous administrative stage).

Preliminary ruling request

On 3 March 2017, the Dutch Supreme Court referred two cases involving requests for refunds of Dutch dividend withholding tax to the European Court of Justice (CJEU) for a preliminary ruling.

The Dutch Supreme Court ruled in previous decisions that a Luxembourg SICAV fund was not entitled to a refund of the withholding tax and that a Finnish open-ended investment fund is not comparable to a Dutch FII.

The Dutch Supreme Court is of the view that it is not beyond reasonable doubt what the answers should be and has therefore decided to refer both cases.

The two cases for which the Dutch Supreme Court requests preliminary ruling involve dividend distributions made by a Dutch resident company to a UK investment fund and a German investment fund.

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

Client impact

While the decision of the CJEU is pending, it is advised that clients continue to file withholding tax refund requests to the Dutch Tax Authorities for both EU and non-EU based investment funds where amounts involved are material. If the CJEU rules that the Dutch Supreme Court's previous rulings misinterpreted EU law, the Luxembourg and the Finnish investments funds may be eligible for a refund after all.

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