

Luxembourg Tax Alert

Positive decision on withholding tax withheld on Italian dividends distributed to German and US investment funds

20 July 2022

Summary

The Italian Supreme Court (Italy's highest tax court) has made positive decisions in seven cases involving a German investment fund and six US investment funds.

Background

On 6 and 7 July, the Supreme Court issued separate judgments confirming that the Italian tax treatment of dividends paid by Italian companies to German and US investment funds is an infringement of article 63 of the Treaty on the Functioning of the European Union (TFEU), pertaining to the free movement of capital.

Through this decision, the Supreme Court overturned the adverse decisions of lower-tier tribunals (Pescara Tax Court of First Instance and Pescara Court of Appeals), where the claimants requested refunds of the 15% treaty withholding tax based on EU Law.

As a result, the Supreme Court's separate judgments have ordered the refund of excess withholding tax for the German investment fund and US investment funds.

Impact on investors

The Italian Supreme Court's judgments provide crucial guidelines for the Italian tax authorities' interpretation of EU Law regarding withholding tax reclaims lodged by EU/EEA and non-EU/EEA investment funds. Therefore, the chances of successful reclaims for these funds are significantly higher.

Action(s) required

EU and EEA investment funds should consider filing claims to recover the excess of withholding tax until 31 December 2020 . (From 1 January 2021, Italian dividends paid to EU and EEA investment funds have been, in principle, exempt from Italian withholding tax and claims based on EU Law are no longer necessary).

Non-EU and EEA investment funds should consider filing claims to recover the excess of any withholding tax.

All investment funds may consider filing these claims in Italy before the 4-year statute of limitation expires (rolling period) to safeguard their right to these refunds.

If you have any questions about these judgments or need help with filing these claims, please get in touch:

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