

International Tax News*

**The Norwegian Aberdeen case
– a Lux. SICAV gets WHT refunded**

Norway

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PricewaterhouseCoopers has successfully assisted a Luxembourg SICAV in getting a refund of withholding tax levied in breach with the EEA Agreement. A Settlement was signed today.

PwC obtains tax refund

PwC is one of the leading firms with respect to getting refunds of withholding tax levied in breach with the EEA/EC law. PwC Finland assisted Aberdeen in the ground-breaking Aberdeen case (Case-303/07) where the European Court of Justice concluded that also Luxembourg SICAVs are comprised by the EC law including the four freedoms.

PwC has also successfully argued that UK OIECs are comprised by the Norwegian tax exemption method ("TEM") and thus entitled to a refund of withholding tax previously imposed in violation with the EEA Agreement.

In September 2009, the Norwegian Ministry of Finance stated that their previous policy is reversed and that Norway will comply with the decision in the Aberdeen case. However, Norwegian tax authorities have been hesitant to conclude in specific cases, and are in the process of considering what formal and documentation requirements they will impose. Hence, they have not until today accepted refunds for SICAVs. The Settlement signed today should have a positive impact on pending cases for Central Office - Foreign Tax Affairs (COFTA).

The case in brief

The case concerned a Luxembourg SICAV which was an umbrella fund. In the period from 2002 to 2005, Norwegian companies had withheld over NOK 100 million in withholding taxes on dividend distributions to the Luxembourg fund.

PwC Norway, assisted by PwC UK, filed a refund application in December 2005 based on EEA law arguments. COFTA denied

refund in a decision in 2006. This decision was appealed to the tax appeal board at COFTA. The appeal board upheld the decision in 2008. A summons was submitted in July 2009 resulting in the Settlement of today.

This case shows the importance of safeguarding potential refund claims by submitting applications and appealing against incorrect decisions by the tax office.

The effect on other cases

The Settlement should have positive impact on pending and new refund cases at COFTA, and improve the likelihood of getting a refund for corporate based investment funds such as Luxembourg and French SICAVs, PLC based Irish investment funds and other corporate based investors.

We understand that similar cases have been put on hold pending the outcome of this case. It is expected that COFTA will start reconsidering these refund applications. The cases will be considered in the same order they were submitted. The large number of cases to be reviewed is likely to give a time lag before corporate based investment funds receive the cash refund.

We also expect that the documentation requirements for getting a refund will be largely the same as required by the tax authorities in relation to this case. The following documentation should be submitted along with a refund application:

- Dividend vouchers in original
- Tax certificate in original covering all relevant years (may be neutral without any reference to a tax treaty only domestic law)
- Excel spreadsheet with an overview of the information in the dividend vouchers
- Prospectus or similar document

Appellate court decision regarding statutes of limitation in pilot cases

Those claims filed more than 3 years after the relevant income year could be disallowed, as illustrated by a recent appellate court decision won by the State based on statutes of limitation arguments. The State was heard that the general statutes of limitation apply, so claims not submitted within a three year deadline expire. Also, the court agreed that no compensation claim can be made although the Norwegian tax law was in violation with EEA freedoms.

We expect this ruling to be appealed to the Supreme Court, and a decision to come during 2010.

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