

Aberdeen Case (ECJ/C-303/07/June 18, 2009): Withholding tax claims in Hungary

In June 2009, the European Court of Justice issued its decision in the Aberdeen case. For further information, please refer to our previous flash news regarding this decision.

In light of the Aberdeen decision, PwC Hungary identified the opportunity to reclaim Hungarian all withholding tax suffered in 2004 and 2005 by Luxembourg investment funds, which invested into Hungarian shares. Action has to be taken before 31 December 2009.

Aberdeen decision

On June 18, 2009, the ECJ issued its judgment in the Aberdeen Property Fininvest Alpha Oy case. The decision is of considerable significance for the European investment management industry as it is the first time the ECJ has considered the compatibility with the EC Treaty of an EU Member State levying withholding taxes only on dividends paid to non-resident investment funds while exempting domestic investment funds from such taxes. The Court finally took a decisive position on some of the most commonly used arguments to justify the differentiation in treatment between domestic and foreign funds. All of them were rejected!

Application to Hungary

In 2004 and 2005 Hungary withheld 20% withholding tax on dividends paid by Hungarian companies to foreign investment funds, while this was not the case for dividends paid to Hungarian investment funds.

In light of the ECJ decision in the Aberdeen case, the Hungarian withholding tax system violated the basic EU principle of free movement of capital. Therefore, Luxembourg investment funds (FCPs or SICAVs) who invested significantly in Hungarian equities in 2004 and 2005 should now file a withholding tax reclaim to recover this tax from the Hungarian Tax Authorities.

We estimate the success probability of such claims very high.

Necessary Actions before 31 December 2009

The delay for filing the reclaim for dividends received in 2004 is 31 December 2009. Therefore, the 2004 claims should still be filed this year.

You should check your portfolio held in 2004 and identify significant dividend payments received from Hungarian companies. PwC Luxembourg and PwC Hungary would then assist you filing the necessary claims.

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