

OPPORTUNITY FOR A REFUND OF FINNISH DIVIDEND WITHHOLDING TAX

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On 10 May 2012, the European Court of Justice ("ECJ") issued its judgment in the Santander case (C-338/11). This landmark judgment is likely to have major impact on dividend withholding taxes in Finland and other EU Member States. The ECJ ruled that certain non-French mutual investment funds were entitled to a full refund of the French dividend withholding tax on their French source portfolio dividends.

The judgment by the ECJ further strengthens the position of foreign investors to claim a refund of withholding taxes suffered in Finland. The opportunity exists not only for investment funds within the EU or third countries, but also for companies and other investors irrespective of their jurisdiction.

In the Santander case, which forms a part of joined cases (C-338/11 – C-347/11), Spanish, German, Belgian UCITS funds and US regulated investment funds argued that the levy of 25% withholding tax on French source dividends is in breach of the free movement of capital under EU law, as such French dividends received by comparable French funds are fully exempt from French tax.

The ECJ ruled that the difference in treatment between resident and non-resident investment funds constitutes a restriction of the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union ("TFEU") in circumstances where the funds are comparable and there is no justification for the different treatment of non-resident investment funds. In respect of comparability, the ECJ stated that the French rule is based on the residence of the funds and, thus, the comparability is to be assessed solely at the fund level. The arguments presented by the French government relating to the balanced allocation of taxing right and far-reaching budgetary consequences were set aside by the ECJ.

Opportunity for foreign investors

Finnish source dividends are fully or partly tax exempt for various types of Finnish investors, but a dividend withholding tax is payable in many cases by foreign investors, in particular on portfolio dividends or in the absence of a tax treaty.

The ECJ judgment supports the position of foreign investors in claiming a refund of Finnish dividend withholding taxes in cases where a domestic investor in a comparable situation would have benefited from a tax relief.

Foreign investors should claim for their refunds within five years from the dividend. Accordingly, dividend withholding taxes levied in 2007 – 2012 can be reclaimed.

Dittmar & Indrenius advises some of the world's largest investment funds in Finnish tax matters and withholding tax refund claims. The ECJ judgment makes it worthwhile to analyse the opportunities to reclaim withholding taxes in Finland.



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