

UK pensions to receive £ millions in Dutch withholding tax refunds

An extract from European IMRE News March 2009

UK pensions to receive £ millions in Dutch withholding tax refunds

Following claims filed on their behalf, UK pension funds are about to receive substantial Dutch tax refunds. Other territories, in particular France, may have to follow.

UK pension schemes have begun to receive notices from the Dutch tax authorities that they will receive withholding tax refunds worth in excess of €35 million, following protective claims filed by them under EC treaty principles.

These claims have been made on the basis that UK schemes investing in the Netherlands suffered withholding taxes on Dutch dividends that local Dutch schemes did not. Similar claims have been filed on behalf of UK pension schemes in other European territories. The total value of claims is in excess of €100 million (more than £85 million).¹¹

Although refunds of withholding taxes for UCITS funds and non-UK pension scheme clients in Europe have been successfully obtained during 2008, this is the first time that UK pension schemes will receive refunds in respect of the EU protective claims they have filed.

Similar refunds may follow in other Member States. In France, for example, the Supreme Court ruled in February that French withholding taxes are also in breach of treaty principles.

Moving towards equality of tax treatment

In the UK, pension scheme clients have been working on such claims since 2004. And, in the Netherlands, the European Federation for Retirement Provision filed a ground-breaking complaint with the European Commission in 2005 against 18 Member States that operated discriminatory withholding taxes. The EC are now well advanced with infringement proceedings against Member States named in the complaint that, to date, have refused to change their laws.

The Dutch have never officially conceded that their withholding tax laws were in breach of EC treaty principles, in spite of this latest development. Furthermore, many other territories named in the complaint have yet to follow the Dutch example or bow to EC pressure to change their laws. For this reason, this very positive development appears likely to be the first victory in a series of protracted discussions in other territories.

We believe these are the first welcome steps on the road to seeing the principle of the freedom of movement of capital driving the equality of tax treatment for investors across the European Union. We expect that more and more countries will have to follow suit over time.



Tim Sowter

PricewaterhouseCoopers (UK)
+44 20 7804 3736
timothy.j.sowter@uk.pwc.com

¹¹ Relates to claims made by PricewaterhouseCoopers only.

Investment Management and Real Estate contacts

IMRE News is produced by experts in their particular field at PricewaterhouseCoopers, to address important issues affecting the investment management industry. If you would like to discuss any aspect of this document, please speak to your usual contact at PricewaterhouseCoopers or one of those listed on these pages.

Global Investment Management and Real Estate Leadership Team



Marc Saluzzi
PricewaterhouseCoopers (Luxembourg)
Global Investment Management
and Real Estate Leader
+352 49 48 48 2511
marc.saluzzi@lu.pwc.com



Kees Hage
PricewaterhouseCoopers (Luxembourg)
Global Real Estate Leader
+352 49 48 48 2059
kees.hage@lu.pwc.com



Barry Benjamin
PricewaterhouseCoopers (US)
Americas Investment Management
and Real Estate Leader
+1 410 783 7623
barry.p.benjamin@us.pwc.com



Pars Purewal
PricewaterhouseCoopers (UK)
UK Investment Management
and Real Estate Leader
+44 20 7212 4738
pars.s.purewal@uk.pwc.com



Brendan McMahon
PricewaterhouseCoopers (Channel Islands)
Global IMRE Private Equity Leader
+44 1534 838234
brendan.mcmahon@je.pwc.com



Robert Grome
PricewaterhouseCoopers (Hong Kong)
Asia Pacific Investment Management
and Real Estate Leader
+852 2289 1133
robert.grome@hk.pwc.com



David Newton
PricewaterhouseCoopers (UK)
Global Investment Management
Tax Leader
+44 20 7804 2069
david.newton@uk.pwc.com



Tony Artabane
PricewaterhouseCoopers (US)
Global Hedge Funds Leader
+1 646 471 7830
anthony.artabane@us.pwc.com

If you would like to receive copies of this newsletter or would like further information about PricewaterhouseCoopers Investment Management and Real Estate publications, please contact Denise Cook at denise.cook@uk.pwc.com

Editor: Rupert Bruce

pwc.com

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

PricewaterhouseCoopers provides industry-focused assurance, tax, and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

This report is produced by experts in their particular field at PricewaterhouseCoopers, to review important issues affecting the financial services industry. It has been prepared for general guidance on matters of interest only, and is not intended to provide specific advice on any matter, nor is it intended to be comprehensive. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers firms do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.