

Withholding tax on dividends

An extract from UK real estate insights - Issue 13, July 2009

Withholding tax on dividends – the European Court of Justice delivered its final judgement in the Aberdeen case (C-303/07)

On 18 June 2009, the ECJ issued its judgment in the Aberdeen Property Fininvest Alpha Oy (Aberdeen) case. It is the first time the ECJ has considered the compatibility with the EC Treaty of an EU Member State, levying dividend withholding taxes only on dividends paid to non-resident investment funds while exempting domestic investment funds from such taxes; therefore, the ruling is of considerable significance for the European investment management industry.

Aberdeen is a Finnish resident real estate company, wholly owned by a real estate fund structured as a Luxembourg SICAV. The case concerns Finnish rules that subjected dividends paid by Aberdeen to its Luxembourg SICAV parent to withholding tax.

PwC Finland represented Aberdeen in both the Finnish courts and then the ECJ, assisting them in challenging the compatibility with the EC Treaty of the levying of Finnish withholding tax on the dividends it paid. The case was referred to the ECJ to rule whether the imposition of withholding tax by Finland on dividends paid to a non-resident company constituted as a Luxembourg SICAV while exempting Finnish resident parent companies and investment funds from such taxes is contrary to Articles 43 (freedom of establishment) and 56 (free movement of capital) of the EC Treaty.

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