

# Newsalert

## EU Direct Tax Group

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*The EUDTG is one of PwC's Thought Leadership Initiatives and embedded in the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EU law.*

#### European Commission recommends simplified procedures for claiming back cross-border withholding tax relief

On 19 October 2009, the EU Commission adopted recommendations to Member States to make it easier for investors resident in an EU Member State to claim back withholding tax (WHT) relief on dividends, interest and other securities income received from other Member States.

National refund procedures across the EU are often so complicated and time consuming that investors may forego the reliefs to which they are entitled, or be discouraged to invest in other Member States. To reduce this dissuasive effect, the EU recommends Member States to:

- Apply at source rather than by refund any WHT relief applicable to securities income under double taxation treaties or domestic law;
- Accept alternative proofs of investors' entitlement to tax relief besides certificates of residence. Such alternative proofs could include self-certification by the investor and/or residence documentation gathered by financial intermediaries. For instance, when an investment firm provides investment advice and discretionary portfolio management to its clients, it is required under the Financial Instruments Directive 2004/39/EC to obtain information about its clients/investors. The Recommendation suggests that tax authorities might, in particular, find these alternative proofs sufficient in the case of small claims, for example claims of less than €1,000.
- Consider its suggestions as to how Member States can involve financial intermediaries in making claims on behalf of investors and, in particular, where there is a chain of financial intermediaries, in different Member States, between the issuer of the securities and a beneficiary. For example, it is suggested that financial intermediaries should only have to pass on "pooled" WHT rate information (i.e. information in a format which groups securities income according to the WHT rate applicable without identifying the owners of the securities) to the next financial intermediary in a custody chain
- Apply simplified tax refund procedures where investors are not able to obtain WHT relief at source, provided that all necessary information is available. In this respect the Commission explicitly recommends the granting of refunds within a period of 6 months
- Allow claims to be filed electronically and using common formats for filing such claims.

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The Commission's recommendations should make it easier for investors to obtain an immediate relief at source, or obtain a WHT refund within 6 months after claims have been filed. Despite the fact that this EC Recommendation is not legally binding, the Commission nevertheless hopes Member States to implement them. According to the Commission, Member States are already moving towards less complicated procedures, and by publishing this Recommendation the Commission aims at stimulating this trend.

The Commission Recommendation echoes the report that was published by the OECD working group earlier this year. Representatives of the Commission are participating in the ongoing work at the OECD. The OECD Report is available at:

<http://www.oecd.org/dataoecd/34/19/41974569.pdf>

For more detailed information, please do not hesitate to contact your local PwC contact person or a member of the EUDTG.

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