

ARTICLE 63 WITHHOLDING TAX RECLAIMS

A fully integrated service

FILING WITHHOLDING TAX RECLAIMS

US RICs, 81-100's, §584, Canadian mutual funds and European UCITS who have suffered withholding tax on dividends paid from European companies are now filing withholding tax reclaims with European tax authorities under Article 63 of the Treaty on the Functioning of the European Union (TFEU):

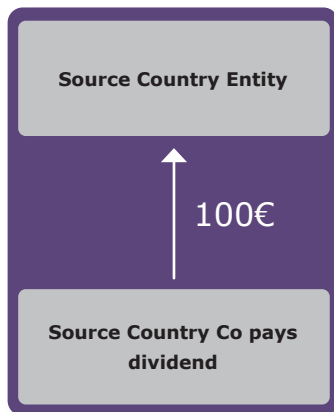
“Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.”

These claims are based on the demonstration of comparability between different types of European investment funds and their US and Canadian equivalents. According to the Article, non-resident entities are able to receive the same tax treatment by the source state as resident entities, granted they are considered “comparable”.

For illustrative purposes:

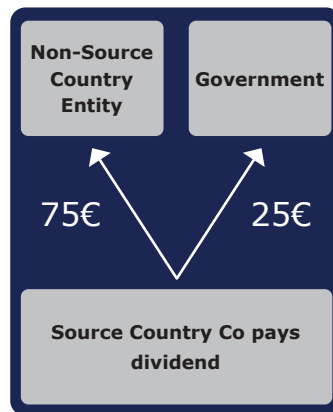
Model 1:

No WHT applies



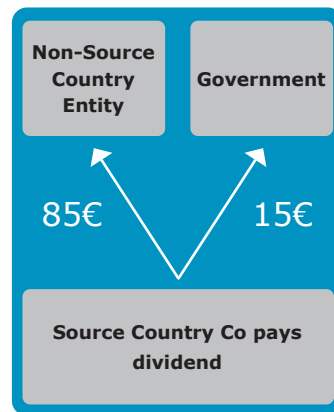
Model 2:

Standard WHT rate applies



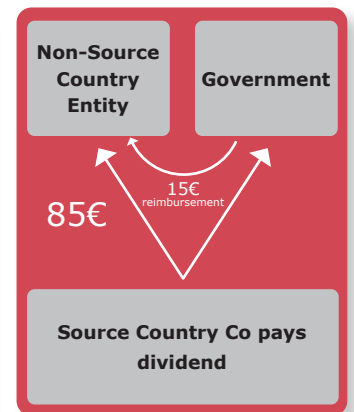
Model 3:

Reduced rate granted at source or reclaimed under treaty



Model 4:

Reduced rate granted at source or reclaimed under Article 63



We are also able to assist our clients with filing applications for withholding tax exemption cards in France and Finland.

Prior results do not guarantee similar outcome. This publication was not designed to provide tax or legal advice and it does not substitute for the consultation with a tax or legal expert. Taxand is a global organisation of tax advisory firms. Each firm in each country is a separate and independent legal entity responsible for delivering client services.

SUMMARY - REFUND STATUS BY COUNTRY

Refund status				
Country	Highest level of proceedings	Significant Refunds		
		EU	US	CANADA
Austria ¹	🟡 Highest	No	No	No
Belgium ²	🟡 Middle	Yes	No	No
Denmark ³	🟡 Highest	No	No	No
Finland ⁴	🟢 Highest	No	Yes	Yes
France ⁵	🟢 Highest	Yes	Yes	No
Germany ⁶	🟡 Lowest	No	No	No
Italy ⁷	🟡 Highest	No	Yes	No
Netherlands ⁸	🔴 X Highest	No	No	No
Norway	Appeals suspended due to very low chance of success.			
Poland ⁹	🟢 Highest	Yes	Yes	No
Portugal ¹⁰	🟡 Middle	No	No	No
Spain ¹¹	🟢 Highest	Yes	Yes	No
Sweden ¹²	🟢 Highest	Yes	Yes	Yes

🟢 Positive decision
 🟡 Current level - ongoing proceedings
 🔴 X Final rejection (US RICS)

- Following a recent Supreme Court decision issued in Austria, the chances of success for claims filed on behalf of US RICs following FY 2013 are low.
- Belgium has changed its law as from the 1 January 2013, therefore there is no longer any discrimination on dividends received after 1 January 2013. Following the change of law, the sole potential discrimination that remains is with regards to Pension Funds. Recently, following a proceedings initiated by the Taxand network, an agreement with the Belgian Tax Authorities was reached to refund partially the WHT reclaimed.
- Danish tax authorities are treating cases and rejecting them. The CJEU has rendered its decisions (C-480/16) and the Danish High Court has applied it to the case at hand in favor of the tax authorities. In 2021, the Danish Supreme Court issued their decision in favor of the tax authorities. In June 2022 the Danish tax authorities issued their final guidance, interpreting the Fidelity Funds case. According to the guidance, it seems to be practically impossible for a foreign fund to reclaim WHT in Denmark. Since 2022, following a change in the Danish Law, no discrimination exists.
- As of 2016, the Finnish tax authorities started to issue, upon request, WHT exemption cards to US RICs giving right to exemption at source (vs. refund).
- In France, there are multiple routes being pursued. Key CJEU cases originated based on French discrimination cases. Since August 2020 the French tax authorities started reimbursing WHT to US RIC. Direct exemption procedure is also available.
- In Germany, all claims are still with the tax authorities. However, the tax authorities have started 2 test cases for 2 European funds (a Luxembourg SICAV & a French FCP) and are currently considering a test case for a third country fund. The European funds have deposited their court letters and requested a direct referral to CJEU. Recently, we have received indications that the German tax authorities wish to advance on our cases. We filed summaries of all cases filed with the German tax authorities in the past years.
- Test cases on behalf of US RICs were filed by the Taxand network. The first positive decision was issued on 6 July 2022. Since the beginning of 2023, 20+ additional cases were decided by the Supreme Court. The final set of documentation is collected in order to manage the payments of the refunds.
- In the Netherlands, following the CJEU decision on the C-156/17 case and the Supreme Court decision on the US RIC test case, the chances of successful reclaim for US RICs are very low. Following an investigation opened by the EC we are currently filing new claims on pro forma basis with the DTA.
- No jurisprudence principle exists in Poland. Therefore, even if positive decisions arise from one court/tax authority, the other courts/tax authorities are not obliged to follow this decision. Poland has been paying out fairly consistently though. Litigation is in process in relation to late interest.
- Since 2019 Arbitration Courts in Portugal are judging that the Portuguese regime infringes the free movement of capital, as set out in the TFEU. Recently, the Judicial courts started issuing positive decisions as well.
- In 2019 the Spanish Supreme Court issued positive decisions, confirming the discrimination for both UCITS and US RICs types of funds. An important decision is expected by the Spanish Supreme Court in the next months.
- Since 2022 the Swedish Tax authorities started issuing positive decision for MBT type of funds based on "the legal personality argument". No interest is granted to the claimants in those cases.

Note: for information purposes only and prior results do not guarantee similar outcome.

WHAT MAKES US DIFFERENT

With around 15 years of experience in this highly-specialised area of practice, we have developed a keen understanding of what is required to achieve reclaim success. That's why we are committed to providing our clients with a comprehensive service, including:

Up-front analysis of the summary dividend vouchers per fund/sub-fund, year and country in order to eliminate claims that are not viable and ensure that the only documents requested from clients are those which are required to support claims adequately. Based on extensive experience we can suggest appropriate thresholds taking into consideration the administrative filing costs for both the client and service providers.

A centralised knowledge centre in order to ease the proof of Non-European/European fund comparability for each jurisdiction and to ease documentation flows.

OUR EXPERIENCE

We are the leading Article 63 Claims adviser.

Since 2009, we have been managing approximately EUR 8,9 billion of withholding tax reclaims filed for the years 2002 till 2022 for eight large US investment management companies. We have now recovered in excess of EUR 3 billion for our US fund clients.

In 2015, we were engaged to litigate against France on behalf of a grouping of US regulated investment companies to contest against administrative practices inconsistent with Article 63, leading to a successful outcome.

We are not restrained by conflict of interest rules between audit, advisory and consulting services. Therefore, we can deliver continuous tax and legal services throughout your European claims filing and litigation process, aligning our interests fully with investors and managers.

BENEFIT FROM OUR NETWORK

Our network enables us to provide our clients with an efficient and simple way of working. The dedicated team in Luxembourg is our clients' unique point of contact for withholding tax reclaims filed throughout Europe. This organisation allows for streamlined information flows between our clients and Taxand teams in each country where the claims are filed.

We also share knowledge within the network. This means that all of our local offices work together, communicating strategies for solving any problems which may arise. It is our goal to not 're-invent the wheel' each time a claim is filed. When an issue arises, we are able to draw on our network's collective experience to find the right solution quickly.

Working with Taxand to file withholding tax reclaims in Europe means having access to over a dozen dedicated teams of professionals, each specialists in their own jurisdiction, without wasting time on project management and coordination.

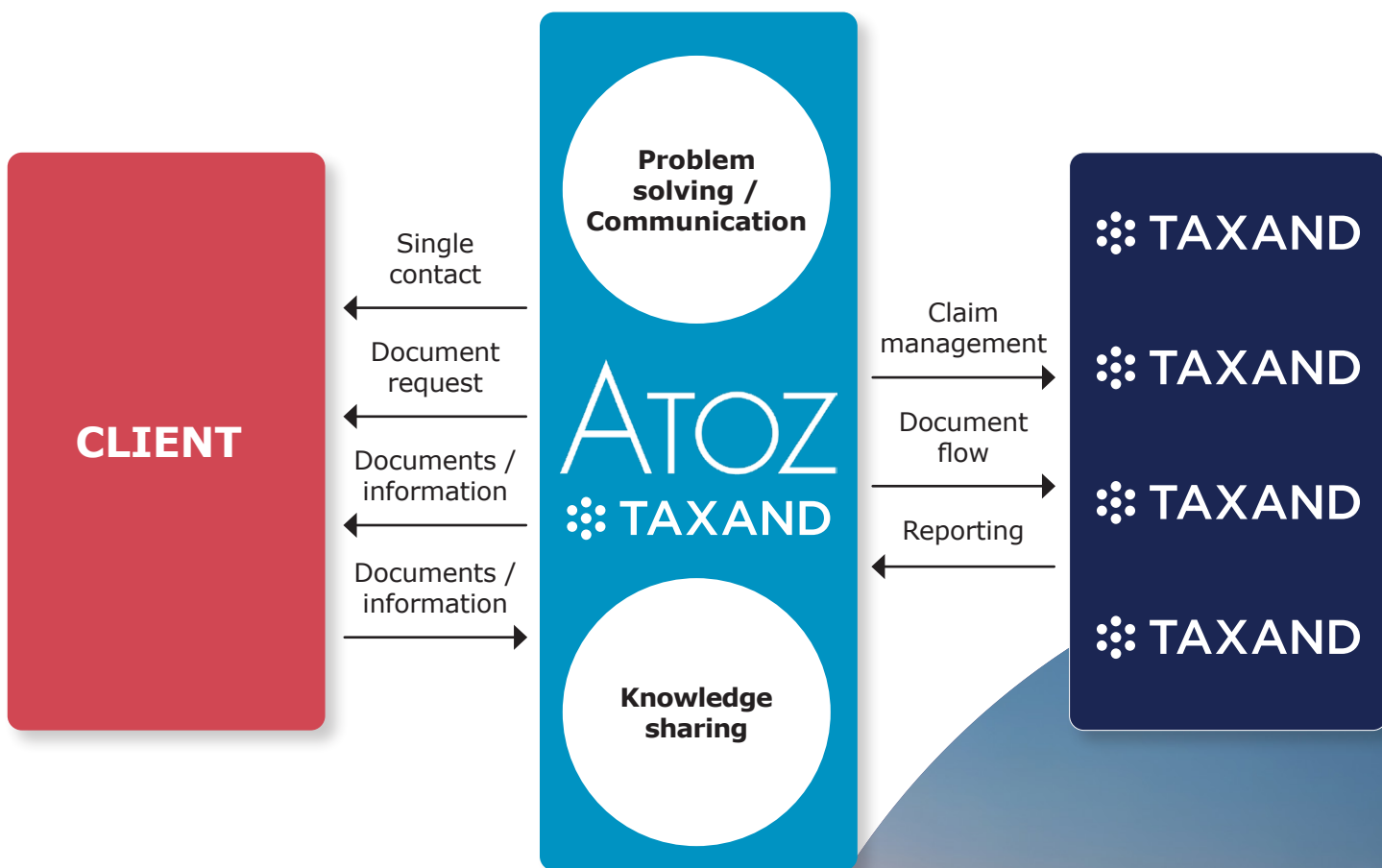
OUR SERVICE OFFER

We provide our clients with a high added value service from start to finish. Before taking any action, we perform a cost/benefit analysis for each claim to ensure that the administrative costs required to file the claim will not outweigh any potential benefits

We take care of centralising claims from all European countries and preparing filings, respecting each country's specific administrative process. After the initial filing, we act as a facilitator, communicating with local tax authorities and coordinating with our clients to respond to requests for any additional documentation (translations, POAs, apostillisations, etc.).

Our service is integrated and comprehensive; we follow our client's claims all the way to the highest court proceedings, including the CJEU if necessary.

ONE CONTACT FOR SEAMLESS COORDINATION




ATOZ Tax Advisers (Taxand Luxembourg) is generally the central contact for all administrative and legal procedures, no matter in which country the withholding tax reclaims have been filed allowing for synergies to form. ATOZ acts as a coordinator for clients and the local Taxand firms which handle claims per country, ensuring clear, direct and efficient communication.

Taxand is regarded as the leading counsel and litigant in a number of European countries and is regularly consulted by various tax authorities and ministries on the processes and pursuit of litigation.

APPENDIX

CLAIMS AND STATUTES OF LIMITATIONS

Country	Statutes of Limitation ("SOL")	Decider for SOL	1 claim per fund per year?
 Austria	5 years	As from end of year in which tax liability arose	Yes
 Belgium	5 years	1 January of year tax is paid	Yes
 Denmark	3 years	As from the 10th in the month following the formal decision to distribute the dividend	Yes
 Finland	3 years	1 January following levy of WHT	Yes
 France	Generally 1 year, 2 years possible based on recent jurisprudence	As from end of year in which dividend is paid	Yes
 Germany	4 years	As from end of year in which dividend is paid	No - one claim is filed for each dividend distributed and filled in different jurisdictions depending on the registered seal of the company distributing the dividend.
 Italy	4 years	As from payment of WHT	Yes
 Netherlands	3 years	As of the end of the financial year of the fund	Yes but tax authorities can join multiple years into a single claim of their discretion.
 Norway	Appeals suspended due to very low chance of success.		
 Poland	5 years	1 January following levy of WHT	There is no particular regulation in practice, claims are filed in different jurisdictions depending on the registered seat of the company distributing the dividend.
 Portugal	2 years	As from the dividend payment date	Yes
 Spain	4 years	As from the dividend payment date	No - one claim is filed per year and per payor. Tax authorities can join claims/appeals in the Judicial Phase at their discretion.
 Sweden	5 years	As from end of year in which WHT was withheld	Yes

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YOUR MAIN CONTACTS



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ABOUT TAXAND

Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide.

Taxand was founded in 2005 by a respected, entrepreneurial group of tax firms with a common vision for delivering both seamless, responsive service to local and international clients and advice that is both theoretically sound and practical to implement. Taxand has grown into an integrated worldwide team of leading experts working together to provide the highest quality tax advice.

Our tax professionals, over 700 tax partners and more than 3000 advisers in 51 countries, grasp both the fine points of tax and the broader strategic implications. We are focussed on understanding you and your business needs; collaborating to deliver tailored, practical local and international tax advice, in consideration of your strategic goals.

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