

Comments on the Commission recommendation dated 28 January 2016 on the implementation of measures against tax treaty abuse as well as on the implementation of TRACE for the purpose of simplifying withholding tax procedures

I. INTRODUCTION AND BACKGROUND

EFAMA¹ would like to make positive use of the opportunity to comment on the Commission recommendation dated 28 January 2016 on the implementation of measures against tax treaty abuse as well as on the implementation of TRACE for the purpose of simplifying withholding tax (“WHT”) procedures.

As the representative of the European fund industry, we believe that European investment funds in the form of Collective Investment Undertakings (“CIUs”) i.e. those established according to Directive 2009/65/EC [“UCITS”] as well as Alternative Investment Funds “AIFs” according to Directive 2011/61/EU as well as their investors have an important role to play in providing non-bank finance and in the development of the Capital Markets Union. We do feel there is a risk this role will be impeded by restrictive rules in double tax treaties and/ or burdensome local WHT-relief procedures. The following considerations shall emphasize our thoughts and ideas for solutions.

We have made below some general recommendations before responding specifically to recommendations/ solutions to overcome WHT issues.

1.) Removing barriers for cross border investments improves retirement savings and benefits for EU citizens

In particular the UCITS funds industry has been a remarkable realization of the Single Market within the EU to the benefit of many citizens. By breaking down the barriers for cross border investment, citizens of the EU have benefitted from:

- Increased competition in the supply of financial products;
- Lower administration costs associated with the purchase of funds;
- Greater choice of investment vehicles;
- Greater economies of scale associated with collective investment;
- Greater diversification of risk.

These benefits are particularly important to smaller investors, and investors from countries without developed financial markets. They are afforded to citizens through the efforts of policymakers to break

¹ **EFAMA** is the representative association for the European investment management industry. EFAMA represents through its 28 member associations and 62 corporate members EUR 21 trillion in assets under management of which EUR 12.6 trillion managed by 56,000 investment funds at end 2015. Just over 30,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 25,900 funds composed of AIFs (Alternative Investment Funds). For more information about EFAMA, please visit www.efama.org

down the barriers of international trade and investment – efforts that double tax treaties seek to protect and advance.

Governments have long recognized the importance of widely-held CIUs as an important complement to other savings vehicles. In many countries, participants, through defined contribution retirement plans invest primarily in CIUs. Because widely-held CIUs allow small investments, they are ideally suited for such periodic savings plans. They are highly liquid, allowing withdrawals as needed by retirees. With ageing populations in many countries, CIUs will become increasingly important and their relevance cannot be overstated.

Especially, given the significant move from defined benefit schemes to defined contribution schemes in the pensions markets, there is more of an onus on investors than ever before to take ownership of their asset allocations over their lifetime to ensure their risk profile matches their age and timeline to retirement. This becomes even more relevant in current times of low interest rates to be achieved through e.g. classic secure investments like government bonds. CIUs allow small investors to gain the benefits of economies of scale even if they have relatively little invested.

2.) Progress on WHT-relief procedures strongly needed

The Commission already consulted in 2011 on taxation problems that arise when dividends are distributed cross border to portfolio and individual investors and asked for possible solutions. In addition, the OECD and EU already took a specific look at the situation for Collective Investment Vehicles (see the OECD Report "The granting of treaty benefits with respect to the income of collective investment vehicles" dated 23 April 2010 as well as the work of the Commission's Tax Barriers Business Advisory Group). When the various projects looking at cross border tax relief procedures started, it was widely acknowledged and reflected in the various studies undertaken by the EU Commission and the OECD that, in practice, claiming WHT relief under Double Taxation Agreements and/or a country's domestic tax laws is often cumbersome and time and resource intensive for governments, financial institutions, and foreign portfolio investors. As a result, end investors often are effectively forced to forego the tax relief due to them which has adverse effects. In addition, the process for claiming WHT relief has deteriorated over time in many countries, resulting in increased costs and protracted delays for cross-border portfolio investors to collect the tax relief owed to them. Although there is a broad consensus about these problems, only minor or no improvement has been made so far. The time and costs of WHT recovery in many cases still act as deterrent for investment funds to invest in other than their residency states.

3.) Practical problems EFAMA's members experience in connection with WHT recovery

EFAMA's members experience several difficulties due to inconsistent WHT recovery processes which are defined and applied at national level:

- The deadlines as well as the forms are deviating among European states. The supporting documentation required by the forms also widely varies and may in some instances be heavy and bureaucratic, e.g. it may include duly certified translations of clients' specific information;
- The possibility for an investment fund to appoint a local representative, such as the depositary bank, to file tax reclaims on its behalf is not always granted;
- Tax reclaim forms quite often list unilaterally additional conditions which are onerous to meet or which simply make impossible to take a systematic system-based approach in the tax reclaim process.

It is therefore nearly impossible to standardize the relevant processes and this lack of consistency is expensive and time consuming.

In those instances where costs outweigh the benefits of reclaiming tax, an investment fund may prefer to forego its right to claim treaty benefits.

Finally, the uncertainty surrounding the tax reclaim process or the length of recovery has an impact from the point of the view of the Net Asset Value calculation of an investment fund: reclaimable amounts may be accounted for on a cash basis rather than being accrued over an extended period of time. Funds (/sub-funds) mergers, liquidations or transfers of domiciles add up a further level of complexity in this particular context.

A summary done by the International Custody Tax Liaison Group from the British Bankers Association in June 2015 (*Appendix 1*) captures all EU countries and the withholding tax rates on tax events from transferable securities (dividends from equities and interest from fixed income), the domestic tax rate, the treaty tax rate, the possible domestic tax exemption process, and the treaty relief at source and/or tax reclaim process.

This summary also reflects substantial and fundamental discrepancies between Member States on the tax treatment of transferable securities:

- Some Member States imposes withholding tax on dividends and/or interest, some of them do not;
- The Withholding tax rates are different for those Member States which imposes withholding tax on dividends and/or interest;
- Some Member States provides tax relief through the application of a Double Tax Treaty;
- In the application of tax relief, some Member States provides tax relief at source based on specific tax documentation provided;
- Other Member States provides treaty tax relief through a tax reclamation system. There are very different processes, documentation provided, and refund time frames between Member States.

4.) The role of the European Court of Justice cases on Withholding Tax

The problem of complexity in withholding taxes on investment in European transferable securities for European Collective Investment Undertakings is not new. In some cases, the different tax treatment has been considered as discriminatory and against the free movement of capital provisions in the Treaty on the Functioning of the European Union and investors have used the court avenue to remediate discriminatory scenarios between Member States and with third countries.

The European Court of Justice (ECJ) has been very active in the last decade in deciding numerous cases related to cross border withholding tax on investments between European countries as well as third country claims and is playing a critical role to close discriminatory scenarios and ensure that the free movement of capital principle prevails. As a result of the ECJ decisions, countries have been requested to modify their domestic rules, and in some cases, the outcome has been to move to a 0% Withholding Tax and/or further harmonization. *Appendix 2* illustrates high level the ECJ activity in the last decade and country reactions after the ECJ court decisions.

Although the ECJ decisions have resulted in some domestic changes to a 0% Withholding Tax on transferable securities and/or further European harmonization, there is still a lot of work to be done to achieve an efficient, simple and attractive tax environment in Europe for cross border investments.

5.) Preliminary Conclusion

The tax treatment on investment in European transferable securities, tax rates, and tax relief process for European Collective Investment Undertakings (“CIUs”) is far from harmonized. Conversely, it is a very different, complex and sometimes uncertain environment which is clearly, from the tax perspective, not encouraging cross border investments within European Member States.

EFAMA has reflected on several solutions / recommendations to overcome WHT issues. In the following we set out the view of the European investment management industry on several measures in this regard.

II. COMMENTS on recommendations / solutions to overcome WHT issues for the purpose of simplifying withholding tax procedures

1.) Comments on the implementation of TRACE for the purpose of simplifying withholding tax procedures

TRACE has been designed to improve efficiency for claiming treaty benefits for investors and EFAMA understands that TRACE could be a way to overcome withholding tax issues. EFAMA is therefore supportive of a TRACE implementation or any other alternative that provides additional information to investors.

As mentioned above, at the moment the time and costs of recovery of withholding taxes in many cases act as deterrent for investment funds to invest in states other than those of their residence. An implementation of TRACE could definitely ease the problem of recovery of withholding taxes and reduce tax barriers on cross-border investments for funds.

However, EFAMA is concerned that in practice implementation may be quite protracted and will not in all cases ensure treaty entitlement of widely-held CIUs. Thus, EFAMA is of the opinion that it would be helpful to have better and easier European WHT rules in advance of the implementation of TRACE. It is necessary that investment funds are generally entitled to DTAs so that the fund itself will always be considered as the beneficial owner in all member states and is therefore able to claim benefits in its own right. In this regard it is necessary to set up a unified system.

Many funds are widely distributed, especially Luxembourg and Irish funds are routinely distributed beyond Europe. Retail funds are typically held by or through distributors and would only have information about those distributors, if any. Thus, in case TRACE requires the knowledge of the investor base it is not helpful for a lot of widely-held CIUs. Consequently, better and easier rules including a general treaty entitlement for UCITS and comparable AIFs would be mandatory.

2.) Easiest and justifiable solution: Abolishment of WHT for payments made to UCITS and AIFs within the EU and partner jurisdictions

From our point of view the easiest solution to solve complex legal and practical WHT problems in Europe would be the abolishment of WHT on transferable securities for payments made to UCITS and AIFs within the EU and partner jurisdictions to the EU². This is a less radical proposal than it may at first appear.

Further to the judgement of the ECJ on the principles of the free movement of capital (especially “Santander” C-338/11 or “Emerging Markets” C-190/12), some member states already abolished under certain circumstances WHT for certain types of foreign CIUs (France; Spain; Poland) or limited the WHT rate to 15% (e.g. Netherlands, Belgium, Germany from 2018). Other member states do not levy WHT on certain type of income paid on the basis of their domestic legislation (e.g. UK on dividends and Luxembourg on interest). The Commission could thus consider a recommendation to member states to abolish the WHT for payments made to UCITS and AIFs in order to ensure a uniform and consistent application of the ECJ judgements.

As major source countries in Europe already followed that approach this would also help to create a level playing field for all countries within the EU and partner jurisdictions and to boost the competitiveness of the Single Market as a whole.

Especially in this age of Automatic Exchange of Information EFAMA is of the opinion that a WHT within the EU and partner jurisdictions is not appropriate anymore. However, we are aware that safety regulations have to be implemented to prevent investors that are non-residents of the EU / EU partner jurisdictions from benefiting of this 0% WHT rate.

3.) Comments on the Commission recommendation dated 28 January 2016 on the implementation of measures against tax treaty abuse

EFAMA fully agrees that tax treaties play an important role in encouraging cross-border trade efficiency and that they should not create opportunities for non- or reduced taxation through treaty shopping or other abusive strategies.

However, EFAMA is of the opinion that a wider adoption of a Limitation On Benefits (LOB) approach (as foreseen by the BEPS Action 6 report) to prevent abusive strategies would mean more cases where the lack of data about underlying beneficial owners is problematic, resulting in most investments funds operating on a cross-border basis being deprived from treaty access. This can be seen as detrimental to the Single Market by discouraging cross border investments as well as detrimental to investment by third countries.

EFAMA therefore welcomes the fact that the EU Commission is encouraging member states to implement a general anti-avoidance rule based on a Principal Purpose Test (PPT) in its recommendation dated 28 January 2016.

Nevertheless, with respect to the special nature of investment funds EFAMA has some concerns regarding the above recommendation of the Commission. CIUs operate under different tax regimes around the

² In this document, ‘partner jurisdictions’ refer to EFTA member states not being part of the EU.

world with the intention of ensuring that investors are not impacted by an unnecessary additional taxation at fund level. Divergence in the interpretation of a PPT by different tax administrations can undermine and create further uncertainty on the ability of UCITS and comparable AIFs to meet treaty qualification.

The economies of scale from investments held through widely-held CIUs give access to markets, appropriately diversified, in which investors would otherwise not be able to invest. If investors with less to invest had to invest directly, they would incur substantial time and costs, not to mention the lack of diversification. In the current investment climate it is imperative that investors are able to diversify risks across investments and international markets. In addition, investors in widely-held CIUs benefit from the market experience and insights of professional money managers.

It is therefore important that UCITS as well as comparable AIFs can operate under tax laws that give them greater certainty as to the tax impact at investor level, be it withholding tax or capital gains tax so that investors can manage their savings more effectively.

We therefore believe that the EU Commission should encourage member states to consider that UCITS as well as comparable AIFs shall not be considered as creating opportunities for treaty shopping. They should thus be expressly excluded from the scope of the PPT clause. If this is not achievable, the EU commission should at least provide for concrete and precise examples of bona-fide transactions where cross-border investments made via UCITS and comparable AIFs would always benefit from treaty provisions.

4.) UCITS and comparable AIFs are low risk entities and should be treaty entitled

UCITS and comparable AIFs (AIFs that are sold to the public or that are open-ended and capable of having an unlimited number of investors) represent a low risk of being used for treaty shopping purposes. First, they are open-ended vehicles, i.e. an unlimited number of investors can subscribe and redeem their fund units freely and on a daily basis. This limits the capacity of a single investor to control the vehicle for treaty shopping purposes. Second, they must fulfil risk spreading requirements, i.e. cannot be used to hold a certain position in order to benefit from a specific treaty relief on investments. Due to the generally rather small number of shares invested in these, widely-held CIUs should normally not be able to exert any influence on the companies in which they invest. In addition, investors in those widely-held CIUs are also not able to influence any treaty shopping politics of those CIUs.

In the course of the final report on BEPS 6 the OECD stated “...as a general rule, because the shares of publicly-traded companies and of some entities are generally widely-held, these companies and entities are unlikely to be established for treaty shopping.” EFAMA is of the opinion that there should be no distinction for investment vehicles that are publicly traded and that they should receive the same treaty access without having to fulfil further conditions.

CONCLUSION

EFAMA strongly recommends that, for the reasons already explained above in relation to the importance of widely-held CIUs and the low risk of treaty shopping by investors in widely held investment vehicles, the recommendation of the Commission should be extended and UCITS as well as comparable AIFs should be expressly excluded from the scope of any PPT.

In addition we strongly recommend that the EU Commission should encourage member states to consider abolishing any WHT on investments of UCITS and AIFs within the EU / EU partner jurisdictions. We also recommend that the EU Commission should encourage member states to treat all widely-held CIUs, especially those set-up as UCITS as residents of the state where established for tax treaty purposes. It is important that this status is guaranteed, independent of the country of residence of the fund's investors or whether their shares are listed / regularly traded on a stock exchange. A solution that does not include a general treaty entitlement for widely-held CIUs leaves much room for national interpretation at member state level and therefore has the risk of creating damaging legal uncertainty.

A general treaty entitlement for widely-held CIUs would serve the goals of neutrality between direct investments and investments through a CIU as the risk of double taxation between the source state and the investor's state of residence would decrease. Existing barriers to cross-border investments would be eliminated and especially investors from small countries would enjoy a greater choice of investment vehicles.

Brussels, 6 July 2016

[16-4026]

[Appendices \(2\)](#)

BBA INTERNATIONAL CUSTODY TAX LIAISON GROUP

Summary of Tax Reclaim Market Standards for UK Institutional Claimants as at 24 June 2015

Country of Investment	Tax Rates			Domestic Tax Exemption Process (relief conferred at source)				Treaty Relief at Source Process				Treaty Reclaim Process		Exceptions	Refund Time Frame after filing	Statute of Limitations (SOL) (from end of calendar year of income payment unless otherwise stated)
	Statutory Dividend and Interest Rate	Treaty Rate	Reclaim Rate	Available	Process	Entity Types	Claimant Documentation Requirements	Available	Process	Entity Types	Claimant Documentation Requirements	Permitted Filing Frequency	Claimant Documentation Requirements			
Austria	Divs 25% Int - N/A	15%	10%	No	N/A	N/A	N/A	No	N/A	N/A	N/A	All year round	Certified Form ZS-RE1A (English version ZS-RE1) *	See footnote (iii) below	6 months **	3 years***

* reclaims filed under Section 6 of the Austrian Corporate Income Tax Act (ACITA) which provides for a full tax reclaim opportunity for certain non-resident pension funds residing in the European Union (EU) and reclaims filed under Section 21 of the ACITA by certain non-resident corporations residing in the EU or in an eligible European Economic Area (EEA) member country may be subject to additional documentation requirements.

**In early 2014 there was a change at the Austrian Tax Authorities, that has resulted in additional information being required when filing all reclaims, the new requirements may cause a delay to the timeframe stated.

*** the Austrian General Tax Code details that the refund claim for excess Austrian withholding tax has to be filed within 5 years of tax withheld. However, the 5 year filing deadline is only valid if a double taxation treaty does not specify a different (shorter) period such as the Austria/UK treaty

Belgium	Divs - 25%/15%* Int - 25/15/0%	10% 10%	15% 10%	Yes	Submission of claimant documentation	Tax exempt "not for profit" entities only	An attestation (Annexe 26) is required declaring the entity eligible for exemption in accordance with Article 117, Sec.2 of Royal Decree CIR 92 regarding the dividends (and similar incomes) allotted to non-resident investors.	No	N/A	N/A	N/A	All year round	One Certified Form 276 per income event [ad-hoc claims may also be filed for refund under domestic exemption]		2 months for quick refund process 12-24 months	5 years. Statute is reduced to four years from end of pay year from 2012.
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* 15% rate applies to certain shares of real estate investment companies (SICAFIs). Distributions by Belgian regulated investment companies (e.g. SICAVs, SICAFs) are exempt from dividend withholding tax for the portion not related to Belgian dividends.

Bulgaria	Divs - 5% Int - 10%	10% 0%	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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Canada	Divs - 25% Int - 0%	15% 10%	10%	N/a	N/a	N/a	N/a	Yes	Non resident form NR 301, required	N/a	N/A	N/a	N/a		N/a	2 years after the end of the calendar year in which the non-resident tax was remitted
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Under the new tax protocol in place between UK And Canada from 1 January 2015, recognised pension plans can get an exemption from withholding tax on dividends earned on portfolio investments. The pension plan must not own, directly or indirectly, more than 10% of the capital or 10% of the voting power of the company paying the dividends. In the case of the UK, it includes "a pension scheme (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes".

Cyprus	0%	0%	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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Czech Republic	Divs - 15%* Int - 15%*	15% 0%	0% 15%	No	N/A	N/A	N/A	Yes	Submission of claimant documentation	Generally interest only, however exemption extends to pension funds on interest and	Certificate of Tax Residency, Statement of Beneficial Ownership	Reclaims are rare, however the market has a procedure in place if a reclaim is necessary.	Sub-custodians can file for a reclaim directly with the within the first three after the dividend payment.		3 months for quick file, otherwise- 6-12 months	No specific rules for reclaims though the general statute of limitations is 3 years
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*From 1 January 2013 a rate of 35% applies to dividends and interest paid to a beneficial owner resident in a country with which the Czech Republic does not have an EOI agreement

Denmark	Divs - 27% Int - N/A	15%	12%	Yes	Enquiry based application process - each assessed on a case by case basis.	Government Organisations	Constituting documentation.	No	N/A	N/A	N/A	All year round	One certified reclaim form .06.006 per dividend event or certificate of residence in the case of electronic filing		3 months or 1 month in the case of electronic filing	5 years - revised statute of limitation for income paid from 1 January 2011. The previous SOL's were 3 years from 1 January 2008 and 20 years from date of payment and claims for income paid prior to the 1 January 2008 retain a 20 year SOL. Statute is 5 years from pay date
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	Statutory Dividend and Interest Rate	Treaty Rate	Reclaim Rate	Available	Process	Entity Types	Claimant Documentation Requirements	Available	Process	Entity Types	Claimant Documentation Requirements	Permitted Filing Frequency	Claimant Documentation Requirements			
Finland	Div 20% 30% Int 0%	0%	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	All year round	FORM 6203-During the year of payment, only the payer of the dividends can refund excess withheld amounts (custodian bank). They will require the recipient to provide the payer with evidence necessary to make the correction.		4 months for quick reclaim process 12 months for standard reclaim process	5 years

* The UK/Finland DTA abolishes Finnish withholding tax on dividends paid to U.K. residents. 15% withholding tax applies on dividends distributed to EEA corporations if the shares are part of the investment assets of the recipient company and the Parent-

France	Divs - 30%* Int - Generally 0%	15%	15%	Yes	Enquiry based application process - each assessed on a case by case basis.	National Government organisations	Exemption approval letter issued by the French tax authorities	Yes - on equities	Annual application process	UK Residents	Certified attestation of residence (5000-EN) or questionnaire for non-profit organisations	All year round	Certified Form RF5001A/RF 4GB		6-12 months	2 years
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* a 15% rate on dividend income is available to EU resident not-for-profit entities considered comparable to French Pensions upon application by way of a tax questionnaire to the French tax authority
We believe only one submission is allowed per year following the year in which the income was paid , but this may be a firm specific requirement.

Germany	Divs - 26.375%* Int - Generally 0%	15% / 10%**	11.375% / 16.375%**	No	N/A	N/A	N/A	No	N/A	N/A	N/A	All year round or once a month in the case of electronic filing	Certified-010184 reclaim form - no form is required in the case of electronic filing	15% rate applies to charities	Electronic Filing Process - 4 to 6 Months, Standard Reclaim Filing - 12 to 18 Months	4 years
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*** In December 2013, The German Tax Authorities (GTA) officially informed local sub-custodians that with immediate effect, all UK Funds wishing to claim treaty benefits in Germany are required 'to submit a German questionnaire (GQ) using the standard reclaim option and are no longer eligible for the Electronic Filing Programme (EFP). This has caused issues for UK OEICs and UK AUTs who are opaque in nature and unable to attest to the 'transparency' requirements in the GQ. This issue has been discussed by HMRC and the German Ministry of Finance (BMF) with the BMF confirming in July 2014 that:-

- OEICs and AUTs are treaty-entitled in their own right as fiscally opaque entities.
- Paragraph 5 of the Protocol does not apply to OEICs or AUTs.
- OEICs and AUTs may file paper claims or use the Electronic Filing Programme (Datenträgerverfahren/DTV).

Greece	Divs - 10% Int - 0% / 15%*	Divs - 10% Int - 0%	15%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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* Interest from Corporate Bonds is subject to 15% withholding tax.

Hungary	0%	10%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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Ireland	Divs - 20% Int - 20%/0%	0% 0%	20% 20%	Yes - dividend withholding tax exemption is available, provided that custodian is a Qualifying Intermediary and holds a duly completed Dividend Withholding Tax form (DWT-form) on file.	Lodgement of shares into qualifying intermediary "gross" account	Tax exemption is available for all tax treaty and EU residents.	DWT-form, valid for 5 years from the end of the year of tax certification.	No	N/A	N/A	N/A	Quarterly - Tax reclaim process for Qualifying Intermediaries filing under domestic tax exemption now initiated. Otherwise, all year round.	Dividends - DWT-form, valid for 5 years from the end of the year of tax certification. Interest - IC3 (Company)	Charities and Pension funds are exempt under the treaty.	2-4 months	4 years

Note: DWT form may be used for claims under domestic tax exemption.

Italy	Divs - 26% Int - 12.5% / 20% See Note	15% 10%	11%	Yes - on Bonds	One time application process	UK Residents	Tax Exemption Application Form for Non-Residents (no certification required).	Yes - on Equities	Annual application process	UK Residents	Certified declaration of non Italian resident status	All year round	Refer to relief at source process.		Minimum 10 years	10 years for bonds issued before 01/01/97, 18 months for bonds issued between 01/01/97 and 01/07/99. 4 years after the date that the tax is withheld for all other bonds and equities.
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Note: Reclaims filed but not refunded within 10 years will automatically lapse unless the Italian administration receives a formal letter of enquiry from the claimant. Dividends paid to corporate shareholders resident in an EU/EEA country and subject to tax in that country are subject to WHT at 1.375%. Pension funds resident in an EU/EEA country can apply for a dividend withholding rate of 11% Interest from Government Bonds is subject to a 12.5% withholding tax rate.

Latvia	Divs 0% Int 0%	Divs 15% Int 0%	0%	Yes - on interest	See Note	N/a	N/a	See Note	See note	See note	See note	N/a	N/a		N/a	N/a
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Lithuania	Divs 15% Int 0% / 10%*	Divs 15% Int 10%*	Int 10%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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* Interest income derived from corporate bonds issued prior to January 1, 2002 and government bonds issued prior to January 1, 2003 is exempt from withholding tax.

Luxembourg	Divs 15% Int 0%	Divs 15% Int 0%	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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Malta	0%	0%*	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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	Statutory Dividend and Interest Rate	Treaty Rate	Reclaim Rate	Available	Process	Entity Types	Claimant Documentation Requirements	Available	Process	Entity Types	Claimant Documentation Requirements	Permitted Filing Frequency	Claimant Documentation Requirements			
Netherlands	Divs - 15% Int - N/A	Divs - 10%*	Divs - 5%* / 15%**	See Note	See Note	Exemption extends to EU pension funds and other tax exempt entities	See Note	N/A	N/A	N/A	N/A	See note for claims under domestic tax exemption. Note also that IB93 is required for reclaims (5% or 15%).	See note for claims under domestic tax exemption. Note also that a DIV16 form is required for reclaims (5% or 15%).		6-8 months	3 years, although the Netherlands has a SOL of 5 years 'ex officio', meaning that the SOL can be extended from 3 years to 5 years at the discretion or good will of the tax authority.

Note: Netherlands TA requires that all EU exempt entities provide a copy of their Articles of Association (or similar governing documentation) in order to determine on an individual basis whether the entity meets the criteria for tax exemption.

Once approved, reclaim applications should be filed on Form IB93 for 5% reclaims and DIV16 for 15% reclaims. No at source relief is available in respect of this exemption. Refund timeframe after filing is on average 12 months.

* Under a new double tax treaty with the Netherlands effective from 1 January 2011, UK beneficial owners are entitled to a treaty rate of 10% (therefore 5% reclaims are required)

** UK Charities are exempt under the new double tax treaty effective since 1 January 2011 (via reclaim) by virtue of Article 10 (2) (b) (iii) (reference also to Article 4 (2)(b). Note 15% reclaims are required via Form IB92.

Norway	Divs - 25%* ** Int - 0%	Divs - 15% Int - 0%	Divs - 10% / 25%	See Note	See Note	EEA taxable entities	The refund claimant must be able to provide documentation/information to substantiate a claim. There is no standard application form for refund of withholding tax.	Yes	(i) Annual certificate of residence (ii) Automatic exemption	(i) All except pension funds (ii) Pension funds	(i) Annual certificate of residence (ii) None	All year round	Letter of Appeal and supporting documents e.g. COR, POA and Statutory instrument/Trust Deed		18 months	1 year. Statute is 2 years from end of pay year
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* Dividends paid to corporate shareholders resident within the EEA that meet a substance test are exempt from WHT. Exemption can be secured via a reclaim application with the Norwegian authorities.

** Dividends paid to UK pension funds are exempt from WHT at source

Poland	Divs - 19% Int - 20%	Divs - 10% Int - 5%	Divs - 9% Int - 15%	N/a	N/a	N/a	N/a	Yes	Submission of claimant documentation	All except trusts (other than a CIV, charity or pension fund) and partnerships	Annual Certificate of Tax Residency	All year round See Note	There is a tax reclaim procedure in the market; however, the process may be lengthy, as each reclaim is handled on a case-by-case basis and may require additional documentation as dictated by the tax authority. Quick refunds on all income payments available through paying agents effective from 1 January 2015		6- 12 months	5 years from the end of the calendar year in which the tax was withheld
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Non-resident pension and investment funds based in the European Union (EU) or the European Economic Area (EEA) may be eligible for tax exemption in Poland, provided certain criteria are satisfied.

*Trusts that are not fiscally transparent may be able to claim treaty benefits on their own behalf as these entities are subject to U.K. tax in their own right

BBA INTERNATIONAL CUSTODY TAX LIAISON GROUP

Summary of Tax Reclaim Market Standards for UK Institutional Claimants as at 24 June 2015

Country of Investment	Tax Rates			Domestic Tax Exemption Process (relief conferred at source)				Treaty Relief at Source Process				Treaty Reclaim Process		Exceptions	Refund Time Frame after filing	Statute of Limitations (SOL) (from end of calendar year of income payment unless otherwise stated)
	Statutory Dividend and Interest Rate	Treaty Rate	Reclaim Rate	Available	Process	Entity Types	Claimant Documentation Requirements	Available	Process	Entity Types	Claimant Documentation Requirements	Permitted Filing Frequency	Claimant Documentation Requirements			
Portugal	Divs - 25% 35% Int - 25% 35%	Divs - 15% Int - 10%	0%/10%* 25%	Yes - on interest	Segregated sub accounts are generally required	Exemption extends to residents of non tax haven countries	Certificate of residence, renewable every 3 years	See Note	See Note	UK Residents	Certified Form MOD 21-RFI	All year round See Note	Certified Form MOD 22-RFI. Only first claim form must be certified each year in the case of dividends		2-3 years	2 years

Note: Practical tax relief arrangements have still to be officially sanctioned covering the conferral of treaty relief.
* Following the implementation of the Tax Elected Fund regime, effective from 01/09/09, tax relief in the form of relief at source or reclaim will be unavailable to UK entities in Portugal where there is a 'subject to tax' clause in the treaty, unless taxable status is elected.
** Note that investors not willing to disclose their residency will be subject to the standard rate of withholding rate of 35% on interest and dividends
***This market has historically paid reclaims inconsistently. Reclaim collectability in this market is questionable. Many reclaims are often rejected without the ability to address in a practical matter

Romania	Divs - 16% Int - -16%	Divs - 15 Int - 10	1%	Yes*	Submission of claimant documentation	All	Annual certificate of residence	Yes	Annual certificate of residence	All	Annual certificate of residence	N/a	N/a		N/a	N/a
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*Non-resident pension funds domiciled in the EU or EFTA remain eligible for exemption from withholding tax on dividend and interest income, with appropriate documentation.

Slovakia	Divs 0% Int 0%	0%*	0%	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/A	N/a	N/a		N/a	N/a
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Slovenia	Divs - 15% Int - 0%	Divs - 15%	N/a	Yes	Submission of claimant documentation	Exemption extends to EU Pension funds and investment funds or insurance companies which exclusively manage pension schemes	Annual certificate of residence	Yes	Submission of claimant documentation	All	Annual certificate of residence	N/a	N/a	No average timeframe	N/a	Claims for refund of excess withholding must be submitted to the tax authorities within five years from December 31 following payment date.
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Spain	Divs - 20% Int - 20%	10% 0%	5%/20%	Yes - on interest	Beneficial owner breakdown required for each interest payment	Exemption extends to residents of non tax haven countries (Government interest) or EU residents (corporate interest)	Annual certificate of residence	See Note	See Note	UK Residents	Certified Form EE-RU Reduction	Effective 3 January 2011 onwards, all standard tax reclaims will have to be submitted to the Spanish Tax Authorities no sooner than 1 February of the year following the dividend payment.	Certified Form EE-RU Devolucion	* EU Pension Funds and EU UCITS are entitled to 0% WHT and 1% WHT respectively effective from 1 January 2010 (subject to documentary requirements being met)	1 month for quick filing, 12 months for standard reclaims *	Effective since 3 January 2011, the statute of limitations for tax reclaims will be 4 years (previously two years) following the dividend payment date. This supersedes any statute of limitations that may be specified in any double taxation treaties.
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Note: Special Development Rule countries, including the UK, are required to provide certified Form EE-RU for each income payment in order to benefit from relief at source. Due to time constraints attached to the delivery of this form, relief at source may not be achieved in practice.
* Spanish reclaims filled prior to 2012 may take up to 5 years to be refunded due to the previous filing system used by the Spanish Tax Authorities

BBA INTERNATIONAL CUSTODY TAX LIAISON GROUP

Summary of Tax Reclaim Market Standards for UK Institutional Claimants as at 24 June 2015

Country of Investment	Tax Rates			Domestic Tax Exemption Process (relief conferred at source)				Treaty Relief at Source Process				Treaty Reclaim Process		Exceptions	Refund Time Frame after filing	Statute of Limitations (SOL) (from end of calendar year of income payment unless otherwise stated)
	Statutory Dividend and Interest Rate	Treaty Rate	Reclaim Rate	Available	Process	Entity Types	Claimant Documentation Requirements	Available	Process	Entity Types	Claimant Documentation Requirements	Permitted Filing Frequency	Claimant Documentation Requirements			
Sweden	Divs - 30% Int - 0%	Divs - 5% Int - 0%	0%	Yes	Submission of claimant documentation	Compliant and non-compliant UCITS funds meeting certain criteria.	Yet to be defined by the market	N/a	N/a	N/a	N/A	No filing restrictions	Certified reclaim form		3-6 months	5 years
Switzerland	Divs - 35% Int - 35%	15% 0%	20% 35%	No	N/A	N/A	N/A	No	N/A	N/A	N/A	Once per year - however if the total reclaim value exceeds CHF 1 Million you are permitted to file twice within the calendar year	Certified Form 86	See footnote (ii)	On average 12 months; may vary depending on value of claim	3 years
United Kingdom	Divs - 0% Int - 20%	N/a	N/a	N/a	N/A	N/A	N/A	N/a	N/A	N/A	N/A	N/a	N/a	See footnote *		3 Months

* Reclaims filed for UK Pension Schemes (R63N) to request repayment of UK Income Tax that has been deducted at source from the investment income of a pension scheme which is registered for tax reliefs and exemptions with HMRC or a common investment fund.

(i) Non-resident entity types described as 'look through' or transparent entities are deemed not to be the beneficiary of dividends. Instead the underlying investors are regarded as the beneficiaries of the income and therefore it is these end investors that are entitled to the withholding tax refunds. The German Tax Authority recognises that it would be an onerous task for all involved if each final beneficiary were to submit an individual reclaim application therefore applications for transparent entities will be accepted provided that the percentage of investment certificates held by investors resident in the country of establishment is provided. The tax refund is limited to this percentage of shareholders. Impacted claimants include partnerships and estates. UK collective investment vehicles organised as Unit Trusts, Open Ended Investment Companies and Investment Trusts are not impacted.

(ii) Similar to Germany, above, certain 'look through' or transparent entities are deemed not to be the beneficiary. Impacted claimants presently include collective investment vehicles organised as Unit Trusts (authorised or unauthorised) and Open Ended Investment Companies. These entities must provide UK resident investor percentage details in order to secure a prorated refund, or a full refund where the percentage amount is 95% or more.

(iii) Similar to Germany, above, certain 'look through' or transparent entities are deemed not to be the beneficiary. UK Collective Investment Vehicles organised as Unit Trusts (authorised or unauthorised) and Open Ended Investment Companies and Investment Trusts are not currently impacted. Other entities must provide eligible investor percentage details in order to secure a prorated refund. UK resident investor, plus any other DTA eligible investor, percentage details in order to secure a prorated refund.

High level Summary of the ECJ Withholding Tax Cases & reactions from EU Countries

2004

Fokus Bank case (case E-1/04) – Decision November 23, 2004 EFTA Court decision – The Norwegian Tax legislation restricts the free movement of capital. Discrimination Unjustified (justifications of fiscal coherence and public interest are not accepted). Breach of the EEA Agreement

2005

ECJ claims filed by various EU resident Pension funds, investment funds and life companies in several EU Member States as they consider their comparable position between Member States are discriminatory and against the free movement of capital

2007

Norway starts repaying EU resident Pension funds, investment funds and life insurance companies as a result of the Fokus Bank case

2009

French Tax Authorities issued information requests to several resident EU pension funds.

Strathclyde case (UK Pension Fund) – January 2009 – PF successful in securing refunds of WHT in the Netherlands back to January 1, 2003 (5 years)

The Netherlands changed its legislation (initially only EU/EEA Pension funds and in 2012 extended to other qualifying exempt entities)

Austria – June 2009 – amendment to CIT Act – resulted in repayments for EU resident PF, UCITS (note that since 2015 – rejections for AUT as viewed by ATA as transparent) and EU resident corporates provided these demonstrate that the WHT claimed has not been offset against local Corporate Income Tax

Aberdeen case (C-303/07) Decision of June 18, 2009 – Issue: dividends distributed by non-listed companies to resident corporate shareholders are tax exempt; WHT was levied on outbound dividend payments to a Lux SICAV which was not covered by the PS Directive. CJEU decision – Freedom of establishment, lack of equivalent company form in Finland cannot in itself justify the different treatment, tax exemption of the Lux SICAV does not create a justified difference in treatment. No justifications for fiscal coherence.

This is a key case and it resulted in repayments for some EU resident investment funds in Finland

2010

March 2010 Spain passes law introducing exemption for qualifying EU/EEA resident pension funds and reduced rate (1%) for UCITS

2011

Poland changes its legislation as of January 1, 2011. Corporate income Tax exemption extended to qualifying EU and EEA resident investment funds and pension funds

Repayments received by EU investment funds (assume also EU Pension funds but I didn't have any of those clients). Note that position varies from Tax office to tax office.

Spanish Tax Authorities started repaying EU resident Pension funds and UCITS.

2012

Santander case (C-338/11 through C-347/11) Decision of May 10, 2012 – non-resident and resident investment funds (UCITS) are comparable; tax position of investors not relevant for comparison: comparison at fund level. No justifications accepted. Temporal limitation rejected

August 17, 2012 – France – new law exempting foreign investment funds from WHT on dividends paid after that date. Some repayments received by UCITS

As of 1 Jan 2012, Sweden changed tax legislation to exempt qualifying EU/EEA Investment Funds from WHT. Rules also apply to non-EU countries with which Sweden has a treaty in force that contains an EOI clause

2012 onwards - Repayments received by UCITS funds from Swedish Tax Authorities (I think it was very late 2012, definitely I saw more in 2013 onwards)

Through 2012 onwards – Spanish Tax Authorities continued making repayments under EU law for EU Pension Funds and UCITS. Some funds including non-EU funds and life companies may have also received repayments.

2013

Belgium – Belgium changed its law for Belgian companies which are no longer entitled to a credit / refund of Belgian WHT (ECJ for periods 2013 onwards not viable as no discrimination)

August 6, 2013 – French Guidelines published

Throughout 2013 – French Tax authorities – repayments to UCITS

November 15, 2013 – Supreme Court in the Netherlands rejects request for repayment for WHT levied on a Finnish investment fund re Dutch sourced div income

2014

Austria starts issuing detailed information requests seeking details re holding periods to determine Beneficial Owner at the time the dividend was paid

CJEU – Poland April 10, 2014 – Emerging Market Series of DFA Investment Trust Company case – difference in tax treatment for dividend payments made to a third country fund in comparison with domestic investment funds constituted a restriction on the free movement of capital. The CJEU held that non-resident investment funds are in a situation which is objectively comparable to that of

investment funds whose registered office is situated in Poland and rejected the defence that such restriction can be justified on the grounds of overriding reasons relating to the public interest, in particular the need to ensure the effectiveness of fiscal supervision. Claims can be made provided sufficient comparability with a relevant EU fund can be shown and can be verified by the local tax authority under a double tax convention or the Convention of the OECD and the Council of Europe (via a mechanism for exchange of information. Since Emerging Markets (and mainly in 2015) more positive decisions at the level of Polish Administrative Courts where the Courts have overturned negative decisions from Polish Tax Offices or Polish Tax Chamber.

2Q 2014 – Belgium Tax Authorities issued information requests to several UCITS claimants.

2015

1Q 2015 – Belgium Tax Authorities issued positive decisions to UCITS funds (some repayments may have come through – it's a complicated process re local bank accounts, etc)

July 10, 2015 – Dutch Supreme Court rejects request for a refund of Dutch WHT to Lux SICAV (in their judgment the Court focused on comparing direct and indirect investment rather than foreign with domestic funds). Complaint to the Commission filed in 2015.

ECJ claims related to Withholding Tax filed in 14 European countries
