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By PwC Deutschland | 22. November 2012

# Dividend withholding tax does not disadvantage foreign pension funds

**The ECJ has rejected a claim by the Commission that the German withholding tax on gross dividends discriminates against foreign pension funds, because the Commission did not substantiate the expenses excluded from deduction.**

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Germany levies a 25% withholding tax on dividends paid. Corporate recipients may request a partial refund to 15% and all recipients entitled to further, treaty relief may file the appropriate claims. However, the remaining tax is a final burden for foreign recipients, though not for their domestic fellows, for whom it becomes a payment on account of their final liability once they file their tax returns. Ultimately, the distinction means that the foreign recipient cannot claim a deduction for any direct costs of earning the dividend income. This conclusion was, for the Commission, a clear indication of discrimination against foreign pension funds investing in Germany. Accordingly it brought a case against Germany before the ECJ, claiming a hindrance on the free movement of capital.

The ECJ has now dismissed the Commission's suit for lack of evidence of any actual disadvantage suffered by foreign funds as dividend recipients. The Commission claimed that foreign funds could expect to have bank charges on their dividend receipts, costs in corresponding with their dividend debtors and staff costs in connection with their investments. However, it could produce no concrete examples of any of these costs actually arising in connection with a German dividend receipt. Accordingly, there was no evidence that the difference in tax status put a foreign fund at a disadvantage. Indeed, the ECJ accepted the German assertion that the incidence of such costs as claimed by the Commission was improbable.

The ECJ case reference is C-600/10 *Commission v. Germany*, judgment of November 22, 2012.

**Schlagwörter**

direct costs, dividend withholding tax, pension fund