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tax + legal newsflash

CJEU judgment regarding WHT refund in case of non-residents with foreign losses

In brief

What happened?

On December 19, 2024, the European Court of Justice (CJEU) held, that it breaches the free movement of capital under Art. 63 TFEU, if WHT is refunded only to residents being in a loss-making position whereas a refund is not granted to non-residents being in a foreign loss-making position (case C-601/23, Credit Suisse Securities (Europe) Ltd. vs. Diputación Foral de Bizkaia).

This judgment confirms, on the hand, the validity of the decision in the Sofina case (C-575/17, November 22, 2018) for which it was unclear whether it established general principles of CJEU jurisprudence for the future. On the other hand, the current judgment extends the Sofina principles to cases where WHT is also withheld on dividends paid to domestic recipients.

Why is it relevant?

WHT on dividends, royalties and interest may become final in case a non-resident recipient of those payments is not able to claim full relief from WHT under a European directive (e.g. parent-subsidiary directive) or a double tax treaty. For those cases, the aforementioned judgment of the CJEU may lead to a further option to claim full relief from WHT.

In case the non-resident recipient of payments generates profits after incurring losses, we understand that the CJEU held that this leads to a “recapture” of the previously relieved WHT.

Actions to consider

Non-resident corporations and individuals (whether resident in the EU or in third countries) who are subject to final WHT on dividends, royalties or interest and incur losses in their state of residence in that very year should consider claiming a further refund taking into account the recent judgment of the CJEU. The judgment may also be relevant for prior years, insofar as the previous losses have not been offset by subsequent profits since. However, domestic statute of limitation rules needs to be considered (e.g. under German tax law refunds for WHT on payments being made in the year 2020 need to be filed by December 31, 2024).

Any questions?

For more information about the CJEU judgment and a deeper discussion of how this might affect your business, please reach out to your local PwC contact advisor or our following international tax experts:

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