By PwC Deutschland | 09.07.2013

Withholding tax exemption on dividends on shares held in bank custody

The finance ministry has announced the arrangements for claiming withholding tax exemption under the EU Parent/Subsidiary Directive on dividends on shares held in the custody of a bank.

Publicly quoted companies do not typically issue their shares to the actual shareholders, but rather to the bank clearing system which holds them on behalf of member banks offering a custodial service to their customers. Dividends are paid into the clearing system in a lump sum which is then split into its component amounts falling to each bank and, ultimately, to each customer. The withholding tax is deducted by the paying bank when the customer's account is credited, or by the clearing system when the amount is transferred abroad. However, even if the shareholder qualifies for exemption under the EU Parent/Subsidiary Directive, the paying entity cannot refrain from deducting the withholding tax, as under the letter of the law this right is reserved to the company as dividend debtor. The finance ministry has now resolved this anomaly with a decree allowing banks to "displace" shares held in custody for foreign customers qualifying for dividend withholding tax exemption under the directive. The bank continues to act as custodian, but holds the shares on a sub-account within the clearing system. The customer is notified accordingly. The company does not pay the dividend on "displaced" shares into the clearing system, but rather to the customer direct. It is therefore in principle required to deduct the withholding tax from dividends paid, but is able to refrain from doing so, if the shareholding company proves its entitlement under the directive. This proof is furnished with the exemption certificate from the Central Tax Office and a copy of the "displacement" notification.

Keywords

Parent/Subsidiary Directive, dividend, withholding tax