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By PwC Deutschland | 10 December 2025

ECJ: Documentation requirements for tax exemption and tax refunds on dividends paid to non-resident pension funds

In a most recent decision on the procedural approach to obtain a WHT exemption, the European Court of Justice (ECJ) has reaffirmed that procedural aspects and formalities can amount to disguised restrictions, and that the practical realization of fundamental freedoms must be ensured. This requires considering not only the relevant provisions of tax law but also any procedural requirements and formalities that may hinder the application of tax benefits or relief.

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Following the decision in a request for a preliminary ruling from Portugal, it seems to imply that in the context of procedures carried out before the tax authorities for the purposes of obtaining a WHT exemption, be it on an upfront basis or as a reimbursement, the burden of attesting for the fulfilment of requirements by non-resident entities tax resident in other EU Member States rests not only on these entities but also on the tax authorities, which have at their disposal means of attesting for the accuracy of the evidence put forward by the non-resident entities (this outlook was taken from the PwC Newsalert of 8 December 2025. The full newsletter will be available shortly on the **EU Direct Tax Group Newsalert** website).

Background

Santander is a legal person governed by Spanish law, constituted as a pension fund established under contract law and resident for tax purposes in Spain. In 2020 and 2021, Santander, which did not have a permanent establishment in Portugal, received dividends in respect of shares held continuously for at least one year in companies resident in Portugal. Those dividends were subject to corporation tax at a rate of 25%, levied by way of a final withholding at source.

After requesting a refund of the difference between the amount of the tax thus levied and the amount corresponding to the tax rate of 15% laid down in the double tax convention between the Portugal and Spain, Santander sought, first, that the acts withholding at source the corporation tax for the years 2020 and 2021 be annulled on the ground of an infringement of EU law and, second, that its right to a refund of the total amount of the tax, withheld in error in respect of those years, be recognized, asserting that it had satisfied all the conditions laid down in Article 16 of the EBF (Estatuto dos Benefícios Fiscais - a statute governing tax benefits).

The referring court was uncertain whether the conditions relating to proof, as laid down in Article 16(7) and (8) of the EBF, may be imposed on non-resident pension funds, especially where they are not required of a resident pension fund, and whether, in a situation where the taxpayer claims that it is unable to obtain such proof, the tax authority must request that proof of its own motion.

Decision

The ECJ held that Article 63(1) TFEU on the free movement of capital must be interpreted as

(i) not precluding a Member State from requiring a non-resident pension fund to provide proof that the substantive conditions for being granted an exemption from the tax levied on dividends received by that fund are satisfied, by producing a declaration that is confirmed and certified by the authorities responsible for the supervision of that fund in its Member State of residence, provided that those authorities have the necessary powers

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and competences to issue such a declaration, that that declaration can be obtained within a reasonable period of time, and that there are no measures which, while being equally effective, are less restrictive; and

(ii) precluding a Member State from requiring a non-resident pension fund to provide proof that the substantive conditions for obtaining a refund of the tax levied on dividends received by that fund are satisfied, by producing a declaration that is confirmed and certified by the authorities responsible for the supervision of that fund in its Member State of residence.

ECJ, decision of 27 November 2025 **C-525/24***Santander Renta Variable España Pensiones, Fondo de Pensiones*.

Keywords

dividend withholding tax, refund procedure, withholding tax exemption