6 February 2013

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SW1A 2BQ

Email: Dan.Ingreji@hmrc.gsi.gov.uk

Dear Mr Ingreji,

Double Tax Treaty Network Review 2013/14

Thank you for your letter dated 7 January 2013 requesting IMA's views on priorities for work on the UK's network of Double Tax Agreements (DTAs) for 2013/14.

As you may be aware, IMA represents the investment management industry operating in the UK. Our members include independent investment managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £4.2 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK authorised funds (i.e. unit trusts and open-ended investment companies).

The appendix to this letter provides our detailed response, which covers a number of specific treaties. These are all important to the funds our members manage and to the investors in those funds, and we encourage officials to continue or initiate bilateral discussions accordingly. In particular, we urge all future discussions to include the position of the UK's new tax-transparent funds, which are due to be introduced this year, and which will have a different tax status to authorised unit trusts and OEICs.

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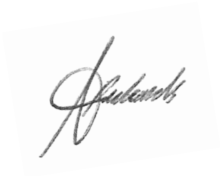
If you wish to discuss in more detail any of the issues raised in the attachment, please feel free to call me on 020 7831 0898 or email me at jmorley-smith@investmentuk.org.

Yours sincerely



Jorge Morley-Smith	Alexander Rickards
Head of Tax	Tax Adviser

cc: Rosalind Moss, HM Treasury
Douglas Rankin, HM Revenue & Customs

Encs.

Appendix

Incorporation of European Court of Justice (ECJ) judgements into UK DTAs and EU matters generally

In recent years the ECJ has found consistently that levying dividend withholding tax on dividend payments to recipients in EU Member States (where no dividend withholding tax is levied domestically) is in breach of the principles of discrimination and free movement of capital in the EU Treaty.

The case most relevant to funds is the recent *Santander*[1] case in France, but this was preceded by a series of other cases that underline this principle - examples include *Aberdeen Property Fininvest Alpha Oy*[2], *Amurta*[3], *Manninen*[4] and *Verkooijen*[5].

IMA believes that the precedent being set by these ECJ judgements should be reflected in DTAs with fellow Member States as they are agreed or renegotiated. In addition, within the EU, UK DTAs should seek to achieve equivalent benefits for mutually comparable entities (e.g. exempt pension funds in both States should receive the same treatment from both States in terms of complete exemption from tax). To do this, new definitions may need to be inserted into relevant DTAs.

We appreciate that HMRC are aware of these points and ask that such matters continue to be pursued.

[1] Cases C‑338/11 to C‑347/11 - *Santander Asset Management SGIIC SA v Directeur des residents á l'étranger et des services généraux and Others* [2012]
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1. Are there any problems with any of the UK's existing DTAs which we need to address by a new treaty or a protocol?

Austria

The reclaim process in Austria continues to pose significant problems for our members. From January 2008, the Austrian Government has required significant documentation to be provided to the Austrian tax authorities for treaty-entitled collective investment schemes. This includes:

- Tax residence certificate issued by the home country;
- The percentage of investors holding shares in the fund who are entitled to claim benefits under a Double Taxation Treaty with Austria;
- Tax residence certificates for any investors holding greater than 10% of the fund, issued by the investor's tax office.

When applying for a refund, a *'Declaration of Widely-Held Foreign Investment Funds'* (see Attachment A) form needs to be completed by the investment vehicle, and in some cases, its treaty-entitled underlying investors. Within the declaration there is a requirement for the fund to disclose details of its investors in order for them to be eligible for a refund. Certificates of Residence (CORs) for the underlying investors are also required in some cases.

These conditions place significant requirements upon the funds reclaiming withholding tax in Austria, and it is likely to be difficult and time-consuming for the funds to obtain all the information required (for example, in determining the tax residency of all investors in the fund). In some cases, for example where investments are held through a nominee account, it may not be possible for funds to obtain the information required by the Austrian authorities and therefore the fund will not be able to reclaim withholding tax suffered.

Calculation of percentage of investors

The Declaration requires the investment vehicle to disclose the percentage of treaty entitled underlying investors in the fund. Tax reclaims will be processed based on this percentage only, thereby denying treaty benefits to the fund itself. There has been little guidance released on how the investment vehicle should make this calculation and when the calculation should be made in respect of the reclaim applications. Funds typically have investors coming in and out of the vehicle frequently, and the percentage holdings of particular assets could change on a daily basis, making both parameters difficult to measure without specific guidance.

Collection of additional CORs for underlying investors

In addition to the Declaration, depending on the number of investors in a fund, CORs for underlying investors are required when submitting the reclaim application. Each COR should state that the particular investor is resident in its respective country within the meaning of that country's tax treaty with Austria. This requirement makes the documentation collection process very onerous and difficult, increasingly so as the number of investors in a fund increases.

We continue to recognise and are appreciative of the considerable efforts made by HMRC to improve materially the position under the Austria-UK treaty. Members still face considerable difficulties, however, in respect of the reclaim process described above.

<u>We ask HMRC to request a move to relief at source and for AUTs and OEICs to be fully eligible for treaty benefits in line with the recommendations in the OECD report</u>.

China

We understand that efforts have continued to be made to ensure that the Chinese authorities ratify the treaty promptly.

<u>We request that HMRC continue to press the Chinese authorities on this to ensure that this comes into force as soon as possible.</u>

Germany

Our members have highlighted instances where the German Tax Authority (GTA) have requested the submission of a new form *'Resident Entitlement Questionnaire / Confirmation of Shareholder Percentage Distribution'* (see Attachment B) for reclaiming excess amounts of withholding tax suffered at source.

The first paragraph of this form refers to the fund as being a fiscally transparent entity, which is not applicable to UK OEICs or AUTs. However, Custodians have noted that this is the only form made available by the German tax authorities, and without it funds will not be able to claim outstanding amounts unless it is submitted at each accounting point. HMRC have indicated that they would provide updated CORs with the following wording:

> *HMRC wording*
>
> *I certify that to the best of HM Revenue & Customs' knowledge [Name and RO of company] as at [date] is a resident of the UK in accordance with Article 4 of the Convention in force between the UK and Germany.*
>
> *Date*
> *Office Stamp, Name and signature of Officer*

<u>To this date we have yet to hear if these CORs have been accepted by the GTA, but we ask HMRC to engage with the GTA to ensure UK OEICs and AUTs are not denied treaty reclaims by virtue of the requirements set out in the German questionnaire.</u>

Indonesia

As noted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, Indonesia has implemented changes to the reclaim process for accessing beneficial rates under the DTA. The claimant is required to complete Form DGT1 *'Certificate of* *domicile of non-resident for Indonesia tax withholding'* (see Attachment C) for every dividend event.

The form contains a series of questions in Part V which must be answered for non-individuals. If the claimant answers 'No' to Question 6 of this Part (i.e. the company is not listed on a recognised stock market and the shares are not regularly traded), it **must** answer yes to Questions 7-12 for the treaty claim to be valid. In the context of AUTs and OEICs, it is questionable whether a fund can legitimately answer yes to the following questions:

9. The company employs sufficient qualified personnel.
10. The company engages in active conduct of a trade or business.
11. The earned income is subject to tax in your country.

In particular, Question 11 requires the claimant to certify that the income is subject to tax, and this may be of concern in the context of portfolio income received by AUTs and OEICs in that it appears to be in direct conflict with the terms of the UK/Indonesian DTA. This means that the position for UK funds has become less certain as a fund must now take a view on whether it can give a representation that the Indonesian dividends are subject to tax in the UK. Market practice may therefore differ on this when it should not.

Questions 9 and 10 are problematic for AUTs and OEICs due to the very nature of these vehicles.

We understand that unless claims are made within a few days of the dividend payment, there is currently no mechanism for repayment of withholding tax in excess of the treaty rate and therefore AUTs and OEICs are foregoing treaty benefits.

We ask HMRC to make representations to the Indonesian authorities that the requirement to certify that the income is subject to tax is inconsistent with the DTA with the aim of forms being modified for UK funds or a clarifying statement issued by the Indonesian authorities.

Capital gains tax

Gains on Indonesian listed shares are exempt, but gains on transfer or redemption of government and corporate bonds are taxable as interest under domestic legislation at a rate of 20%. Where a treaty contains a narrow definition of 'interest', any treaty provision exempting gains should prevail over domestic legislation. The UK/Indonesia DTA has a narrow definition of interest. This should mean that residents of the UK are exempt from the interest on redemption, provided that Forms DGT1 and 2 are in place.

Where the treaty has a broad definition of interest (e.g. Luxembourg) we would expect any gain on corporate or government bonds to be taxable at treaty interest rates. Unfortunately, our members have highlighted instances where the sub-custodian has had a different interpretation of the treatment.

In one instance, the sub-custodian advised our member that based on the direction they have received from the Indonesian Tax Authorities, the income arising from bond transfers shall be treated as interest/discount in accordance with *Government*

Regulation No. 16 Year 2009 on Income Tax Interest on Bonds and *Government Regulation Number 27 Year 2008 on Income Tax on Discounts Treasury Bills*. Based on that direction, the difference between the selling price and purchase price shall not be considered as a capital gain.

Should there be any request to exempt the withholding tax, based on the UK/Indonesia Double Taxation Agreement, it was stated that such exemption shall be applied only to: the Bank of England; the United Kingdom Export Credits Guarantee Department; the Commonwealth Development Corporation; and such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of the United Kingdom as may be agreed from time to time between the competent authorities of Indonesia and United Kingdom.

Hence, if a fund claims the exemption, the sub-custodian would need authorisation from the Indonesian Tax Authorities in order to verify the exemption.

<u>We ask HMRC to make further representations to the Indonesian authorities that the gains on transfer or redemption of government and corporate bonds should be treated as exempt capital gains under the DTA.</u>

India

The Indian Finance Bill 2012 introduced proposals for the taxation of indirect transfers, as a result of the high-profile *Vodafone* case, as well as a proposal for the introduction of a General Anti-Avoidance Rule (GAAR). The proposal to tax indirect transfers may give rise to double taxation on non-resident investment funds with Indian equity portfolio holdings, whereas the GAAR would allow India's Direct Tax Code to override domestic law where there is a conflict.

As noted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, we understand that such rules are unlikely to be used to attack investment funds given the impact that would have on Indian capital markets. However, additional certainty to achieve this outcome should be encouraged.

<u>We therefore ask HMRC to continue to make representations to the Indian authorities with a view to mitigating any conflict between the existing DTA and the proposed GAAR legislation.</u>

Israel

Article VI (2) of the UK/Israel treaty requires that a dividend is 'subject to tax' in the UK in order to receive the reduced withholding rate. Whilst AUTs and OEICs may generally be able to make an election to tax these dividends in the UK, this may result in a worse after-tax position and also will increase administration costs. If an election to tax is not made (or cannot be made, e.g. Tax-Elected Funds), then the UK fund will suffer the domestic withholding tax rate in the overseas country, which in some cases may result in a materially greater rate of non-UK withholding tax being applied.

We understand that treaty negotiations had been taking place with Israel with a view to eliminating the 'subject to tax' condition, but that no new treaty has been concluded. <u>We continue to ask that every effort be made in future negotiations to ensure that the 'subject to tax' requirement is removed from the treaty</u>.

Italy

Italy continues to be one of the most arduous countries to reclaim withholding tax suffered for UK funds. Typically, successful claims are paid years (if not decades) after which they were made, and these timescales, twinned with the administration burdens of making such claims, make it near untenable for a fund to file refunds.

We are also aware of instances of the Italian tax authorities having requested repayment of a tax reclaim plus interest, and further cases where appeals against these reclaims are being rejected on totally spurious administrative non-issues. This serves only to increase the risk and uncertainty of claims being filed.

In response to tax reclaims, the Italian tax authorities have issued questionnaires to claimants, which must be completed in Italian and returned to the tax authorities within 60 days. These forms require significant information and many funds have struggled to respond fully to the questionnaires within the specified time.

In practice this has meant that many UK funds are no longer attempting to recover Italian withholding tax in excess of the treaty entitlement, and instead prefer to suffer the full rate of withholding tax, or withdraw investment from Italy altogether.

We continue to appreciate the large amount of work that HMRC have undertaken with the Italian tax authorities in respect of delays in the reclaims of withholding tax and in the refund of tax credits.

<u>We ask that HMRC continue to take every opportunity to impress on their Italian counterparts the need for this issue to be addressed</u>.

Korea

As we highlighted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, new tax laws have been introduced in Korea that require overseas investment vehicles ('OIV') to submit a list of all beneficial owners of the Korean source income on a 'Report of OIV', and additionally for those beneficial owners to complete and submit an *'Application for Reduced Tax Rate under a Double Tax Treaty'* to the OIV.

IMA wrote to the Korean Government on 22 June 2012 outlining the reasons why OEICs and AUTs should be considered beneficiaries under the UK/Korea DTA, and therefore entitled to the reduced 15% withholding tax rate under Article 10(2)(b) by completing the administratively simpler Form 72-2 *'Application for Entitlement to Reduced Tax Rate on Domestic Source Income (for Foreign Corporation)'*. We attach a copy of the letter as Attachment D.

Following discussions with HMRC we believe that, as both OEICs and AUTs are beneficiaries under the UK/Korea Double Tax Convention, they are entitled to receive dividends net of 15% withholding tax under Article 10(2)(b) by completing Form 72-2.

<u>We ask HMRC to seek confirmation from the Korean tax authorities that UK AUTs and OEICs are entitled to benefits under the UK/Korea Double Tax Convention and that they should file Form 72-2 to claim treaty benefits.</u>

Portugal

Our members continue to experience practical problems with reclaims of withholding tax in Portugal. Although in principle the Portuguese authorities have not been denying treaty benefits to collective investment schemes, they have made the reclaim process difficult for many funds and have introduced yet further administrative difficulties before a fund can successfully apply for relief at source, which in effect has prevented some funds from obtaining treaty benefits.

In particular, custodians have indicated that UK non-tax exempt resident beneficiaries are required to provide a *'Dividend Election Form'* (see Attachment E) in order to enjoy treaty benefits on Portuguese dividends. Our members have seen instances where this form was rejected and a new document called a *'UK Representation Letter'* (see Attachment F) was requested. This letter is intended for eligible UK beneficiaries to continue to benefit from the reduced rate on their Portuguese dividends.

In addition, CORs with specific wording have been requested stating that the fund is fully liable to tax and not fiscally transparent (see Attachment G). These administrative barriers continue to cause problems for funds seeking treaty rates in Portugal.

<u>We ask that HMRC take this matter into account in any future treaty negotiations with Portugal.</u>

Saudi Arabia

Under local Saudi law, withholding tax of 20% is applied to management fees paid to entities resident outside the Kingdom of Saudi Arabia. The management fee earned in the UK is "business profits" in nature will be covered under Article 5 and Article 7 of the DTA. Moreover, the UK entity will not create a PE in the Kingdom under Article 5, the right to tax the business profit remains solely with the UK tax authority under Article 7.

The local Saudi law states that the payer must first deduct and deposit the amount with the DZIT (Saudi tax authority) and then facilitate the recipient in claiming a refund for such taxes if relief is available under a tax treaty.

Our members have noted that in order to claim a refund in terms of the Saudi DTA, the following must be provided:

1. a letter from the beneficiary resident in treaty country requesting refund of the overpaid WHT along with completed refund request form;

2. valid certificate from the tax authorities in the treaty country where the beneficiary is residing stating that the beneficiary is resident in accordance with the provisions of Article (4) of the DTT in the treaty country and the amount paid is subject to tax in the treaty country;
3. copy of the WHT form for the settlement of tax together with bank receipt confirming settlement of the WHT with the tax authority (DZIT); and
4. certificate of tax registration of withholder.

The documents indicated in (1) and (2) would be required to be attested by the Saudi embassy in the treaty country.

Recently the DZIT has advised that the refund application should also be accompanied with the following:-

5. a copy of the company's commercial registration;
6. refund request letter should be attested from Saudi Chamber of Commerce; and
7. an authority letter to the consultant following up with the DZIT for refund; from the company requesting refund.

There is also a possibility that the DZIT may require a copy of the contract in order to ascertain that the correct amount of withholding tax (maximum of 20%) is being withheld.

This process is overly burdensome and costly and may result in UK businesses forgoing treaty benefits when transacting with businesses in Saudi Arabia.

<u>We ask HMRC to make representations to the Saudi tax authorities to simplify access treaty benefits for UK businesses.</u>

Switzerland

We are aware of recent instances where the Swiss Federal Tax Administration (SFTA) has rejected reclaims filed by UK funds. In those instances, the SFTA required further detailed information to determine beneficial ownership. Some of the comments and questions from the SFTA are detailed below:

> *Based on Article 48, paragraph 1 of the federal Law on Withholding Tax (WHTL; SR 642.21) we require the following documents and information to examine your application:*
>
> *According to the consistent position of the SFTA, a refund of Swiss anticipatory tax will not be granted if a dividend is not paid to the beneficial owner.*
>
> *Due to current investigations, we came to the conclusion that we have to undertake some addition controls.*
>
> 1. *A detailed statement of account for the shares [xxx] and [xxx] with the relevant dates of purchases and sales over 2010 and 2011 (in chronological order), include also another column with the balance of*

the quantity of shares after each sale and each purchase. Please also send us a historical chart showing the development of the number of shares held during this period.

2. *Please make detailed comments on the economic reasons (not tax reasons) for the acquisition and the holding of the stock position.*

3. *Have there been some hedging transactions with derivative financial instrument (e.g. with call or put options, swap) in relation with the stock position? If yes, please explain the financial transactions and visualize the flows (dividends / interests / shares / derivative / spreads / fees).*

4. *Is the practice of these financial transactions at own risk for the issuer of the derivative? Please comment and send details.*

5. *Have there been some transactions in securities lending in relation with the stock position?*

6. *Does that kind of transactions/operations enter within the framework of dividend stripping? If it is not the case, please bring us proof.*

7. *Does [fund] benefit of the UK tax credit on these positions?*

8. *Have the dividends out of the stock position been forwarded or is it intended to forward the dividends? If yes, to whom? Please specify the precise amount.*

These questions are irrelevant to the claim by UK funds to benefits under the UK/Swiss Double Tax Convention and impose a burden on funds making claims.

<u>We ask HMRC to make representations to the Swiss Federal Tax Administration to ensure that spurious requests for information do not impede or delay the granting of treaty benefits to UK funds.</u>

Taiwan

In order to apply exemption or seek a reduced rate from withholding tax (20%) under Article 7 of the Taiwan-UK DTA, our members have been required to submit a withholding tax refund claim. In practice, due to complexity and language, this requires our member to engage a local tax advisor to submit the necessary forms and applications on their behalf, including:

1. Preparing the treaty application letters, describing the relevant background of the service charges in question and presenting tax rule analysis and arguments to support the treaty applications. In addition, the application packages will be compiled and filed with the National Tax Administration.
2. Communicating with the National Tax Administration regarding the treaty applications.

3. Assisting in preparing the WHT refund application letters, amending the WHT statements and submitting the application.

However, we are aware of instances where the Taiwanese tax authorities have taken a 'look through' approach to their deliberation on separate account investment management fees. The 'look through' approach would apply where a separate account client exists in Taiwan and part of the portfolio is managed by another group company in another jurisdiction. This other jurisdiction may or may not have a DTA in place with Taiwan.

By way of an example, let's say that a UK management company managed a Taiwanese mandate and invoices/receives all fees directly from that client. The UK management company delegates 70% of the overall portfolio to a US company. The UK company would pass on a proportion of the fees to the delegated manager to reflect the proportion of the portfolio. So, say, 70% of fees passed on to the sub-delegated management company.

In the absence of a DTA the WHT would be 20% whereas potentially the UK treaty rate should potentially be 0% (i.e. full exemption).

In this case in question, the Taiwanese tax authorities would look at the whole contractual arrangements including the sub-delegated management to decide on what WHT rate would be appropriate to the overall fees payable for managing the mandate.

In the example above, from a total fee of £100, the client would pay £80 and withhold £20. The Taiwan Tax Authorities would typically agree that the portion of the 'master' fee relating to the UK company should not suffer any WHT but the portion relating to the sub-advisory arrangement should continue to suffer WHT. The impact of this would be that 30% of the WHT would be refunded (6% of the master fee) but 70% would be deemed as irrecoverable (14% of the master fee) as it related to the US based sub-delegated manager. The Taiwan Tax Authorities agreed that for future periods the WHT would be reduced to 14% of the master fee.

However, double tax relief in the UK tax would be claimed to the extent that sufficient profits cover the irrecoverable WHT of the 'master' fee. In all cases there may not be sufficiency of profits so the Taiwanese WHT would create costs for the UK company.

As a result of the Taiwanese tax authorities taking a 'look through' approach it means that each mandate/contractual arrangement must be considered in detail on its own merits and the DTA cannot effectively be relied upon. Rather, on each occasion, a WHT exemption application/ruling must be submitted. This is burdensome and costly. Moreover, the 'look through' approach taken by the Taiwanese tax authorities is not in line with the normal operation of a DTA where legitimate commercial arrangements are in place (i.e. where there is no deliberate structuring to benefit from treaty rates that would not normally be available).

We ask HMRC to make representations to the Taiwanese tax authorities to simplify access treaty benefits for UK businesses.

2. Are aspects of the UK's existing DTAs un-competitive when compared with agreements our treaty partners have made with other countries?

Spain

As we highlighted last year, our members continue to report difficulties in being able to access the Spanish "quick reclaim procedure", which is currently unavailable to UK investors. The quick reclaim procedure works well for those investors that are not resident in a country covered by the 'special development rule'. In general, all investors have to provide a beneficial owner breakdown to the Spanish sub-custodian for each income event. However, investors eligible to join the quick reclaim procedure (which include US investors) have only to ensure a valid tax residence certificate to be held on file by the investor's custodian. This contrasts with the position of an investor resident in a country covered by the special development rule (which includes the UK), where the investor has to provide a certified reclaim form to their custodian for each income event.

Thus, in order to benefit from the quick reclaim procedure, UK investors must complete a tax reclaim form and get this form certified by HMRC. At best, if the dividend is paid at beginning of the month, they will have a month to do so. At worst, if the dividend is paid at the end of the month, they will have one or two days to do so. In contrast, investors that do not reside in a special development country have to provide only a single tax residence certificate, which covers all income payments.

Moreover, we understand that the Spanish tax authorities are now requesting to see original versions of FSA certification of UCITS III [sic] status for each year a reclaim is made. In practice this is not feasible because the FSA does not provide certification of UCITS status annually. There are concerns therefore that WHT in excess of treaty rates will not be recoverable at all from Spain.

Our members have provided evidence of instances where custodians have received the relevant UCITS certification from the FSA, but continue to see reclaims not being paid by the Spanish tax authority. This is a problem which is widely recognised in the industry.

We understand that negotiations with Spain have taken place over many years. <u>We ask HMRC to continue to pursue opportunities to engage in the treaty renegotiation process with Spain, and we request that officials seek to ensure that the UK is able to take advantage of the quick reclaim procedure and that the Spanish tax authorities do not seek certifications other than those required under the tax treaty for residence.</u>

Attachments

A. Austria – Declaration of Widely-Held Foreign Investment Funds

B. Germany – Resident Entitlement Questionnaire / Confirmation of Shareholder Percentage Distribution

C. Indonesia – Certificate of domicile of non-resident for Indonesia tax withholding (Form DGT1)

D. Letter from IMA to the Korean MOSF dated 22 June 2012

E. Portugal – Dividend Election Form

F. Portugal – UK Representation Letter

G. Portugal – HMRC COR

If you wish to discuss in more detail any of the issues raised in the attachment, please feel free to call me on 020 7831 0898 or email me at jmorley-smith@investmentuk.org.

Yours sincerely

Jorge Morley-Smith	Alexander Rickards
Head of Tax	Tax Adviser

cc: Rosalind Moss, HM Treasury
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Germany

Our members have highlighted instances where the German Tax Authority (GTA) have requested the submission of a new form *'Resident Entitlement Questionnaire / Confirmation of Shareholder Percentage Distribution'* (see Attachment B) for reclaiming excess amounts of withholding tax suffered at source.

The first paragraph of this form refers to the fund as being a fiscally transparent entity, which is not applicable to UK OEICs or AUTs. However, Custodians have noted that this is the only form made available by the German tax authorities, and without it funds will not be able to claim outstanding amounts unless it is submitted at each accounting point. HMRC have indicated that they would provide updated CORs with the following wording:

> *HMRC wording*
>
> *I certify that to the best of HM Revenue & Customs' knowledge [Name and RO of company] as at [date] is a resident of the UK in accordance with Article 4 of the Convention in force between the UK and Germany.*
>
> *Date*
> *Office Stamp, Name and signature of Officer*

<u>To this date we have yet to hear if these CORs have been accepted by the GTA, but we ask HMRC to engage with the GTA to ensure UK OEICs and AUTs are not denied treaty reclaims by virtue of the requirements set out in the German questionnaire.</u>

Indonesia

As noted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, Indonesia has implemented changes to the reclaim process for accessing beneficial rates under the DTA. The claimant is required to complete Form DGT1 *'Certificate of* *domicile of non-resident for Indonesia tax withholding'* (see Attachment C) for every dividend event.

The form contains a series of questions in Part V which must be answered for non-individuals. If the claimant answers 'No' to Question 6 of this Part (i.e. the company is not listed on a recognised stock market and the shares are not regularly traded), it **must** answer yes to Questions 7-12 for the treaty claim to be valid. In the context of AUTs and OEICs, it is questionable whether a fund can legitimately answer yes to the following questions:

9. The company employs sufficient qualified personnel.
10. The company engages in active conduct of a trade or business.
11. The earned income is subject to tax in your country.

In particular, Question 11 requires the claimant to certify that the income is subject to tax, and this may be of concern in the context of portfolio income received by AUTs and OEICs in that it appears to be in direct conflict with the terms of the UK/Indonesian DTA. This means that the position for UK funds has become less certain as a fund must now take a view on whether it can give a representation that the Indonesian dividends are subject to tax in the UK. Market practice may therefore differ on this when it should not.

Questions 9 and 10 are problematic for AUTs and OEICs due to the very nature of these vehicles.

We understand that unless claims are made within a few days of the dividend payment, there is currently no mechanism for repayment of withholding tax in excess of the treaty rate and therefore AUTs and OEICs are foregoing treaty benefits.

<u>We ask HMRC to make representations to the Indonesian authorities that the requirement to certify that the income is subject to tax is inconsistent with the DTA with the aim of forms being modified for UK funds or a clarifying statement issued by the Indonesian authorities.</u>

Capital gains tax

Gains on Indonesian listed shares are exempt, but gains on transfer or redemption of government and corporate bonds are taxable as interest under domestic legislation at a rate of 20%. Where a treaty contains a narrow definition of 'interest', any treaty provision exempting gains should prevail over domestic legislation. The UK/Indonesia DTA has a narrow definition of interest. This should mean that residents of the UK are exempt from the interest on redemption, provided that Forms DGT1 and 2 are in place.

Where the treaty has a broad definition of interest (e.g. Luxembourg) we would expect any gain on corporate or government bonds to be taxable at treaty interest rates. Unfortunately, our members have highlighted instances where the sub-custodian has had a different interpretation of the treatment.

In one instance, the sub-custodian advised our member that based on the direction they have received from the Indonesian Tax Authorities, the income arising from bond transfers shall be treated as interest/discount in accordance with *Government*

Regulation No. 16 Year 2009 on Income Tax Interest on Bonds and *Government Regulation Number 27 Year 2008 on Income Tax on Discounts Treasury Bills*. Based on that direction, the difference between the selling price and purchase price shall not be considered as a capital gain.

Should there be any request to exempt the withholding tax, based on the UK/Indonesia Double Taxation Agreement, it was stated that such exemption shall be applied only to: the Bank of England; the United Kingdom Export Credits Guarantee Department; the Commonwealth Development Corporation; and such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of the United Kingdom as may be agreed from time to time between the competent authorities of Indonesia and United Kingdom.

Hence, if a fund claims the exemption, the sub-custodian would need authorisation from the Indonesian Tax Authorities in order to verify the exemption.

<u>We ask HMRC to make further representations to the Indonesian authorities that the gains on transfer or redemption of government and corporate bonds should be treated as exempt capital gains under the DTA.</u>

India

The Indian Finance Bill 2012 introduced proposals for the taxation of indirect transfers, as a result of the high-profile *Vodafone* case, as well as a proposal for the introduction of a General Anti-Avoidance Rule (GAAR). The proposal to tax indirect transfers may give rise to double taxation on non-resident investment funds with Indian equity portfolio holdings, whereas the GAAR would allow India's Direct Tax Code to override domestic law where there is a conflict.

As noted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, we understand that such rules are unlikely to be used to attack investment funds given the impact that would have on Indian capital markets. However, additional certainty to achieve this outcome should be encouraged.

<u>We therefore ask HMRC to continue to make representations to the Indian authorities with a view to mitigating any conflict between the existing DTA and the proposed GAAR legislation.</u>

Israel

Article VI (2) of the UK/Israel treaty requires that a dividend is 'subject to tax' in the UK in order to receive the reduced withholding rate. Whilst AUTs and OEICs may generally be able to make an election to tax these dividends in the UK, this may result in a worse after-tax position and also will increase administration costs. If an election to tax is not made (or cannot be made, e.g. Tax-Elected Funds), then the UK fund will suffer the domestic withholding tax rate in the overseas country, which in some cases may result in a materially greater rate of non-UK withholding tax being applied.

We understand that treaty negotiations had been taking place with Israel with a view to eliminating the 'subject to tax' condition, but that no new treaty has been concluded. We continue to ask that every effort be made in future negotiations to ensure that the 'subject to tax' requirement is removed from the treaty.

Italy

Italy continues to be one of the most arduous countries to reclaim withholding tax suffered for UK funds. Typically, successful claims are paid years (if not decades) after which they were made, and these timescales, twinned with the administration burdens of making such claims, make it near untenable for a fund to file refunds.

We are also aware of instances of the Italian tax authorities having requested repayment of a tax reclaim plus interest, and further cases where appeals against these reclaims are being rejected on totally spurious administrative non-issues. This serves only to increase the risk and uncertainty of claims being filed.

In response to tax reclaims, the Italian tax authorities have issued questionnaires to claimants, which must be completed in Italian and returned to the tax authorities within 60 days. These forms require significant information and many funds have struggled to respond fully to the questionnaires within the specified time.

In practice this has meant that many UK funds are no longer attempting to recover Italian withholding tax in excess of the treaty entitlement, and instead prefer to suffer the full rate of withholding tax, or withdraw investment from Italy altogether.

We continue to appreciate the large amount of work that HMRC have undertaken with the Italian tax authorities in respect of delays in the reclaims of withholding tax and in the refund of tax credits.

We ask that HMRC continue to take every opportunity to impress on their Italian counterparts the need for this issue to be addressed.

Korea

As we highlighted in our 2012/13 DTT Network Review letter to HMRC of 31 January 2012, new tax laws have been introduced in Korea that require overseas investment vehicles ('OIV') to submit a list of all beneficial owners of the Korean source income on a 'Report of OIV', and additionally for those beneficial owners to complete and submit an *'Application for Reduced Tax Rate under a Double Tax Treaty'* to the OIV.

IMA wrote to the Korean Government on 22 June 2012 outlining the reasons why OEICs and AUTs should be considered beneficiaries under the UK/Korea DTA, and therefore entitled to the reduced 15% withholding tax rate under Article 10(2)(b) by completing the administratively simpler Form 72-2 *'Application for Entitlement to Reduced Tax Rate on Domestic Source Income (for Foreign Corporation)'*. We attach a copy of the letter as Attachment D.

Following discussions with HMRC we believe that, as both OEICs and AUTs are beneficiaries under the UK/Korea Double Tax Convention, they are entitled to receive dividends net of 15% withholding tax under Article 10(2)(b) by completing Form 72-2.

<u>We ask HMRC to seek confirmation from the Korean tax authorities that UK AUTs and OEICs are entitled to benefits under the UK/Korea Double Tax Convention and that they should file Form 72-2 to claim treaty benefits.</u>

Portugal

Our members continue to experience practical problems with reclaims of withholding tax in Portugal. Although in principle the Portuguese authorities have not been denying treaty benefits to collective investment schemes, they have made the reclaim process difficult for many funds and have introduced yet further administrative difficulties before a fund can successfully apply for relief at source, which in effect has prevented some funds from obtaining treaty benefits.

In particular, custodians have indicated that UK non-tax exempt resident beneficiaries are required to provide a *'Dividend Election Form'* (see Attachment E) in order to enjoy treaty benefits on Portuguese dividends. Our members have seen instances where this form was rejected and a new document called a *'UK Representation Letter'* (see Attachment F) was requested. This letter is intended for eligible UK beneficiaries to continue to benefit from the reduced rate on their Portuguese dividends.

In addition, CORs with specific wording have been requested stating that the fund is fully liable to tax and not fiscally transparent (see Attachment G). These administrative barriers continue to cause problems for funds seeking treaty rates in Portugal.

<u>We ask that HMRC take this matter into account in any future treaty negotiations with Portugal.</u>

Saudi Arabia

Under local Saudi law, withholding tax of 20% is applied to management fees paid to entities resident outside the Kingdom of Saudi Arabia. The management fee earned in the UK is "business profits" in nature will be covered under Article 5 and Article 7 of the DTA. Moreover, the UK entity will not create a PE in the Kingdom under Article 5, the right to tax the business profit remains solely with the UK tax authority under Article 7.

The local Saudi law states that the payer must first deduct and deposit the amount with the DZIT (Saudi tax authority) and then facilitate the recipient in claiming a refund for such taxes if relief is available under a tax treaty.

Our members have noted that in order to claim a refund in terms of the Saudi DTA, the following must be provided:

1. a letter from the beneficiary resident in treaty country requesting refund of the overpaid WHT along with completed refund request form;

2. valid certificate from the tax authorities in the treaty country where the beneficiary is residing stating that the beneficiary is resident in accordance with the provisions of Article (4) of the DTT in the treaty country and the amount paid is subject to tax in the treaty country;
3. copy of the WHT form for the settlement of tax together with bank receipt confirming settlement of the WHT with the tax authority (DZIT); and
4. certificate of tax registration of withholder.

The documents indicated in (1) and (2) would be required to be attested by the Saudi embassy in the treaty country.

Recently the DZIT has advised that the refund application should also be accompanied with the following:-

5. a copy of the company's commercial registration;
6. refund request letter should be attested from Saudi Chamber of Commerce; and
7. an authority letter to the consultant following up with the DZIT for refund; from the company requesting refund.

There is also a possibility that the DZIT may require a copy of the contract in order to ascertain that the correct amount of withholding tax (maximum of 20%) is being withheld.

This process is overly burdensome and costly and may result in UK businesses forgoing treaty benefits when transacting with businesses in Saudi Arabia.

<u>We ask HMRC to make representations to the Saudi tax authorities to simplify access treaty benefits for UK businesses.</u>

Switzerland

We are aware of recent instances where the Swiss Federal Tax Administration (SFTA) has rejected reclaims filed by UK funds. In those instances, the SFTA required further detailed information to determine beneficial ownership. Some of the comments and questions from the SFTA are detailed below:

> *Based on Article 48, paragraph 1 of the federal Law on Withholding Tax (WHTL; SR 642.21) we require the following documents and information to examine your application:*
>
> *According to the consistent position of the SFTA, a refund of Swiss anticipatory tax will not be granted if a dividend is not paid to the beneficial owner.*
>
> *Due to current investigations, we came to the conclusion that we have to undertake some addition controls.*
>
> *1. A detailed statement of account for the shares [xxx] and [xxx] with the relevant dates of purchases and sales over 2010 and 2011 (in chronological order), include also another column with the balance of*

the quantity of shares after each sale and each purchase. Please also send us a historical chart showing the development of the number of shares held during this period.

2. *Please make detailed comments on the economic reasons (not tax reasons) for the acquisition and the holding of the stock position.*

3. *Have there been some hedging transactions with derivative financial instrument (e.g. with call or put options, swap) in relation with the stock position? If yes, please explain the financial transactions and visualize the flows (dividends / interests / shares / derivative / spreads / fees).*

4. *Is the practice of these financial transactions at own risk for the issuer of the derivative? Please comment and send details.*

5. *Have there been some transactions in securities lending in relation with the stock position?*

6. *Does that kind of transactions/operations enter within the framework of dividend stripping? If it is not the case, please bring us proof.*

7. *Does [fund] benefit of the UK tax credit on these positions?*

8. *Have the dividends out of the stock position been forwarded or is it intended to forward the dividends? If yes, to whom? Please specify the precise amount.*

These questions are irrelevant to the claim by UK funds to benefits under the UK/Swiss Double Tax Convention and impose a burden on funds making claims.

<u>We ask HMRC to make representations to the Swiss Federal Tax Administration to ensure that spurious requests for information do not impede or delay the granting of treaty benefits to UK funds.</u>

Taiwan

In order to apply exemption or seek a reduced rate from withholding tax (20%) under Article 7 of the Taiwan-UK DTA, our members have been required to submit a withholding tax refund claim. In practice, due to complexity and language, this requires our member to engage a local tax advisor to submit the necessary forms and applications on their behalf, including:

1. Preparing the treaty application letters, describing the relevant background of the service charges in question and presenting tax rule analysis and arguments to support the treaty applications. In addition, the application packages will be compiled and filed with the National Tax Administration.
2. Communicating with the National Tax Administration regarding the treaty applications.

3. Assisting in preparing the WHT refund application letters, amending the WHT statements and submitting the application.

However, we are aware of instances where the Taiwanese tax authorities have taken a 'look through' approach to their deliberation on separate account investment management fees. The 'look through' approach would apply where a separate account client exists in Taiwan and part of the portfolio is managed by another group company in another jurisdiction. This other jurisdiction may or may not have a DTA in place with Taiwan.

By way of an example, let's say that a UK management company managed a Taiwanese mandate and invoices/receives all fees directly from that client. The UK management company delegates 70% of the overall portfolio to a US company. The UK company would pass on a proportion of the fees to the delegated manager to reflect the proportion of the portfolio. So, say, 70% of fees passed on to the sub-delegated management company.

In the absence of a DTA the WHT would be 20% whereas potentially the UK treaty rate should potentially be 0% (i.e. full exemption).

In this case in question, the Taiwanese tax authorities would look at the whole contractual arrangements including the sub-delegated management to decide on what WHT rate would be appropriate to the overall fees payable for managing the mandate.

In the example above, from a total fee of £100, the client would pay £80 and withhold £20. The Taiwan Tax Authorities would typically agree that the portion of the 'master' fee relating to the UK company should not suffer any WHT but the portion relating to the sub-advisory arrangement should continue to suffer WHT. The impact of this would be that 30% of the WHT would be refunded (6% of the master fee) but 70% would be deemed as irrecoverable (14% of the master fee) as it related to the US based sub-delegated manager. The Taiwan Tax Authorities agreed that for future periods the WHT would be reduced to 14% of the master fee.

However, double tax relief in the UK tax would be claimed to the extent that sufficient profits cover the irrecoverable WHT of the 'master' fee. In all cases there may not be sufficiency of profits so the Taiwanese WHT would create costs for the UK company.

As a result of the Taiwanese tax authorities taking a 'look through' approach it means that each mandate/contractual arrangement must be considered in detail on its own merits and the DTA cannot effectively be relied upon. Rather, on each occasion, a WHT exemption application/ruling must be submitted. This is burdensome and costly. Moreover, the 'look through' approach taken by the Taiwanese tax authorities is not in line with the normal operation of a DTA where legitimate commercial arrangements are in place (i.e. where there is no deliberate structuring to benefit from treaty rates that would not normally be available).

<u>We ask HMRC to make representations to the Taiwanese tax authorities to simplify access treaty benefits for UK businesses.</u>

2. Are aspects of the UK's existing DTAs un-competitive when compared with agreements our treaty partners have made with other countries?

Spain

As we highlighted last year, our members continue to report difficulties in being able to access the Spanish "quick reclaim procedure", which is currently unavailable to UK investors. The quick reclaim procedure works well for those investors that are not resident in a country covered by the 'special development rule'. In general, all investors have to provide a beneficial owner breakdown to the Spanish sub-custodian for each income event. However, investors eligible to join the quick reclaim procedure (which include US investors) have only to ensure a valid tax residence certificate to be held on file by the investor's custodian. This contrasts with the position of an investor resident in a country covered by the special development rule (which includes the UK), where the investor has to provide a certified reclaim form to their custodian for each income event.

Thus, in order to benefit from the quick reclaim procedure, UK investors must complete a tax reclaim form and get this form certified by HMRC. At best, if the dividend is paid at beginning of the month, they will have a month to do so. At worst, if the dividend is paid at the end of the month, they will have one or two days to do so. In contrast, investors that do not reside in a special development country have to provide only a single tax residence certificate, which covers all income payments.

Moreover, we understand that the Spanish tax authorities are now requesting to see original versions of FSA certification of UCITS III [sic] status for each year a reclaim is made. In practice this is not feasible because the FSA does not provide certification of UCITS status annually. There are concerns therefore that WHT in excess of treaty rates will not be recoverable at all from Spain.

Our members have provided evidence of instances where custodians have received the relevant UCITS certification from the FSA, but continue to see reclaims not being paid by the Spanish tax authority. This is a problem which is widely recognised in the industry.

We understand that negotiations with Spain have taken place over many years. We ask HMRC to continue to pursue opportunities to engage in the treaty renegotiation process with Spain, and we request that officials seek to ensure that the UK is able to take advantage of the quick reclaim procedure and that the Spanish tax authorities do not seek certifications other than those required under the tax treaty for residence.

Attachments

A. Austria – Declaration of Widely-Held Foreign Investment Funds

B. Germany – Resident Entitlement Questionnaire / Confirmation of Shareholder Percentage Distribution

C. Indonesia – Certificate of domicile of non-resident for Indonesia tax withholding (Form DGT1)

D. Letter from IMA to the Korean MOSF dated 22 June 2012

E. Portugal – Dividend Election Form

F. Portugal – UK Representation Letter

G. Portugal – HMRC COR

Attachment A

DECLARATION OF WIDELY-HELD FOREIGN INVESTMENT FUNDS supplementing the application for refund of Austrian dividend tax

The following declaration is made in relation to the claim for repayment of Austrian dividend tax of …………….

Name of the fund whose treaty residence has been confirmed by the tax administration

……………………………………………………….

The fund is widely-held (fulfilled in any case if at least 100 investors).

Percentage of units held by investors entitled to the benefits of a Double Tax Treaty with Austria:

…………%.

Method used for determination of entitled investors (e.g. Quarterly Determinations, Sales Restrictions, Direct Tracing or other Method):
(Please specify)

……………………………………..

Closing date of the accounting period: ……………………………………………………

Disclosure of investors holding at least 10 % in the Investment Vehicle (for these investors residence within the meaning of the respective Tax Treaty with Austria has to be certified by the tax administration of the residence country)

………………………………………………………………………………………………..

………………………………………………………………………………………………..

Attachments: ………*Certificates of Residence*

The fund management is prepared to disclose to the Austrian tax administration details on the method used to determine the above percentage of investors protected under the Austrian tax treaty network if so requested by the Austrian tax administration. The authorised undersigned declares to the best of his knowledge that the information provided in this attestation is correct and that he is aware of the fact that the case may be subjected to special examinations under the administrative assistance provisions of the respective tax treaty.

Place and date: ……………………………………………………

Stamp and authorised signature: ……………………………………………………….

Attachment B

Resident Entitlement Questionnaire / Confirmation of Shareholder Percentage Distribution

In accordance with the application documents, it appears that the applicant is an Investment Fund/Investment Asset Pool (Special Assets / Special Purpose Fund). The investors of this Investment Fund have acquired certain units in the Investment Asset Pool which are certificated in the form of share certificates (Investment Certificates). Since the Investment Fund itself is a fiscally transparent entity and thereby not a taxable subject, the earnings generated at fund level are not, in principle, subject to tax. Rather, the earnings are allocated to and taxed at the level of the respective certificate holder.

....

Name and domicile of the Investment Company

....

Name and ISIN of the Investment Fund/Investment Asset Pool

Day of distribution (ex-date) of the Investment Fund: ....

All details below pertain to the day of distribution (ex-date) of the Investment Fund.

	Total	In percent
1.1 Number of share certificates/investment certificates issued:	....	(100%)
1.2 Of these, the number of share certificates held by residents of the country where the fund is located:	....	(%)[1]
2.1 Total number of certificate holders:	....	(100%)
2.2 Of these, the number of persons resident in the country in which the fund is located:	....	(%)[1]

The percentage determined under 1.2 above should be applied in respect of the "taxed proceeds" recorded under Section VII of the application form. Should the quota determined lie under 100%, the gross dividend amount, the tax paid and tax surcharges, as well as the refund applied for, should be reduced accordingly.

I confirm that all information provided in this attachment is correct to the best of my knowledge and belief.

---------------------- --

Place, Date Signature of Fund representative

[1]All percentage numbers determined should not be rounded up to the next full number but rather be given with a maximum of two decimal places (e.g. resulted calculated: 95.35% ≠ 96%)

Attachment C

Lampiran II
Peraturan Direktur Jenderal Pajak
Nomor: PER- 61/PJ/2009
Tanggal: 5 November 2009

MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF TAXES

CERTIFICATE OF DOMICILE OF NON RESIDENT FOR INDONESIA TAX WITHHOLDING (FORM – DGT 1)

Guidance:

This form is to be completed by a person (which includes a body of person, corporate or non corporate):

- who is a resident of a country which has concluded a Double Taxation Convention (DTC) with Indonesia; and
- who claims relief from Indonesia Income Tax in respect of the following income earned in Indonesia (dividend, interest, royalties, income from rendering services, and other income) subject to withholding tax in Indonesia.

Do not use this form for:

- a banking institution, or
- a person who claims relief from Indonesia Income Tax in respect of income arises from the transfer of bonds or stocks which traded or registered in Indonesia stock exchange and earned the income or settled the transaction through a Custodian in Indonesia, other than interest and dividend.

All particulars in the form are to be properly furnished, and the form shall be signed as completed. This form must be certified by the Competent Authority or his authorized representative or authorized tax office in the country where the income recipient is a taxpayer resident before submitted to Indonesia withholding agent.

NAME OF THE COUNTRY OF INCOME RECIPIENT : ____(1)

Part I INCOME RECIPIENT:	**INDONESIA WITHHOLDING AGENT:**
Tax ID Number : ____________________ (2)	Tax ID Number : ____________________ (5)
Name : ____________________ (3)	Name : ____________________ (6)
Address : ____________________ (4)	Address : ____________________ (7)
________________________________	________________________________

Part II: DECLARATION BY THE INCOME RECIPIENT:

I, (full name) ____ (8) hereby declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete. I further declare that □ I am □ this company is not an Indonesia resident taxpayer. (Please check the box accordingly)

______________________________(9) Signature of the income recipient or individual authorized to sign for the income recipient	__/___/___(10) Date (mm/dd/yy)	________________(11) Capacity in which acting	________________(12) Contact Number

Part III CERTIFICATION BY COMPETENT AUTHORITY OR AUTHORIZED TAX OFFICE OF THE COUNTRY OF RESIDENCE:

For the purpose of tax relief, it is hereby confirmed that the taxpayer mentioned in Part I is a resident in ______________________(13)*[name of the state]* within the meaning of the Double Taxation Convention in accordance with Double Taxation Convention concluded between Indonesia and ______________________(14) *[name of the state of residence]*.

Date (mm/dd/yyyy): __/___/_____(17)

______________________________(15)
Name and Signature of the Competent Authority or his authorized representative or authorized tax office

Official Stamp (if any)

Office address:
____(18)
____

______________________________(16)
Capacity/designation of signatory

This form is available and may be downloaded at this website: http://www.pajak.go.id

This certificate is valid for 12 (twelve) months commencing from the date of certification.

Part IV TO BE COMPLETED IF THE INCOME RECIPIENT IS AN INDIVIDUAL

1. Name of Income Recipient : ____ (19)

2. Date of birth (mm/dd/yyyy) : __/__/____ (20) | 3. Are you acting as an agent or a nominee? ☐ Yes ☐ No *) (21)

4. Full address: ____

____(22)

5. Do you have permanent home in Indonesia? ☐ Yes ☐ No *) (23)

6. In what country do you ordinarily reside? ____________________________ (24)

7. Have you ever been resided in Indonesia? ☐ Yes ☐ No*) If so, in what period? __/___/____ to __/__/____(25)

Please provide the address ____

8. Do you have any office, or other place of business in Indonesia? ☐ Yes ☐ No *) (26)

If so, please provide the address ____

Part V TO BE COMPLETED IF THE INCOME RECIPIENT IS NON INDIVIDUAL

1. Country of registration/incorporation: ____________________________(27)
2. Which country does the place of management or control reside? ____________________(28)
3. Address of Head Office:____(29)

____

4. Address of branches, offices, or other place of business in Indonesia (if any): ____________(30)

____

5. Nature of business (i.e. Pension Fund, Insurance, Headquarters, Financing) (31)
6. The company is listed in stock market and the shares are regularly traded. ☐ Yes ☑ No *)
   If yes, please provide the name of the stock market: ____________________ (32)
7. The creation of the entity and/or the transaction structure is not motivated by reasons to take advantage of benefit of the DTC. (33) ☑ Yes ☐ No*)
8. The company has its own management to conduct the business and such management has an independent discretion. (34) ☑ Yes ☐ No*)
9. The company employs sufficient qualified personnel. (35) ☑ Yes ☐ No*)
10. The company engages in active conduct of a trade or business. (36) ☑ Yes ☐ No*)
11. The earned income is subject to tax in your country. (37) ☑ Yes ☐ No*)
12. No more than 50 per cent of the company's income is used to satisfy claims by other persons (i.e. interest, royalties, other fees) (38) ☑ Yes ☐ No*)

Part VI: INCOME EARNED FROM INDONESIA IN RESPECT TO WHICH RELIEF IS CLAIMED

1. Dividend, Interest, or Royalties:

a. Type of Income: ____(39)

b. Amount of Income liable to withholding tax under Indonesian Law: IDR ____________________ (40)

2. Income from rendering services (including professional):

a. Type of incomes: ____ (41)

b. Amount of Income liable to withholding tax under Indonesian Law: IDR ____________________ (42)

c. Period of engagement (mm/dd/yy): (43)

►From: ___/___/_____ to ___/___/_____ ►From: ___/___/_____ to ___/___/_____

►From: ___/___/_____ to ___/___/_____ ►From: ___/___/_____ to ___/___/_____

3. Other Type of Income:

a. Type of incomes: ____ (44)

b. Amount of Income liable to withholding tax under Indonesian Law: IDR ____________________ (45)

This form is available and may be downloaded at this website: http://www.pajak.go.id

**) Please check the appropriate box*

I declare that I have examined the information provided in this form and to the best of my knowledge and belief it is true, correct, and complete.

______________________ Signature of the income recipient or individual authorized to sign for the income recipient	___/___/___ Date (mm/dd/yy)	______________ Capacity in which acting	______________ Contact Number

Attachment D

Investment Management Association

ima

22 June 2012

Mr. Byung-Cheol Kim, Director
Corporation Tax Division
Ministry of Strategy and Finance
Government Complex II, 88 Gwanmoonro
Gwacheon City, Gyeonggi Province, 427-725
Korea

Sent electronically: won8100@mosf.go.kr

Dear Sir

RE: Treaty relief for UK funds under Article 98-6 of the Corporate Income Tax Law and Draft Presidential Decree Article 138-7

IMA represents the investment management industry operating in the UK. Our Members include independent investment managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £4.2 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members manage UK-authorised investment funds, most of which are Undertakings for Collective Investments in Transferable Securities (UCITS).

IMA supports the views represented by The Association of Global Custodians and the Investment Company Institute in their letters submitted to you (dated 19 and 20 January 2012 respectively) regarding the new withholding tax procedures set out in the draft Presidential Decree Article 138-7. IMA seeks clarification on the Korean tax forms to be completed by UK funds in order to claim treaty relief at source in Korea. Specifically, we seek clarification of the treatment of UK-authorised funds which will receive Korean-source payments on or after 1 July 2012.

Currently in the UK, authorised funds may be either open-ended investment companies (OEICs) or authorised unit trusts (AUTs). The former are companies (albeit ones with variable share capital), which are constituted under company law and are readily recognisable to legal and taxation systems outside the UK. The latter take the form of trusts and are governed by trust law, although they are treated as companies for tax purposes in the UK. Both OEICs and AUTs are authorised and regulated by the Financial Services Authority.

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Following discussions with Her Majesty's Revenue & Customs (HMRC) we believe that, as both OEICs and AUTs are beneficiaries under the UK/Korea Double Tax Convention, they are entitled to receive dividends net of 15% withholding tax under Article 10(2)(b) by completing Form 72-2 *Application for Entitlement to Reduced Tax Rate on Domestic Source Income (for Foreign Corporation)*.

We attach a paper explaining in more detail how these funds are established in the UK, and our understanding of the treatment of these vehicles under the UK/Korea Double Tax Convention.

IMA respectfully requests confirmation of the treatment of UK-authorised funds as described in this letter and attached paper.

Please feel free to contact me (jmorley-smith@investmentuk.org or +44 20 7831 0898) if you require any further information.

Yours sincerely

Jorge Morley-Smith
Head of Tax

cc:

Mr. Nak Hoe Kim (nh1112@mosf.go.kr)
Mr. Kyoung Ho Moon (mkh103@mofe.go.kr)
Steven Effingham – HM Treasury
Douglas Rankin –HM Revenue & Customs

The UK/Korea double taxation convention

1. The objective of this paper is to analyse the entitlements of UK-domiciled and authorised investment schemes under the UK/Korea Double Taxation Convention ("the Convention"). Although the paper focuses on entitlements to reduced rates of withholding tax on dividends payments, the analysis is equally applicable to interest payments.

Open-ended investment companies (OEICs)

2. OEICs are UK-authorised funds structured as companies, incorporated under the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 2001. An OEIC's share capital varies as it issues and redeems shares in response to investor demand. This enables it to expand and contract so that the value of its shares can be matched with the value of its underlying investment portfolio. There are two aspects of an OEIC's structure that are relevant to its entitlements under the convention:

3. First, an OEIC is a 'resident person'[1] for purposes of the Convention. This follows from the fact that for UK tax purposes an OEIC is a UK resident company which is subject to corporation tax of 20% in respect of underlying scheme property[2].

4. Second, an OEIC is the beneficial owner of its underlying scheme property. This follows from the fact that an OEIC is defined as "…a collective investment scheme which satisfies both the property condition and the investment condition" [3]. The 'property condition' is defined as:

> *…the property belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of –*
>
> *(a) spreading investment risk; and*
> *(b) giving its members the benefits of the results of the management of those funds by or on behalf of that body.*

An OEIC achieves the property condition by way of incorporation: members' rights vest in their shares rather than in the underlying property of the company. Consequently, an OEIC is the beneficial owner of any Korean dividends paid on its underlying portfolio of securities.

---

[1] Article 4(1) of the convention defines a resident of a contracting state as "…any *person* who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management, place of incorporation or any other criterion of a similar nature". Article 3(1)(e) defines a person as "…an individual, a *company* and any other body of persons, but does not include a partnership". Therefore, an OEIC is a resident person for the purposes of the convention.

[2] Corporation Tax Act 2010, section 613 and Authorised Investment Funds (Tax) Regulations 2006, SI 2006/964.

[3] Financial Services and Markets Act 2000, section 236.

5. Since an OEIC is a resident person and the beneficial owner of its property, its entitlements to dividends under the Convention are described in Article 10:

> 10(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other state.
>
> 10(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the **beneficial owner** of the dividends the tax so charged shall not exceed:
>
> *(a)* *5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls, directly or indirectly, at least 25 per cent of the voting power in the company paying the dividends;*
>
> *(b)* *15 per cent of the gross amount of the dividends in all other cases.*

6. Since an OEIC is prohibited from controlling 'at least 25 per cent of the voting power in the company paying the dividend', its entitlements under the Convention are described in Article 10(2)(b), that is: it is entitled to received Korean dividends net of 15% withholding tax.

Authorised unit trusts (AUTs)

7. A unit trust is an investment scheme with the same economic function as an OEIC but with a different legal structure. A unit trust is created under a deed of trust. The appointed manager of the trust is a company empowered by the trust deed to acquire securities on behalf of the trust of a type specified in the trust deed. This power is subject to a general duty to maintain a portfolio of investments to spread the risk of the total investment capital of the fund and to limitations on maximum exposure to any issuer. Those securities are transferred to the trustee appointed in the trust deed. The trustee is a company distinct from the management company. Both the management company and the trustee are authorised by the FSA in that capacity, in addition to the fund itself being authorised. The fiduciary function is therefore divided between the investment management responsibilities of the manager and the custodian and manager oversight responsibilities of the trustee. The profits of the pooled capital are allocated equally between the units held by members of the unit trust.

8. The authorisation and regulation of unit trust schemes was originally enacted in the Prevention of Fraud (Investments) Act 1958, then in the Financial services Act 1986 and is now contained in Part XVII of the Financial Services and Markets Act 2000.

9. An AUT are taxed in exactly the same way as an OEIC - i.e. as a company subject to corporation tax of 20%. Consequently, an AUT, like an OEIC, is a 'resident person' for the purposes of the Convention[4].

---

[4] Article 3(1)(f) defines a company as "…any body corporate or any entity which is *treated as a body corporate for tax purposes*". Therefore, an AUT is a resident person for the purposes of the convention.

10. However, the ownership of the underlying scheme property of an AUT and OEIC differ. Although both are clearly legal owners of their underlying property (i.e. because they have control over that property), beneficial ownership is harder to locate in the case of an AUT, and depends on the sense with which one uses the term 'beneficial owner'.

11. In the international sense of beneficial owner (i.e. as intended by the OECD Commentary on the Model Tax Convention), the AUT is the beneficial owner of its property. This is because paragraphs 12, 12.1 and 12.2 of the Commentary on Article 10 of the OECD Model anticipate disconnecting formal (i.e. legal) ownership from beneficial ownership in the cases of conduit companies or of mere nominees. An AUT is clearly neither. The contents of paragraph 6.14 of the Commentary to Article 1 are also relevant to the position of AUTs.

12. The AUT's entitlements under the Convention are therefore described in Article 10(2)(b); that is, it is also entitled to received Korean dividends net of 15% withholding tax.

Conclusion

13. In conclusion, we believe that the proper entitlements of UK-authorised investment schemes under the Convention are as follows:

> 13.1 That OEICs are entitled, under Article 10, to receive dividends net of 15% withholding tax by completing Form 72-2 '*Application for Entitlement to Reduced Tax Rate on Domestic Source Income (for Foreign Corporation)*'; and
>
> 13.2 That AUTs are entitled, under the same Article, to receive dividends net of 15% withholding tax by completing Form 72-2.

Attachment E

[redacted]

DIVIDEND ELECTION FORM

Dear Sir/Madam

We hereby inform the [redacted] that we either (check as appropriate)

- o Are subject to tax on foreign dividend incomes and want to benefit from the double taxation treaties in vigor between the U.K. and the source countries, or

✓Will make or have made an election through our financial accounting that ALL dividends received from the below indicated markets will be taxable in the U.K. and therefore we will continue to benefit from the Treaty rates indicated below

By ticking the respective column(s) in the below table, we advise [redacted] on which market(s) we will be subject to tax in the U.K.

Tick	Markets	Standard Rate in %	Treaty Rate in %
✓	Portugal	25% or 30%	15
✓	Israel	20	15
✓	Russia	15	10
✓	Ukraine	15	10

We understand that the above information is required in connection with certain tax legislations and regulations of the United Kingdom (as per paragraph 49 of Clause 34, Schedule 14 of the 2009 Finance Bill). We authorize [redacted] to provide this Dividend Election Form, or a copy hereof, to any interested party in any administrative or legal proceedings or official inquiries in connection with this election.

We accept to take the responsibility in the case of any claims or additional taxes, interest thereon, or penalties levied by tax authorities in connection with any payments made in reliance upon this certification including any additional information provided in connection to it.

We hereby also undertake to immediately notify [redacted] of any changes affecting the present declaration.

Beneficial Owner Name: [redacted]
Beneficial Owner Tax identification Number: [redacted]

For and on behalf of: [redacted]

Authorised Signatory: [redacted]

Authorised Signatory Name and Title: [redacted]

Date of signature: [redacted]

Attachment F

[redacted]

[redacted]

Attention: Tax Operations Group - Direct Custody

Dear Sir/Madam

Portugal: UK Taxation of Foreign Dividends

Beneficial Owner Name: [redacted]

Beneficial Owner Tax-Payer Identification Number: [redacted]

Safekeeping Account Number(s): [redacted]

We represent to [redacted] that:

- ☐ We are taxable on the receipt of foreign dividends on the basis that PART 9A CTA 2009 does not apply; OR

- ☑ We will make or have made an election(s) so that ALL dividends received from Portugal will be taxable in the UK.

We understand that the representation is enduring and will inform [redacted] immediately if this representation can no longer be relied upon.

Without prejudice to any rights or remedies to which you are entitled under the Custody Agreement, we shall do all things necessary to verify any matter which is raised by a tax authority in relation to the above and we hereby indemnify you against any liability, loss or expense which you may incur in connection with any act which you perform in relation to this letter.

Yours faithfully

For and on behalf of: [redacted]

Authorised Signatory : [redacted]

Authorised Signatory Name and Title: [redacted]

Date: [redacted]

Attachment G

HM Revenue & Customs

Collective Investment Schemes Centre
Large & Complex Businesses
Concept House
5 Young Street
Sheffield
S1 4LB

TO WHOM IT MAY CONCERN

Phone 0114 2969 472

Fax 0114 2969 791

www.hmrc.gov.uk

Date 22 August 2012
Our ref 11002 01685

2011 ✓

STATEMENT

The tax authorities of the beneficiary's country of residence certify that:

[redacted] ✓

Beneficiary name: [redacted] ✓

Address: [redacted] ✓

Country of residence: United Kingdom ✓

Legal status: UCITS ✓

The Fund is considered a legal entity under the Double taxation Convention signed between its country of residency and Portugal being covered by the convention scope.

The Fund is a legal corporate entity "that qualifies under Art 4 of the DTT" for tax purposes in its country of residency (please cross the box if DTT falls under the OCDE convention)

The Fund is fully liable to corporate income tax in its country of residency and is not "transparent", ie the fund is taxable and not their underlying subscribers.

The Fund is the final beneficiary of the income payment.

Tax Authority's signature and official stamp:

Andrew Nutbrown
HM Inspector of Taxes

Collective Investments Schemes Centre HMRC
22 August 2012
Concept House
5 Young Street
Sheffield S1 4LB