Tax Alert

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Withholding tax (WHT) rate applicable to dividends from South Korean Real Estate Fund (REF) trusts

KPMG has recently obtained an official public tax ruling from the South Korean Ministry of Strategy and Finance (KMSF) regarding the applicability of a reduced WHT rate to dividends distributed from REF trusts.

This ruling would enable companies resident in countries which have a tax treaty with South Korea to benefit from a lower WHT rate (down to 5% for some countries instead of 15%) on dividends distributed from REF trusts (established prior to 4 November 2015) which have fulfilled certain conditions. This represents real tax savings for companies that are not taxed on the aforesaid dividends in their country of residence. Refunds may be granted for excess WHT paid for up to the prior three tax years.

Legal position taken by KMSF on REF trusts

The WHT rate on dividends distributed by REF trusts has historically been at 15% due to the legal position taken by KMSF that a REF Trust is not considered a company for tax treaty purposes. Though the KMSF has issued private rulings granting REF Trusts the right to apply a reduced WHT rate if certain conditions are met, there was no certainty that an application for a private ruling would be successful.

Public ruling obtained by KPMG and the conditions

The recent public ruling obtained by KPMG meant that the reduced WHT rate on dividends would apply prospectively to future dividends and retrospectively (up to three tax years due to statute limitations), subject to the conditions in the ruling and the treaty being met. Broadly, the conditions are:

- The REF trust must be established prior to 4 November 2015;
- The beneficial owner of the dividends by the REF trust must have a direct investment in the trust;
- The beneficial owner must be resident in a country which has a tax treaty with South Korea and fulfill the conditions in the tax treaty; and
- The beneficial owner must have at least a 25% beneficial ownership in the REF trust.

Refund on excess WHT paid

The ruling brings with it the effect of potential refunds for excess WHT paid up to the prior three tax years. An application to the Korean tax authorities proving that the above conditions are met is required to obtain a refund.

How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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Tier 1 Firm for Tax Advisory (2016), Transfer Pricing and Tax Transactional (2015) – International Tax Review.
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About Tax Alert

KPMG's Tax Alerts highlight the latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company. As certain issues discussed herein are time sensitive it is advisable to make plans accordingly.

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