

# News Alert: CJEU Judgement (C-782/22) – Taxation of dividends – Important Update for Foreign Insurance Companies Offering Unit-Linked Insurance Products

**Summary: In a judgement on 7 November 2024, the Court of Justice of the European Union (CJEU) has determined that Dutch legislation imposing a 15% dividend tax on dividends distributed by resident companies to non-resident insurance companies offering unit-linked insurance products and having invested in the shares of the first company to cover future payment commitments could be considered discriminatory.**

## Key Points of the Judgment:

- 1 Restriction on Free Movement of Capital:** The CJEU has found that “Article 63(1) TFEU must be interpreted as precluding national legislation under which dividends distributed by a resident company to a non-resident company, which has invested in the shares of the first company in order to cover future payment commitments, are subject to a dividend tax of 15% on their gross amount, whereas dividends distributed to a resident company are subject to withholding tax which may be offset in full against the corporation tax payable by the second company and give rise to a refund, leading to the tax burden on those dividends being nil due to the taking into account, in the calculation of the second company’s corporation tax base, of the costs arising from the increase in its future payment commitments”.
- 2 Comparability of Situations:** Making reference to the case-law applicable to pension funds, the CJEU has stated that the situations of a resident insurance company and a non-resident insurance company can be in a situation objectively comparable (to be determined by the local courts) depending on the specific purpose of the investment activities in case a direct link exists between the dividends received by resident companies and the change in the level of commitments vis-à-vis the customers (insured persons) of the given (insurance) companies.
- 3 Lack of Justification:** The Court concluded that the difference in treatment could not be justified by overriding reasons in the public interest, such as preserving the allocation of powers of taxation between Member States or maintaining the coherence of the national tax system.

## Implications:

Even if the matter is not new, this ruling is a crucial development for insurance companies – when the underlying investments relate to unit-linked insurance products – to recover dividend withholding taxes levied by other EU member states. It highlights the potential discriminatory nature of withholding taxes in that context.

Insurance companies should consider reviewing their positions and exploring the possibility of seeking refunds or adjustments in relation to WHT based on (notably) this judgment. Particularly for Belgium, this would mean the following:

- 1 Claims by foreign insurance companies in Belgium against Belgian sourced withholding tax:** foreign insurance companies, not established in Belgium, should seek for refund of Belgian (dividend) withholding tax associated to investments made in relation to unit-linked (and possibly non-unit linked) insurance products.
- 2 Claims by Belgian insurance companies in other EU countries against locally withholding tax:** Belgian insurance companies should seek for refund of local (dividend) withholding tax associated to investments made in relation to unit-linked insurance products.

Finally, other situations may exist in which investment linked to other insurance products may also lead to a discriminatory outcome, which has to be assessed on a case-by-case basis (a.o. in function on the existence of a direct link between the dividends and the commitments of the insurance company).

## Conclusion:

For further details and to assess the specific impact for your insurance products, please do not hesitate to contact us:

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