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Withholding tax refund: a small difference with costly consequences

Introduction

Dividends from Swiss companies, as well as interest on bonds issued by Swiss debtors, are paid out to the beneficiaries at only 65%. The remaining 35% is remitted directly to the Swiss Federal Tax Administration (FTA) as withholding tax. It is then up to the taxpayer to reclaim the withholding tax from the FTA by filing a refund claim. However, anyone who fails to correctly declare the income (e.g. dividends, interest) or the corresponding assets in their tax return risks not only a supplementary tax assessment but also the loss of the refund. On a dividend of CHF 1'000, CHF 350 is at stake. Two recent Federal Supreme Court rulings show what impact the distinction between negligence and contingent intent (dolus eventualis) has on the refund of withholding tax.

Principle

As a general rule, the right to a refund is forfeited if the income subject to withholding tax (e.g. dividends, interest) and the assets from which that income derives were not declared in the tax return. Art. 23 para. 2 of the Withholding Tax Act (WTA) mitigates this consequence: if the failure to declare was due to negligence, a refund remains possible provided the relevant items are subsequently declared, or are added by the tax authority, in an assessment, revision or supplementary tax procedure that has not yet been concluded with legally binding effect.

Negligence: an oversight can be remedied

A person acts negligently if they fail to recognise the incompleteness of their declaration even though they should have recognised it had they exercised due care. Even conscious negligence can still qualify as negligence, where a risk is recognised but the person trusts that the declaration is correct. Cases classified as negligent include, among others, a one-off transcription or input error, a field inadvertently left blank, or disclosure to the competent tax authority by other means. Thus, the Federal Supreme Court recognised negligence where a dividend had been announced to the tax administration in advance but was subsequently not declared (ruling 2C_1110/2018).

Contingent intent: knowledge and acceptance suffice

If, on the other hand, the failure to declare the income and assets was due to contingent intent, the withholding tax will not be refunded. Contingent intent exists where the taxpayer knows that their information is incorrect or incomplete and, at the very least, accepts this. Indications include, for example, several items missing at the same time, substantial and unusual inflows of assets, repeated omissions, or inaction despite requests from the tax authority. By contrast, merely 'ought to have known' is not sufficient.

Latest case law

In a ruling of 20 July 2026 (9C_53/2026), the Federal Supreme Court confirmed that the refund must be denied where the taxpayer had failed to declare several items (a shareholding, dividends and the bank accounts to which the dividends had been transferred) and the dividends were high in relation to the taxpayer's other income. This applies regardless of whether the distributing company declared the dividend distribution to the FTA using Form 103 or filed a tax ruling request.

Inaction can also constitute contingent intent

In ruling 9C_281/2026 of 13 July 2026, the Federal Supreme Court confirmed that anyone who fails to file a tax return despite repeated formal reminders, thereby accepting the possibility of under-taxation, cannot rely on Art. 23 para. 2 WTA. According to the Court, this also applies where the taxpayer subsequently files the tax return and a supplementary tax procedure is therefore opened. The Federal Supreme Court reasoned that a subsequent declaration does not undo contingent intent that has already materialised.

Our recommendation

Income and assets subject to withholding tax should be reviewed with particular care before the tax return is filed – particularly in the case of extraordinary dividends, inheritances, new bank accounts or shareholdings. If an error is discovered, swift action is advisable: a prompt subsequent declaration, made before the assessment becomes legally binding, can secure the right to a refund. It is equally important to document the circumstances that point to an oversight or negligence.

Please do not hesitate to contact us if you have any questions.

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