

Pensions Audit Sub Committee – 16 December 2014

Withholding Tax – Update on Points Raised

Country	Findings	Conclusions as at Date of Report to Pensions Audit Sub-Committee	Update as at 15 December 2014
Australia WHT Rate	“Franked” dividends are exempt from WHT in Australia. Under Australian domestic legislation LPF should also be entitled to a 0% rate of WHT on “unfranked” dividends received from Australia, if they have obtained a ruling from the Australian Tax Authorities showing that they are comparable to an Australian superannuation fund. It is unclear whether this clearance has been obtained as 30 dividends have been subjected to WHT at rates from 8.79% to 30%. LPF could be entitled to refunds of these amounts if the necessary clearance has been obtained. The total tax leakage across these dividends is AU\$63,547 (£ 34,603).	KPMG raised the question of the ruling in their previous report. We contacted NT and established that a ruling had been agreed with the Australian tax authorities for the period 1 July 2012 to 30 June 2015. In most cases the 0% ruling has been applied. Therefore, the non-application of the ruling to what appears to be a random selection of dividends has been raised with NT.	NT has commented: The taxed Income relates to Trust Income (i.e. not equity dividend income). Exemption from tax on Trust Income is not applicable under the client’s private ruling. However, as the dividends concerned do not seem to relate to Trust investments. NT is following up with their income team to obtain copies of the MT566’s that detail the Income classification of each payment.
Canada WHT Rate	Generally, dividends received from Canada suffer a WHT rate of WHT of 15%. 2 dividends from the National Bank of Canada have suffered 25% WHT. The over-withholding totals CD\$ 7,227 (£4,020).	Awaiting comments from NT.	NT has commented: As of 1/1/2013 a new tax form (NR-301) was required to apply the reduced rate. This does not look to have been received until September 2013; hence income was taxed at the full rate until this point.
Dominican Republic WHT Rate	A rate of 10% applies to Dominican Republic government bonds. There are 3 Dominican Republic 5.875% 18/04/24 which have been paid gross. The potential under withholding totals US\$ 5,630 (£3,548) however, these may be manufactured payments.	Confirmed that the payment was not manufactured. Awaiting comments from NT.	NT has commented: The payment is a Eurobond and most Eurobonds pay gross so long as they are not held by residents of their home country. It can be beneficial to hold bonds in EOC as compared to their domestic market.
Indonesia (Dividends) WHT Rate	A 15% dividend WHT is available to LPF; however 4 dividends (Gudang Garam TBK, PT Media Nusantara and 2 x Unilever Indonesia) have been paid at a rate of 20%. The total tax leakage on	Awaiting comments from NT.	NT comment: We require one DGT-2 form per income event. I’m seeking confirmation on whether we run out of forms, and what’s being done. Will advise ASAP.

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	these dividends is IDR 54,819,250. (£2,840).		
Indonesia (Interest) WHT Rate	A 10% interest WHT is available to LPF; however 7 corporate bond payments in Pertamina have been paid gross. The potential under-withholding is US\$10,120 (£6,380). These bonds have US ISIN numbers and may have been treated as US source income.	Awaiting comments from NT.	NT comment: These look to be Eurobonds, where there is no WHT applicable for all investors.
Japan WHT Rate	A 0% rate is available to LPF, however 1 dividend (NTT Docomo – Due 20 June 2014) has been taxed at 15.31% (£4,453.41). It is not clear why this has occurred and whilst we are aware that a refund of the WHT was paid at a later date we recommend that you raise this with your custodian.	Awaiting comments from NT.	NT comment: Reclaims occurred in the gap between Certificate of Tax Residence expiring and being renewed.
Japan WHT Claims	8 Japanese reclaims have been submitted to the sub-custodian. Reclaims should not be necessary as relief at source is available.	Awaiting comments from NT.	These claims relate to dividends received in March 2013, prior to the 0% being applicable. Tax should be recovered in due course.
Kazakhstan WHT Rate	The domestic WHT rate in Kazakhstan is 15%, however the Kazmunaigas Exploration dividend paid on 1 July 2014 was taxed at 20%. There is currently no process for relief at source or reclaims in Kazakhstan, so we suggest you raise this with your custodian. The potential tax leakage is US\$ 11,086 (£6,975).	Awaiting comments from NT.	NT comment: Chasing an update from our tax team. Will revert ASAP.
Netherlands WHT Claims	Netherlands reclaims should be refunded within 12 months. 2 reclaims have been outstanding for 17 months and 1 reclaim has been outstanding for 42 months.	Awaiting comments from NT.	The three dividends are being actively targeted to move them through the NT system.
Philippines WHT Rate	The standard rate of WHT of 30% has been applied to all dividends received from the Philippines. A reduced rate of 25% should be available to LPF under the Philippines/UK Treaty. The tax leakage identified is approximately US\$12,904 (£8,114). We recommend that you raise this with your	Awaiting comments from NT.	NT comment: We do not offer a tax service on Philippines ADRs.

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	custodian, <u>however as these amounts relate to ADRs it may be extremely difficult to recover this tax.</u>		
Poland WHT Claims	Polish reclaims should be refunded within 12 months. 1 reclaim has been outstanding for 40 months, and currently has the status "Certification requested".	Value is around £11k.	NT comment: Documentation being sent to client for completion.
Russia WHT Rate	LPF has received most dividends at the correct WHT rate of 15%, however 5 were paid at 10%. This is the rate under the Russia/UK Treaty, however, as the Treaty contains a subject to tax clause LPF should not be entitled to this rate. The under-withholding totals US\$ 28,102 (£17,709).	Awaiting comments from NT.	NT comment: These look to relate to ADR/GDR assets held at DTC or Euroclear. In 2014 there was a market change which enabled NT to obtain 10% for all UK investors, and this is done by making a per event declaration of the residency of the various holders. Note, that for certain ADR assets the issuer requires additional market documentation which restricts our ability to obtain 10%.
Switzerland WHT Claims	Numerous Swiss reclaims have been outstanding for longer than the expected timeframe. We are aware that Switzerland only allows 1 claim per year, and that some custodians have faced issues in this market previously. However the majority of these claims should now have been submitted by the custodian and the ability to consolidate different years onto one reclaim form should reduce the amount of time the refund should take.	KPMG expect Swiss claims to take 12 months to recover. It is evident that NT claims are taking more than twice that amount of time. However, the NT report indicates that they regard only one dividend to be outside their normal claim parameter for Switzerland. Given the value of the claims we are pressing NT for an early response. Awaiting comments from NT.	<p>NT comment: The on-going delay is caused by the 'enquiry letter' issued by the FTA, the response provided was deemed inadequate. As such, the reclaim process needs to commence again from the start.</p> <p>NT comment: Our tax team are chasing our sub for an update on how long it would take from the point you provide the information required from the enquiry letter to when we are able to lodge the claims in the market. I'll confirm this ASAP.</p> <p>Staff comment: The claim referred to in the first NT comment is for calendar year 2012. The FTA raised a query on 16 January 2014, in response to NT's claim dated 12 December 2013. The FTA rejected NT's response on 6</p>

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			<p>August 2014.</p> <p>We are pressing NT for an update on the claims for 2012 and 2013.</p>
USA WHT Rate	<p>LPF is entitled to a 0% WHT rate on dividends in the United States. 21 dividends have suffered a 35% WHT. The tax leakage identified is approximately US\$ 576,305 (£362,319). These payments relate to US listed partnerships therefore a reclaim should be available.</p>	<p>Awaiting comments from NT.</p>	<p>NT comment: Certain payments from a US partnership are subject to 35% tax. The issuer in this case is a publicly traded partnership. Cash distributions from a publicly traded partnership are generally treated as being comprised of income from a US trade or business (known as effectively connected income) when paid to a non-US holder. Effectively connected income is taxed at a 35% rate for non-US corporations and governments and 39.6% for other foreign investors. Non-US investors receiving effectively connected income are generally required to file an annual income tax return with the Internal Revenue Service and may also be required to file one or more state income tax returns. Lothian should contact their tax advisers regarding the income tax return filing requirements.</p> <p>Staff comment: We are currently looking at the possibility of making a claim via our advisers KPMG.</p>
USA WHT Claim	<p>1 United States reclaim has been outstanding for 35 months. The stock is actually Irish and therefore we would normally expect relief at source to have been applied, or alternatively repayment within 6 months.</p>	<p>There are 3 US claims outstanding with a total value of £2.5k.</p>	<p>NT Comment: US (Irish) – Cross border claim. NT has recently reviewed and improved procedures for RAS/Reclaims on DTC held assets.</p>