

SIPP providers are failing their customers on foreign withholding taxes

Introduction

This paper explains how SIPP providers are failing their customers by not taking action to recover part or all of the foreign withholding taxes that they suffer.

It has been written for UKSA by one of our Policy Team members Mohammed Amin (“Amin”). He is a chartered accountant and a chartered tax adviser and before retirement was a tax partner in PricewaterhouseCoopers.

Foreign dividends and withholding tax

Many countries, although not currently the UK, impose a withholding tax on dividends paid by companies. In particular, withholding taxes are a way for the source country to charge tax on foreign shareholders who would otherwise not be liable for income taxes in that source country since they do not live there.

For over a century, countries have negotiated bilateral double taxation treaties. These are intended to promote cross-border trade and investment by the countries agreeing to waive or reduce taxes that they would otherwise charge on taxpayers based in the other country.

They frequently reduce, or sometimes entirely eliminate, the withholding taxes that a shareholder in country A would suffer on dividends paid by a company in country B.

Different ways that shares are held

Our organisation’s members are individuals who hold their shares in a variety of ways:

- Paper share certificates with their name on the company’s register of members. Foreign countries share registration systems vary but some countries operate similar systems.
- Nominee accounts used to operate a “general investment account”, sometimes called a “dealing account.” The shares are registered in the name of a nominee company operated by the stockbroker or investment platform providing the service. However, the individual is absolutely entitled to the shares and can insist on them being transferred to him or her (or to any new nominee of the individual’s) at any time. The individual is subject to UK income tax on all dividends paid.
- Nominee accounts used to operate an Individual Savings Account (ISA). In this case, dividends on the shares must be paid into a cash account run by the ISA provider. There is a significant tax benefit since dividends on shares held in an ISA are not subject to UK income tax.
- Self-Invested Personal Pension plans (SIPPs). The precise legal status of SIPPs is discussed below. However, our members will normally think of the shares in the SIPP as belonging to them since they have chosen to buy them and choose when to sell them. The SIPP will be operated by a SIPP provider and the registered owner will be a nominee company in the provider’s group.

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Reducing or recovering foreign withholding tax

As mentioned above, many, perhaps most, double taxation treaties reduce or eliminate the withholding tax when dividends are paid to foreign shareholders. The precise details will vary from country to country and there is no substitute for consulting the double taxation treaty.

For illustrative purposes, this paper looks at only two foreign countries from the perspective of a UK resident shareholder.

The United States of America

Copied below is Article 10 of the UK/USA Double Taxation Treaty applicable since 31 March 2023. For simplicity, provisions not relevant to our members have been deleted and are indicated by....

ARTICLE 10

Dividends

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.

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 dividends are beneficially owned by a resident of the other Contracting State, the tax so charged shall not exceed, except as otherwise provided,

(a) ...

(b) 15 per cent. of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and either:

(a) ...

or

(b) a pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension scheme.

4. Sub-paragraph a) of paragraph 2 and sub-paragraph a) of paragraph 3 of this Article shall not apply in the case of dividends paid by a pooled investment vehicle which is a resident of a Contracting State. Sub-paragraph b) of paragraph 2 and sub-paragraph b) of paragraph 3 of this Article shall apply in the case of dividends paid by a pooled investment vehicle, the assets of which consist wholly or mainly of shares, securities or currencies or derivative contracts relating to shares, securities or currencies. In the case of dividends paid

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by a pooled investment vehicle not described in the preceding sentence, sub-paragraph b) of paragraph 2 and sub-paragraph b) of paragraph 3 of this Article shall apply only if a) the beneficial owner of the dividends is an individual or pension scheme, in either case holding an interest of not more than 10 per cent. in the pooled investment vehicle; b) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 per cent. of any class of the stock of the pooled investment vehicle; or c) the beneficial owner of the dividends is a person holding an interest of not more than 10 per cent. in the pooled investment vehicle and that vehicle is diversified.

The standard USA withholding rate is 30%. As stated in Article 10(2)(b) that is reduced to 15% for UK resident individual shareholders. In the case of a UK pension scheme, Article 10(3)(b) reduces the withholding tax rate to zero.

The USA operates a system whereby prospective relief can be given from withholding tax. For example, if a UK individual files a form W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)" with the dividend paying company, the company applies only the 15% rate. Otherwise withholding tax of 30% will be deducted, and the individual will need to file a refund claim with the USA's Internal Revenue Service.

A different form is filed by entities, such as pension schemes. That is form W-8BEN-E "Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)."

Amin has experience of holding US companies in his general investment account with Interactive Investor, and in his two SIPPs provided by AJ Bell and Interactive Investor. Both providers have ensured that the paperwork has been filed to ensure that the correct double tax treaty withholding tax rates are applied. (15% for the general investment account and zero% for the SIPPs.)

Germany

Copied below is Article 10 of the UK/Germany Double Taxation Treaty of 2010 as amended by the protocols of 2014 and 2021. Again, for simplicity, provisions not relevant to our members have been deleted and are indicated by....

Article 10

Dividends

- 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.*
- 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:*
 - a);

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- b) *10 per cent of the gross amount of the dividends if the beneficial owner is a pension scheme;*
- c) *15 per cent of the gross amount of the dividends in all other cases.*

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- 3) *The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and income from distributions on certificates of a German "Investmentvermögen".*

4)

5)

While the USA's standard withholding tax rate has been steady at 30% for decades, the German standard withholding tax has varied. Amin is aware from one of his holdings that for a dividend paid in June 2024 the withholding tax rate for foreign investors was 26.375%. This peculiar number comprises a 25% base withholding tax plus a 5.5% solidarity surcharge on the withholding tax.

The treaty reduces that 26.375% to 15% for dividends received by UK individuals, and 10% for dividends received by UK pension schemes.

Unlike the USA, Germany does not have a system enabling foreigners eligible for double tax treaty benefits to apply prospectively for the treaty rates to be applied. i.e. there is no German equivalent of a form W-8BEN. Instead, the German company always withholds at the full rate, and the recipient needs to apply to the German tax authorities for a refund.

For simplicity, this paper does not discuss other countries. However, Amin has past experience of applying for similar refunds from countries like Ireland, the Netherlands, and Switzerland. Although completing the forms can be finicky, eventually the refund arrives, historically by cheque.

Amin's SIPP with Interactive Investor held the shares which gave rise to the June 2024 dividend. Interactive Investor has done nothing to recover the excess withholding tax. Nor did it do so with previous holdings in Germany and the Netherlands. The same is true of Amin's AJ Bell SIPP which had a holding in a company based in Israel.

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The specific problem of SIPPs

Where shares are held directly in certificated form, the UK individual will receive dividend vouchers from the paying company. These can be used as evidence when applying to the overseas tax authorities for a refund. This was the case with Amin's historic refunds from Ireland, the Netherlands, and Switzerland.

While Amin has never needed to make a refund claim for a general investment account, the process should be similar.

However, the individual who is the beneficial owner would not have any dividend vouchers from the paying company. Instead, Amin expects that the nominee company would need to provide written attestation that it had received the foreign dividends as nominee for the individual. The individual would need to supply this attestation to the foreign tax authorities along with their refund claim form duly completed by the individual.

The same should apply for ISA accounts, since the individual has the absolute right to have the shares transferred to himself, albeit thereby terminating the future tax benefits of the ISA post-transfer. (Some double tax treaties limit treaty benefits if the income is not taxed in the state where it is received. Amin considers that unlikely to apply to dividends paid into ISAs, but researching the point is beyond the scope of this paper.)

SIPPs however are different.

A SIPP is a pension scheme, as evidenced by the name Self-Invested Personal Pension scheme. The UK has complex legislation governing the legal form of pension schemes, including SIPPs.

That can be summarised as follows:

- The SIPP is a trust arrangement, with the trustee normally being a company within the platform provider's group.
- The individual is a beneficiary of the trust, able to receive benefits in ways that are specified in quite restrictive ways in the tax legislation. For example, you cannot normally take pension benefits below a specified age.

Accordingly, even though Amin (for example) will have initiated every share purchase transaction of the SIPP (using AJ Bell's and Interactive Investor's website) and can initiate sale of all the SIPP's shares (with the proceeds being received by the SIPP, not by him), he does not own the shares.

He does not even own the shares beneficially, the way that the owner of a general investment account does own the shares beneficially when they are held by the stockbroker's nominee company. Instead, Amin is only the beneficiary of the pension scheme, able to receive benefits in accordance with the law governing pension schemes.

The consequence is that, for example with the German company held in his Interactive Investor SIPP, Amin has no legal standing to file a refund claim with the

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German tax authorities. The claim can only be filed by the SIPP itself, or more precisely by the relevant group company that operates the SIPP or which is the nominee company.

This is illustrated in the case of the USA by the fact that there are different double taxation prospective relief forms which must be filed by entities (W-8BEN-E) and by individuals (W-8BEN).

UKSA's perspective

UKSA considers that SIPP providers are letting down their customers when they fail to file refund claims in respect of foreign dividends received by their SIPPS when foreign withholding tax has been suffered in excess of the treaty rate.

We consider it reasonable to expect them to make such refund claims. In particular, they always have the full set of data for all shares in a particular country held by all the SIPPs that they administer. Accordingly, once they are minded to do it, making such refund claims should be both routine and efficient.

As these companies hold the SIPP assets on trust, the providers may be in breach of their fiduciary duty to their customers if they fail to make such refund claims. We stress however that we have not, at present, sought legal advice on this point. We will however be raising the matter with the Financial Conduct Authority.

Disclaimer

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