

UNOFFICIAL AND UNAUTHORIZED TRANSLATION

**WITHHOLDING TAX ON INCOME FROM
DEMATERIALIZED FINANCIAL INSTRUMENTS**

**Refund procedures for withholding tax on income from
dematerialised financial instruments received for a
third-party account (Article 383d of the Tax Procedure
Act (Slov. ZDavP-2))**

Detailed description

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1.0 REFUND PROCEDURES FOR WITHHOLDING TAX ON INCOME FROM DEMATERIALIZED FINANCIAL INSTRUMENTS RECEIVED FOR A THIRD-PARTY ACCOUNT

When the payer of tax (i.e. person considered the payer of tax in accordance with Article 58 of Tax Procedure Act - ZDavP-2) pays income from dematerialised financial instruments to an intermediary (i.e. a person who receives it for a third-party account), they shall be obliged to calculate and deduct the withholding tax without considering the provisions resulting in lower tax obligations in relation to the withholding tax if they are not the same for all income beneficiaries according to all tax laws and international treaties¹.

The withholding tax shall be charged, deducted and paid according to the rate defined under that tax law which sets forth a higher rate of withholding tax on income paid.

The beneficiary holder of dematerialised financial instruments that received the income from which an excessive amount of tax had been deducted by the taxpayer is entitled to claiming back the tax that had been overcharged and overpaid.

The beneficiary holder of dematerialised financial instruments may claim a refund of overpaid tax through the following procedures:

1. with a written application – refund procedure in accordance with the Tax Procedure Act, Article 383d, Paragraph 1,
2. with a tax refund application in the event of advantages granted in accordance with an international treaty,
3. with a tax refund application in the event of advantages granted in accordance with the tax law, applicable to the parent and subsidiary companies from different EU member states, and the taxation applicable in relation to interest payments and property right payments between associated companies from different EU member states,
4. with a tax refund application if the recipient of income may not deduct the withholding tax paid in Slovenia in his state of residence.

1.1 Tax refund procedure with a written application in accordance with the Tax Procedure Act, Article 383d, Paragraph 1

The beneficiary holder of dematerialised financial instruments may claim a refund of overpaid tax from the tax authority by submitting a written claim for refund of withholding tax on income from dematerialised financial instruments in accordance with the Tax Procedure Act, Article 383d, Paragraph 1.

A written application shall be sent by mail to the Special Financial Office, Gospodinjska ulica 8, 1000 Ljubljana, Slovenija.

Tax refund shall take place in case the beneficial holder of dematerialised financial instruments – who received the income through an intermediary – is entitled to the advantages already under the Slovenian laws or any other international treaty (i.e. treaty that does not refer to avoidance of double taxation), if the income was paid out directly to this person and the procedure for a refund of overpaid tax is not specifically provided for. This means that a refund of overpaid tax cannot be exercised under the procedures set forth in sections 2, 3, and 4 below.

An integral part of the claim is relevant evidence indicating tax liabilities, the identity of the beneficial holder of dematerialised financial instruments, receipt of income, the underlying base for payment of withholding tax and withholding tax paid. When there are several intermediaries

¹ The withholding tax shall not be charged and deducted if for a certain income the withholding tax is not payable and chargeable according to both tax laws.

in the chain between the payer of tax and the beneficial holder of dematerialised financial instruments, this must be evident from the evidence submitted.

The application to refund the overpaid tax may be filed within five days since the day the tax was paid.

1.2 Tax refund procedure with an application in the event of advantages granted in accordance with an international treaty for the avoidance of double taxation

If the beneficial holder of dematerialised financial instruments is a resident of a country with which Slovenia has a treaty for the avoidance of double taxation, overpaid taxes can be refunded filing a dividend tax refund application under the provisions of an international treaty to avoid double taxation of income (KIDO 9 form) or interest rate tax refund application under the provisions of an international treaty to avoid double taxation of income (KIDO 10 form).

An application in writing shall be submitted or sent by mail to the Special Financial Office, Gospodinjaska ulica 8, 1000 Ljubljana, Slovenia.

If the payer of tax has charged the tax at a rate higher than that stipulated by the international treaty, the recipient of the income – non-resident – may apply for a refund of tax, which is the difference between the amount of tax charged at the rate stipulated by the taxation act and the amount of tax which would be charged at the rate stipulated by the international treaty. If the tax has been charged on income that is exempt from tax in accordance with the international treaty, the full amount of tax paid shall be refunded to the recipient of the income.

An integral part of these two tax refund applications are also instructions on how to fill out the forms, which must be followed when completing the above application forms (KIDO 9 and KIDO 10), with certain exceptions. These two applications shall be accompanied by appropriate evidence on the receipt of income, the basis for payment of withholding tax, and paid withholding tax. If there are several intermediaries in the chain between the payer of tax and the beneficial holder of dematerialised financial instruments, this shall be made evident from the supporting documents and they shall be enclosed to this application. One of the supporting documents may also be the transaction number, which the beneficial holder of dematerialised financial instruments can obtain from an intermediary who is not a resident of Slovenia. If the recipient of the income has this number at his disposal, it shall be entered in field 5 (other).

If the payer of dividend is not also the payer of tax, the issuer of shares shall be entered in KIDO 9 form under point 3 – information on the payer of dividend. This means that the entire content of point 3 refers to the issuer of shares and not to the payer of tax. Given that taxpayer information is mandatory information in the procedure of recognition of benefits under KIDO 9, taxpayer information shall be entered under point 5 – other.

The application to refund the overpaid tax may be filed within five years from the date on which the tax was paid.

1.3 Tax refund procedure with an application for tax refund in the event of advantages granted in accordance with the taxation law– ZDDPO-2 (Corporate Profit Tax Act), applicable to the parent and subsidiary companies from different EU member states, and the taxation applicable in relation to interest payments and payments of property rights between associated companies from different EU member states

The tax is not deducted from the payment of dividends, which are distributed to the persons in one of the legal forms for which the common system of taxation is used, applicable to the parent and subsidiary companies from different EU member states, subject to predefined conditions (a minimum of 10% equity participation with a minimum duration of 24 months).

The tax is not deducted from interest payments paid to the entities in one of the legal forms for which the common system of taxation is used in relation to interest payments, applicable to associated companies from different EU member states, subject to predefined conditions (a minimum of 25% equity participation with a minimum duration of 24 months).

When the eligible recipient of income generated by dematerialised financial instruments receives via an intermediary an income generated by dematerialised financial instruments, for which the tax was paid, the person that charged and deducted the tax (the taxpayer) may apply for a tax refund, but only if the before-mentioned conditions are met. The taxpayer shall file a tax refund application with the relevant financial administration office, attaching the evidence indicating compliance with the criteria. The overpaid tax shall be refunded to the taxpayer.

The tax refund application to refund overpaid tax may be filed within five days after the date on which the tax was paid.

1.4 Tax refund procedure with an application for tax refund in the event of a legal measure set forth in the ZDDPO-2 (Corporate Profit Tax Act), if the recipient of income may not deduct the withholding tax paid in Slovenia in his state of residence

The tax shall not be deducted from the payment of dividends, payable to the person who is a resident of an EU or EEA member state (with the exception of Lichtenstein), if the recipient of income is unable to have the Slovenian tax refunded in his state of residence. The same rule applies to payments of dividends and interest, payable to foreign investment funds, pension funds and insurance companies that can operate the pension scheme, which are residents of an EU or EEA member state (with the exception of Lichtenstein).

The tax refund application shall be filed with a relevant financial administration office by the person that charged and deducted the tax upon the payment of income generated by dematerialised financial instruments (the taxpayer). A declaration by the income recipient shall be attached to the application, stating that in his state of residence he was unable to claim back the tax paid in Slovenia, that in his state of residence he is a person liable for payment of income tax and that this transaction does not constitute tax evasion, and a residence certificate of eligible recipient. The overpaid tax shall be refunded to the taxpayer.

The tax refund application to refund overpaid tax shall be filed within five days after the date on which the tax was paid.

2.0 REFUND OF OVERPAID TAX ON INCOME FROM DEMATERIALISED FINANCIAL INSTRUMENTS TO BENEFICIARIES FROM ARTICLE 75 OF THE CORPORATE PROFIT TAX ACT, PARAGRAPHS 1 AND 2

Resident, Slovene legal entity receiving income from dematerialised financial instruments, and non-resident, receiving income from dematerialised financial instruments through its business unit in Slovenia and the income from dematerialised financial instruments is subject to

deduction from the taxable amount and the tax was charged, can only claim refund of the overpaid tax in accordance with Article 75 of the Corporate Profit Tax Act, Paragraph 3. In accordance to the latter, the paid amount of withholding tax shall reduce the taxpayer's obligation for tax payment under the tax calculation for an individual tax period.