



# UCITS 2022 WEBINAR SERIES

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**UCITS Tax Trends and Solutions**

## The speakers

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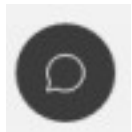
## Hello and welcome!

Let's enjoy an interactive session



### **Q&A – please send your questions to the panelists**

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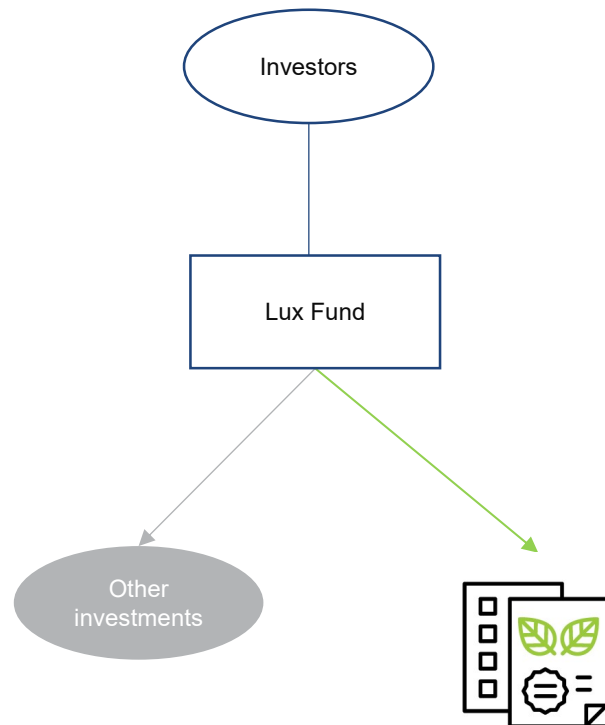
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# **Sustainable Assets Reduced Subscription Tax**

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# Sustainable assets – reduced subscription tax



**Reduced subscription tax** for sustainable investment funds (or sub-funds)  
→ UCITs & UCIs

Sustainable net assets	Subscription tax rate (applying on net sustainable assets)
Less than 5%	0.05%
<b>At least 5%</b>	<b>0.04%</b>
<b>At least 20%</b>	<b>0.03%</b>
<b>At least 35%</b>	<b>0.02%</b>
<b>At least 50%</b>	<b>0.01%</b>



**Applicable since 1 January 2021**



**Strong incentives for funds and investors!**

# Sustainable assets – reduced subscription tax

## *Determination*



### 3-Step-Approach

STEP 1 Determination of the reduced subscription tax rate

STEP 2 Taxable base

STEP 3 Filing process

# Sustainable assets – reduced subscription tax

## *In practice (1/2)*

### STEP 1

#### Determination of the reduced subscription tax rate

Situation of the portfolio **on the last day of the previous FY**

**Certified statement** – by an approved statutory auditor – based on the determination in the

- annual report; or
- ad-hoc assurance report

Contains the % of net sustainable assets  
(as determined in the fund's annual report or in an assurance report)

→ Some exceptions (mergers, new (sub-)fund,...)

# Sustainable assets – reduced subscription tax

## *In practice (2/2)*

### STEP 2

#### Taxable base

Reduced rate applied on the value of the sustainable assets **as at the last day of each quarter**

### STEP 3

#### Filing – Timing considerations

- Certified statement to be submitted **annually** (i.e. 4 quarters) and **for the future** to the **AED**
  - Different from the general subscription tax filing regime (filing on the 20<sup>th</sup> day following each quarter and for the quarter which just ended)
  - Shorter period for mergers, new (sub-)fund,...
- Filing at the same time of the Q1 /first subscription tax return following the finalization of the annual account/ad-hoc assurance report
  - Administrative tolerance expected



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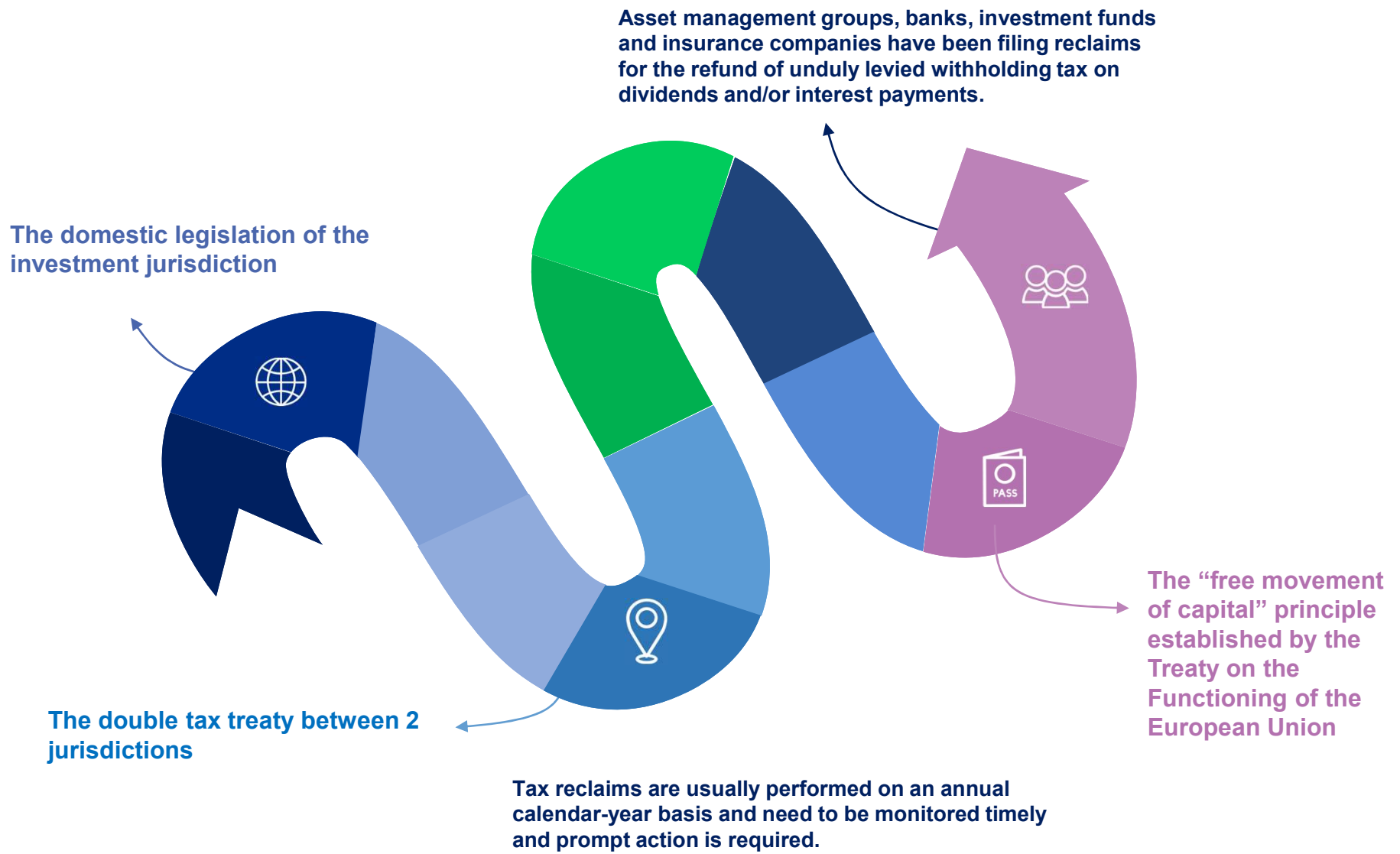
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# Withholding Tax Reclaims

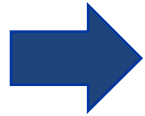
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# Reclaims possible under 3 types of Legislation



# Today's challenges for Reclaims 1/2



## A constantly changing tax framework

For the last 12 months 2022, we have seen a lot of decisions i.e. Italy, Finland, Denmark, Spain, Portugal ... and these decisions show the obligation to be up to date on tax reclaims news.

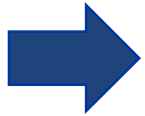
- ❖ Important to understand and determine the subtleties of each country requirement (i.e. tax residence definitions, comparability characteristic among the investment vehicles)
- ❖ Each country has a specific tax reclaim procedure which varies in complexity
- ❖ Requirements quickly evolving and vary across countries



## Responsibilities increasing with TRACE

- ❖ Complex for portfolio investors to effectively reclaim the reduced rates of withholding tax due
- ❖ TRACE initiative launches the framework of a standardized system allowing the reclaiming of withholding tax relief at source on portfolio investments
- ❖ TRACE objectives : future harmonization and allow digitalization. Those objectives will increase the legal liabilities and responsibilities of the financial institutions with the Authorised Intermediary status as they will be the main actor of such tax reliefs.
- ❖ New system was implemented in Finland on 1 January 2021. Key financial institutions choose to change their market offering by not implementing relief at source of Finnish dividends anymore as they are not willing to cope with an increased risk exposure, legal liabilities and responsibilities.

# Today's challenges for Reclaims 2/2



## **A burdensome process**

- ❖ The tax reclaim process requires information and documentation different for every jurisdiction of investment and to be separately gathered, prepared and filed.
- ❖ What you need to do ? Collect this information, keep it up to date and identify changes in both domestic legislation or tax treaties with an access to local experts is key in this process with deep domain expertise.
- ❖ Calculation of potential reclaim per beneficiary is one of the main challenge that professionals are facing today. A Cost/Benefit analysis is required and need to be rapidly determine. It is therefore essential to have centralized and automated solutions to undertake a Cost/Benefit analysis.
- ❖ Reclaim : a complex procedure with excessive documentation requirements and can be extremely time-consuming, as each jurisdiction has its own procedures, processes, specific requests concerning documentation, information flows.

## How to overcome the challenges ?



### Ways to overcome them?

- ⑩ Understanding the organizational procedure, efficient management of tax information and technology advanced solutions are some of the key means to successfully navigate these challenges;
- ⑩ Robust governance;
- ⑩ Clear and documented operational processes;
- ⑩ Target efficiency;
- ⑩ Specialised operational teams can relieve resources and offer stability in the tax reclaim process allowing them to concentrate on the core business activities.

# Latest developments



... with recent developments for investment funds opening new refund opportunities in Europe but not only

## **Finland – Positive decision for listed SICAV**

The Finnish tax authorities (FTA) have accepted the EU law-based comparability of non-listed Luxembourg SICAV corporate funds with Finnish tax-exempt contractual funds..

## **Denmark – Negative decision**

The Danish Supreme court issued a negative decision, concluding that the foreign funds are not entitled to a repayment of withholding tax levied on dividends as one the conditions was not met.

## **Spain – 1st positive decision for NON-UCITS**

The Spanish High Court confirmed that a higher taxation imposed on EU Non-UCITS IF compared to resident Funds restricts the free movement of capital.

## **Italy – 1<sup>st</sup> positive decision for UCITS**

The Italian Provincial Court of Pescara issued a positive decision confirming a Lux SICAV is entitled to a refund of the WHT levied on dividends distributed by Italian companies.

➔ **First decision in favor of a Foreign Investment Fund in Italy**

## **Portugal – 1<sup>st</sup> positive decision for UCITS**

CJEU confirmed that the Portuguese Withholding tax levied on dividends to foreign UCITS constitute an unjustified breach of EU law

## **Taiwan – New process for DTT**

The process to obtain a reduced rate -15%- on Taiwanese dividend payments has been modified for FINI's. A pre-approval application needs to be submitted each year with the Taiwanese Tax Authority;



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# Recent Tax Trends

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# Overview

## AML-KYC requirements for funds and their managers

CSSF circular 20/744 of 3 July 2020

→ list of nine (9) indicators specific to the collective investment activities and to professionals providing services in that sector

Fight the money laundering of tax crimes, i.e., **aggravated tax fraud** and **tax evasion**

Report to FIU + CSSF

- adapt supporting documentation
- internal AML/CFT policies

## Transfer Pricing / ManCos

Arm's length remuneration – Key functions and risks assumed

## FATCA, CRS and DAC 6 internal compliance

FATCA/CRS policy / 'Register of actions'  
DAC 6 policy / Compliance process

## EU consultation on withholding tax relief at source

Review of refund procedures for cross-border payments  
Exchange of information with tax authorities

- ✓ Complex investment structuring
- ✓ Tax base erosion
- ✓ Investment transactions
- ✓ Efficient portfolio management techniques
- ✓ Subscription tax
- ✓ Investor tax reporting





**Questions?**

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