

# WIRRAL COUNCIL

## PENSIONS COMMITTEE

25 MARCH 2013

<b>SUBJECT:</b>	<b>WITHHOLDING TAX CLAIMS</b>
<b>WARD/S AFFECTED:</b>	<b>NONE</b>
<b>REPORT OF:</b>	<b>INTERIM DIRECTOR OF FINANCE</b>
<b>KEY DECISION?</b>	<b>NO</b>

### 1.0 EXECUTIVE SUMMARY

1.1 The purpose of this report is to provide Members with an update on the progress made by the Fund in reclaiming withholding tax from the UK and European tax authorities and seeks approval to continue the group action in respect of Manufactured Overseas Dividends (MODs).

### 2.0 BACKGROUND AND KEY ISSUES

2.1 In January 2009, Committee was informed of the engagement of KMPG and McGrigors (now Pinsent Masons) to assist in the recovery of withholding taxes (WHT) suffered on EU sourced dividend income and non-recoverable under existing Double Tax Agreements.

2.2 In April 2009, this was extended to the recovery of UK withholding tax suffered on Manufactured Overseas Dividend (MOD) income arising from stocklending.

Updates were brought to Committee in September 2009 and March 2011.

### 2.3 European Withholding tax

At the year end, a cumulative £293,735.52 had been recovered from the Dutch and Norwegian tax authorities since 2009. Claims filed against the German, French, Spanish and Italian authorities, amounting to more than £2.0m, remain unsettled. However, there have been some positive developments:

France: the Supreme Court has decided that French WHT rules contravene EU law. French NPO's are now subject to tax on their French source dividends at the rate of 15%. Claims and questionnaires filed by foreign pension funds to challenge the former rules are still under examination by the French Tax Authorities.

Germany: the German Ministry of Finance issued guidance on 18 July 2012 that stated that the Federal central Tax office is currently not competent for EU-law claims. This confirms the need to approach local tax offices in relation to EU law claims. This has been done and we are waiting for a response.

Italy: the CJEU issued its decision on 19 November 2009 and stated that Italian WHT rules were in breach of EU law.

On 5 July 2011, the Regional Tax Court of Pescara decided for the first time in favour of the taxpayer (a UK Pension Fund) in relation to a tax credit claim confirming that the Italian tax rules were contrary to EU law. The Italian Tax Authority have recently appealed the case (the hearing date has not been fixed).

Spain: the Spanish Tax Authorities did not appeal a decision by the Spanish Administrative Court that Spanish rules are contrary to EU Law as the tax treatment of non-resident investment funds is different from that of resident investment funds. A repayment was made to an investment fund and, although there is no certainty that this will set a precedent, it is progress.

Despite the need to re-file and appeal some of the claims, costs incurred to date are within the parameters set out in January 2009.

## **2.4 MOD claims**

Test case pending and test claimant identified. KPMG and Pinsent Masons have prepared draft Tribunal pleadings including supporting evidence and statement of the case for HMRC to agree.

HMRC has reviewed the supporting evidence and statement of case and confirmed it wishes to litigate. The test claimant has been agreed and it has been agreed all other GFA members' claims will be placed on hold until the outcome of the test case. In October, however, the HMRC solicitor changed and further questions have been raised which may slow the process down.

In view of the time that has elapsed, it has been possible to make 'top up' claims of £3.75m and this has involved some incremental additional cost. The costs of litigation incurred so far are around the £35,000 initially advised. However, with no certainty as to the timing of a conclusion to the claim, they will exceed the initial estimate. They are being pooled with several other institutional investors under a Group Funding Arrangement (GFA). In view of the value of the additional claims that we have made since 2009 it is recommended that this action is continued.

## **2.5 Internal Claims**

Since July 2011, the Fund's internal accounting team has been successful in recovering over £250,000 of unclaimed tax that had not been identified by our Custodians or other external managers. As this will be an ongoing requirement, I am reviewing the need to strengthen the resource in this area in view of the financial benefit to the Fund.

## **3.0 RELEVANT RISKS**

3.1 The Fund is working with its advisers and other institutional investors in these matters and this should ensure that appropriate action is taken.

## **4.0 OTHER OPTIONS CONSIDERED**

4.1 The litigation could be allowed to lapse but in view of the substantial claims involved it is believed to be in the best interests of the Fund not to do so.

## **5.0 CONSULTATION**

5.1 There has been no consultation undertaken or proposed for this report. There are no implications for partner organisations arising out of this report.

## **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

6.1 There are none arising from this report.

## **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 Costs incurred to date are within the parameters approved by Pensions Committee and are offset by recoveries of £293,735.52 from European tax authorities. An additional £255,000 has been recovered by the internal team. Outstanding withholding tax claims amount to over £2.0m and MOD claims to £5.1m.

## **8.0 LEGAL IMPLICATIONS**

8.1 There are none arising from this report.

## **9.0 EQUALITIES IMPLICATIONS**

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(b) No because there is no relevance to equality.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are none arising from this report.

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are none arising from this report.

## **12.0 RECOMMENDATION/S**

12.1 That Members: note the progress of the European Withholding Tax claims;

12.2 Note the contribution from the internal team;

12.3 Approve the continuation of the MOD claim.

## **13.0 REASON/S FOR RECOMMENDATION/S**

13.1 The Fund has the potential to recover substantial amounts of tax from the UK and European tax authorities.

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## **APPENDICES**

None

## **REFERENCE MATERIAL**

NONE

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Pensions Committee</b>	<b>March 2011</b>