

THE ASSOCIATION OF GLOBAL CUSTODIANS

BNY MELLON
BROWN BROTHERS HARRIMAN
CITIBANK, N.A.
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NORTHERN TRUST
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SKANDINAVISKA ENSKILDA BANKEN
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26 September 2012

Director of International Tax Policy and Legislation
Ministry of Finance
International Tax Policy and Legislation Directorate
P.O. Box 20201
2500 EE The Hague
The Netherlands

Re: Association of Global Custodians – Request for Mutual Agreement
Procedure under Article 26 of the Italy – Netherlands Income Tax Treaty

Dear Sir:

The Association of Global Custodians (the “Association” or “AGC”)¹ hereby requests Competent Authority assistance pursuant to paragraph 3 of Article 26 of the Netherlands – Italy Income Tax Treaty (the “Treaty”)² and the Decree of 29 September

¹ The Association is an informal group of 11 member banks that provide securities safekeeping and asset-serving functions to cross-border institutional investors worldwide. Members provide custody-related services to most types of institutional investors, including investment funds, pension funds, and insurance companies. Members' clients include European-based funds and investors, and members play a substantial role in European markets. Association members are listed on the letterhead above.

² The Convention between the Kingdom of the Netherlands and the Republic of Italy for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital and the Prevention of Fiscal Evasion, signed at The Hague on 8 May 1990, together with a Protocol of the same date.

2008, No. IFZ2008/248M (the “Decree”).³ This request relates to withholding taxes collected by the Italian Revenue Agency with respect to dividend and interest payments received by Dutch resident investor clients of AGC member institutions from at least 1 January 1995 to date. The withholding taxes at issue are the amounts of tax withheld in excess of the tax liability of such Dutch residents under Articles 10 and 11 of the Treaty. AGC member institutions have submitted numerous withholding tax refund claims from at least 1996 to date on behalf of their Dutch resident investor clients, which remain outstanding. The aggregate value for all outstanding refund claims filed by AGC member institutions on behalf of Dutch beneficial owners as of the end of 2011 was more than EUR 9.7 million.

We respectfully submit that the benefits of the reduced dividend and interest withholding rates provided by the Treaty are effectively being denied to Dutch resident beneficiaries as a result of practices by the Italian Revenue Agency that are contrary to the intent, object and purpose of the Treaty and OECD guidance.

As set forth in greater detail below, the issues identified in this request present difficulties and doubts regarding the interpretation and application of the Treaty. In particular, the number and age of the outstanding refund claims and the overly burdensome, often unworkable, and retrospective procedures established by the Italian Revenue Agency for such refund claims raise significant difficulties and doubts regarding the effective application of the provisions of Articles 10 and 11 of the Treaty. The procedures implemented by the Italian Revenue Agency also raise difficulties and doubts regarding the manner in which such provisions are being interpreted. The Italian practice differs significantly from that in most European Union markets, which have average processing times of about 6 to 12 months for refund claims.

Paragraph 3 of Article 26 of the Treaty authorizes and obligates the Dutch and Italian Competent Authorities to endeavor to resolve these issues, as it provides in relevant part that “[t]he competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.” We hereby request that the Dutch Competent Authority initiate a mutual agreement procedure with the Italian Competent Authority to address and provide procedural guidance on the issues described herein that ensures the prompt payment of outstanding refund claims by the Italian Revenue Agency.

(1) IDENTIFICATION INFORMATION AND YEARS AND AMOUNTS INVOLVED

The Association of Global Custodians is a group of eleven global custodian banks with affiliates and branches in numerous countries that provide global custody services to cross-border institutional investors. The current member institutions of the AGC are as follows:

³ The Decree does not provide explicit guidance for requests made under paragraph 3 of the mutual agreement procedure of the applicable treaty. Because this request, like many paragraph 3 requests, is not limited to a specific taxpayer, several items of information required under the Decree are not applicable. This request follows the Decree to the extent applicable.

BNY Mellon
Brown Brothers Harriman
Citibank, N.A.
Deutsche Bank
HSBC Securities Services
J.P. Morgan
Northern Trust
RBC Investor Services
Skandinaviska Enskilda Banken
Standard Chartered Bank
State Street Bank and Trust Company

AGC member institutions provide global custody services to clients investing in the Italian marketplace and have pending refund claims with the Italian Revenue Agency that have been outstanding since at least 1991. Total outstanding withholding tax refund claims filed by AGC member institutions for beneficiaries under all treaties for 1991 through the end of 2011 have an aggregate value of more than EUR 159 million. The outstanding refund claims filed by AGC member institutions with respect to Netherlands beneficial owners through the end of 2011 was more than EUR 9.7 million. The supplemental letter which accompanies this document⁴ sets out the following information regarding specific outstanding refund claims filed by individual AGC member institutions for their Netherlands resident customers:

- (1) The name and address of the AGC member institution submitting the refund claim;
- (2) The investor's name;
- (3) The investor's address;
- (4) The investor's Netherlands taxpayer identification number ("TIN"), if known;
- (5) An indication if the claim was with respect to a dividend or interest payment;
- (6) A description of the security with respect to which the payment was made;
- (7) The payment date;
- (8) The gross amount of the payment (EUR);

⁴ Due to the confidential nature of the data regarding specific refund claims filed by individual AGC member institutions for their Netherlands resident customers, that information is being submitted to you under cover of a supplemental letter.

- (9) The withholding tax withheld (EUR);
- (10) The reclaim amount (EUR); and
- (11) The date of the reclaim application.

(2) BRIEF DESCRIPTION OF RELEVANT TRANSACTIONS AND ISSUES

Italian Taxation and the Treaty Relief Procedures

Under Italian domestic tax law, income derived from shares in entities subject to Italian corporate income tax is treated as dividends. The standard rate of withholding tax currently applicable to dividend distributions made by such entities to non-residents is 20 percent (a statutory tax change effective 1 January 2012 reduced the rate to 20 percent from 27 percent) and can be either reduced at source or reclaimed, if a lower rate applies under an applicable treaty or domestic law provision. Italian source interest paid to non-residents is likewise subject to a standard withholding rate of 20 percent unless a lower rate applies under an applicable treaty or domestic law provision.

Dividends paid with respect to Italian shares deposited with the centralized deposit system managed by Monte Titoli S.p.A are subject to a “substitute tax” instead of the usual withholding tax. The substitute tax is collected by resident intermediaries admitted to the deposit system. Non-resident intermediaries can assume the role of withholding tax agents for Italian tax purposes, whether they are admitted to the central depository systems managed by Monte Titoli S.p.A or another qualified central deposit system. However, an intermediary must appoint a fiscal representative, such as a resident bank or a brokerage company, a permanent establishment of a non-resident bank or brokerage company, or a centralized deposit company authorized to operate in Italy. The fiscal representative, in turn, must withhold and pay the withheld tax to the Italian Revenue Agency. Each fiscal representative is also required to obtain documentation and information relating to the beneficial owners of income from which taxes are withheld and to communicate the beneficial owner data to the Italian Revenue Agency. Finally, each fiscal representative must provide additional information and documentation upon request.

In principle, Italian procedures permit non-resident investors to obtain tax relief at source; however, in order to do so, certain documentation must be provided prior to the payment date. The Italian Revenue Agency has approved forms for this purpose. Although use of such forms is not compulsory, most Italian withholding agents insist on these so their use is required as a practical matter. The documentation comprises an annual declaration detailing beneficial ownership information, which includes name, address, tax identification number issued by the beneficial owner’s residence country, and confirmation of treaty entitlement. The documentation must be accompanied by a certificate of tax residence (“CoTR”). The CoTR is valid until March 31st of the year following the year of issue. In practice, it is often difficult or impossible to obtain and provide the CoTR and other documentation in advance of the dividend or interest payment date due to processing timeframes at the local tax authorities.

Withholding tax refund claims may be submitted when it is not possible to complete the required documentation in advance of the dividend payment date. Refund requests must be made within 48 months of the payment of the tax, and interest on refunds is currently due at a rate of 1 percent per annum.

As discussed below, the documentation requirements established by the Italian Revenue Agency for refund claims and the manner in which those requirements are being administered are effectively denying the benefits of the Treaty's reduced dividend and interest withholding rate to Netherlands resident beneficial owners that are entitled to benefits under the terms of the Treaty. This is due to several factors, including:

- (1) The imposition of overly burdensome and often unworkable documentation, information, and filing requirements;
- (2) The recent retrospective imposition of new, even more burdensome requirements with deadlines that are impossible to meet in most cases and, in many respects, lack any apparent relevance to the requirements of the Treaty;
- (3) The general unresponsiveness of the Italian Revenue Agency to repeated efforts by the AGC, its member institutions, and others to obtain the requested refunds or, at a minimum, information regarding their status and formal guidance regarding applicable refund procedures; and
- (4) The extreme and continuing delays in processing refund claims, dating back to at least 1991, for amounts that are now very significant in the aggregate.

The combination of these factors has created such a high barrier to refunds that they are operating to deny Treaty benefits properly due to Netherlands resident beneficial owners, as evidenced by the dearth of refunds received during the past two decades. As discussed below, these requirements and administrative practices are thus plainly inconsistent with the intention and the object and purpose of the Treaty, as well as with OECD guidance that Italy and the Netherlands have committed to follow in applying the Treaty.

Efforts to Obtain Refunds

In May of 2004, the AGC wrote a letter to the Italian Revenue Agency (of which a copy is attached as Attachment A for your information) concerning non-payment of aged Italian tax refund claims. These claims had been made by AGC member institutions for and on behalf of beneficiaries eligible for benefits under Italian treaties. This letter asked for an explanation of the reason for the delay and requested that payment be made in respect of those claims. Following that initial correspondence, AGC members were informed by local Italian custodian banks that the relevant department of the Ministry of Finance would commence paying tax refund claims, with interest. No formal response was ever received from the Italian Revenue Agency, and few or no payments were made. The AGC was informally notified that all claims had been frozen.

Thereafter, on 18 September 2009, the AGC wrote a letter to Italian Revenue Agency officials in Rome (copy attached as Attachment B) to reiterate the concern of the AGC member institutions regarding the continuing extended delays in the processing and payment of refund claims. By that date, the outstanding claims submitted by AGC member institutions covering income years 1991 to 2009 had reached an aggregate amount for Netherlands and other treaty beneficiaries of EUR 159 million.

In January of 2010, the AGC received a written message on behalf of the director of the Italian Revenue Agency's Pescara Office, which is responsible for processing withholding tax treaty refund claims. Pescara requested additional information in order to reply to the September 2009 AGC payment request. In follow-up exchanges, the AGC was informed that the Pescara Office required further details regarding the pending claims, in order to enable Pescara to "link" this information to the existing data in its hands.

Most AGC member institutions agreed to provide the required information, which was transmitted by the AGC Secretariat with a request for acknowledgement of receipt and an indication of refund payment timelines. The details provided included: (1) the name of the applicant; (2) the submission date; (3) the amount claimed; (4) the type of refund requested (withholding/tax credit); (5) the beneficial owner of dividends or interest, and (6) the name of the Issuing Company. In response to a request from the Pescara Office, each of the AGC member institutions also identified an individual to contact for questions or follow-up.

As of today, no AGC member institution has received an acknowledgement of receipt from the Pescara Office or any information as to whether or when claims will be paid, except for a limited number of claims made on behalf of U.S. resident customers following an intervention by the U.S. competent authority with the Italian competent authority.

In addition to the foregoing efforts at AGC level, many member institutions have also separately undertaken direct efforts over the years to seek refund payments on behalf of customers, including meetings with Italian Revenue Agency officials in Rome and Pescara.

Changes in Italian Procedures

In April of 2010, the Pescara Office announced that it would no longer honor pending or newly submitted tax refund claim applications unless an Italian Fiscal Code ("IFC") of the beneficiary and/or its legal representative, if any, is included in the tax refund claim application. Additional extensive tax documentation was required to apply for the IFC number. After successful lobbying by the "Assogestioni",⁵ in June 2011 a circular was issued (No. 64/2011) which removed the IFC obligation for certain foreign

⁵ Assogestioni is the Italian association of asset managers and represents the majority of management companies of Italian savings and foreign companies operating in Italy, as well as banks and insurance companies active in the management of individual and collective savings.

institutional investors. However, there are other such entities that are still required to apply for an IFC. In addition, this provided another delay and administrative burden and no tax treaty monies were released for investors that did comply.

In addition, the Pescara Office has initiated a so-called “diniego” questionnaire procedure. The applicable questionnaire is issued in Italian and requires a response, directly from the claimant, in Italian, within 60 days of receipt. The new procedures provide that failure to respond within this time period will result in the refund claim being “finally cancelled”. The information required on this questionnaire is very detailed and specific to the transaction activity undertaken by the claimant. It also seeks confirmation regarding the claimant’s legal and tax status, including copies of founding documents and financial reports. The questionnaire makes reference to the fiscal code of the beneficiary/signatory of the refund claim, but this request pertains to the TIN of the claimant and not the IFC described above. Given that the process to collate this data is likely to be quite time-consuming and that the questionnaire must be completed in Italian, many non-resident investors will likely have significant difficulty in meeting the 60-day deadline.

The AGC would ask that the Netherlands Competent Authority raise these issues as prime examples of the unreasonable nature of the Italian procedural requirements.

(3) APPLICABLE TREATY PROVISIONS AND OECD GUIDANCE

AGC requests assistance under Articles 26 (Mutual Agreement Procedure), 10 (Dividends), and 11 (Interest) of the Treaty.

Articles 10 (Dividends) and 11 (Interest)

The provisions of Article 10 provide the following limitations on the rate of tax that may be imposed by one Contracting State on dividends paid to a resident of the other Contracting State by a company that is a resident of the first Contracting State (the “Source State”):

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - a)
 - i) 5 percent of the gross amount of the dividends if the beneficial owner is a company which owns more than 50 percent of the voting stock of the company paying the

dividends for a period of 12 months preceding the date on which the distribution of the dividends was voted; and

- ii) 10 percent of the gross amount of the dividends if the beneficial owner is a company with no right to the treatment stipulated in the preceding point (i), but which owns 10 percent or more of the voting stock of the company paying the dividends for a period of 12 months preceding the date on which the distribution of the dividends was voted; and

- b) 15 percent in all other cases.

The provisions of Article 11 provide the following limitations on the rate of tax that may be imposed by a Source State on interest paid to a resident of the other Contracting State:

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2. However, such interest may also be taxed in the State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in one of the States shall be exempt from tax in said State if:
 - a) the person paying the interest is the Government of said State or one of its political or administrative subdivisions or one of its local authorities; or
 - b) the interest is paid to the Government of the other State, to one of its political or administrative subdivisions, or to one of its local authorities or to institutions or establishments (including financial institutions) which belong wholly to that State, to one of its political or administrative subdivisions, or to one of its local authorities; or
 - c) the interest is paid to other institutions or establishments (including financial institutions) in respect of financing granted by such institutions or establishments under agreements concluded between the Governments of the States.

The Protocol signed on 8 May 1990 with respect to the Treaty provides as follows regarding the availability of benefits under Articles 10 and 11:

5. Ad Articles 10, 11 and 12

International organizations, their agencies and officials, who are in the territory of one of the States, have no right in the other State to the tax reductions or exemptions described in Articles 10, 11 and 12 with respect to dividends, interest and royalties arising in that other State, if this income is not liable for income tax in the first-mentioned State.

...

12. a) With respect to Italy and for the purposes of this Convention, taxes levied through withholding at the rates established by Italian domestic laws shall be reimbursed at the request of the interested party where the right to collect these taxes is limited by the provisions of the Convention. Requests for reimbursement, to be presented within the time periods set by Italian law, must be accompanied by an official certification from the competent Netherlands authorities that the conditions required to benefit from the exemptions or reductions provided by this Convention have been satisfied. This provision does not exclude the interpretation according to which the competent Italian authorities may define other procedures for the application of the tax reductions to which this Convention gives a right.

A critical point regarding the application of domestic procedures for claiming treaty reductions in withholding is set out in the Commentary on Article 1 (Persons Covered) of the OECD Model Tax Convention on Income and on Capital (the “OECD Model”), in a discussion of “Limitations of source taxation – procedural aspects” which is cross-referenced in the OECD Commentary on Articles 10 and 11:

26.2 A number of Articles of the Convention limit the right of a State to tax income derived from its territory. As noted in paragraph 19 of the Commentary on Article 10 as concerns the taxation of dividends, the Convention does not settle procedural questions and each State is free to use the procedure provided in its domestic law in order to apply the limits provided by the Convention. A State can therefore automatically limit the tax that it levies in accordance with the relevant provisions of the Convention, subject to possible prior verification of treaty entitlement, or it can impose the tax provided for under its domestic law and subsequently refund the part of that tax that exceeds the amount that it can levy under the provisions of the Convention. As a general rule, in order to ensure expeditious implementation of taxpayers’ benefits under a treaty, the first approach is the highly preferable method. *If a refund system is needed, it should be based on observable difficulties in identifying entitlement to treaty benefits. Also, where the second approach is adopted, it is extremely important that the refund be made expeditiously, especially if no interest is paid on the amount of the refund, as any undue delay in making that refund is a direct cost to the taxpayer.*⁶

⁶ OECD Committee on Fiscal Affairs, paragraph 26.2, Commentary on Article 1 of the OECD Model (emphasis supplied).

Italy has not filed an “observation” with the OECD notifying its treaty partners and their residents of dissenting views on this provision. Therefore, the Italian Revenue Agency is expected to follow the OECD Commentary in applying and interpreting the dividend provisions of its bilateral treaty with the Netherlands, which track the OECD Model in relevant respects. This principle was established by a rare formal Recommendation to that effect adopted in 1997 by the OECD Council, which is comprised of senior government officials from all OECD member countries, including Italy. The Introduction to the OECD Model confirms this expectation as follows:

As recommended by the Council of the OECD, Member countries, when concluding or revising bilateral conventions, should conform to this Model Convention as interpreted by the Commentaries thereon, and having regard to the reservations contained therein and their tax authorities should follow these Commentaries, as modified from time to time and subject to their observations thereon, when applying the provisions of their bilateral tax conventions that are based on the Model Convention.⁷

In support of this agreed approach, the OECD Council cites a number of important considerations, including the need to remove the obstacles that double taxation presents to the free movement of goods, services, and capital; the need to harmonize existing bilateral treaties on the basis of uniform principles, definitions, rules, and methods; the need to encourage the common application and interpretation of bilateral treaty provisions based on the OECD Model Convention; and the desire to extend international cooperation on tax matters. All of these considerations remain important objectives of both the OECD and its member countries. It is, therefore, incumbent upon Italy, as a long-standing member of the OECD, to support these objectives by following the OECD Commentaries in interpreting and applying the Treaty, including their provisions relating to the dividend and interest withholding taxes at issue in this case.

Article 26 (Mutual Agreement Procedure)

Article 26 of the Treaty establishes the mutual agreement procedure to address cases of taxation “not in accordance with the provisions of the Convention”. Paragraph 3 of Article 26 provides that the Competent Authorities “shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention”. Thus, the Competent Authorities are under an obligation to work together in good faith to resolve difficulties or doubts arising from conflicting interpretations or applications of provisions in the Treaty.

The Commentary on Article 25(3) of the OECD Model (which corresponds to Article 26(3) of the Treaty) explains the nature of the authority granted by the provision:

⁷ Introduction at paragraph 3 (internal citation to Recommendation of the OECD Council concerning the Model Tax Convention on Income and on Capital, adopted 23 October 1997, omitted).

51. This provision makes it possible to resolve difficulties arising from the application of the Convention. Such difficulties are not only those of a practical nature, which might arise in connection with the setting up and operation of procedures for the relief from tax deducted from dividends, interest and royalties in the Contracting State in which they arise, but also those which could impair or impede the normal operation of the clauses of the Convention as they were conceived by the negotiators, the solution of which does not depend on a prior agreement as to the interpretation of the Convention.

The AGC respectfully submits that the issues identified in this request present difficulties and doubts regarding the interpretation and application of the Treaty and that the Netherlands and Italian Competent Authorities are obligated under paragraph 3 of Article 26 of the Treaty to endeavor to resolve such difficulties and doubts through the mutual agreement procedure. In particular, the number and age of the outstanding refund claims and the exceedingly onerous procedures established by the Italian Revenue Agency for filing such refund claims raise significant doubts and difficulties regarding the interpretation and application of the provisions of Articles 10 and 11 of the Treaty and Article 12(a) of the Protocol.

(4) NATURE OF RELIEF SOUGHT

The AGC requests that the Netherlands Competent Authority engage in discussions with the Italian Competent Authority to reach an agreement that (1) clarifies the requirements and procedures for obtaining refunds under Articles 10 and 11 of the Treaty and Article 12(a) of the Protocol in a manner that ensures that such requirements can be reasonably met with respect to such claims; and (2) ensures that the agreed requirements are implemented in a manner that provides timely refunds to those properly entitled to the benefits of the Treaty.

* * * * *

Should you have any questions or need additional information, please contact me at (202) 452-7045 or by e-mail at mary.bennett@bakermckenzie.com. We appreciate your consideration of this request.

Sincerely,



Mary C. Bennett
Baker & McKenzie LLP
Counsel to the AGC

Attachments:

- A – May 2004 letter from AGC to Italian Revenue Agency
- B – September 2009 letter from AGC to Italian Revenue Agency

THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK
BROWN BROTHERS HARRIMAN
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11 maggio 2004

Dott. Gianni Giammarino
Direttore Centrale Gestione Tributi
Viale Europa 242
00144 Roma
Italia

Oggetto: problematiche relative al rimborso delle imposte italiane

Preg.mo Dott. Giammarino,

a nome dell'Associazione Banche Depositarie Internazionali (per brevità, l'"Associazione"), desideriamo esprimere la nostra preoccupazione per i ritardi con cui vengono effettuati i rimborsi delle ritenute fiscali e dei crediti d'imposta italiani per gli investitori non residenti.

L'Associazione, che ha carattere non ufficiale, rappresenta nove banche depositarie internazionali aventi consociate e filiali in numerosi paesi, che offrono servizi di deposito in custodia a investitori istituzionali esteri¹. Le nostre associate forniscono servizi di deposito in custodia a istituzioni che investono sul mercato italiano e, come specificato in maggior dettaglio nel seguito, sono attualmente in credito nei confronti del Ministero delle Finanze italiano per un totale di 406,2 milioni di euro per gli anni dal 1991 al 2003.

La possibilità offerta dal mercato italiano di usufruire di uno sgravio alla fonte è di importanza fondamentale per le nostre associate. Talvolta, tuttavia, l'applicazione di tali sgravi non è possibile al momento del versamento della ritenuta fiscale. Quando ciò si

¹ Le banche appartenenti all'Associazione sono elencate nell'intestazione della presente.

Dott. Gianni Giammarino
Direttore Centrale Gestione Tributi
11 maggio 2004
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verifica è l'investitore a sopportarne i danni: spesso, infatti, l'attuale procedura per la richiesta del rimborso dovuto in base ai trattati fiscali subisce ritardi considerevoli.

Nella maggior parte dei paesi dell'Unione Europea i tempi di rimborso vanno dai 6 ai 12 mesi dalla ricezione dei moduli di richiesta da parte dell'autorità competente. A fronte di questi, i tempi di rimborso relativi all'Italia sono notevolmente più lunghi, come attestato dal numero di pratiche ancora in corso evidenziate dalle nostre associate, in alcuni casi risalenti addirittura al 1991.

In relazione a tali insoluti, le nostre associate erano state informate dalle rispettive banche depositarie in Italia che l'Agenzia della Entrate avrebbe iniziato a evadere tutte le pratiche di rimborso precedenti al 1996 destinando circa 350 milioni di euro a copertura di tali pagamenti ("Fase 1"). Il pagamento dei rimborsi sarebbe dovuto iniziare nel 2003, e i fondi stanziati avrebbero compreso gli interessi maturati su tali voci. Ci viene inoltre comunicato dalle nostre corrispondenti locali che il Ministero delle Finanze intende chiudere tutte le pratiche di rimborso per ritenute fiscali e crediti d'imposta entro i prossimi tre anni, utilizzando fondi stanziati dal Governo centrale a tale precipuo scopo ("Fase 2"). Tali iniziative, unitamente alle sostanziali misure amministrative intraprese nel 2003 dal Ministero delle Finanze per ristrutturare e centralizzare la procedura di richiesta di rimborso fiscale all'interno del Centro Servizi di Pescara, sono assai apprezzate dall'Associazione come dagli investitori a cui presta i propri servizi.

Le associate riferiscono che in seguito all'evasione delle pratiche relative alla Fase 1, sono stati incassati rimborsi per un totale di 13,8 milioni di euro. Restano tuttavia insolute richieste di rimborso di ritenute fiscali in eccesso o di crediti di imposta per un totale di 406,2 milioni di euro. Pertanto, i rimborsi versati nell'ambito della Fase 1 rappresentano solo il 3% delle richieste tuttora inevase. Data l'entità rilevante dei rimborsi di Fase 1 tuttora non versati, le nostre associate si chiedono con preoccupazione come possa la Fase 2 dell'iniziativa in questione concludersi entro il citato termine di tre anni. Considerando l'importo complessivo dei rimborsi tuttora rimanenti e il numero di anni occorsi per riscuoterne una parte, le associate temono che la procedura di rimborso dall'Italia rischi di restare problematica.

Al fine di rendere un servizio alle nostre associate, questa Associazione si appella al Ministero delle Finanze italiano perché si attivi per accelerare il versamento dei rimborsi fiscali di vecchia data. Il nostro obiettivo è di azzerare completamente i crediti fiscali arretrati entro e non oltre il 2006. Contestualmente, desideriamo chiedere la collaborazione del Ministero per definire tempistiche di pagamento ragionevoli per le nuove richieste di rimborso inoltrate in Italia.

Dott. Gianni Giammarino
Direttore Centrale Gestione Tributi
11 maggio 2004
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La preghiamo di comunicarci in che modo possiamo attivarci per il buon fine di queste nostre iniziative. Il sig. Patrick C. Costello, Presidente del Comitato per le Questioni Fiscali dell'Associazione (617/382-4588) e la sottoscritta (202/452-7020) saranno a Sua completa disposizione per qualsiasi domanda e chiarimento sui punti sollevati nella presente.

Mi è gradita l'occasione per porgerLe i miei più cordiali saluti.

A handwritten signature in black ink, appearing to read "Margaret R. Blake", with a long horizontal stroke extending to the right.

Avv. Margaret R. Blake
Consulente Legale dell'Associazione

cc: Dott. Federico Abatino
Direttore Centrale Gestione Tributi

THE ASSOCIATION OF GLOBAL CUSTODIANS

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May 11, 2004

Dott Gianni Giammarino
Direttore Centrale Gestione Tributi
Viale Europa 242
00144 Roma
Italy

Re: Italian Tax Repayment Issues

Dear Dott Gianni Giammarino:

On behalf of the Association of Global Custodians ("Association"), we are writing to express our concern over the repayment delays involved in receiving Italian withholding tax refunds and tax credit payments for non-resident investors.

The Association is an informal group of nine global custodian banks with affiliates and branches in numerous countries that provide global custody services to cross-border institutional investors.¹ Members of the Association provide global custody services to investors investing in the Italian marketplace and, as noted in more detail below, currently have outstanding reclaims with the Italian Ministry of Finance in the amount of 406.2 million EUR for income years 1991- 2003.

The Italian market's offering of a relief-at-source capability is of paramount importance to our members. However, there are occasions where obtaining relief at source may not be possible at the time of the income payment. When this occurs, it is the investor who suffers, as there are often severe delays in obtaining tax treaty entitlements through the reclaim process presently being offered in Italy.

¹ The members of the Association are listed on the letterhead above.

Dott Gianni Giammarino
Direttore Centrale Gestione Tributi
May 11, 2004
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In most European Union markets the average reclaim repayment timeframe is within 6-12 months of receipt of the tax reclaim forms by the applicable tax authority. By comparison, the Italian market has shown a much longer repayment timeframe, which is evidenced by the number of outstanding tax payments, that are reflected by the Association's clients, dating as far back as 1991.

In relation to these outstanding amounts, our members previously were advised by their local custodian banks in Italy that the "Agenzia della Entrate" would commence paying tax reclaims for all pre-1996 tax reclaims by allocating approximately 350 million EUR to cover such payments ("Phase One"). Payments were to begin in 2003 and the allocated funds were to include the interest associated with these items. In addition, we understand from our local custodians that the Ministry of Finance intends to close all outstanding withholding tax and tax credit claims within the next three years, using funds that have been allocated by the Central Government to meet this objective ("Phase Two"). These initiatives, along with the substantial administrative steps taken in 2003 by the Ministry of Finance to restructure and centralize the tax reclaim payment process within the Pescara Service Centre, are very much appreciated by the Association and the investors we serve.

Association members report that following Phase One of the payment processing, refunds totaling 13.8 million EUR have been received. However, claims for repayment of excess withholding tax or tax credits valued at 406.2 million EUR remain outstanding. Thus claims refunded under phase one only account for 3% of the remaining outstanding claims. With such an amount still remaining from Phase One, the Association members are concerned with how Phase Two of this initiative is to be concluded within the aforementioned three-year timeframe. Taking into consideration the amount of the outstanding claims and the number of years it has taken to obtain partial refunds, members are concerned that the Italian reclaim process may continue to be problematic.

In an effort to best service its clients, the Association would like to appeal to the Italian Ministry of Finance for its support in expediting the historical tax reclaim repayments. Our goal is to fully eliminate the backlog of funds due by no later than 2006. Concurrently, we also would like to ask for the Ministry's aid in finding a reasonable repayment timeframe to establish for new tax reclaims filings in Italy.

Dott Gianni Giammarino
Direttore Centrale Gestione Tributi
May 11, 2004
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Please let us know how we can assist in moving these initiatives forward. If you have any questions or comments in relation to the points raised in this letter, please do not hesitate to contact Patrick C. Costello, Chair of the Association's Tax Issues Committee (617/382-4588) or the undersigned (202/452-7020).

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret R. Blake". The signature is fluid and cursive, with the first name "Margaret" being more prominent than the last name "Blake".

Margaret R. Blake
Counsel to the Association

cc: Dott Federico Abatino
Direttore Centrale Gestione Tributi

THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK MELLON CORPORATION
BROWN BROTHERS HARRIMAN
CITIBANK, N.A.
HSBC SECURITIES SERVICES
JPMORGAN CHASE BANK, N.A.
NORTHERN TRUST
RBC DEXIA INVESTOR SERVICES
STATE STREET BANK AND TRUST COMPANY

COUNSEL AND SECRETARIAT TO THE ASSOCIATION:
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18 September 2009

Direttore Paolo Savini & Direttore Fabio Rossi
Direzione Centrale Servizi ai Contribuenti
Settore gestione tributi
Via C. Colombo 426 c/d
00145 Roma
Italy

Re: Italian Tax Repayment Issues

Dear Mr. Savini & Mr. Rossi:

We write on behalf of the members of the Association of Global Custodians ("Association"), to express members' concern regarding the extended delays involved in receiving payment of Italian withholding tax reclaims for non-resident investors. Members of the Association – listed on the letterhead above -- currently have outstanding unpaid reclaims with the Italian Ministry of Finance in the amount of 159 million EUR for income years 1991-2009.

The Italian market's relief-at-source capability is of great importance to our members. However, there are occasions where obtaining relief at source in fact is not possible at the time of the income payment. When this occurs, it is the investor who suffers, as there are often severely extended delays in obtaining tax treaty entitlements through the reclaim process presently offered in Italy.

Association members were previously advised by their local custodian banks in Italy that the "Agenzia delle Entrate" would commence paying tax reclaims for all pre-1996 tax reclaims by allocating approximately 350 million EUR to cover such payments ("Phase One"). Payments were to begin in 2003, and the allocated funds were to include the interest associated with these items. Association members report, however, that Phase One of the payment processing resulted in payments amounting to a minimal percentage of the outstanding reclaims. In addition, members' local custodians

THE ASSOCIATION OF GLOBAL CUSTODIANS

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advised that the Ministry of Finance intended to close all outstanding withholding tax reclaims using funds that had been allocated to the Central Government to meet this objective ("Phase Two"). It is our understanding that Phases One and Two were not completed and reimbursements are currently frozen.

In most European Union markets the average reclaim payment timeframe is within 6-12 months of receipt of the tax reclaim forms by the applicable tax authority. By comparison, the Italian market has shown a much longer payment timeframe, evidenced by the number of outstanding unpaid reclaims -- dating as far back as 1991 -- reflected by Association members' investor-clients.

On May 11, 2004, the Association wrote to the Direttore Centrale Gestione Tributi noting members' concern over withholding tax repayment delays (see the attached letter). The Association did not receive a response to our earlier letter. To enable Association members to best serve their investor clients, the Association once again seeks the support of the Italian Ministry of Finance in expediting payment on the aged reclaims. In addition, the Association also urges the Ministry to establish a reasonable and binding timeframe for the repayment of tax reclaim filings going forward.

Association members would be pleased to confer with you about ways to best move these initiatives forward. If you have any questions regarding the points conveyed in this letter, please contact the undersigned at 312.861.2620.

Sincerely yours,



Dan W. Schneider
Baker & McKenzie LLP
Counsel to the Association

THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK MELLON CORPORATION
BROWN BROTHERS HARRIMAN
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18 Settembre 2009

Direttore Paolo Savini & Direttore Fabio Rossi
Direzione Centrale Servizi ai Contribuenti
Settore gestione tributi
Via C. Colombo 426 c/d
00145 Roma
Italy

Oggetto: Questioni inerenti alle richieste di rimborso presentate alle Autorità fiscali italiane

Egregio Dott. Savini, Egregio Dott. Rossi,

scrivo a nome dei membri dell' "*Association of Global Custodians*" ("Associazione"), al fine di esporre la posizione degli stessi in merito al protratto ritardo nell'ottenimento del rimborso della ritenuta italiana a favore degli investitori non residenti. Ad oggi, relativamente ai membri dell'Associazione – indicati nell'intestazione di cui sopra – risultano pendenti, presso il Ministero delle Finanze del Governo italiano, richieste di rimborso per un ammontare pari a 159 milioni di Euro in relazione agli anni compresi tra il 1991 ed il 2009.

La possibilità di investire senza l'applicazione della ritenuta in Italia è di estrema importanza per i nostri membri. Tuttavia sussistono ipotesi in cui, di fatto, non è possibile ottenere l'esenzione al momento del pagamento del reddito. Quando ciò si verifica, il soggetto che ne risulta danneggiato è l'investitore, poiché frequentemente si verificano prolungati ritardi nell'ottenere il diritto al rimborso sulla base dei trattati, facendo ricorso alla procedura attualmente prevista in Italia.

I membri dell'Associazione sono stati in passato informati dalle banche depositarie in Italia che l'Agenzia delle Entrate avrebbe iniziato ad effettuare i rimborsi con riferimento a tutte le istanze presentate precedentemente al 1996, stanziando allo scopo approssimativamente 350 milioni di Euro ("Fase Uno"). I pagamenti sono iniziati

THE ASSOCIATION OF GLOBAL CUSTODIANS

Direttore Savini
Direttore Rossi
18 Settembre 2009
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nel 2003, ed i fondi stanziati sono stati utilizzati anche per il pagamento degli interessi maturati su dette somme. I membri dell'Associazione riferiscono, tuttavia, che con la Fase Uno è stato possibile effettuare il pagamento di importi che ammontano soltanto ad una percentuale minima delle istanze di rimborso pendenti. Inoltre, le locali banche depositarie dei membri dell'Associazione hanno altresì reso noto che il Ministero delle Finanze intende definire tutte le richieste di rimborso pendenti utilizzando risorse che sono state allocate da parte del Governo per raggiungere tale obiettivo ("Fase Due"). Per quanto ci risulta, tanto la Fase Uno quanto la Fase Due non sono state portate a compimento ed i rimborsi risultano attualmente congelati.

Nella maggior parte dei Paesi dell'Unione europea l'esecuzione dei rimborsi è garantita entro 6-12 mesi dal ricevimento, da parte dell'autorità fiscale competente, della relativa istanza di rimborso. Al confronto, la prassi italiana ha rivelato una tempistica molto più lenta, come dimostra il numero delle richieste di rimborso attualmente pendenti – datate sin dal 1991 - riferibili ai clienti-investitori dei membri dell'Associazione.

In data 11 maggio 2004, l'Associazione ha scritto al Direttore Centrale Gestione Tributi facendo presente la posizione dei propri membri in merito alla situazione di ritardo nel rimborso delle ritenute (si veda la lettera allegata). L'Associazione non ha ricevuto alcun riscontro in seguito a tale lettera. Al fine di rendere possibile per i membri dell'Associazione un più efficiente servizio nei confronti dei propri clienti-investitori, l'Associazione chiede nuovamente il supporto del Ministero delle Finanze del Governo italiano affinché venga accelerato il pagamento dei crediti riferibili alle istanze pregresse. In aggiunta, l'Associazione esorta il Ministero a stabilire una tempistica ragionevole e vincolante per il rimborso delle istanze presentate nel frattempo.

I membri dell'Associazione sarebbero lieti di studiare con Voi le possibili modalità attraverso le quali portare avanti al meglio tali iniziative. Per qualsiasi chiarimento sulle questioni esposte nella presente lettera, siete invitati a contattare il sottoscritto al numero 312.861.2620.

Cordiali saluti,



Dan W. Schneider

Baker & McKenzie LLP
Counsel to the Association