

Court of 's-Hertogenbosch Submits Referral to ECJ on Dividend Withholding Tax for Non-Resident Companies on Listed and Unlisted Shares for Investments to Cover Future Payment Obligations

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The Court of Appeal 's-Hertogenbosch (*hof 's-Hertogenbosch*) made reference to the Court of Justice of the European Union (ECJ) on 14 December 2022 for a preliminary ruling in the case of *XX v Inspecteur van de Belastingdienst* (Case C-782/22) on the dividend withholding tax on dividends paid to non-residents on listed and unlisted shares for investments to cover future payment obligations.

The Court of Appeal 's-Hertogenbosch requested the ECJ to answer the following question:

"Does Article 63(1) of the [European Union Treaty on the Functioning of the European Union \(TFEU\)](#) preclude legislation such as that at issue, according to which dividends paid by listed and unlisted companies established in the Netherlands to a company established in another Member State that has invested, inter alia, in shares in those listed and unlisted companies to cover future payment obligations are subject to withholding tax at the rate of 15% on the gross amount of those dividend payments, whereas the tax burden on dividend payments to a company established in the Netherlands in otherwise similar circumstances would be nil, because the calculation of the basis of assessment for the tax on profits to which that company would be subject takes into account the costs that are incurred as a result of an increase in the future payment obligations of the company, which increase corresponds almost entirely to a (positive) change in the value of the investments, even though the receipt of dividends does not as such lead to a change in the value of those obligations?"