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Tax Refund Claim Forms and Related Documentation - FAQs

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This Paper addresses the Frequently Asked Questions around the preparation and submission of Tax Refund Claim Forms and Related Documentation.

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1. Documents to be filed with the Tax Refund Claim Form (TRCF)

1.1 To which address must the TRCF be sent?

The TRCF needs to be sent by post or had delivered to the International Tax Unit (ITU), MFSA, Notabile Road, BKR 3000, Attard, Malta.

1.2 What documentation is required to be filed with the TRCF?

Documents that are required to be filed with the TRCF include, but are not limited to:

- Original signed Dividend Warrants
- If a shareholder is waiving his/her rights to the dividend, an original signed waiver document[1];
- If a class of shareholding is not entitled to a dividend, one should file an extract from the Memorandum and Articles of Association showing that such shareholding is not entitled to a dividend;
- Certificate signed in original is required in terms of Article 92 of the Income Tax Act (ITA), whenever dividends are being distributed out of profits on which the distributing company claimed Flat Rate Foreign Tax Credit;
- Where applicable, original signed Nominee Certificate signed in original certifying that the shareholding is held on behalf of non-resident shareholders in terms of the Income Tax Management Act (ITMA);
- Copy of Evidence of foreign tax paid by the distributing company supporting unilateral/ treaty relief (where applicable);
- Copy of Power of Attorney document in respect of a refund claim form signatory (if applicable);
- Copy of official documentation indicating that the person signing the refund claim form is empowered to sign; and
- Copy of passport or such other official document corroborating the signature of the person signing the refund claim form.

Other Documentation that would facilitate the refund application process:

- A copy of the signed Income Tax Return (ITR) of company distributing the dividend for each year out of which profits have been distributed;
- Copy of the Involved parties of the distributing company as reflected in the Registry of Companies website highlighting the shareholders of the distributing company and

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[1] It is recommended that prior clearance is sought from the ITU whenever a dividend waiver is contemplated.

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their respective shareholding; and

- Copy of Financial statements of the distributing company for the relevant year end in which the profits being distributed have been generated.

Most of the required documents to be filed are listed in the Attachment section of the TRCF.

1.3 I already provided the required documents in previous TRCFs, should I provide the same documents with the TRCF to be filed?

Yes, if such documents have already been provided in previous refund claims ***copies*** of such documents should still be provided.

1.4 What documents and information are required as evidence of the foreign tax paid supporting unilateral/treaty relief?

Receipts relating to foreign tax paid or tax statements indicating such payments are required. If the documents in relation to the evidence of foreign tax paid constitute more than five documents, a reconciliation of the documents should be provided. The documents should be properly referenced. If applicable, the exchange rate used, should be provided. Should the documentation be in a foreign language, a translation to English should accompany the documentary evidence.

1.5 What documents should be filed with the tax refund claim form when the shareholder is a foreign corporate entity?

In addition to the documents referred to above, one should also file evidence of the signatory's legal representation in connection with the shareholder entitled to the tax refund. Such evidence could include a copy of the Memorandum and Articles of Association (or equivalent statute) of the foreign corporate shareholder disclosing the signatory's legal representation and substantiating the names of the relevant parties. If the Memorandum and Articles of Association does not disclose the directors of the foreign corporate shareholder, one should provide a copy of an extract from a foreign equivalent of the Registrar of Companies or a certified copy of signatories signing the TRCF (this can also be Certificate of Good Standing).

Such evidence should substantiate the fact that the signatory is a director of the shareholding company filing the TRCF and should also include applicable proof of signature (such as

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passport or equivalent documentation).

1.6 What documents should to be filed if the bank details indicated in the Payment section (i) pertain to the bank account of the distributing company, and the shareholder claiming the tax refund does not have at least 95% shareholding in the distributing company, or (ii) the bank account details relate to a 3rd party bank account?

A document/s showing the proof of signature and legal representation of the person signing the TRCF.

1.7 What documents should to be provided if the relative year/s of assessment (Y/A) involve various sources of income or tax credits have been claimed?

A detailed tax computation should be provided showing the different sources of income and the relative deductions and tax credits applicable to such sources of income.
It is important that such tax computation specifies the allocations for the year and that the opening reserves of that Y/A reconcile with to the closing reserves of the previous Y/A.

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2. The Dividend Warrant

2.1 What information should be specified in a dividend certificate?

A dividend certificate should be drawn up in terms of the requirements of article 59(5) of the ITA and should include the following:

- The date when the dividend was distributed;
- The years of assessments out of which the profits being distributed have been generated;
- The tax accounts out of which the profits are being distributed;
- The gross amount of dividend in respect of each taxed account, the tax paid by the distributing company on the dividend and the net dividend;
- Where double taxation relief or tax credits have been claimed, these should be reflected separately (as part of the tax charge);
- Signature of the director or company secretary of the distributing company.

This is not an exhaustive list and reference to Article 59(5) of the ITA should be made.

2.2 Who should sign a dividend warrant?

A dividend warrant is to be signed by the director or the company secretary of the distributing company holding office at the date of the dividend distribution.

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3. Completing the TRCF

3.1 What date should be inserted in Section 4 of the refund claim?

It is important that the date of distribution stated in Section 4 of the TRCF reconciles with the date of the dividend warrant filed with the TRCF.

3.2 From where should the figures inserted in sections 3 and 4 of the TRCF be obtained?

Figures in section 3 of the TRCF should be reflected in section 4 which in turn should be extracted from page 6 of the tax return of the company distributing the dividend and should also reconcile to the figures stated on the dividend warrants.

3.3 How should a dividend distributed to more than one shareholder be reflected in section 3 of the TRCF?

Distributions made to other shareholder/s should be reflected under the column 'Past Distributions' (including current distributions).

3.4 What details are required when an intermediary bank is involved?

In the payment section of the TRCF, one should provide the Bank Account details, IBAN number and BIC code (as applicable) of the Intermediary Bank involved. Where the 'fields' in the TRCF are not sufficient, further details should be provided by furnishing a letter duly signed by the shareholder in question.

3.5 What happens if the bank account where the tax refund is to be received is closed before the refund application form is processed?

The bank details specified in the TRCF are amended and another original signed TRCF should be filed with the ITU. The ITU should be informed of such change so that the TRCF already submitted is substituted.

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3.6 What contact details should be included in the declaration section?

The contact details in the declaration section should specify the email address of the person who prepared the documents and who should be contacted for further details (such as professional service provider).

3.7 Who should sign a TRCF?

The TRCF should be signed by the director or legal representative of the shareholder company/entity (where the shareholder is not an individual), who holds that office at the time when the TRCF is being completed. In the event that the shareholder is an individual, such shareholder should sign the TCRF in his own name. When a representative with Power of Attorney will be signing on behalf of the shareholder, the Power of Attorney provided with the TRCF has to cover the date when the representative signs the TRCF.

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4. The Refund Process

4.1 How is a shareholder made aware that the TRCF filed was processed?

The ITU sends a notification on the email address provided on the TRCF advising that the claim was processed and was found to be correct and notifies the company to effect the tax payment.

4.2 What amount should be paid after receipt of notification from the ITU?

The amount to be paid has to cover the actual tax due by the distributing company as well as any interest and penalties that might have been incurred. This is due to the fact that payments are primarily allocated against any penalties and interest due with the remaining balance being allocated to the actual tax liability. Tax payments can be made via direct transfer to the bank accounts (depending on the currency) which the ITU holds with the Central Bank of Malta. The transfer should include all relevant details including the name of the distributing company, its tax number and the relevant year of assessment.

When the tax balance is settled, one should notify the ITU by replying to the notification received, quoting the claim reference number.

4.3 If a company has changed its currency, how should the TRCF be completed?

The TRCF needs to be submitted in the company's currency at the time the distributable reserves from which the dividends have been issued were generated.

For example, a company's reporting currency was EUR in Year 1, but changes to USD in Year 2. In Year 2 the company distributed a dividend out of profits derived in Year 1. The TRCF should be completed and submitted in EUR.

4.4 When are shareholders entitled for a refund?

In order for shareholders to be entitled to claim a refund they must be duly registered in term of subsidiary legislation 372.25, Tax Refunds and Registration Procedure Rules and in receipt of a qualifying dividend distributed from the Foreign Income Account and/or the Maltese Taxed Account of the distributing company.

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Furthermore Article 48(5) stipulates that a refund pursuant to Articles 48(4) and 48(4A) of the ITMA shall be made not later than four years from the date when the amounts of tax is eligible for refund.

4.5 Under which circumstances is no refund of tax made?

No refund will be issued unless the distributing company paid all the income tax due on the dividend distribution made and on which a TCRF is submitted from which the dividends are being distributed.

In addition, in the event that the company claiming the refund (the 'Claimant') is registered for Malta VAT purposes, the Claimant should have filed all VAT returns due and paid all VAT due including any fines and penalties in respect of tax periods up to and including the last complete tax period in the year preceding that in which the tax refund should have been payable, before any tax refund is issued.

4.6 What procedure should be followed when the shareholder receives a tax refund, and the financial statements for the relevant are subsequently amended?

To rectify the situation, a letter explaining the situation and specifying the revised figures together with the workings should to be sent to the ITU. The company should confirm to the ITU that the financial statements (with restated figures for the prior year) have been filed with the Registry of Companies.

The shareholder that received the incorrect amount of tax refund based on the incorrect net dividend distributed should submit a revised TRCF with the amended figures.
In addition, the shareholder must also repay any excess refund received, quoting the original claim numbers and advising the ITU, once the transfer is affected. Such transfers should be paid to the ITU by direct transfer to the bank accounts (depending on the currency) which the ITU holds with Central Bank of Malta. The transfer should include all relevant details including the name of the distributing company, its the tax number and the relevant year of assessment.
On receipt of the funds, the ITU will be able to process the revised TRCF and any claim forms subsequently filed. The ITU will then refund any overpaid tax to the company, when this is due, if any.

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4.7 When a company overpays tax in a year and has to pay tax in the following year, can the tax amounts be set-off between the two years?

No, in this case no set-off can be made between the two years. The company should pay the tax due for the second year, and should receive the tax refund of the overpaid tax relating to the prior year when such refund of tax is due in terms of law.

4.8 What are the penalties/interest contemplated in the ITMA for an over claim of tax refund under Article 48(4A) ITMA?

Where a refund of tax by the Commissioner is wholly or partly not due to a person, it shall be the duty of such person to make a repayment thereof to the Commissioner within thirty days from the date of receipt of such refund, and where such repayment is not paid as aforesaid, interest shall be charged according to the provisions in ITMA.

Article 48(10) of the ITMA stipulates a 7% additional tax per month for any tax refund claimed by a shareholder that is not entitled to such tax refund (when it cannot be sufficiently proven that such person did not know and could not reasonably know that such a refund was not available).

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5. Registering for Tax Refund

5.1 Who has the right to receive the tax refund?

The person/company registered as shareholder of the company distributing the dividend at the time of the dividend distribution is the rightful shareholder entitled to receive the tax refund.

5.2 Should a shareholder claiming a tax refund be registered for refund?

Yes, the shareholder has to be registered for refund at the time of making the claim for tax refund in terms of the relevant provisions of subsidiary legislation 372.25 'Tax Refunds and Registration Procedure Rules'. The shareholder should request the company to register him/her for refund purpose in writing.

5.3 Is there a particular date by which the shareholder should register for tax refund?

A shareholder should be registered for tax refund not later than the date on which the company's first provisional tax payment instalment for the relevant year of assessment falls due or the date on which the company makes a payment of tax in respect of that year of assessment, whichever is the earlier. Where the first provisional tax payment falls due in less than 120 days then the shareholder registration has to be completed by the date of the second provisional tax payment.

When the company is in possession of an exemption under Article 47 of the Duty on Documents and Transfers Act, the shareholder should be registered for tax refund purposes by the tax settlement date of the year of assessment in question.

The registration cannot be made later than eighteen months after the end of the accounting period to which the registration applies.

5.4 Do any changes in profit entitlement have to be notified to the Commissioner?

Yes, any increase or reduction in a person's entitlement to a company's profits, and changes to the capital structure/ shareholding of the company, should be notified to the Commissioner by filing a revised shareholder registration form.

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5.5 What should be done when a person wishes to cancel his/her registration for tax refund?

The person who wishes to cancel his registration for tax refund should inform the company in writing and the company shall de-register such shareholder by completing a revised shareholder registration form.

END

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