

SWISS FILE NUMBER

ATTACHMENT TO FORM 98 (CLAIM TO REFUND) FOR AUSTRALIAN RESIDENT TRUST ESTATE (E.G. MANAGED INVESTMENT SCHEMES) ONLY

SUPPLEMENTARY STATEMENT TO CLAIMS TO REFUND OF SWISS ANTICIPATORY TAX WITHHELD ON DIVIDENDS AND INTEREST DERIVED FROM SOURCES WITHIN SWITZERLAND

This supplementary statement should be attached to each claim submitted by the management of an Australian resident trust estate.

It will be used to determine the amount for which the estate is entitled to claim a refund of Swiss anticipatory tax deducted at source from interest or dividends paid by Swiss companies, on behalf of unit holders who are residents of Australia.

This supplementary statement and the relevant claim should be completed in triplicate and sent to the Australian Taxation Office, at which the claimant lodged their last Australian income tax return.

Australian resident trust estate have to submit to the Australian Taxation Office a list of unitholders, so that the proportional participation of Australian residents in the trust can be calculated.

Claimant

Is the claimant an Australian resident trust estate (e.g. a managed investment scheme)? Yes No Name: _____

ATO file number: _____

Management of the trust estate: _____

(Name, registered office and address where trust estate is controlled)

Distribution to the trust estate's unit holders

1. Trust estate's financial year from _____ 20__ to _____ 20__

2. Due date of distribution: _____ 20__

3. Units in circulation at the due date of distribution: _____ Units

4. The percentage of units held by ultimate Australian residents at the due date of distribution (If the Australian Resident Trust estate distributes more than once a year, it has to indicate the percentage at the date of the distribution of the last coupon in the financial year): . . . _____%

Computation of amount to be paid

Total amount to be paid in accordance with Form 98

CHF _____ at _____% (as in item 4 above) CHF _____

Declaration of the Manager of the Australian resident trust estate

We declare that all details shown on this supplementary statement are correct.

Place and date: _____ SIGNATURE: _____

CERTIFICATION BY THE AUSTRALIAN TAX AUTHORITIES

We certify that the above named estate is an Australian resident trust estate according to Australian legislation and that we have verified that the indicated percentage of ultimate unit holders corresponds to the proportional percentage of Australian residents.

Date:

**Official Stamp and Signature of
the Australian Taxation Office:**

Location of office:

Australian-Swiss income tax agreement of 28th February 1980 (DTA-AUS)

Explanation for Australian investment vehicles regarding form 98 and form 98a

Australian resident trust estate (e.g. managed investment schemes): An Australian resident trust estate is a trust whose trustee is a resident of Australia at the end of the financial year of the trust. An Australian resident trust estate is a flow-through entity for tax purposes and therefore is not entitled to treaty benefits. However, in order to avoid that each unit holder of such an Australian resident trust estate has to file a refund claim individually according to his or her proportional percentage, the competent authorities provide the simplified procedure as described in the Memorandum of Understanding. Therefore, an Australian resident trust estate may itself file a refund claim for the Swiss anticipatory tax in relation to its proportional percentage of unit holders themselves being resident in Australia and entitled to relief under the DTA-AUS. As such, the resident trust estate has to complete and file form 98 together with form 98a, duly certified by the ATO.

The decisive date for the calculation of the proportional percentage of Australian residents is the date of dividend distribution by the Australian resident trust estate. If an Australian resident trust estate makes more than one distribution per year, the decisive date for the calculation is the last distribution within its financial year.

For those refund claims already pending before the Swiss Federal Tax Administration at the date of this clarifying explanation, the proportional percentage of Australian resident unit holders needs only to be calculated by the resident trust estate for its last distribution in the financial year ending in the calendar year 2004, even if the refund claims apply also for previous years.

For the following entities the Form 98a is not required.

Corporate unit trust: A corporate unit trust is a certain type of public unit trust, formed as part of a company reorganisation, and is treated for Australian tax purposes as a company subject to tax. The trust itself is taxed at the company rate of tax and distributions to unit holders are assessable on the same basis as dividends. A corporate unit trust is therefore entitled to apply the DTA-AUS like any other resident Australian company and claim relief from Swiss Withholding tax in accordance with the normal rules.

Public trading trust: A public trading trust is a certain type of public unit trust, which normally carries on a trading business or controls or is able to control a trading business, and is treated for Australian tax purposes as a company subject to tax. The trust is taxed at the company rate of tax and distributions to unit holders are assessable on the same basis as dividends. A public trading trust is therefore entitled to apply the DTA-AUS like any other resident Australian company and claim relief from Swiss Withholding tax in accordance with the normal rules.

Memorandum of Understanding

Based on Article 23 of the Agreement between Australia and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income, the competent authorities have reached the following mutual agreement regarding a simplified procedure for the refund of withholding taxes to Australian resident trust estates or Swiss investment funds:

1. Resident trust estates organized in Australia and investment funds organized in Switzerland may claim a refund of the withholding tax according to Articles 10 and 11 of the Agreement in Australia or in Switzerland, respectively, limited to that portion of units beneficially owned by persons who are residents according to Article 4 of the Agreement of the State in which the resident trust estate or the investment fund, respectively, is organized.
2. An Australian resident trust estate means a trust estate as defined in Division 6 of Part III of the *Income Tax Assessment Act 1936 (as amended)* but does not include a corporate unit trust or a public trading trust within the meaning of Divisions 6B and 6C of the Assessment Act respectively. The proportional participation of Australian residents must be indicated by the trustee of the Australian resident trust estate and will be checked and certified by the Australian Taxation Office. The Australian Taxation Office will also check and certify that the claimed percentage corresponds to that part of the distribution of the trust that is subject to Swiss anticipatory tax.
3. An investment fund organized in Switzerland means an investment fund as defined in Article 2 of the Federal Law governing investment funds of March 18, 1994. The proportional participation of Swiss residents must be indicated by the Swiss investment fund. The Federal Tax Administration controls that this percentage corresponds to that part of the distribution of the fund that is subject to anticipatory tax.
4. The simplified procedure shall apply for the first time to dividends and interest paid in 2003.

In addition the simplified procedure will be applied to all the pending claims for refund if the applicants provide a duly signed and certified form 98a for claims for refund of Swiss anticipatory tax in addition to the pending claim for refund.

Signed in Canberra
on September 10, 2003

Signed in Berne
on August 27, 2003

For the competent authorities of Australia:
Paul Duffus

For the competent authorities of Switzerland:
Prof. Dr. R. Waldburger