



## Swiss Withholding Tax and Claim for Refund

The following paragraphs, which are intended as a general guide only are based on current UK tax legislation and HM Revenue & Customs practice, Swiss tax law and US federal income tax law and practice. The following paragraphs are intended for use by individual shareholders, and do not address categories of shareholders who may be subject to special rules (such as banks, dealers or traders in securities, insurance companies, etc), or any shareholders who are not resident or ordinarily resident in the United Kingdom, Switzerland or the United States.

As it pertains to US tax issues, this analysis applies only to US individuals who own (or are deemed to own) stock of the Company and who qualify for benefits under the double tax treaty between Switzerland and the United States. Also, it describes only the US federal income tax consequences of the dividend; it does not discuss any state tax or non US tax issues. Finally, it is assumed for this analysis that the company paying the dividend is not a "passive foreign investment company" for US federal income tax purposes.

The summary below does not purport to constitute a comprehensive analysis of the relevant tax issues and does not consider any shareholder's particular circumstances. It is not a substitute for tax advice. If you are in any doubt about your taxation position, or you are resident other than in the United Kingdom, Switzerland or the United States, you should consult an appropriate professional adviser.

### **1. Shareholders resident in Switzerland for tax purposes**

Withholding Tax may be fully refunded or fully credited against your Swiss income tax liability if:

- You are/were the beneficial owner of ordinary shares at the time of payment of the dividend; and
- You duly report/reported the gross distribution received on your personal tax return.

### **2. Shareholders NOT resident in Switzerland for tax purposes**

If you are not a resident of Switzerland for tax purposes and you do not hold shares in Xstrata plc in connection with the conduct of a trade or business in Switzerland through a permanent establishment or a fixed place of business, any entitlement to a full or partial refund of the Withholding Tax will depend on the existence of a double tax treaty between your country of residence and Switzerland as described below in relation to UK and US resident shareholders. However, such non-resident shareholders should be aware that the rate of recoverable Swiss withholding tax and procedures for claiming treaty refunds (and the time frame required for obtaining a refund) may differ from country to country and may therefore differ from those described below.

Such non-resident shareholders should consult their own tax advisers regarding the procedures for claiming any refund of the Swiss withholding tax under applicable treaty.

#### **(i) UK resident shareholders**

The current double tax treaty between the United Kingdom and Switzerland may entitle you to a reclaim of Withholding Tax on the dividend. UK resident shareholders (other than corporations which have at least 10% of the capital in the Company) that are eligible for double taxation treaty benefits may reclaim 4/7ths of the 35% Withholding Tax, leaving a net Swiss tax cost of 15%.

#### **(ii) US resident shareholders**

The current double tax treaty between the United States and Switzerland may entitle you to a reclaim of Withholding Tax on the dividend. US resident shareholders (other than corporations which have at least 10% of the capital in the Company) that are eligible for double taxation treaty benefits may reclaim 4/7ths of the 35% Withholding Tax, leaving a net Swiss tax cost of 15%.

#### **(iii) Other non-Swiss resident shareholders**

If you are resident outside the United Kingdom, Switzerland or the United States, you may still be able to take advantage of a refund or reduction of Swiss Withholding Tax if your country of residence has a bilateral treaty for the avoidance of double taxation with Switzerland. You should consult your own tax advisers regarding the procedures for claiming any refund of the Swiss Withholding Tax under an applicable treaty.

## **Reclaim procedures**

### **(i) Swiss resident shareholders**

Claims for credit/refunds may be submitted to the respective cantonal tax authorities on the official tax return for income taxes after the expiration of the calendar year in which the taxable payment becomes due, but no later than 31st of December of the third year following the calendar year in which the taxable payment became due. The tax administration may require additional information relevant for the credit or refund. The Withholding Tax will be credited to your income tax paid, or the excess Withholding Tax over your tax liability will be refunded in the following year.

### **(ii) UK resident shareholders**

Three copies of Swiss tax Form 86, duly completed and signed, must be sent to the Inspector of Taxes in the United Kingdom to whom your income tax return is made (or to the Inspector of Taxes for the district in which you reside, if you have not made such a return) no later than 31st of December of the third year following the calendar year in which the dividend became due. Rights to repayment arising in one calendar year must be claimed in a single claim. Two copies of the forms will be sent by the Inspector of Taxes to the Federal Tax Administration of Switzerland, CH 3003 Berne.

The claim must be accompanied by evidence of deduction of Swiss Withholding Tax. In general, a certificate of deduction, signed bank voucher or credit slip will satisfy this requirement. A respective dividend voucher will be provided at the time of payment. However, the Swiss administration reserves the right to request further evidence and information. The claim form may be filed by a representative on behalf of the beneficial owner, provided that the representative is formally authorised by a power of attorney (which must be attached to the form).

Please note: If your shares are held through a custodian, then the reclaim may be automatically generated on your behalf. You should therefore check with your custodian whether the reclaim will be made on your behalf. If not, you can obtain the Form 86 by calling our helpline on +44 (0) 870 707 1417 or via the web page of the Swiss Federal Tax Administration ([www.estv.admin.ch](http://www.estv.admin.ch)).

We have been advised by the Swiss tax authorities that refunds may take some months to obtain, so you are advised to make your application as soon as possible. Refunds will be paid in Swiss francs.

### **(iii) US resident shareholders**

Three copies of the Swiss tax Form 82 I, duly completed and signed before a notary public of the United States, must be sent to the Federal Tax Administration of Switzerland (FTA), Eigerstrasse 65, CH 3003 Berne, Switzerland, no later than 31st of December of the third year following the calendar year in which the dividend became due. Rights to repayment arising in one calendar year must be claimed in a single claim. If, at the time of claiming, you are outside the United States, the declaration may be made before a United States consular office.

The claim must be accompanied by evidence of deduction of Swiss Withholding Tax. In general, a certificate of deduction, signed bank voucher or credit slip will satisfy this requirement. A respective dividend voucher will be provided at the time of payment. However, the Swiss administration reserves the right to request further evidence and information.

The claim form may be filed by a representative on behalf of the beneficial owner, provided that the representative is formally authorised by a power of attorney (which must be attached to the form).

Please note: If your shares are held through a custodian, then the reclaim may be automatically generated on your behalf. You should therefore check with your custodian whether the reclaim will be made on your behalf. If not, you can obtain the Form 82 I by calling our helpline on +44 (0) 870 707 1417 or via the web page of the Swiss Federal Tax Administration ([www.estv.admin.ch](http://www.estv.admin.ch)).

We have been advised by the Swiss tax authorities that refunds may take some months to obtain, so you are advised to make your application as soon as possible. Refunds will be paid in Swiss francs.

### **(iv) Other non-Swiss resident shareholders**

If you are resident outside the United Kingdom, Switzerland or the United States, you should consult your own tax advisers regarding the procedures for claiming any refund of the Swiss Withholding Tax under an applicable treaty.



Xstrata plc

Registered office: 4th Floor Panton House 25/27 Haymarket London SW1Y 4EN  
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