

# **Pension and Endowment Focus:**

## **Ensuring Tax-Exempt Treatment on Global Investments**

**GLOBETAX**

**April 2010**

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- Cross-Border Tax Withholding and Recovery
- Unique Benefits to Pensions and Endowments
- Recovery Process
- Sample Treaty Rates and Statutes of Limitation
- About GlobeTax
- Q&A
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# Realizing entitlements

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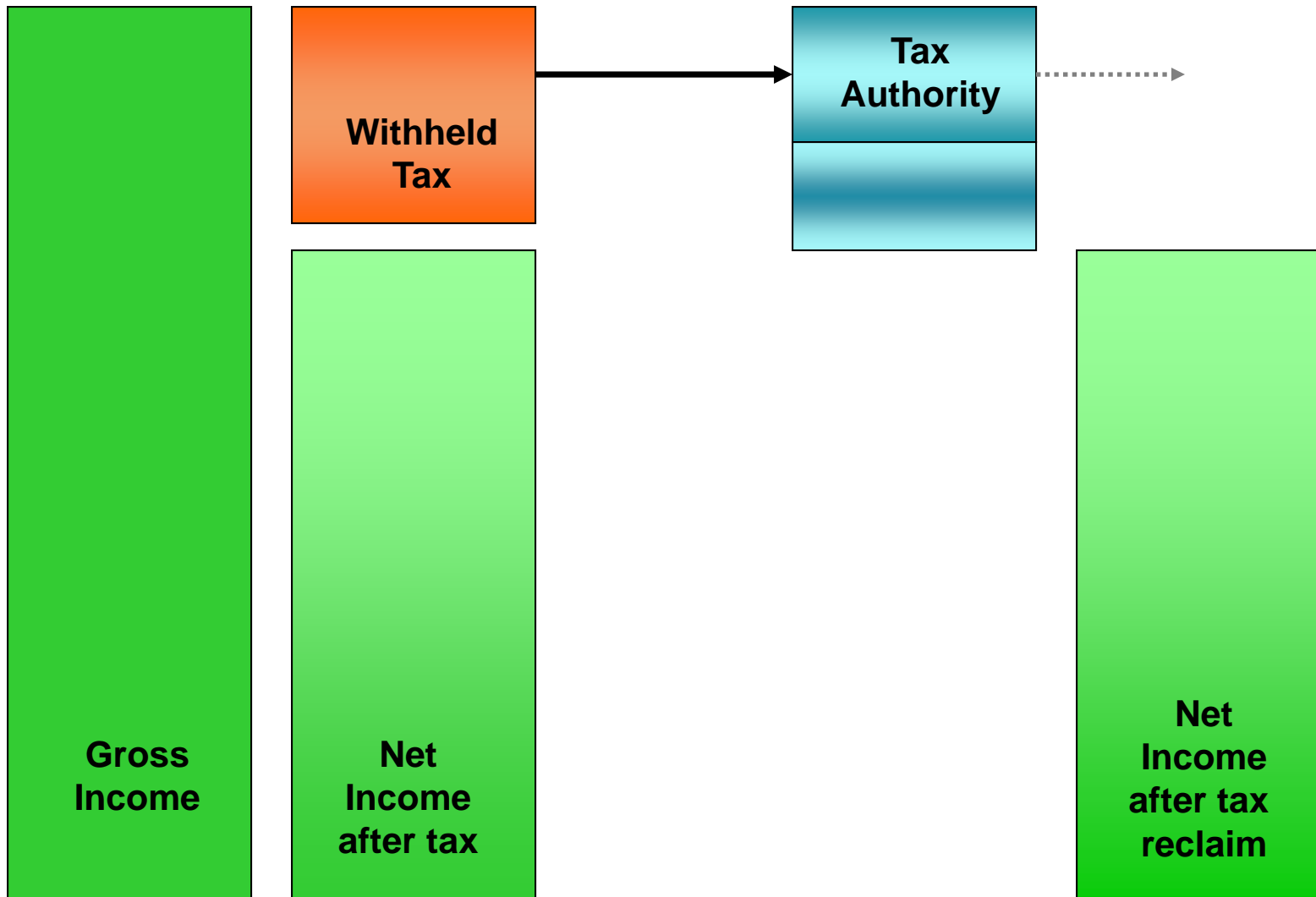
**“But we’re tax exempt...”**

And indeed you are... in your country of residence. However:

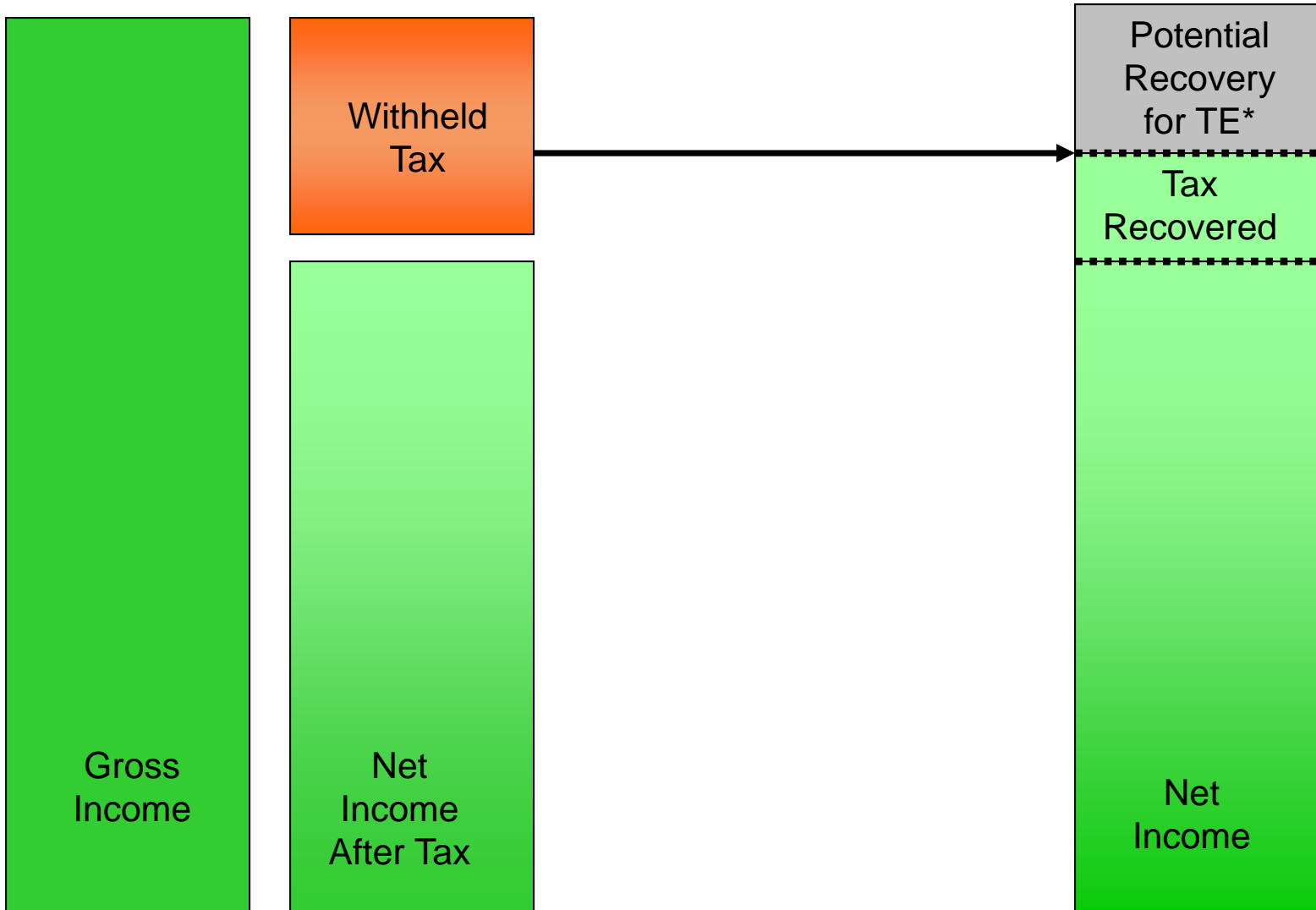
- Exemption from foreign withholding tax is determined treaties which exist between your country of investment and country of residence
- Under the terms of various treaties, pension funds and endowments are often **entitled to reclaim the entire amount withheld on foreign securities income**

**Due to the structure of the custody chain, it is often impossible for foreign tax authorities to determine the identity or residence of you, the ultimate beneficial owner.**

# Withholding tax on cross border investment income



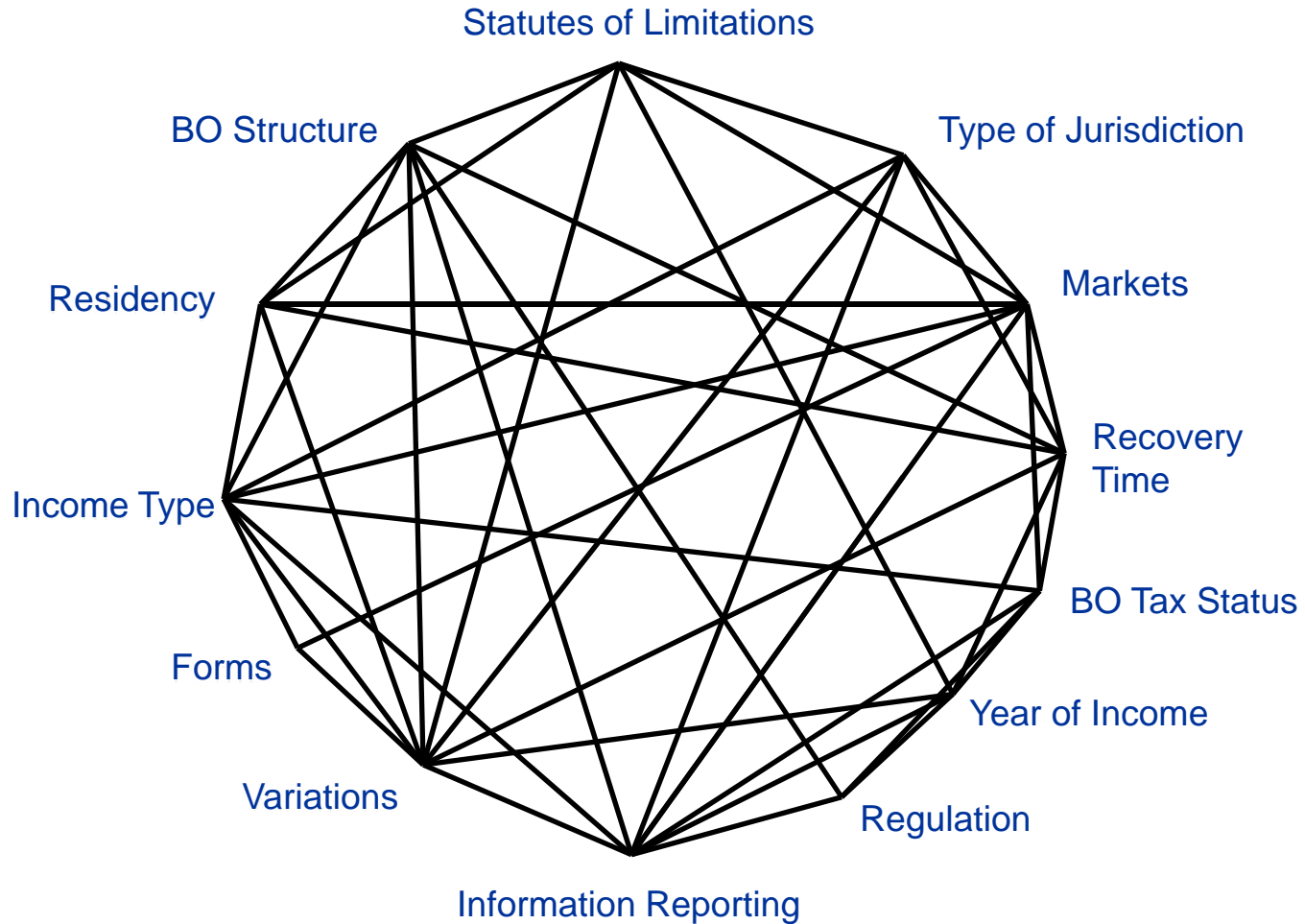
# Post Tax Recovery



\*Tax Exempts (Dependent on Jurisdiction)

# Moving Parts

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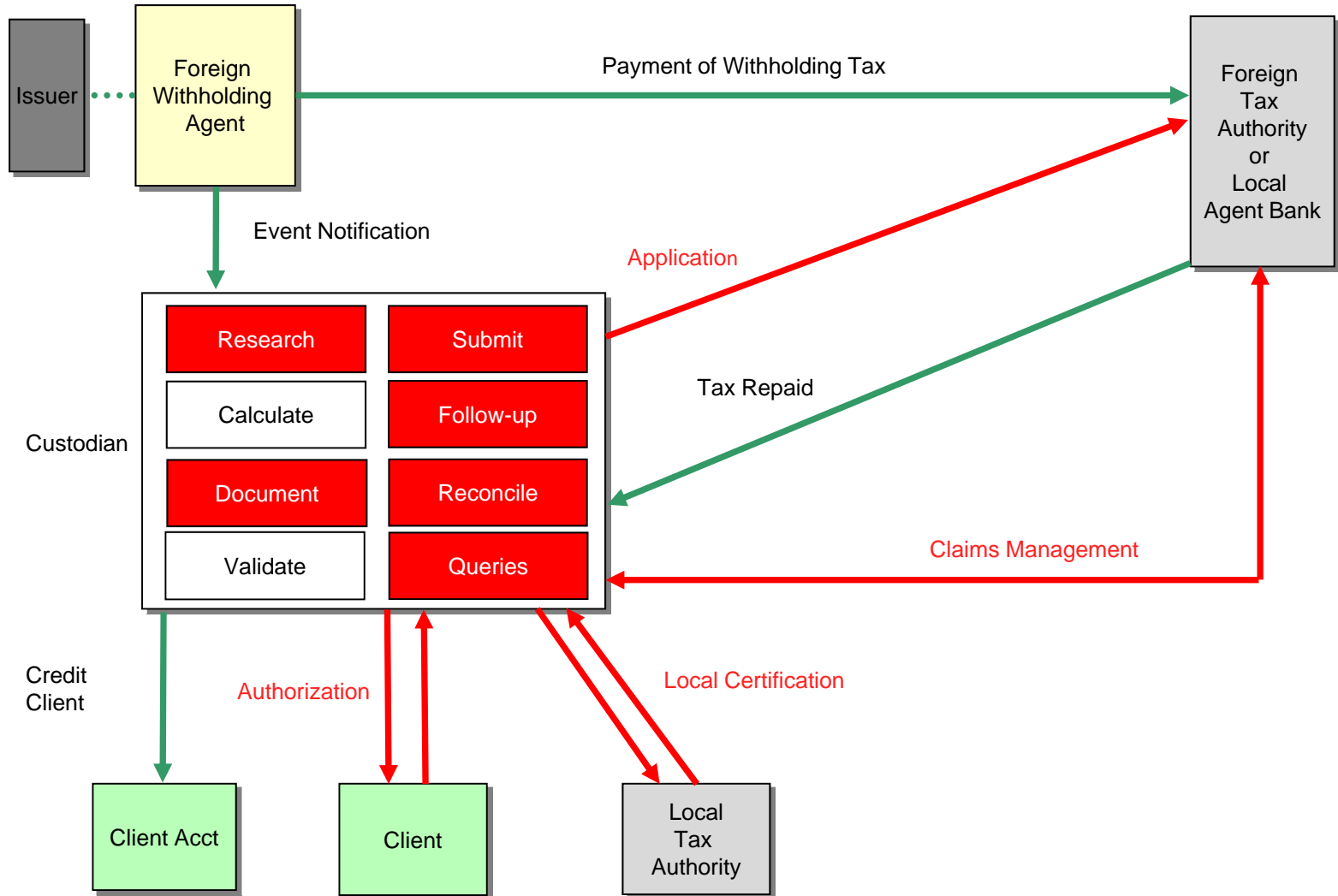
# Unique Benefits

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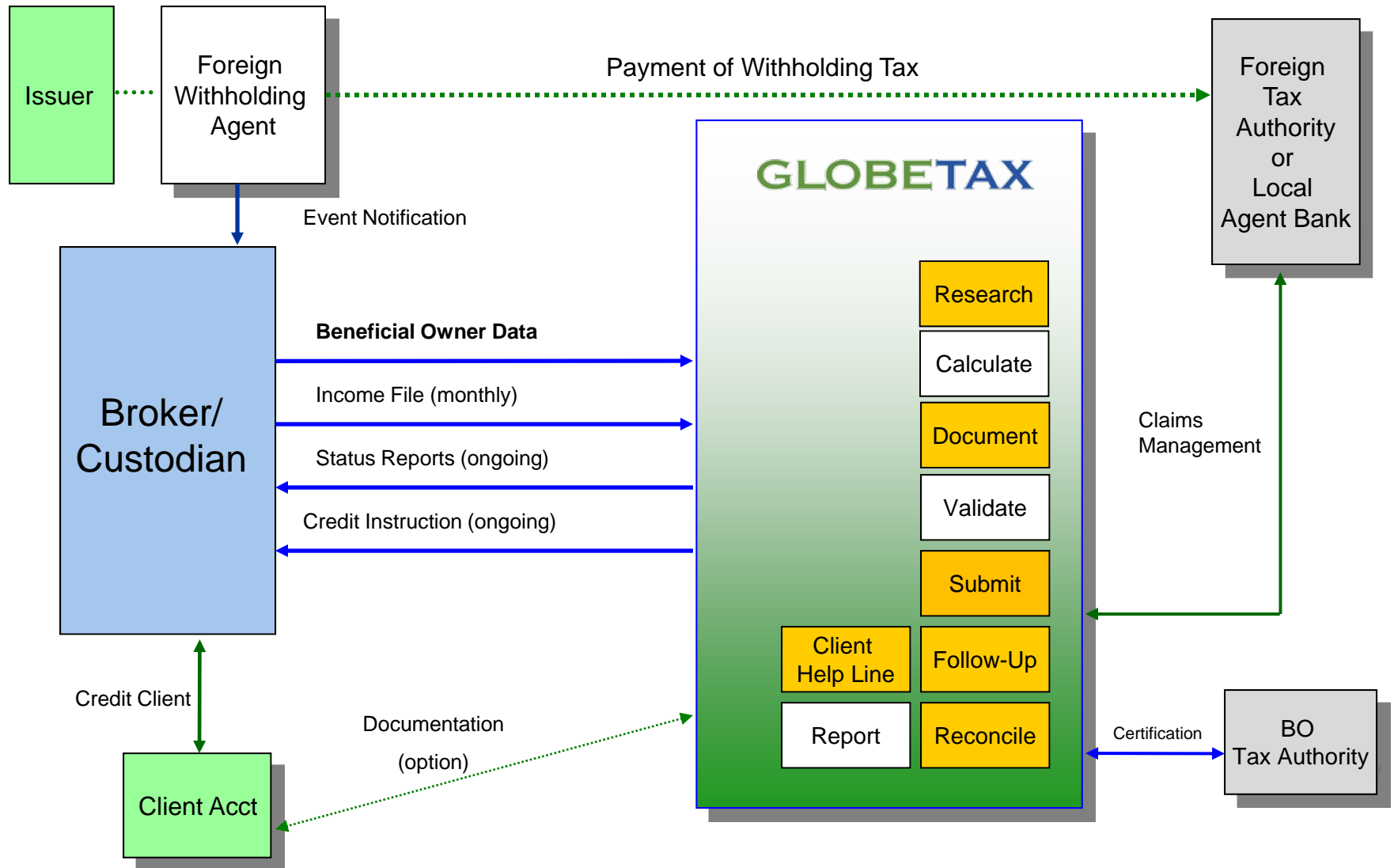
## Special Considerations for Pensions/Endowments

- Pensions and Endowments are entitled to reclaim a high percentage (and often all) of the tax withheld on foreign securities income
  - Larger recovery amounts help tax-exempt entities meet their funding obligations
- Potential for greater recoveries once Statutes of Limitation are taken into account
- Withholding tax recovery helps pension fund fiduciaries fulfill their obligations to plan members

# Long Form Reclaim Process



# Reclaim Process



## Spain

- Spanish legislature has now passed a bill exempting EU pension funds from tax on dividend payments
- Pension fund must be resident in the European Union and equivalent in form to Spanish pension funds
- Bill is effective retroactively to January 1, 2010

## China

- Only “Beneficial Owners” are entitled to treaty benefits on dividends and interest
- May be an individual, company or other group
- Excludes conduit companies that were set up for the purpose of avoiding taxation and have no substantial business activities in their country of residence

# EC / ECJ Updates

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Addressing discriminatory taxation

- European Commission requested the following countries “amend discriminatory taxation”
  - Austria
  - Belgium
  - Denmark
  - Finland
  - Germany
  - Poland
- Failure to “reply satisfactorily” within two months will result in referral to the ECJ

# Available Recoveries

## Sample Rates for U.S. Tax-Exempts

*Effective: 1 January 2010*

Potential Recoveries- Opportunities for U.S. Tax-Exempt Investors					
Country	Gross Dividend	Tax Withheld	Div. Received	Recoverable Taxes	Final Div. Received
Australia	100	30	70	<b>30</b>	100
Belgium	100	25	75	<b>15</b>	85
Canada	100	25	75	<b>25</b>	100
Finland	100	28	72	<b>*13 or 28</b>	85 or 100
France	100	25	75	<b>15</b>	85
Germany	100	26.375	73.625	<b>26.375</b>	100
Netherlands	100	15	85	<b>15</b>	100
South Korea	100	22	78	<b>16.5</b>	83.5
Sweden	100	30	70	<b>*15 or 30</b>	85 or 100
Switzerland	100	35	65	<b>*20 or 35</b>	85 or 100

# Available Recoveries

## Sample Rates for E.U. Tax-Exempts

*Effective: 1 January 2010*

Potential Recoveries- Opportunities for E.U. Tax-Exempt Investors					
Country	Gross Dividend	Tax Withheld	Div. Received	Recoverable Taxes	Final Div. Received
Australia	100	30	70	<b>30</b>	100
Belgium	100	25	75	<b>25</b>	100
Canada	100	25	75	<b>*15 or 25</b>	85 or 100
Finland	100	28	72	<b>28</b>	100
France	100	25	75	<b>15</b>	85
Germany	100	26.375	73.625	<b>*11.375 or 16.375</b>	83.625 or 88.625
Netherlands	100	15	85	<b>15</b>	100
South Korea	100	22	78	<b>16.5</b>	83.5
Sweden	100	30	70	<b>*15 or 30</b>	85 or 100
Switzerland	100	35	65	<b>*20 or 35</b>	85 or 100

# Available Recoveries

## Statutes of Limitations

*Effective: 1 January 2009*

Statutes of Limitations by Market			
Country	Recoverable Taxes	Final Div. Received	Statute of Limitations
Australia	30	100	7 Years
Canada	25	100	2 Years
Finland	13 or 28	85 or 100	5 Years
France	10	85	2-4 Years
Germany	26.375	100	4 Years
Netherlands	15-25*	(75) 85 or 100*	5 Years*
Switzerland	20 or 35	85 or 100	2-3 Years

- *\*EEA pensions and charities can file reclaims on Dutch source income, retroactive to paydates in 2004*

# About GlobeTax

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- Founded: 1992
- Clients in over 40 countries
- Service thousands of pensions and endowments
- Over 500 alternative investment fund clients
- Offices: New York, London, Milan, Sydney
- Filing Capabilities: For ADRs, NY Registry Shares (NYRSs), ordinary shares in all available markets
- Outsource service provider for all DR Depositories: BNY Mellon, Citi, Deutsche Bank and JPMorgan Chase
- Research: 230+ Jurisdictions
- Volumes Processed: 2,000,000+ reclaims per year with a 0% fail rate
- **Fees are Contingent and Remedial**

# Question and Answer

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***Q: Is a foundation always an ultimate beneficial owner?***

A: In most cases, yes. However, in certain instances, depending on the structure of the foundation and the market in which they are submitting a reclaim, there may be underlying beneficial owners that would be recognized by the applicable tax authority.

***Q: If a superannuation fund is exempt, surely we don't need to think about all this- won't we just not get taxed?***

A: Pension funds and superannuation funds are indeed entitled to exemption under many tax treaties. However, due to the structure of the global custody chain, as well as the number of intermediaries between the Issuer and the ultimate beneficial owner, it is often impossible for foreign tax authorities to know your identity or tax status as a beneficial owner. Because of this, engaging in the withholding tax recovery process is often the only way for superannuation funds to receive the full benefit of their tax-exempt status.

# Question and Answer

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***Q: As a fund manager, we maintain separately managed accounts for many of our tax exempt investors. How would this issue apply to them?***

**A:** Tax exempt funds who invest with portfolio managers (particularly hedge fund managers) through a separately managed account structure are at an advantage when trying to recover excess foreign withholding tax. Because their investment holdings and income can be documented at the beneficial owner level, they are able file reclaims without involvement of the portfolio manager. For pension funds and other tax-exempts, an SMA may be one of the only ways to receive exemption on their hedge fund investments. In some cases the custodian bank will fulfill this activity though it is just as likely that no one is managing this process on behalf of the account holder.

***Q: Do pension funds have to provide lists of members in order to file for withholding tax recovery?***

**A:** Generally, pension funds may claim at the fund level and do not have to furnish a list of beneficiaries. However, in some markets more detailed disclosure may be required.

# Question and Answer

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***Q: If a 501(C)3 - tax exempt entity (a type of U.S. foundation) - utilizes subsidiaries organized as single member Delaware limited liability companies (LLCs), which are the recognized legal title holders of the foreign assets, for tax reclaim and treaty purposes, do the tax exempt benefits of the parent as the single member apply to the interest/dividends earned by those investments?***

**A:** Usually, the answer here is yes. We encounter this structure quite often and it appears to be efficient for the owner of the SMA to use the LLC in this form. Most tax authorities will want to pierce the LLC structure, given the view that it is similar in form to a partnership. If there is only one beneficiary of the LLC and they are a tax-exempt, in most cases, they will be able to take advantage of the exemptions granted under both treaty and local statutory law.

# Contact Information

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