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Proposed responses / choices by the AMI-SeCo in the consultation form are marked in green and with a tick mark ✓ in / next to the respective answers. Questions not to be answered by the AMI-SeCo are highlighted in yellow

European Commission (http://ec.europa.eu/index_en.htm) >

Public consultation: New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

Fields marked with * are mandatory.

Introduction

Background of this public consultation:

Despite actions already undertaken both at international and European level[1], tax barriers to cross-border investment such as inefficient withholding tax (WHT) procedures still persist within the EU. This is a key reason as to why the Action Plan for fair and simple taxation supporting the recovery and the New Action Plan for a capital markets union for people and businesses strive to address the problem by proposing to explore both legislative and non-legislative initiatives to lower compliance costs for cross-border investors and to prevent tax abuse.

The problems this initiative aims to tackle are the particularly burdensome WHT refund procedures for cross-border investors in the EU and, at the same time, the risks they present in terms of tax abuse.

When an EU resident makes an investment in securities in another EU Member State, the payments received in return (e.g. dividends, interest) are normally subject to WHT in the country of the investment (source country), at a rate which is often higher than the reduced tax rate that should apply to that income on the basis of an applicable bilateral Double Taxation Convention (DTC) or national rules. The non-resident investor can afterwards submit a refund claim of the excess tax withheld by the source country. However, such refund systems for cross-border securities payments have proved to be demanding, resource-intensive and costly for both investors and tax administrations due to, among other reasons, the lack of digitalization (paper-based processes) and the existence of complicated and different forms across Member States. In addition, there has been an abusive utilization of WHT refund procedures, as recently demonstrated by the 'Cum-Ex' scheme[2], where fraudulent multiple reclaims were requested regarding the same payment of dividend while only one claim should have been made. WHT procedures in general can as well be abused by means of other tax aggressive schemes such as 'Cum-Cum' practices, where a specific set of transactions is agreed between parties in order to fraudulently benefit from a lower or exemption of withholding tax compared to the situation where these transaction would not have taken place.

Relevant definitions for the purposes of this consultation^[3]

Source Member State: means the Member State where the issuer of the securities generating income is resident for tax purposes.

Residence Member State: means the Member State where the beneficial owner of the securities income is resident for tax purposes.

Securities Income: means the dividend, interest or other income that securities may generate and that is subject to withholding tax in the source Member State.

Relief at source system: refers to a mechanism implemented by a tax administration where the reduced WHT rate set in the applicable DTC is granted directly at the moment of the payment (i.e. dividend, interest, etc.) by the WHT agent.

Refund system: reference is made to a mechanism implemented by a tax administration where the full domestic WHT rate is applied at the moment of the payment (i.e. dividend, interest, etc.) and afterwards the taxpayer can claim the refund of the difference between the full domestic and the DTC's reduced WHT rate.

Portfolio investor: Investors in portfolio investments, which entails passive or hands-off ownership of assets as opposed to direct investment, which would involve a controlling stake and/or an active management role.

Beneficial owner: means the investor who receives the securities income for his own benefit.

Withholding agent: means the person who is required, under the laws of the source country, to withhold tax on portfolio investments and remit it to the competent authority (or other body responsible for accepting tax payments).

Financial intermediary: means a central securities depository, credit institution or any other authorised or supervised economic entity in the custody chain between the issuer of the securities and the beneficial owner.

Authorized intermediaries: are those financial intermediaries who have been considered eligible to claim exemptions or reduced rates of withholding tax on a pooled basis on behalf of their customers.

Pooled information: means information provided in a format which groups securities income according to the withholding tax rate applicable without identifying the owners of the securities.

Tax abuse: for the purposes of the public consultation this term comprises tax fraud, tax evasion and tax avoidance.

Responding to the full questionnaire should take about 15-25 minutes. The questionnaire is available in any official language of the EU.

All stakeholders are invited to provide their views. This includes citizens, national tax administrations, intergovernmental, non-governmental and business organizations, business associations, tax practitioners and academics.

Contributions received are intended for publication "as submitted" on the Commission's websites. In the next section, you have the possibility to indicate whether you agree to the publication of your individual responses under your name or anonymously. In addition to answering the questions, you may upload a brief document (e.g. a position paper) at the end of the questionnaire providing additional information or raising specific points not covered by the below questions.

[1] In 2017, the European Commission published the 'Code of Conduct on Withholding Tax'. Find it in the attached link:
https://ec.europa.eu/taxation_customs/system/files/2017-12/code_of_conduct_on_withholding_tax.pdf

[2] More information about "cum-ex scandal" can be found on ESMA's (European Securities and Markets Authority) website:
<https://www.esma.europa.eu/document/preliminary-findings-multiple-withholding-tax-reclaim-schemes>

[3] For relevant definitions please check Recommendation 2009 on WHT relief procedures and TRACE IP

1. Do you think that the current functioning of withholding tax refund procedures in Member States hinders cross-border investment in the EU securities market?

- Strongly agree
- Agree
- Agree to some extent
- Do not agree
-

2. For which of the following payments, do you think that the issue of inefficient WHT procedures is relevant: (Multiple options are available)

Nature of the cross-border payment	Check the box where applicable
Dividends from listed companies	<input checked="" type="checkbox"/>
Dividends from unlisted companies	<input checked="" type="checkbox"/>
Interests related to debt instruments in listed companies	<input checked="" type="checkbox"/>
Interests related to debt instruments in unlisted companies	<input checked="" type="checkbox"/>
Royalties	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

The issue is also relevant for dividends paid in stock.

3. What is in your opinion the nature of the problems with existing WHT refund procedures? (Multiple options are available. Please qualify your answer by clicking in the grid)

Nature of the problem	Low importance	Medium importance	High importance
Lack of knowledge by the investor about the existence of refund procedures and/or mechanism available to claim the refund	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of digitalization in WHT procedures and non user-friendly forms	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lengthy WHT refund procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Costly WHT refund procedures in monetary terms (administrative and opportunity costs included)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Country of investment does not accept tax residence certificates from the residence state	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Conflict on tax residency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Country of investment requires information which the investor is unable to deliver	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Lack of common, harmonized definitions across EU Member States (e.g. definition of 'beneficial owner' or of tax residency, etc.). This is significant issue for investors in European securities that invest across multiple Member States.

4. What are in your view the consequences of the problems encountered with WHT refund procedures? (Multiple options are available. Please qualify your answer by clicking in the grid)

Consequences	Low importance	Medium importance	High importance
Delays in effectively receiving the excessive WHT refund	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
High compliance costs associated with the WHT refund procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Giving up the right of submitting WHT refund claims	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
High opportunity costs due to the delay in receiving the WHT refunds	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Permanent double taxation suffered	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
High risk that the system is abused	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Other significant consequences include: i) preventing the emergence of a genuine Capital Market Union, ii) reduced cross-border investment and diversification, iii) reduced size and resilience of EU capital markets to absorb external shocks .

5. In January 2016, the overall cost of WHT refund procedures was estimated at EUR 8.4 billion per year ^[4] (<https://ec.europa.eu/eusurvey/> https://ec.europa.eu/info/sites/default/files/170227-report-capital-barriers_en.pdf) . Are you aware of any study or estimate of the cost of WHT refund incurred per year on aggregated basis at EU or national level from academic or official source (Please, indicate the source)?

Yes



No

[4] https://ec.europa.eu/info/sites/default/files/170227-report-capital-barriers_en.pdf
(https://ec.europa.eu/info/sites/default/files/170227-report-capital-barriers_en.pdf)

6. Have you ever invested in securities (debt or equity) in an EU country different from your home country?

- Yes, regularly
- Yes, occasionally
- No, never
- Don't know

II. Need for EU action

15. Several EU countries have now introduced (or are planning to introduce) enhanced procedures to make WHT procedures more efficient. In this context, do you think that there is a need for EU action in order to make WHT refund/relief procedures more efficient?

- Strongly support
- Support
- Support to some extent
- Do not support
- Don't know

16. What would be the added value of an action at EU level, compared to actions taken by Member States? (i.e. harmonized system, single set of standardized forms, common procedures, etc.)?

- High added value as there would be an EU wide harmonized framework in place (no more fragmented WHT systems across the EU)
- Medium value
- Low added value as an EU wide harmonized framework is not needed
- No added value
- Don't know

III. Policy options

17. As an investor, which mechanism would you prefer to have in place across the EU to obtain the return on your cross-border investment from securities?

- Preference for a harmonized relief at source system [6] (hereby the reduced WHT rate over dividends, interests, etc. is applied directly by the issuer of the securities/financial institution)
- Preference for a harmonised and more efficient refund procedure system (whereby the issuer of the securities/financial institution applies the domestic WHT rate and then the investor claims the refund of the excessive tax withheld)
- Preference for putting in place a combination of both previous mechanisms
- No preference for one or the other system, provided that current system is not burdensome and that it is efficient
- Other

[6] A relief at source system would mirror TRACE model ('treaty relief and compliance enhancement'). Find more information in the link (<https://www.oecd.org/ctp/exchange-of-tax-information/aboutthetracegroup.htm>):

<https://www.oecd.org/ctp/exchange-of-tax-information/aboutthetracegroup.htm>

18. As a financial intermediary, which mechanism would you prefer to have in place across EU to manage the return on your clients' investments in order to remove barriers to cross-border investment?

- Current system with different national procedures in place
- Harmonized system of relief at source
- Harmonized system of improved refund procedures
- A combination of the above systems (relief at source and refund system)
- Other

19. As tax administration, which mechanism would you prefer to have in place across EU for non-resident investors receive the return on their investment:

- Current system with different national procedures in place
- Harmonized system of relief at source
- Harmonized system of improved refund procedures
- A combination of the above systems (relief at source and refund system)
- Other

III.A. Improving withholding tax refund procedures

20. In case the EU initiative consists of simplifying and streamlining the WHT refund procedures, which measures do you think will be more effective to achieve these goals? (Multiple options are available)

Nature of the solution provided	Check the box where applicable
Standardized and same language forms for refund requests across Member States' tax administrations	<input checked="" type="checkbox"/>
Central repository at EU level to store tax residence certificates issued by Member States' tax administrations	<input checked="" type="checkbox"/>
E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalized verification system	<input checked="" type="checkbox"/>
Obligation of digitalizing the WHT refund procedures by every Member States' tax administrations (E-filing of tax reclaim, online website to monitor refund status, e-document sharing, online communication of the outcome, etc.)	<input checked="" type="checkbox"/>
Single web-portal (one-stop shop) where an investor could log in and make a refund claim irrespective of the source MS, based on standardized forms	<input checked="" type="checkbox"/>
Allowing alternative ways of proving tax residence (i.e. investor self-declaration)	<input type="checkbox"/>
Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim	<input type="checkbox"/>
Issuing digital passport to attest investor's entitlement to tax treaty benefits for a period of time	<input checked="" type="checkbox"/>
Refund claim made on the investor's residence country instead of on the country of the investment	<input type="checkbox"/>

21. Explain below any other mechanism you consider appropriate to streamline the WHT refund processes.

22. Who should make the refund claim to the investment country?

- Only the non-resident investor
- Besides the non-resident investor, the financial intermediary should have the opportunity to make the refund claim on behalf of the non-resident investor in case by case basis
- Besides the non-resident investor, the financial intermediary should have the opportunity to make the refund claim on behalf of the non-resident investor in bulk basis

III.B. Establishing a common EU relief at source system

23. Which payments do you think should be covered under a potential EU relief at source system?

Nature of the cross-border payment	Check the box where applicable
Dividends from listed companies	<input type="radio"/>
Dividends in general	<input type="radio"/>
Dividends and interest	<input checked="" type="checkbox"/>
Dividends, interest, royalties, other passive income payments	<input type="radio"/>
Other	<input checked="" type="checkbox"/>

Dividends paid in stock should also be covered

24. There are countries where the relief at source system is just used for low risk payments (i.e. payments below EUR 10.000 and above 15% withholding tax rate). Do you think that a relief at source system should cover both low and high-risk payments without any threshold in terms of amount/rate or should it be used only for low-risk situations?

- Fully fledged relief at source system (covering both low and high-risk payments)
- Relief at source system covering only low-risk payments

25. What do you consider as low-risk payment in the context of a relief at source system?

- Payment where the withholding tax rate to be applied is above 5%
- Payment where the withholding tax rate to be applied is above 10%
- Payment where the withholding tax rate to be applied is above 15%
- A joint limit of minimum withholding tax rate and maximum amount of payment

26. Which investors do you think should benefit from a potential relief at source system: cross-border investors from EU Member States or investors from non-EU Member States as well?

- Only cross-border investors from EU Member States
- Investors from both EU and non-EU Member States

27. Who should be the entities obliged to report the relevant information on the correct WHT rate to be levied on the dividend payment (or other passive income payments) to the withholding agent: only EU financial intermediaries or both EU and non-EU financial intermediaries?

- Only EU financial intermediaries
- Both EU and non-EU financial intermediaries^[7]

[7] as far as there is automatic exchange of information and mutual assistance in place between the relevant non-EU country and the EU source country

28. What would be the preferred or best way to establish authorized intermediaries in a relief at source system?

- By way of a request by the financial intermediary and explicit approval by the tax administration
- By way of registering in a public EU register of authorized intermediaries without explicit prior approval by the tax authorities

III.C. Enhancing existing administrative cooperation framework

29. Do you think that it would be appropriate to broaden the administrative cooperation framework in the EU (based on the Directive on administrative cooperation – DAC) to include the automatic exchange of additional financial information^[8] related to the payments received

- Strongly agree
- Agree
- Agree to some extent
- Do not agree
- Don't know

[8] DAC2 already comprises as reporting items the amount of dividend received in the holder account. Conversely, it does not comprise any additional relevant data for the correct checking of refund/relief procedures (e.g. WHT agent, intermediaries in the financial chain, gross dividend paid, date of payment, etc.)

31. Who should be the entities bound to report the relevant information on the payment made to the investor: only EU financial intermediaries or both EU and non-EU financial intermediaries?

- Only EU financial intermediaries
- Both EU and non-EU financial intermediaries

32. In which country should the relevant information be reported by the financial intermediary closest to the investor (multiple options are available)?

- The residence country of the investor
- The residence country of the financial intermediary
- The source country of the investment

33. According to works at international (<https://www.oecd.org/ctp/exchange-of-tax-information/treatyreliefandcomplianceenhancementtrace.htm>) and EU (https://ec.europa.eu/info/publications/reports-fiscal-compliance-experts-group-fisco_en) level in this field, it is relevant to report the following information in order to achieve the goal of ensuring tax treaty benefits entitlement: the identification information and treaty residence status of the beneficial owners of the income paid and the nature and amount of income earned by those investors. Do you agree with this approach?

Yes

No

Don't know

34. What do you suggest to ensure that exchanges of information between relevant authorities is as efficient as possible?

To include it as a new reporting item of the already standardized process of automatic information exchange established at international and EU level (Common reporting standard – CRS, DAC2)

As part of another separate mechanism

IV. Combating Tax Abuse

Combating tax abuse is one of the main goals of this initiative. Bearing this in mind we would like to hear your views on which system would be best suited to fight against any kind of tax abuse. The question of who should be held liable in case of flaws or incorrect information in any of the systems eventually implemented plays a crucial part to minimize or avoid failures in compliance. Therefore, we would like to hear your opinion on who should be accountable in case of any underreporting during WHT procedures in order to avoid tax abuse and loss of tax revenue.

35. Which of the above mentioned options would be most effective in tackling tax abuse regarding withholding taxes:

An improved refund procedure system (section III.A)

An EU-wide relief at source system (section III.B)

Enhanced automatic exchange of information (section III.C)

A combination of the above options

36. What other options do you deem helpful to prevent or combat tax abuse. Please explain:

The elimination / minimal use (only when relief at source cannot work) of refund frameworks by relying on a robust and well-enforced framework of relief-at-source as well as treating market claims as indemnities (not as taxable dividend) could help in preventing tax abuse cases similar to the cum/ex scheme that was used in several European countries. Please see also the attached cover letter by the AMI-SeCo and included references to previous industry work on such proposals.

37. Under the option of an improved refund system, in case the financial intermediary makes the refund claim on behalf of the non-resident investor, who should be liable in case of any underreporting to the investment country?

- Financial intermediary making the refund claim on behalf of its client
- Non-resident investor (final investor)
- Other

Depending on the circumstances, it is possible that one or both of the final intermediary (i.e. the intermediary closest to the final investor) and the final investor should be liable.

38. Under the option of an EU-wide relief at source system, do you think that authorized intermediaries ^[9] should be liable for any underreporting of WHT or should authorised intermediaries only be liable when they did not carry out all reasonable actions to properly verify the investor's entitlement to the tax treaty benefit?

[9] The authorized intermediary closest to the investor is considered the best placed to check non-resident investor's identification (via KYC and AML due diligence), hence, he would normally be deemed liable under a relief at source system

- Liable for any underreporting detected
- Liable for underreporting when acting without due diligence

Final remark

Should you wish to provide additional information (for example a position paper) or raise specific points not covered by the questionnaire, you can upload your additional document here.

[AMI-SeCo cover letter, see separate doc, to be attached]