

Response to EC consultation on its roadmap on withholding tax

Our reference:	ECO-TAX-21-085	Date:	26 October 2021
Referring to:	Withholding taxes – new EU system to avoid double taxation		
Related documents:			
Contact person:	Michele Tadi, Policy Advisor, Life Insurance & Taxation	E-mail:	tadi@insuranceeurope.eu
Pages:	3	Transparency Register ID no.:	33213703459-54

Insurance Europe welcomes the possibility to comment on the European Commission's roadmap for the introduction of a common EU-wide system for withholding tax on dividend or interest payments.

Provisions around withholding tax procedures for cross-border portfolio investors or shareholders in the EU, which are different between member states, often pose a challenge to insurers in regard to cross-border investment, due to their complexity and the related costs. It is therefore important for the European Commission to improve their efficiency and effectiveness, without creating an excessive administrative burden in order to monitor and administer the withholding taxes paid.

The following measures should be considered for a future reform of the EU withholding tax system:

■ Acceleration, simplification and digitalisation of the relief procedure

- It should be possible to submit applications for tax relief (eg for a reduced rate under a double tax convention (DTC)) digitally to a central point of contact in the member state of the investor or shareholder respectively. As already happens with the VAT One Stop Shop, the central point of contact would accept applications in the language of the claimant and would then forward the applications to the tax authorities of the source state (including a residence certificate). The regulations on the VAT refund procedure could therefore serve as a blueprint.
- Procedures could be significantly accelerated by imposing maximum processing periods on the authorities of source states. In addition, interest should be charged on a refund amount if the application is not processed within the prescribed deadline, similar to the VAT refund procedure.
- Procedures and forms, such as residence certificates, should be digitalised and standardised within the EU. Residence certificates should be unlimited or at least valid for the long-term, together with the obligation by the investor/shareholder to notify authorities about relevant changes in facts.

■ **Expansion of relief at source**

- A relief at source is preferable over the refund of withholding tax. A system of refund procedure is bound to be more cumbersome than a relief at source.
- The introduction of the TRACE procedure for portfolio investments throughout the EU would be helpful. Through the procedure, EU cross-border portfolio investors should be in the same position as if they had invested directly in securities. This could be achieved by (i) allowing the benefit of the local withholding rate or the rate applicable under a double tax avoidance agreement should it be lower and (ii) introducing a right to a tax credit in the domestic rules of the member state of the investor, where needed to avoid double taxation.

■ **Strengthening the EU principle of free movement of capital.**

- There should be a common EU wide withholding tax reduction for certain investment funds. This would improve the level-playing field for cross-border investments. Source states sometimes tend to be reluctant to grant non-resident taxpayers the same benefits that resident taxpayers enjoy under their relevant national law. Consequently, foreign taxpayers cannot obtain the benefits granted by national law for a reduced withholding tax in the source state. Such discriminatory practices are against the principle of free movement of capital. Furthermore, it results in economic double-taxation as the residence state would not accept a tax credit against the tax charge of the investor on the basis that withholding tax relief is available in the source state.
- By initiating infringement proceedings, the European Commission could ensure that member states design their withholding tax schemes in line with EU-law and therefore strengthen the EU-principle of free movement of capital.

■ **Withholding tax relief in relation to third countries.**

- Withholding tax relief measures should also be implemented for third country cases. This could be coordinated by the OECD or the Inclusive Framework.

■ **Clarifications in the Parent-Subsidiary Directive and the Interest and Licensing Directive**

- The reform of the EU-withholding tax system as envisaged by the European Commission appears to be limited in scope to securities. However, the assertion of withholding tax relief claims for intra-group-payments is often as lengthy and cumbersome as is the case for portfolio investments. The scope of the proposed reform should therefore be widened in order to include intra-group payments: eg from controlling participations.
- To that end, the Parent-Subsidiary Directive should be amended to clarify that the interposition of an intermediary company that is treated as tax transparent in the member state of the parent company (eg a partnership) does not exclude the parent company from the benefits granted by the Directive. Since this appears to be a contentious issue amongst tax authorities and taxpayers, legal certainty is needed.
- Likewise, interest payments and license fees should fall under the Interest and Royalties Directive, regardless of an interposed tax transparent entity.



Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.