

Response to EC consultation on withholding taxes

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The secretariat prepared a **response** of the questionnaire **below based on the feedback submitted** to the European Commission in the context of the public consultation on the roadmap on a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (see [ECO-TAX-21-085](#)).

I. Issue at stake

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
- Don't know

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	X
Dividends from unlisted companies	X
Interests related to debt instruments in listed companies	X
Interests related to debt instruments in unlisted companies	
Royalties	X
Other	

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			
Lack of digitalization in WHT procedures and non user- friendly forms			X
Lengthy WHT refund procedures			X
Costly WHT refund procedures in monetary terms (administrative and opportunity costs included)		X	
Country of investment does not accept tax residence certificates from the residence state			X
Conflict on tax residency			X
Country of investment requires information which the investor is unable to deliver			X
Other			X

Please explain:

Legal uncertainty regarding the application of national withholding tax privileges to non-resident entities on the grounds of the non-discrimination principle established by ECJ jurisprudence on the free movement of capital. In addition, there are diverse and complex procedures in the process of reducing the tax liability at the source (tax relief) and after the payment of rights when filing a claim for tax refund (tax reclaim).

In cases where a group has branches in various Member States, the WHT levied on some payments cannot be credited against the CIT of a given branch for 100 % of its value, as the underlying asset is held by the group. In this context, cross-border investments usually result in double taxation.

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			X
High compliance costs associated with the WHT refund procedures			X
Giving up the right of submitting WHT refund claims			X
High opportunity costs due to the delay in receiving the WHT refunds		X	
Permanent double taxation suffered			X
High risk that the system is abused	X		
Other			

5. In January 2016, the overall cost of WHT refund procedures was estimated at EUR 8.4 billion per year¹. 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

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

7. If you answered to question 6 in the negative, what is the reason?

- I do not want to go through WHT procedures due to the inefficiencies of the system
 Any other tax-related reasons
 Any non tax-related reasons

N/A

8. If you answered to question 6 in the affirmative, if the country of investment levied a withholding tax above the rate of the applicable Double Taxation Convention, did you encounter problems on the refund of this excess withholding tax?

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

9. With which countries did you encounter such problems?

Austria		Estonia		Italy		Portugal	
Belgium		Finland		Latvia		Romania	
Bulgaria		France		Lithuania		Slovakia	
Croatia		Germany		Luxemburg		Slovenia	
Republic of Cyprus		Greece		Malta		Spain	
Czech Republic		Hungary		Netherland		Sweden	
Denmark		Ireland		Poland		None of the above	

10. With which countries did you not encounter such problems?

Austria		Estonia		Italy		Portugal	
Belgium		Finland		Latvia		Romania	
Bulgaria		France		Lithuania		Slovakia	
Croatia		Germany		Luxemburg		Slovenia	

¹ https://ec.europa.eu/info/sites/default/files/170227-report-capital-barriers_en.pdf

Republic of Cyprus		Greece		Malta		Spain	
Czech Republic		Hungary		Netherland		Sweden	
Denmark		Ireland		Poland			

11. *Did you manage to receive the excessive tax withheld back?*

- Yes, in all cases
- In some cases
- In few cases
- No, never
- Don't know**

12. *How long did you have to wait for the refund after submitting the application?*

- Period of time for the refund: between 0 and 6 months
- Period of time for the refund: between 6 months and 1 year
- Period of time for the refund: between 1 and 2 years
- Period of time for the refund: longer than 2 years
- Don't know**

13. *In monetary terms, how much did the procedure for getting the refund back cost² you?*

- Small percentage of the amount of the refund (below 5%)
- Medium percentage of the amount of the refund (5-30%)
- High percentage of the amount owed as refund (30-50%)
- Very high percentage of the amount of the refund (above 50%)
- Don't know**

14. *In terms of time spent, how long did it take you, on average, to collect all the documentation required to submit one refund claim?*

- Less than a week
- Between 1-3 weeks
- More than 3 weeks**
- Don't know

In case of more than a week, can you indicate what the issue is?

In most cases, insurers share the burden of the WHT with financial intermediaries and the collection of specific data relating to WHT takes time.

² Amount of administrative and compliance costs related to the reclaim procedure (custodian fee over customer, advisor costs, paperwork, etc.). Opportunity costs (cash flow disadvantage) for not having the money back are not covered by this question.

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 system³ (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

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

N/A

³ 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>

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

N/A

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	X
Central repository at EU level to store tax residence certificates issued by Member States' tax administrations	X
E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalized verification system	X
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.)	X
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	X
Allowing alternative ways of proving tax residence (i.e. investor self-declaration)	
Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim	X
Issuing digital passport to attest investor's entitlement to tax treaty benefits for a period of time	X
Refund claim made on the investor's residence country instead of on the country of the investment	X

21. *Explain below any other mechanism you consider appropriate to streamline the WHT refund processes. Consideration may be given to rescinding the regulatory requirement to appoint a tax representative in each member state. If MS tax administrations cannot agree on a single, standardised form, it should be envisaged to have them upload their national forms on the single web-portal mentioned above.*

N/A

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	
Dividends in general	
Dividends and interest	
Dividends, interest, royalties, other passive income payments	X
Other	

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

N/A

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 intermediaries⁴**

⁴ as far as there is automatic exchange of information and mutual assistance in place between the relevant non-EU country and

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 information⁵ related to the payments received*

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

N/A

30. *In case of a positive reply to the previous question, do you consider that the EU framework for administrative cooperation in the field of direct taxation should be broadened:*

- Independently from the implementation of the measures described in section III.A and section III.B
- In combination with the above-mentioned measures

N/A

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 option are available)?*

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

the EU source country

⁵ 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.)

33. *According to works at international and EU 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

N/A

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:*

N/A

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

N/A

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?*

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

N/A

Final remark

Insurance Europe welcomes the initiative by the European Commission to introduce a common, more efficient, EU-wide system for withholding tax relief. The widely divergent rules lead to lengthy, complex and costly withholding tax relief procedures. In some cases, investors end up waiving their right to claim a refund or relief from the withholding tax levied.

In addition to the answers provided in the consultation document, there are further comments that the insurance industry would like to make.

1. Harmonisation of substance requirements

To claim withholding tax relief, the recipient of a payment may have to demonstrate adequate economic substance and/or activity to be eligible for the tax benefit granted under a DTC or EU law (eg, general anti-abuse rule in Art. 6 ATAD). In order to facilitate the application of substance and activity requirements, companies could be enabled to upload a "company profile" to a central server. The server could be made accessible to other member states to verify whether a recipient of a cross-border payment fulfils substance and/or activity requirements applicable in the case. This would save companies compiling and submitting information on employees, the existence of office space, etc. each time a withholding tax relief claim is filed for which a substance/activity test is required. It would also be desirable to have a uniform catalogue of requirements coordinated between the member states for proof of substance.

Furthermore, the substance test as envisaged by the recent Commission's proposal for a directive against the misuse of shell entities for tax purposes (COM(2021) 565 final) could, in the industry's view, be an effective instrument for simplifying the withholding tax relief process in the internal market. To that end, the proposal would need to be amended so that an entity that was found to have sufficient substance by its state of residence is fully recognised for (withholding) tax purposes by all other EU member states. Currently, the proposal foresees only an obligation by EU member states to disallow tax advantages where the state of residence establishes that an entity lacks sufficient substance.

2. Clarifications in the Parent-Subsidiary Directive and the Interest and Royalties Directive

The envisaged reform of the EU withholding tax system 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 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 (eg, a partnership) does not exclude the parent company from the benefits granted by the Directive. Since this appears to be a contentious issue among tax authorities and taxpayers, legal certainty is needed. Likewise, interest payments and licence fees should fall under the Interest and Royalties Directive, regardless of an interposed tax transparent entity.

3. Refund claims based on ECJ case law (right to non-discrimination under the principle of free movement of capital)

Often foreign investors 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.

Taxpayers and tax authorities need legal certainty as to whether withholding tax benefits that a source state limits to its own resident taxpayers are to be extended to foreign taxpayers under the right to non-discrimination according to ECJ case law. One possible solution would be to enter into bilateral agreements between source and residence states on certain types of foreign entities (eg, certain types of investment funds) which are eligible for withholding tax benefits granted under the national law of the source state. Another solution could be to introduce a uniform EU legal basis to regulate withholding tax for certain investment funds. Finally, 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.