

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 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

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority

- Trade union
- Other

* First name

Luxembourg Capital Markets Association

* Surname

LuxCMA

* Email (this won't be published)

info@luxcma.lu

* Organisation name

255 character(s) maximum

LuxCMA - Luxembourg Capital Markets Association

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|-------------------------------------|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |

- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
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- Greenland
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- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria

- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
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- Netherlands
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- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
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- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu

- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
Ascension and
Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

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The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Once the consultation period is over, the European Commission will prepare a report summarizing the responses. Would you like to be informed when the report is published?

- Yes
 No

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	<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 type="checkbox"/>

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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>
Country of investment does not accept tax residence certificates from the residence state	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain:

The discrepancy between the information requested from the source country and the timing at which such information is available in the investor's country of residence generates potential refund losses at the level of the investors (statute of limitations expired). The lack of digitalisation impacts the timing and quality of the information provided.

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 checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>
High risk that the system is abused	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. In January 2016, the overall cost of WHT refund procedures was estimated at EUR 8.4 billion per year [4] . 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

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 extend
- 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

Please, provide a further explanation of the reply given

Discrepancies in WHT systems for investors constitute an obstacle to the free flow of capital and negatively impact the diversity of investment routes in the EU as well as the EU single market.
A well-designed WHT system that is equipped with necessary resources would be a great asset for capital markets and ultimately beneficial to both the corporate sector as well as individual investors.

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>

If so, please specify how the two options should be combined?

Relief at source would be the preferred system, but it may not be possible to apply it in all cases, in which case there should be the possibility for a refund.
While TRACE could serve as a basis, we believe that the EU should review practical implementation of TRACE and aim to design a system that is clear and practical and where administrative burden and costs do not outweigh the benefits.

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

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

There would be a benefit in harmonized and digitalized documentation requirements supporting the request, e.g. tax vouchers, daily positions.

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 checked="" type="radio"/>
Dividends in general	<input checked="" type="radio"/>
Dividends and interest	<input checked="" type="radio"/>
Dividends, interest, royalties, other passive income payments	<input type="radio"/>
Other	<input checked="" type="radio"/>

Please explain:

As this initiative aims at simplifying and rationalizing the WHT system, it follows that its scope should be as comprehensive as possible, when it comes to the payments to which it should apply.

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.)

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

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

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

Please explain further:

Combining reporting on basis of existing standardised information exchange processes (CRS, DAC2) with a common repository in which information is accessible to concerned tax authorities could be contemplated.

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

If yes, please specify which combination would be most adequate:

By combining information exchange and automatisisation, there is less pressure on investors as to their responsibility of providing documentation and responding to tax authorities' requests.

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

Please explain:

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

Please explain:

The intermediary's liability should depend on whether it acts in good faith and has taken reasonable measures to meet its obligations. Depending on the intermediary's level of control over the payment and the data it has received and in function of whether it has appropriate control measures in place, the investor may remain liable for underreporting.

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.

Please upload your file(s)

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

**505ec6cd-eacc-47cb-b853-7f8ea7498f02/20220624_-
_LuxCMA_Statement_LuxCMA_WHT_consultation_feedback.pdf**

Contact

Lourdes.BUSTOS1@ec.europa.eu



LuxCMA feedback on the new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

Luxembourg, 24 June 2022

LuxCMA feedback to the European Commission – New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

The Luxembourg Capital Markets Association (**LuxCMA**) welcomes the opportunity to comment on the European Commission’s roadmap consultation “Withholding taxes – new EU system to avoid double taxation” and is pleased to provide hereby our comments.

LuxCMA represents the common interests of stakeholders of the primary capital markets industry of Luxembourg. Constituted as a not-for-profit association, its mission is to promote Luxembourg’s capital markets, provide networking and collaboration opportunities and foster innovation in the industry. LuxCMA’s goal is to become the single point of contact for authorities, associations, market practitioners and other actors in Luxembourg.

Our members comprise pan-EU and global banks as well as law firms, accounting firms, investors, and other financial market participants.

In our practical experience, the process of claiming a refund of withholding tax is often burdensome, lengthy, and expensive, and its outcome is sometimes uncertain, although such refund constitutes a legitimate right for the beneficial owner(s) of the income. These difficulties are particularly apparent for (but are not limited to) investors in public companies and may impact the diversity of investment routes in the EU. They risk constituting an inhibition to cross-border investments and the efficiency of the EU single market. At the same time past abusive practices have highlighted weaknesses in existing systems that need to be addressed in a manner that closes potential loopholes without creating undue obstacles to valid refund claims.

LuxCMA therefore welcomes the initiative of the Commission to address the issue. We support establishing a harmonized EU withholding tax relief-at-source / refund system. If such system is well-designed and equipped with necessary resources, it would be a great asset for capital markets and ultimately beneficial to both the corporate sector as well as individual investors.



LuxCMA feedback on the new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

Our observations, remarks and recommendations can be summarized as follows:

- Information requested by source countries' tax administrations may only become available in the investor jurisdiction significantly after the payment that triggers withholding tax. Lengthy refund procedures then create a significant cash flow disadvantage, which, together with the costs for filing refund claims and relating advice, may discourage investors from requesting refunds. In some cases, information only becomes available after the statute of limitation for withholding tax refunds has expired.
- Lack of digitalization makes existing withholding tax refund requests burdensome for investors and likely also inefficient for the tax authorities, resulting in refund procedures that can easily take two years. There is a real need for harmonized refund procedures, including harmonization of documentation requirements among Member States, reasonable statutes of limitation and clearly defined deadlines for tax authorities to complete the refund.
- Timely exchange of relevant information would, in our view, improve the effectiveness of relief-at-source systems and refund systems alike. Investors and markets would welcome extending existing exchange of information systems, which currently seem more focused on providing information to tax authorities to avoid abuse and address perceived tax avoidance, to also include information available to other tax authorities to apply correct withholding taxes which would ultimately result in a benefit for investors. Information exchange should also be used for the benefit of taxpayers. In doing this it will however be important to ensure that EU financial intermediaries will not suffer additional burdens compared to non-EU financial intermediaries.
- Where possible withholding tax should already be relieved at source. However, we realize that this will not be possible in all cases, which is why we support a combination of both models. However, refunds should be limited to situations that cannot be addressed at source, as any refund will always result in opportunity costs.



LuxCMA feedback on the new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

- The rules should also consider how to deal with transparent entities and how to apply the withholding tax relief in conjunction with other applicable rules (e.g. hybrid mismatch rule), with a view to ensuring that withholding tax relief is not disallowed merely as a result of the fact that countries involved disagree on whether to treat entities involved as transparent or not.
- The scope of a common relief-at-source system should be as comprehensive as possible and cover all possible direct taxes on cross-border payments, in order to make cross-border investments as attractive as domestic investments.
- Any system will have to be mindful of the costs and additional burdens created for financial intermediaries and public companies. To avoid a situation where financial intermediaries established in the EU suffer additional compliance costs compared to non-EU competitors, we believe consideration must be given to extending any additional obligations to non-EU financial intermediaries, possibly drawing inspiration from the US FATCA requirements.

All those who would like to become a LuxCMA member should visit www.luxcma.com or contact info@luxcma.lu.

ABOUT LUXCMA

The Luxembourg Capital Markets Association (LuxCMA) represents the common interest of all stakeholders of the primary capital markets industry of Luxembourg. Its mission is to promote Luxembourg's capital markets, provide networking and collaboration opportunities and foster innovation in the industry. LuxCMA's is to become the single point of contact for authorities, associations, market practitioners and other actors.

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