

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
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- Maltese
- Polish
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* 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

Anthony Paul

* Surname

Gisby

* Email (this won't be published)

paul@accountancyeurope.eu

* Organisation name

255 character(s) maximum

Accountancy Europe

* 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.

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* Country of origin

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

- | | | | |
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| <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
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- Falkland Islands
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- French Guiana
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- Gabon
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- Ghana
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- Malaysia
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- Marshall Islands
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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
- Kazakhstan
- Kenya
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
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- Pakistan
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- Palestine
- Panama
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- Philippines
- Pitcairn Islands
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- Portugal
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- Timor-Leste
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- United Kingdom
- United States
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- Uruguay
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- 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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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 type="checkbox"/>
Royalties	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>

Please explain:

We believe that inefficient WHT procedures are relevant for dividends and interest payments made by all companies. Whilst unlisted companies tend to have a much smaller pool of investors that are mostly drawn from the same jurisdiction as the company making the payment, there are smaller entities with cross-border investors who would be affected by inefficiencies in cross-border WHT procedures.

Indeed, it is arguable that where smaller entities do have, or are looking for, cross-border investors the effects of the inefficiencies would be amplified. For example, investors would know that investing in smaller entities comes with a risk premium which unrecovered WHT reduces.

We have also seen issues with repayment of withholding tax on royalty payments, which indicates that a modernised system, harmonised across the EU, would benefit investors and tax authorities.

Indeed, it would be ideal if the withholding tax relief and repayment procedures for all cross-border payments were harmonised at an EU level and extended to cover all financial flows for which a WHT obligation might arise.

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

Please explain:

In respect of tax residency certificates, the problem is not always the case that tax residency certificates are not accepted by other states. Sometimes it is merely an issue of timing – i.e. a tax residency certificate may be dated with the date of application for the certificate and not the date of payment of the relevant income. This leads to the state of payment receiving information that doesn't help them establish tax residence of the ultimate investor at the date of payment.

It should be possible to devise a pan-EU system for the automatic exchange of tax residence information at the time that the relevant payment is made. We have seen recent developments in IT systems so that for VAT it is possible to obtain a certificate of status in real-time, for example in the United Kingdom. Thus, it should be equally feasible to have a real-time, or near real-time pan-EU system, to determine the rate of tax withheld, the beneficial owner and country of residence of the beneficial owner. We will examine options for this later in this response document.

An additional issue is that some Member States make use of treaty overrides in respect of their national procedures for claiming relief or repayment of WHT deducted from payments to foreign investors. Although the legality of these overrides has been confirmed by the courts, their usage is not consistent with the aim of harmonising WHT procedures across the EU and Member States should be discouraged from their use.

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 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

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

There is no EU wide system for relieving such taxation at source or for repaying it.

Most, but not all, double tax treaties contain provisions for relief and or a refund of withholding tax, but some only grant partial relief at source or partial refunds.

Collective investment funds (CIFs) and pension funds are often unable to obtain treaty relief because they may not be subject to tax and, thus, are not considered as resident persons for treaty purposes. Pension funds also suffer from the lack of harmonised EU rules confirming the tax-exempt status of pension funds.

Consequently, such entities are often denied relief at source and must seek repayment of withholding tax.

Each Member State has its own system for relieving or repaying WHT. Many national systems are still predominantly paper based. Paper systems are slow and effort intensive for all parties, with an uncertain outcome.

Manual processes, lack of coordination between agencies, both nationally and cross-border, and different rules also leave the withholding tax repayment process open to abuse – as we have seen with the cum-ex and cum-cum scandals.

There have been initiatives to deal with some of these issues, such as the EU 2017 Code of Conduct and the OECD's Treaty Relief and Compliance Enhancement (TRACE) package. However, these are only recommendations and have not been widely adopted – to our knowledge, in the EU only Finland has implemented TRACE, in 2021.

Currently, within the EU there exist 27 different, often paper based systems for relief at source and repayment of withholding taxes. Undoubtedly, improvements could be made to national systems (such as digitalisation of the process, online applications, multiple languages etc) that would improve the experience for cross-border investors.

However, the maximum benefit would be achieved by harmonising the requirements and processes throughout the EU and having a centralised portal for submitting claims for relief at source and repayment. This would preferably be aligned with the TRACE package to ensure international compatibility and provide the best opportunities for inward foreign investment into the EU.

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>

Please explain:

We do not come under any of the three categories mentioned in questions 17-19. However, we see considerable benefits for investors, financial intermediaries, and tax authorities in having both relief at source and repayment systems harmonised at EU level. Our preference is for a full harmonised relief at source system, based on modern information technology systems, covering all withholding tax deducted from financial flows. This should be supported with a simplified, automated and harmonised WHT refund procedure if circumstances arise that prevent relief at source.

Investors and financial intermediaries would benefit from the same system in all Member States, in a number of different languages and using the same documentation and processes. It would cut down the learning curve in dealing with many different systems and processes and would cut the costs associated with applying for relief at source or repayments across different Member States. A harmonised and digitalised system will encourage taxpayers to make claims, thereby reducing double taxation and reducing the opportunity costs to EU capital markets of delayed or unclaimed repayments.

Tax authorities would benefit from shared experience and shared development and migration costs to when moving to the new system and also increased transparency and sharing of information between Member States

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

Please explain:

See 17 above

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

Please explain:

See 17 above

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 checked="" 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"/>



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

There should be a maximum 6-month time limit for Member States to make repayments after receiving a valid claim with the correct supporting documentation (i.e. documentation to confirm the nature and identity of the beneficial owner of the source income and the country of tax residence of the taxpayer making the claim).

This would be facilitated by digitalising national relief and refund processes. In respect of languages, the ideal situation would be that investors could use a national portal based on their home language – as with the case of the OSS. If the investor must use a portal based in the Member State of origin, there should be an option to use an international business language in addition to the local language.

Ideally, the 6-month time limit would apply to repayments of all direct and indirect taxes. Interest on late repayment after the 6-month deadline should then be applied automatically, at a common rate agreed for the entire EU.

Electronic or digital signatures should be accepted in accordance with the Electronic Identification and Trust Services Directive. Also promoting more widespread use of e-ID would facilitate the verification process for individual investors. It is important that Member States can adopt a standardised e-ID format to streamline the access that EU citizens have to various public services in other Member States – including tax authorities. We are aware that some Member States have different ways of establishing identity within their own jurisdiction – this complicates national processes and causes even more difficulties for citizens of other Member States trying to access services or fulfil their compliance obligations.

Pension funds and collective investment vehicles (CIVs) are also badly hit by inefficient refund procedures. Pension Europe's paper on 'Withholding Tax Refund Barriers' indicates that costs for a refund action can range from €10 000 to €100 000 per country for each fund, with refunds taking up to 10 years. Consequently, many pension funds do not press for refunds to which they are legally entitled.

To help with this, we propose the standardised categorisation and definitions of investor type, including definitions of recognised pension funds and collective investment vehicles. These entities should also have access to harmonised and simple documentation to provide evidence of entitlement to treaty relief, which could be the first stage towards developing a single register of all funds in Europe eligible for relief at source. This would also be a useful first stage to the digitalisation of these relief and recovery processes.

We also believe that greater use should be made of authorised intermediaries to provide the basic information tax authorities require to grant relief at source and to make bulk relief at source and repayment claims. The requirements for authorised intermediaries should be harmonised to ensure that they are recognised throughout the EU and their details maintained on a centralised public EU register.

Those intermediaries that wish to take part should be certified, with checks made on internal controls for their 'know your client systems' to ensure that the self-certified information required by tax authorities is properly maintained and is consistent with the intermediaries' knowledge of the beneficial owner.

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 checked="" type="radio"/>
Other	<input type="radio"/>

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:

There are currently many existing and potential instances of data requests and exchanges of data, between taxpayers and tax advisors and tax authorities and between tax authorities in different Member States. Consideration should be given to aligning of data requests - e.g., the requirements for DAC7 and article 242a VAT Directive and, for direct tax purposes, alignment with Digital Reporting Requirements adopted in the VAT in the Digital Age project.

Additionally, please see our proposals in response to question 36

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:

We support the development of a common EU automated process to establish entitlement to treaty relief at source and, thereby, to reduce the possibility of abuse.

A 2017 Danish study examined using a distributed ledger system, or blockchain as it is often called, to replace the manual withholding tax repayment procedures in Denmark - mostly with a view to reducing cum-ex fraud involving the double repayment of withholding tax.

The system proposed would provide a central information system for all parties involved in a refund and would deal with common problems such as the:

- difficulty that the tax authority staff have in checking the eligibility of the person asking for the refund,
- the lack of control to ensure that a refund is linked to the same payment of withholding tax, and
- the complexity of current refund procedures.

There are other parties working on similar solutions - a project known as the Tax Grid has undergone successful multi-party, proof of concept trials.

The 'Tax Grid' proposal was tested with 3 tax authorities and 6 financial intermediaries. A follow up survey indicated many advantages:

- For investors the correct WHT rate was applied, and it reduced time and costs
- Tax administrations benefited from increased tax transparency, reduced processing time & costs and reduced instances of fraud
- For financial intermediaries there was increased tax transparency, reduced financial and reputational risk and improved tax auditability and accuracy

The Tax Grid is a blockchain based system using fungible and non-fungible digital tokens to check the eligibility of beneficial owners for relief at source in real time or near real time, ensuring that each dividend payment event only triggers a single repayment, thereby greatly reducing the possibility of fraud or tax avoidance.

The first step is the creation of fungible tokens, which are digital assets that are divisible and non-unique. These are then distributed across the network of financial intermediaries through splits and transfers corresponding to the ownership registered at the 'record date'. This can range from direct ownership by the beneficial owner (including pension funds and CIVs) to more complex ownership structures, including overseas ownership through transparent and non-transparent funds.

Each token split and transfer is managed through automated smart contracts, providing assurance that tokens can't be assigned to two different parties and that the total number of tokens is fully accounted for at each step in the process.

The cascading sequence of token splits continues until the beneficial owners have been identified. This is done by querying the local databases of each financial intermediary through a set of enterprise application programming interfaces.

When a beneficial owner is identified, the fungible tokens, representing the entitlement for that beneficial owner, are exchanged for unique non-fungible tokens.

All non-fungible tokens have a value equal to the number of fungible tokens that were exchanged, and the fungible tokens are rendered non-valid. All payments are accounted for, with no possibility of "double spend" and the token information remains permanently on the chain for audit purposes.

Where beneficial owners have not been identified, or insufficient information exists to establish entitlement to relief at source, the fungible token is rendered inactive and is again retained on the chain for audit purposes. Presumably, in such circumstances, the maximum rate of withholding tax would be applied to the subsequent dividend payment.

The Non-fungible Token provides enough information to properly assign the appropriate withholding tax rate without revealing the investor's identity. Information includes the country of residence and category of investor to determine tax treaty eligibility for a reduced WHT rate. On a need-to-know basis, tax authorities or other authorised parties can access the investor's identity using a secure messaging and data transfer system.

Such a system would be effective in preventing the double-reclaim of withholding tax as we have seen in the Cum-Ex scandals.

Other measures would combat other tax abuse (for example cum-cum schemes), such as:

- Clearer and harmonised tax laws outlawing such schemes across the EU
- Increased and timely information sharing - both between contiguous regulatory bodies within Member States (i.e. such as between banking regulatory bodies and tax authorities) and between Member States
- Building adequate regulatory capacity
- Digital certificates of residence and data analytics around trading patterns around the ex-div and payment dates. A study by Buettner and Kreidel 2020 showed that it was easy to spot trade value discrepancies around the two days before the ex-dividend date on the German bourse Xetra.

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:

As mentioned, we believe that greater use of should be made of authorised intermediaries to provide the basic information tax authorities require to grant relief at source and to make bulk relief at source and repayment claims. Those intermediaries that wish to take part should be certified, with checks made on internal controls for their 'know your client' systems to ensure that the self-certified information required by tax authorities is properly maintained and is consistent with the intermediaries' knowledge of the beneficial owner.

Consequently, when the intermediary has wilfully or negligently provided information about the taxpayer to a tax authority that leads to incorrect relief at source or repayment of withholding tax, the intermediary should be held responsible for any tax lost.

Where a taxpayer provides information to an intermediary that is incorrect, and the intermediary has taken all reasonable steps (that are documented) to ensure that the information is correct, the liability should fall on the taxpayer – as it would if the taxpayer supplied the same information directly to the tax authority.

Some Member States already have considerable experience of regulating intermediaries in such areas as VAT registration and reporting and in taking punitive measures where failures occur. It would be beneficial that such national systems are catalogued and evaluated in order to improve the effectiveness of a pan-EU system for authorised intermediaries to make bulk claims on behalf of investors in respect of WHT.

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)

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