

**Response of
Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)**

to the

EU Commission Consultation on the New EU System for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

Executive Summary
EXECUTIVE SUMMARY



Inefficiency of withholding tax systems

Individual, non-professional (“retail”) investors are significantly demotivated or hampered from investing cross-border within the EU due to:

- First, the widespread de facto double taxation of investment income within the “Single Market” (for example the so-called Belgian-French Tax Treaty to avoid double taxation is in reality organizing the double taxation with Belgian residents holding shares of French-domiciled companies paying much higher taxes on the dividends received from those issuers than for Belgian -domiciled ones, and much higher taxes also than French residents receiving the same dividends. And that is even if the Belgian resident investor is able to claim and get the reduced withholding tax rate from the bilateral tax treaty).

- Second, the lengthy, burdensome, and costly refund procedures for withholding tax. Our members cite a long list of inefficiencies, such as language barriers, different bureaucratic requirements, lengthiness and cost of procedures, lack of digitalisation etc.. The procedures are often much more complicated and lengthy than for - for example – US source investment income withholding tax.

In order to create a true single market for investments, the main obstacle (taxation) for “retail” investors must be addressed through EU action and standardised mechanisms.

Tax refund procedures

Tax refund procedures are, by far, too complicated and often too costly to enable the average, non-professional investor obtain refunds on withholding tax. The most important obstacles for this are the delays in effectively receiving the excessive WHT refund, the high compliance costs associated with the WHT refund procedures, the high opportunity costs due to the delay in receiving the WHT refunds, which ultimately lead to permanent factual double taxation suffered.

Need for EU action

It is without doubt that the need for reform has gone beyond a mere “tax cooperation” between EU Member States and action needs to be taken in a harmonised

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Mitglied der
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Brüssel

manner at EU level. ***The EU co-legislators must mandate the EU Commission to propose a relief at source system through an EU Regulation and significantly improve all other adjacent aspects in order to stimulate cross-border “retail” investments.*** The range of measures must simplify procedures and avoid EU “retail” investors being taxed twice – which is not a favour done but their right – and invest on a cross-border basis, otherwise the Capital Markets Union will remain a utopic desiderate.

Preferred policy option

DSW supports all measures proposed by the EU Commission to improve the situation. In our view, it is of utmost importance to oblige all Member States to provide for a relief at source procedure to avoid double taxation from the start.

To ease and streamline the cumbersome refund procedure, the following measures should be taken:

- Standardized and same language forms for refund requests across Member States’ tax administrations;
- Standardised document requirements proving the right to reclaim WHT paid in another Member State whereby a tax residence certificate and the deposit statement showing the tax withheld should be considered as sufficient proof;
- Central repository at EU level to store tax residence certificates issued by Member States’ tax administrations;
- E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalized verification system;
- 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;
- Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim;
- Issuing digital passport to attest investor's entitlement to tax treaty benefits for a period of time.

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

Fields marked with * are mandatory.

Introduction

Background of this public consultation:

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

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

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

Relevant definitions for the purposes of this consultation[3]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Christiane

* Surname

HÖLZ

* Email (this won't be published)

christiane.hoelz@dsw-info.de

* Organisation name

255 character(s) maximum

Deutsche Schutzvereinigung für Wertpapierbesitz e.V.

* 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.

880020819551-97

* 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
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- 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
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- 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

* Contribution publication privacy settings

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

Please explain:

Different documentation requirements across Member States to prove the refund entitlement. While in Finland for example, a certificate of residence is sufficient to reclaim withholding tax, for example, the French tax authorities require a "confirmation from the French paying body" to prove that the withholding tax of a non-resident has been withheld. A confirmation from the German custodian bank is generally rejected. The French paying body however, regularly refuses the confirmation, arguing that (because of the omnibus account structure and multiple intermediaries involved in the cross-border process) a confirmation is not possible as the beneficiary of the dividends is not known to the French paying body.

Another example for burdensome documentation requirements is Austria, where a certificate confirmed and signed by the custodian bank stating in which securities account the shares concerned were held on the last day before the ex-dividend day is required. This proof shall also contain a statement that the securities account balance is the end-of-day balance of the shares before the ex-dividend day and whether the confirmed end-of-day balance was issued on the basis of the actual transaction or the contractual transaction; Further required is evidence of who owned the custodian account on the last day before the ex-date and of the turnover on safe-custody accounts relating to the affected shares for the period from one month before to one month after the ex-date.

To reclaim tax withheld on Spanish or Portuguese dividends, alien investors first need to obtain a NIF (Spanish/Portuguese tax identification number) which in the case of Portugal cannot be obtained online but only either in person or through a consulate in the investor's home Member State. Different documentation requirements including different deadlines for reclaiming tax withheld increase the burden for shareholders and investors. Therefore, documentation requirements need to be standardised at EU level.

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 checked="" type="checkbox"/>	<input type="checkbox"/>
Permanent double taxation suffered	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>

Please explain:

The problems, private investors encounter with WHT refund procedures lead to decreased cross-border investments any by that pose a threat to the CMU. The feedback from our members shows that many German private investors stop investing in French shares because the double taxation makes such an investment far less attractive.

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

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?

- | | | | |
|---|--|---|--|
| <input checked="" type="checkbox"/> Austria | <input type="checkbox"/> Estonia | <input checked="" type="checkbox"/> Italy | <input checked="" type="checkbox"/> Portugal |
| <input checked="" type="checkbox"/> Belgium | <input type="checkbox"/> Finland | <input type="checkbox"/> Latvia | <input type="checkbox"/> Romania |
| <input type="checkbox"/> Bulgaria | <input checked="" type="checkbox"/> France | <input type="checkbox"/> Lithuania | <input type="checkbox"/> Slovakia |
| <input type="checkbox"/> Croatia | <input type="checkbox"/> Germany | <input type="checkbox"/> Luxemburg | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Republic of Cyprus | <input type="checkbox"/> Greece | <input type="checkbox"/> Malta | <input checked="" type="checkbox"/> Spain |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Hungary | <input type="checkbox"/> Netherland | <input type="checkbox"/> Sweden |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Ireland | <input type="checkbox"/> Poland | <input type="checkbox"/> None of the above |

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

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Austria | <input type="checkbox"/> Estonia | <input type="checkbox"/> Italy | <input type="checkbox"/> Portugal |
| <input type="checkbox"/> Belgium | <input checked="" type="checkbox"/> Finland | <input type="checkbox"/> Latvia | <input type="checkbox"/> Romania |
| <input type="checkbox"/> Bulgaria | <input type="checkbox"/> France | <input type="checkbox"/> Lithuania | <input type="checkbox"/> Slovakia |
| <input type="checkbox"/> Croatia | <input type="checkbox"/> Germany | <input type="checkbox"/> Luxemburg | <input type="checkbox"/> Slovenia |
| <input type="checkbox"/> Republic of Cyprus | <input type="checkbox"/> Greece | <input type="checkbox"/> Malta | <input type="checkbox"/> Spain |
| <input type="checkbox"/> Czech Republic | <input type="checkbox"/> Hungary | <input checked="" type="checkbox"/> Netherland | <input checked="" type="checkbox"/> Sweden |
| <input type="checkbox"/> Denmark | <input type="checkbox"/> Ireland | <input type="checkbox"/> 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 cost 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

[5] 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.

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?

Regarding Q12: The time until the refund is made differs significantly from Member State to Member State. For example, in Italy, a refund may take up to 20 years, in Denmark it is currently around 2 years and in Austria around 1 year.

Regarding Q13: The refund costs differ significantly, depending on how many intermediaries are involved and how burdensome the procedure is. For a German private investor, the costs may amount to between 70 EUR and 120 EUR per refund procedure. Taking into account that for example the French tax authorities require one refund procedure per dividend payment (and many French issuers pay quarterly dividends for each of which a refund procedure needs to be initiated), these amounts regularly exceed the tax withheld.

Regarding Q14: See also our answer to Q3: the documentation requirements differ from MS to MS and some documents are difficult or even impossible to obtain, eg. the confirmation from the French paying agent or the NIF from the Spanish/Portugues tax authorities.

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

An EU wide harmonised framework will address most of the shortcomings stemming from EU Member States arbitrary powers to impose different deadlines, administrative and bureaucratic procedures, and requirements, for WHT refunds and relief procedures.

We would like to highlight the following shortcomings:

1. On cross-border investments
 - a. our members have been dissuaded from investing cross-border/have changed their cross-border investment decisions due to:
 - i. Insufficient safeguards related to good administrative conduct (e.g. non-discriminatory treatment of foreign investors, adoption of administrative decisions within reasonable time);
 - ii. Insufficient safeguards in procedural rules of the EU Member State(s), such as lack of legal standing to challenge laws which are contrary to EU law, remedies not in the same procedure, or lack of availability of interim measures;
 - iii. Difficulty in establishing state liability for breaches of EU law;
 - iv. Double taxation of investment income - dividends in particular, of inheritance of real estate investments in another member state, illegal harassment by Member State tax administration
 - v. The inefficient and cumbersome withholding tax procedures on interests and dividend payments which lead numerous of our members to divest in those Member States which build up (procedural) hurdles for individual investors to reclaim their double taxed dividend/interest income.
2. On direct taxation of individuals and their investments, there is:
 - a. Lack of standard and uniform certificates available in all official languages;
 - b. Lack of standardised documentation requirements
 - c. Lack of a better cooperation between the tax administrations of Member States;
 - d. Lack of a common, standardised, EU-wide system for withholding tax relief at source;
 - e. Administrative burdens, such as:
 - i. The need to submit two tax declarations
 - ii. The need to submit a certificate of residence
 - iii. Problems related to language barriers, such as non-acceptance of certificates because they were not drafted in the official language or the necessary data was not reproduced in the standard domestic way.
 - iv. Late withholding tax refunds
 - v. Paper-based withholding tax refund procedures
 - vi. Rejection of foreign certificates for deduction of insurance premiums, donations or the like;

vii. Online tools for reclaiming WHT are difficult to access/fill in or require opening of an account at a tax authority in another Member State with difficult to understand registration procedures.

In addition, we indicate the requirement to process the declaration to reclaim the tax withheld through the intermediaries' chain (e.g. France requires this) which involves high costs and makes it practically impossible for small investors to reclaim double-taxed money back (e.g. France requires that the French intermediary "paying agent" confirms the payment to the foreign shareholder). The French intermediary however generally rejects this confirmation because "he does not know the shareholder" as a result of the omnibus account system. The French State on the other hand does not accept a confirmation from the foreign investor's deposit bank. In Belgium, the process on inheritance tax on real estate in another EU Member State is very burdensome: all in paper, it de facto requires to hire and pay notaries in both Member States given the complexity of the process, of the documents requested, and of the big differences of tax rules and procedures, as well as it demands immediate payment of tax-amount (not waiting for the other Member States' taxation), demands a lot of documents to prove payment in the other Member State, then asks to fill another declaration to ask for offsetting the foreign tax already paid (but requires the individual to fill the form only two years after the beginning of the process). In the end the taxpayer – despite the wording of the bilateral tax treaty - ends up paying more than if the property was in the same Member State. The process can take 3 years or more, and cost even - due to notaries' and lawyers' fees - than the taxes paid. It is a clear violation of the Treaty of Rome. Some banks can help the individual investor (e.g. shareholder) to avoid double taxation, but it proves too costly (due to administrative fees), especially for small positions.

III. Policy options

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

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

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

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

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

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

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

III.A. Improving withholding tax refund procedures

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

Nature of the solution provided	Check the box where applicable
Standardized and same language forms for refund requests across Member States' tax administrations	<input checked="" type="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 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 checked="" 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



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

DSW supports all measures proposed by the EU Commission to improve the situation. In our view, it is however of utmost importance to oblige all Member States to provide for a relief at source procedure to avoid double taxation from the start.

If the abovementioned mechanisms would be put in place, it would constitute an improvement of the current demotivating and burdensome situation.

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

If you choose the last option, please indicate the most suitable amount:

In principle, DSW would be in favour of not making any distinction between low-risk and high-risk payments. In any case, in our view, low-risk payments should not be linked to the WHT tax rate but rather to the amount of payment. Here, we consider an alignment with the AML rules, i.e. reclaim taxes above €10,000 should no longer be considered as low-risk payments.

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

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:

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

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

f898e3c5-79c4-4e72-b836-fd47c3ce3050/DSW-Stellungnahme_Quellensteuer_2022_-_exec_summary.pdf

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