

# 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

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### **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](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

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\* 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

Catherine

\* Surname

Ramsay

\* Email (this won't be published)

[REDACTED]

\* Organisation name

*255 character(s) maximum*

The Association of Global Custodians

\* 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.

813994623570-13

\* 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

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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 checked="" type="checkbox"/>

Please explain:

Listed securities are the most prevalent source of income on which WHT relief is sought, however, we also view this as relevant to (1) Stock dividend distributions and (2) American Depositary Receipts and Global Depositary Receipts.



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 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 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:

We also view the following as problems with existing WHT refund procedures:

- No or limited engagement from source country tax authorities
- Existing or proposed initiatives to digitalize (or partly digitalize) WHT refund procedures, require significant legal and/or financial commitments from parties in the custody chain to adopt different proposals from source countries of investment (in some cases proving unachievable for some stakeholders)
- Multiple refund forms and varying definitions or interpretations of the same terms (such as beneficial owner, liable to tax)
- In recent years a significant amount of supporting documentation is requested by authorities after the reclaim has been submitted. The request may be issued several years after the income payment took place – it may take several weeks or months to collate such documentation (as it may not always be clearly defined what is required) or it may no longer be available due to record retention requirements, thus jeopardizing the entitlement of investors.

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

Please explain:

Reduced attractiveness of cross border investment in the Member States with impact to the objectives of the Capital Markets Union Action Plan

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](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 checked="" 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 checked="" type="checkbox"/> Germany | <input checked="" type="checkbox"/> Luxemburg  | <input type="checkbox"/> Slovenia            |
| <input type="checkbox"/> Republic of Cyprus        | <input checked="" type="checkbox"/> Greece  | <input type="checkbox"/> Malta                 | <input checked="" type="checkbox"/> Spain    |
| <input checked="" type="checkbox"/> Czech Republic | <input type="checkbox"/> Hungary            | <input checked="" type="checkbox"/> Netherland | <input type="checkbox"/> Sweden              |
| <input checked="" type="checkbox"/> Denmark        | <input type="checkbox"/> Ireland            | <input checked="" 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 type="checkbox"/> Finland            | <input checked="" type="checkbox"/> Latvia    | <input type="checkbox"/> Romania             |
| <input type="checkbox"/> Bulgaria           | <input type="checkbox"/> France             | <input checked="" type="checkbox"/> Lithuania | <input type="checkbox"/> Slovakia            |
| <input checked="" type="checkbox"/> Croatia | <input type="checkbox"/> Germany            | <input type="checkbox"/> Luxemburg            | <input checked="" 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 type="checkbox"/> Netherland           | <input checked="" type="checkbox"/> Sweden   |
| <input type="checkbox"/> Denmark            | <input checked="" 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?

Collection of certificates of residence or other documentation from tax authorities/regulatory bodies may take several weeks.

## II. Need for EU action

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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

The impact of extensive variation in WHT procedures has been a longstanding issue and to date has not been resolved, even where tax administrations have taken steps to implement aspects of the Code of Conduct and simplify their procedures. Tax administrations who are considering or already revising their WHT procedures continue to opt for different approaches. Any delta, from a procedural perspective, causes an increase to implementation and running costs whilst also increasing risk for stakeholders managing varied procedures. EU level action to harmonizing the system and provide standardization with respect to forms and procedures will enable all stakeholders to firmly understand the requirements for claiming WHT relief either via relief at source, quick refund or tax reclaim, whilst limiting the significant cost and uncertainty.

### III. Policy options

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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?

Based on client feedback, relief at source is the preferred mechanism for return on cross-border investment, however it is also recognised that a mechanism for refund procedure is occasionally necessary (for example in case of missed relief at source due to missing documentation). In the case of refund procedures, the availability of a quick refund mechanism (where income proceeds are credited net of withholding tax, and any reclaims are made via an accelerated and simplified process via the withholding tax agent) would also be welcomed, followed by the option to rely on a tax reclaim procedure if the investor cannot avail of quick refund.

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

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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 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.

As a long term objective, we see the development of distributed ledger technology or other secure methodologies as potential solutions for advancing transparency in the custody chain , with secure access for relevant stakeholders, in particular for tax administrations, to be assured of correct application of withholding tax relief and identification of beneficiaries. We believe this is a good direction of travel, but it is recognized this is not an immediate solution, and other measures to simplify the procedures (in addition to those cited above) could be considered.

The preference of global custodians is to operate relief at source, but it is also recognized that there may be occasions where it is not possible to apply relief at the time of income payment. The introduction of a quick refund mechanism would be a helpful step towards reducing the number of reclaims submitted to tax administrations. We would strongly recommend a reliance on the same documentation requirements across all three procedures (relief at source, quick refund and tax reclaim) to reduce the number of documents to be collected.

Digitalization is currently underway by some Member States, with the introduction of portals or online reclaim forms, but tax administrations are employing different solutions which requires stakeholders to adopt different technologies and procedures to cater to them, therefore not necessarily reducing inefficiency and increasing associated costs (linked to the same non-standardization). Often there is still a requirement to print online forms to provide wet ink signatures, despite the entry into force of Regulation (EU) 910/2014 (eIDAS Regulation), another potential aid to digitalize WHT refund procedures. Furthermore, there is no procedure within an EU state that is fully digitalized because physical documentation/correspondence is required in all markets with refund procedures. Harmonizing and digitalizing WHT refund procedures among Member States with the same solution (such as a web-portal which would provide for submission by intermediaries on a bulk basis), where the sharing of information/documentation/correspondence is possible would be helpful, as well as standardizing reclaim forms. Such a solution may also assist in the tracking and progress of reclaims (as often these may take longer than 1-2 years to resolve).

It may also be helpful to consider the introduction of common timeframes in the refund procedures, for example a common statute of limitations; common timeframes to respond to requests for information.

It may also be appropriate to consider practical enforcement measures to ensure customer resolution such as compensation for outstanding full settled tax reclaims where there has been a substantial period of time (over 18 months) between submission of the reclaim and payment settlement by the tax administration.

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

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

Please explain:

We also view this as relevant to securities/distributions mentioned in our response to question 2: Stock dividend distributions, ADRs and GDRs.

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<sup>[7]</sup>

<sup>[7]</sup> 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

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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<sup>[8]</sup> 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.)

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

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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:

We would support a combination of all three options. The implementation of a well-functioning relief at source system will provide transparency to tax administrations of participants in the custody chain. The ability to review reporting delivered by intermediaries in the chain will provide clarity and the ability to reconcile to information provided by the issuers on income distributions. Any such EU-wide relief at source system is likely to rely on exchanges of information between administrations to better identify areas of concern. As a consequence of increased relief at source, this should result in reduced numbers of WHT refund applications thereby reducing the complexity for tax administrations and enable them to focus resources on reviewing refund applications (with reference to relief at source reporting).

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

Please explain:

From the perspective of a financial intermediary acting as custodian it is our view that this question is possibly best answered by the relevant tax authorities such that they can provide targeted responses to perceived areas of abuse in their individual jurisdictions.

We acknowledge that inherently there is a limitation in introducing measures to prevent or combat tax abuse as those investors using structures or arrangements to take abusive positions are, by definition, going to take steps to avoid the impact of any such measures.

However, the members of the AGC have identified several potential options that could be helpful towards combating tax abuse.

- Common definition of beneficial ownership – utilizing a common definition of beneficial ownership, likely in conjunction with some form of investor self-certification, will provide a clear basis for entitlement to relief. The definition of beneficial ownership should contemplate and provide clear guidelines for beneficial ownership acknowledging that not all investors are going to simply be holding long positions. For example, the impact of share lending/borrowing arrangements (specifically across record date), derivatives or a contractual obligation to pass on income.
- DAC 2 and DAC 6 – information obtained through existing reporting mechanisms should be used. The position on arrangements or products determined to be abusive should be made clear so that investors can self-identify whether they are able to make a valid claim.
- Audit of Final Investors – utilizing information available through the custody chain and through exchange of information practices, tax authorities might investigate any factual assertions made by investors to obtain withholding tax relief. Note, it is proposed that this would not be an audit of the financial intermediary but acknowledge that it would be necessary to audit financial intermediaries in certain circumstances to ensure compliance with processes and procedures relevant to processing tax relief. To the

extent that it is feasible, the format of information requests by tax authorities for financial intermediaries to provide information on final beneficiaries should be standardized to make complying with the requests easier. Delivery of the same information should also be in a standardized format so tax authorities can readily use the information obtained.

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:

Our understanding of this question is that it may cover a scenario whereby the refund reclaim is submitted by the financial intermediary instead of directly by the non-resident investor and, because of any mistake/action /omission by any of the parties involved, the investor receives a higher refund than they are entitled to. As a general matter, financial intermediaries rely on reconciled payment information stored in their systems to ensure the correctness of a reclaim submission. If as a result of the financial intermediary having inadequate processes or controls, then liability may fall on the financial intermediary. However, if the underreporting is as a result of a misrepresentation of information relating to the beneficial owner or their entitlement, and the financial intermediary has no reason to know of the taxpayer misrepresentation/inaccuracy of their claim, then the financial intermediary should not be the liable party provided there has been no negligence on their part.

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

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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

**f5c322ed-7a00-43e8-8ac5-2ab0853bd1f7/AGC\_Additional\_Response\_to\_EC\_Consultation\_24\_June\_2022.pdf**

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