



Position Paper for the European Commission

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

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About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 5,000 is part of the international CTA network which has more than 30,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, and the Taxation Institute of Hong Kong. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

Introduction

The Irish Tax Institute welcomes the opportunity to contribute to the European Commission's public consultation on a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT). In completing the public consultation questionnaire, we have focused on the questions which are relevant to our members who are tax advisers that have direct experience of dealing with WHT on behalf of their clients.

Returns on investments (for example, dividends or interest) are normally subject to WHT in the source country at a rate that is higher than the reduced rate that should apply to such income based on the relevant double taxation treaty between the source country and the country of residence of the investor. Feedback from our members suggests that cross-border investors face burdensome WHT refund procedures in the EU, with the recovery of WHT on dividends from listed companies being particularly problematic.

In many cases, investors may not have the necessary knowledge regarding the existence of mechanisms for claiming WHT refunds. Where investors seek to claim WHT refunds, onerous administrative procedures, including the non-digitalisation of refund application forms, language difficulties, high compliance costs and delays associated with WHT refund claims can often lead to investors abandoning the refund process. This results in permanent double taxation being suffered by such investors.

Where investments in securities are made through online intermediaries, investors are reliant on the online intermediary to provide them with the necessary documentation to obtain a WHT refund. Frequently, an investor's portfolio will span multiple jurisdictions with some investments being held through layers of institutional nominees. Providing the investor with documentation required to obtain a WHT refund in respect of investments held in multiple jurisdictions (where there is no standardised documentation or process) can be complex and there is a cost for the intermediary associated with such a request. We have received feedback of investors experiencing difficulties in obtaining the required documentation from intermediaries.

A Common EU System for Withholding Tax

The Institute supports the Commission's initiative to introduce a common EU-wide system for WHT. We consider that a harmonised framework for WHT procedures across the EU is necessary to reduce the incidence of double taxation arising as a result of the divergent and complex administrative procedures which exist in EU Member States.

A common EU system for relief at source, with the relevant double taxation treaty rate applying to payments to cross-border investors from EU Member States would minimise the incidence of double taxation.

If it is not possible to implement a relief at source system, the potential for WHT refund processes to be streamlined could be explored, including the introduction of a "One-Stop Shop" where an investor could log in and make a refund claim irrespective of the source Member State. Alternatively, digitised WHT refund procedures across Member States with standardised forms, would simplify the existing procedures. Consideration could also be

given to the introduction of a harmonised online facility for investors to obtain tax residence certificates and the verification of such certificates.

The possibility for financial intermediaries to make refund claims on behalf of non-resident investors on a bulk basis (rather than on a case-by-case basis) should also be considered.

If an improved WHT refund system were introduced, in the event of any under-reporting to the investment country, we consider it would be appropriate for the responsibility for any liability arising to rest with the non-resident investor, rather than a financial intermediary making a claim on behalf of a client. Similarly, under any EU-wide relief at source system, we consider that any potential liability for under-reporting of WHT should only arise for the financial intermediary where they have failed to take reasonable steps to properly verify the investor's entitlement to the tax treaty benefit.

Exchange of Information

If the existing EU framework for administrative cooperation in the field of direct taxation is to be broadened, this should be done in conjunction with the implementation of measures to improve WHT refund procedures and the establishment of a common EU relief at source system. This would ensure the necessary information is reported to enable verification of the entitlement of investors to the benefit of a relevant double taxation treaty.

It would be important that any additional information required to be reported under the new framework would be included as part of the existing standardised process for automatic exchange of information under the Common Reporting Standard.