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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT) Accompanying the document Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes

Delegations will find attached document SWD(2023) 217 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

**New EU system for the avoidance of double taxation and prevention of tax abuse in the
field of withholding taxes (WHT)**

Accompanying the document

Proposal for a Council Directive

on Faster and Safer Relief of Excess Withholding Taxes

{ COM(2023) 324 final } - { SEC(2023) 243 final } - { SWD(2023) 215 final } -
{ SWD(2023) 216 final }

Executive Summary
Impact assessment on 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding tax procedures (WHT)'
A. Need for action
What is the problem and why is it a problem at EU level?
<p>With cross-border investments, many EU countries levy withholding taxes when dividends and interest on securities are paid to a non-resident investor. However, this tax is generally levied at a rate which is higher than the reduced rate the non-resident investor is entitled to, according to the relevant tax treaty or domestic legislation.</p> <p>To avoid double taxation, non-resident investors would need to submit a refund claim for the excess tax withheld in the EU country from which the payment is made (the "source country").</p> <p>Current withholding tax refund procedures for dividends and interest payments to non-resident investors are:</p> <ul style="list-style-type: none"> • inefficient (leading to costly and lengthy refund procedures) • at high risk of tax abuse (leading to revenue losses for Member States). <p>These problems take place in the context of an uneven state of digitalisation across EU countries and a fragmented patchwork of national withholding tax procedures.</p> <p>The identified problems also stem from the lack of accurate information held by tax administrations. This is needed to properly assess and apply reduced withholding tax rates and effectively recognise abusive practices.</p> <p>The current situation discourages cross-border investment within and into the EU and consequently leads to a less competitive EU market, hindering the functioning of the Capital Markets Union.</p> <p>The risk of procedures being abused ultimately also reduces tax revenues and tax fairness.</p>
What should be achieved?
<p>The general objectives of the initiative are related to ensuring fair taxation and reinforcing the Capital Markets Union by:</p> <ul style="list-style-type: none"> • facilitating cross-border investment, and • preventing tax abuse. <p>The initiative's specific objectives are to:</p> <ul style="list-style-type: none"> • make withholding tax procedures more efficient, and • provide Member States with appropriate tools to fight tax abuse. <p>These objectives are of equal importance.</p>

What is the value added of action at the EU level (subsidiarity)?

Given the existing fragmentation across the EU, standardised procedural rules for withholding taxes are needed to ensure the proper functioning of the single market. To reap the full benefits of the Capital Markets Union, portfolio investors need withholding tax rules that are applied more uniformly across the EU instead of having to comply with different rules in each EU country.

As the problem arises in a cross-border context only, EU action seems the most effective way to achieve swifter withholding tax procedures and to combat tax abusive cases.

As soft-law initiatives taken by the Commission (such as the 2009 Recommendation on withholding tax relief procedures and the 2017 code of conduct on withholding tax) have not led to the desired results, a proposal at EU level with a binding impact is now required to meet the objectives.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

The objectives could be achieved by 3 policy options:

- **Option 1 – a common EU digital tax residence certificate (eTRC) + standardised reporting.** This consists of:
 - o **setting up a standardised EU-wide eTRC** – this digital certificate (with a common content and format) would be issued/verified online and almost in real time by all EU countries.
 - o **introducing a common reporting standard** – an EU-wide reporting standard would increase transparency, as every intermediary throughout the financial chain would report a well-defined set of information to the source EU country. This practice would be accompanied by standardised due diligence procedures, liability rules and refund forms, to be filed on behalf of clients/taxpayers on automated basis.
- **Option 2 – a relief-at-source system.** This option is option 1 plus the establishment of a relief-at-source system that allows for reduced rates under double tax treaties or domestic rules to be applied directly at the moment of dividend/interest payment. Under option 2, tax administrations would monitor the taxes due after the dividend/interest payment takes place.
- **Option 3 – a quick refund system within a set time frame or/and a relief-at-source.** This option encompasses option 1 with the added requirement that Member States applying a refund system should ensure that the reclaim is handled within a pre-defined timeframe, a so-called Quick refund system. Member States can introduce or continue to implement a relief at source system.

The preferred policy option is **Option 3**, because:

- it would be highly effective in tackling the problems identified in terms of speed, simpler processes and more digital procedures.
- it would be safer, as it gives EU countries the option of retaining advance control over refund requests.
- it provides a way forward that should be politically feasible in all EU countries.

What are different stakeholders' views? Who supports which option?

There is broad consensus among stakeholders about the problems arising from the different withholding tax procedures across EU countries and on the need for EU action to tackle such a fragmented and inefficient situation.

However, there are differences between the main stakeholder groups on possible options to do this:

Investors and financial intermediaries clearly considered that relief at source would provide the best results such as early relief for investors and a limited burden on intermediaries. They also acknowledged that a relief at source system would likely need to be complemented by withholding tax refund systems, as a back-up. Therefore, they were supportive of an initiative that would also aim to standardise the current processes and forms withholding tax refunds.

Member States expressed support for introducing a common EU-wide digital tax residence certificate. Regarding the reporting obligation and a standardised procedure:

(a) Member States where the domestic rate for non-resident investors is lower or the same as the bilateral tax treaty rate would not be directly impacted by a standardisation of withholding tax procedures or reporting. Some of those Member States expressed support for action at an EU level as it will improve the position of their investors.

(b) Member States where the internal withholding tax rate is higher than the respective bilateral tax treaty rate broadly agreed on enhancing transparency and standardising withholding tax procedures, stressing the importance of striking a balance between making those procedures efficient and keeping the control over processes to prevent tax abuses.

C. Impacts of the preferred option

What are the benefits of the preferred option (Option 3 -Relief at Source or Quick Refund System-)?

- **Investors** would benefit from fewer foregone withholding tax refunds, fewer administrative costs and fewer reduced opportunity costs. These cost savings are estimated to amount to €5.17 billion annually for investors, including €409 million saved yearly because of reduced paperwork for EU investors.
- **Tax administrations** – in the long-term fewer resources might be required to deal with withholding tax reclaim procedures, so more resources could be re-allocated to deal with higher risk cases. However, the main benefit for tax administrations is the availability of the appropriate information to complete withholding tax procedures more promptly and to fight tax abuse.
- **Financial intermediaries** – digitalisation and standardisation at EU level would produce considerable savings (estimated approximately at €13.5 million per year). The increase in investment should benefit financial intermediaries and should increase opportunities to improve turnover.
- **Macro-economic effects** – a 0.025% increase in GDP is expected. This option will also have a positive impact on other macro-economic indicators like capital, wages, and employment.

What are the costs of the preferred option (Option 3 -Relief at Source or Quick Refund System-)?
<ul style="list-style-type: none"> - Investors – no additional costs are anticipated for investors, as they already need to submit documents for withholding tax refunds. - Tax administrations – the main costs are related to the processes needed to issue/verify the eTRC, which are estimated to be €4.9-54 million in development costs and €0.97-10.8 million in recurring costs; and improved reporting systems, which are estimated to incur €18.2 million in implementing costs and €3.5 million in recurrent annual costs. - Financial intermediaries – costs incurred to set up the mechanism to meet the requirements under option 3 amount to €75.9 million in implementing costs and €13 million in recurring costs. - Macro-economic effects – given that there will be less instances of double taxation, Member States will face a reduction in tax revenues estimated at €2.2 billion (this could be offset by the prevention of fraud).
What are the impacts on SMEs and competitiveness?
<p>The impact for SMEs may be limited because the initiative is mainly targeted at portfolio investors, who generally invest in listed companies.</p> <p>Nonetheless, SMEs also act as investors in securities (as portfolio investors or as investment vehicles). In these cases, they would benefit from the current proposal in terms of better access to the reduced withholding tax rates they are entitled to, avoiding double taxation. It would allow them to benefit from greater liquidity due to swifter refunds, which is an advantage for SMEs.</p>
Will there be other significant impacts?
<p>No other significant impacts. However, the initiative is expected to have limited positive social impact, since it would ensure fairer taxation; as well as a limited positive environmental impact, given the expected reduction in paper-based refund processes. Therefore, the current initiative is consistent with the fulfilment of the climate-neutrality objective as requested by the European Climate Law.</p>
Proportionality?
<p>The preferred option meets the objectives of the initiative in a proportionate manner, in the sense that it does not go beyond what is necessary to achieve the objectives and limits the scope to those aspects that EU countries cannot achieve on their own (EU-wide eTRC, standard reporting framework, standardised due diligence and liability rules and standardised procedures across the EU).</p>
D. Follow up
When will the policy be reviewed?
<p>The Commission will examine and evaluate the functioning of this Directive every five years after it enters into force. A report on the evaluation of the Directive will be submitted to the European Parliament and to the Council.</p>