

European Commission
Direct taxation, Tax Coordination, Economic Analysis
and Evaluation
D2 Direct Tax Policy & Cooperation

Luxembourg, 24 June 2022

Object: European Commission public consultation on withholding taxes – New EU system to avoid double taxation

Dear Madam,
Dear Sir,

ALFI welcomes the publication of the public consultation on a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes and is pleased to hereby provide its views in this respect.

As outlined in ALFI's response to the European Commission public consultation on the main barriers to the cross-border distribution of investment funds across the EU in October 2016, at the time, ALFI supported the idea to limit withholding tax rates applicable to income received by investment funds from EU source countries to the standard rate of 15% which corresponds to the rate applicable by almost all double tax treaties signed by and between EU Member States and which could significantly reduce the number of applications for refunds or exemption from withholding taxes levied at source, thus reducing related costs.

ALFI observes that, since 2016, despite the actions undertaken at EU level, in particular the introduction of the Code of Conduct on Withholding Tax published by the European Commission in 2017, as well as at the level of the Organisation for Economic Co-operation and Development (OECD), the difficulties to access double tax treaties for investment funds or the difficulties of withholding taxes continues to be a barrier to cross-border investment as dealing with withholding taxes on income received by investment funds remains a delicate, and sometimes unsuccessful, exercise that triggers significant costs.

ALFI is strongly supportive of this initiative of the European Commission aiming at improving the current situation and of the possible options outlined. In ALFI's view, these options may be seen not as exclusive but as complementary in a time perspective, the first step consisting as suggested in improving withholding tax refund procedures. ALFI has indeed always been supportive of an EU harmonized approach that would provide clear access to double tax treaties for investment funds and of actions and rules that would remove the legal uncertainty surrounding the procedures for reclaiming excess withholding taxes paid and their outcome.

Simplified and streamlined withholding tax refund procedures making them quicker and more transparent would be extremely welcome. ALFI is of the opinion that digitalization of the whole reclaim process is a key element and should include the following features:

- A possibility to request and obtain an e-certificate of residence through dedicated and clear webpages on the websites of national tax authorities of EU Member States;
- Forms for withholding tax refund in digital format should, as much as possible, be streamlined and standardized by Member States on the basis of an EU standardised form. Such forms should be available also in one single common language (in addition to the national official language(s));
- Current paper-based relief or refund processes would have to be digitalised;
- Entities should be able to file reclaims in a digital fashion through dedicated and clear webpages put at their disposal on the websites of national tax authorities of EU Member States. Those websites should provide:
 - clear instructions for completion of forms
 - clear indications on the simplified documentation to be attached to such form (certificates of tax residence, schedule...) that it should be possible to file electronically together with the form on the same website
 - a clear description of information required, applicable procedures and filing deadlines of reclaims and/or reliefs
 - an indication on the timelines for the reclaims and/or reliefs to be processed by national tax authorities and for refunds to be made.

In addition, as far as investment funds are concerned, ALFI supports the introduction of an EU common approach on the recognition of investment funds as beneficial owners of income received, and consequently their entitlement to the provisions of double tax treaties in force mainly on withholding tax rates on interest and dividend, with the view to bring legal certainty in an overall situation often fraught with uncertainty in that respect.

Option 2 on the establishment of a fully-fledged common EU relief at source system is by far the preferred option of the investment fund industry and ALFI strongly supports this option. Although it is a highly desirable solution, given the current context where EU Member States have already in place systems of reclaims and/or relief at source or both, one may wonder whether this option can realistically be implemented in the short term. However, given the benefits it would bring, ALFI is of the opinion that this option should be the subject of ongoing discussions between the European Commission and EU Member States with a view to reaching a consensus on a common EU relief at source system. Such discussions should consider the requirements and guarantees that would need to be implemented from a legal and technical perspective to ensure that the correct withholding tax rate is applied and any risk of tax fraud is adequately addressed.

With regards to option 3, it is not entirely clear how the proposal of enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits through a reporting and subsequent mandatory exchange of beneficial owner-related information on an automated basis could practically work. ALFI has always been supportive of TRACE however the recent experience carried out by Finland seems to have shown that some of the TRACE features would need to be reviewed to allow that the correct information is delivered by the source country to the investors' residence country and ensure that the correct level of taxation has been applied to the non-resident investor. With regards to investment funds, this may require laying down specific rules in terms of the recognition of investment funds as beneficial owners of income received being thus entitled to the provisions of double tax treaties as indicated for option 2.

In the same vein and as a complementary element to option 3, in its response to the public consultation in 2016, ALFI suggested to introduce a digital investor passport that would allow a consumer to open accounts or purchase other investment services with more providers and individually manage his/her digital account in a consolidated manner.

Finally, as already mentioned in 2016, considering the burden and costs associated with filing reclaims for refunds or exemption at source by investment funds on one hand, and with the handling of reclaims, exemptions requests and tax litigation by local tax authorities on the other hand, merely abolishing the application of withholding taxes on income received by investment funds within the EU may also be a possible solution.

We are grateful in advance for your attention and remain at your disposal for any additional information you may wish to receive.

Sincerely yours,

ALFI