



PensionsEurope input to the EC consultation on withholding taxes and the new EU system to avoid double taxation

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1. PensionsEurope input to the European Commission consultation on the new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

General remarks

As the European umbrella organisation representing pensions in Europe, we welcome the European Commission's consultation on withholding taxes and the new EU system to avoid double taxation. We support the current Commission's mandate for removing all barriers to the completion of the Capital Markets Union (CMU) – particularly in the field of simplifying taxation. We agree with the important remarks of the Commission on the current challenges with WHT procedures across Europe, and we have explained those challenges and obstacles from pension funds' point of view in PensionsEurope position paper on the withholding tax refund barriers to cross-border investment in the EU¹.

We warmly welcome that several EU countries have already introduced (or are planning to introduce) enhanced procedures to make WHT procedures more efficient, and we strongly agree with the Commission that there is a need for EU action to make WHT refund/relief procedures more efficient. The high added value of an action at EU level would be that there would be an EU wide harmonized framework in place and no more fragmented WHT systems across the EU. We have stressed for a long time that the relief at source is the best practice for pension funds. However, there are also many other recent WHT proposals which the EC should thoroughly consider.

PensionsEurope has proposed² to the Commission to establish an EU tax register of recognised pension institutions in order that Member States can reciprocally and automatically recognise pension institutions. Furthermore, in many countries pension institutions invest cross border via specialised investments funds and/or vehicles to increase the economies of scale, and it is important to ensure a tax-neutral treatment of these investment structures as well.

Finally, PensionsEurope believes that establishing a cross-border investment-friendly tax environment in the EU not only requires removing unfair tax treatment but also introducing tax incentives. The EC's statement that "[...] Tax and other financial incentives, as well as collective bargaining play an important role [...]" in "improving the cost-effectiveness, safety and equitable access to supplementary pension schemes" is still valid and should be considered as well.³ Regarding financial incentives, for instance the OECD report 'Financial incentives for funded private pension plans OECD country profiles 2020'⁴ is very helpful. Rather recently also the High-level group of experts on pensions recommended in its final report⁵ (December 2019) that "*Member States should reserve tax and/or financial incentives*

¹ See [PensionsEurope position paper on the withholding tax refund barriers to cross-border investment in the EU](#).

² See [PensionsEurope position paper on smoothing WHT procedures beyond Code of Conduct - EU tax register of recognised pension institutions](#).

³ EU White Paper 'An Agenda for Adequate, Safe and Sustainable Pensions' ([COM\(2012\) 55 final](#)).

⁴ See the OECD report '[Financial incentives for funded private pension plans OECD country profiles 2020](#)'.

⁵ See the [report of the High-level group of experts on pensions](#).

in both the saving and the pay-out phase for supplementary pensions meeting minimum quality requirements. These incentives should reflect the diversity in characteristics of types of pensions and the related social policy of a Member State”.

Answers to specific questions

I. Issue at stake

Question 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*

Question 2. For which of the following payments, do you think that the issue of inefficient WHT procedures is relevant: (Multiple options are available)

- **Dividends from listed companies**
- **Dividends from unlisted companies**
- **Interests related to debt instruments in listed companies**
- *Interests related to debt instruments in unlisted companies*
- *Royalties*
- *Other*

Question 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	X		
Lack of digitalization in WHT procedures and non user-friendly forms			X
Lengthy WHT refund procedures			X
Costly WHT refund procedures in monetary terms (administrative and opportunity costs included)			X

Country of investment does not accept tax residence certificates from the residence state	X		
Conflict on tax residency		X	
Country of investment requires information which the investor is unable to deliver		X	
Other:			X

Other: Some source Member States (MSs) do not accept under the applicable tax treaty the tax residency of a pension fund that is tax exempt in its resident MS, however, the pensioners are taxable in the resident MS when receiving a pension payment. This would lead to double taxation for the pensioners as they cannot credit the foreign WHT. Tax residency is recognized in the OECD Model Tax Convention and many bilateral treaties, where beneficial withholding tax rates are provided for pension funds.

The differences in qualification of and entity as pension fund under domestic tax law in a source MS (and also consequently under the tax treaty between source MS and resident MS) trigger uncertainty and inequality within the EU capital market.

The method of relief at source is of limited availability in the EU capital markets, while it is typically available in other capital markets, for instance in the US.

To determine whether a recipient of the Securities income could be considered the Beneficial Owner of this income MSs apply in some cases a “one size fits all” approach and there is no diversification from a risk angle in dealing with various situations in practice. As some situations could be considered low risk, we would like to propose to further explore a risk-based approach in this respect whereby targeting fraud and abuse is still sufficiently covered. In these cases, relief at source could be applied as method.

Within the EU there is no coherent system to deal with a collective investment vehicle (“CIV”) in the field of WHT. Pension funds could use such a CIV to pool assets in order, for example, to achieve economies of scale. The tax classification of a CIV could be different in a source MS and a resident MS. This could result in double taxation for the ultimate Beneficial Owner(s). Also, in case the tax treatment of a CIV is the same in both MS’ it may not be possible to submit tax refund requests on an aggregated pooled basis for all beneficial owners who invest in the CIV. This results in increased work and costs. Basically, an appropriate pooling vehicle with the same tax status in every MS is not available within EU capital markets. Please note that pension funds aim for tax neutrality when pooling assets.

You can find more information in [PensionsEurope position paper on the withholding tax refund barriers to cross-border investment in the EU](#), [PensionsEurope position paper on smoothing WHT](#)

[procedures beyond Code of Conduct - EU tax register of recognised pension institutions](#), and [PensionsEurope feedback to the European Commission on its roadmap on the 'New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes'](#).

Finally, we would like to encourage the wide use and acceptance of electronic signatures, which would make the processes faster and more efficient (and we would find it important).

Question 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			X
High compliance costs associated with the WHT refund procedures			X
Giving up the right of submitting WHT refund claims		X	
High opportunity costs due to the delay in receiving the WHT refunds			X
Permanent double taxation suffered		X	
High risk that the system is abused		X	
Other			X

Other: Some source MSs require for each tax reclaim filed during the year the same number of supporting documents (i.e. tax residency certificate, articles of incorporation, POAs, etc.), which often need to be legalized with apostille. We wonder if these types of documents could not be submitted once and then re-used in the various tax reclaim requests during the year/certain period.

Moreover, some source MSs have multiple (regional) tax authorities, which means that the above-mentioned supporting documents have to be submitted multiple times, i.e. each local authority wants to receive these to support the individual tax refund request submitted with this authority. Perhaps the delivery of these supportive documents could be received in a centralized manner in the source MS, so they can be used for every reclaim submitted with the different regional tax authorities.

The processing time of tax refund requests by the tax authorities is typically between a few months and three years.

Question 5. In January 2016, the overall cost of WHT refund procedures was estimated at EUR 8.4 billion per year. 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

Question 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

Question 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

Question 9. With which countries did you encounter such problems?

Belgium, Finland, France, Germany, Italy, Poland, and Portugal

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

In the rest of the MSs.

Question 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

Question 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

Question 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%):

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.

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*
- **More than 3 weeks**
- *Don't know*

II. Need for EU action

Question 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 extent*
- *Do not support*
- *Don't know*

Question 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*

III. Policy options

Question 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 (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:
[EU tax register of recognised pension institutions](#). We believe that in a risk-based approach (i.e. some situations are low risk by nature or in other situations risk on Tax abuse has been appropriately mitigated to an acceptable level) cases are eligible for RAS. More uniformity in qualifications on tax status of pension funds and an EU-register in which such qualifications are documented would be highly beneficial for the investment climate in the EU. More uniformity is also needed to determine against an acceptable risk whether a recipient of the Securities income could be considered the Beneficial owner of this income.

As a long-term solution, the introduction of a WHT blockchain solution within the EU could be considered to move to a more “real time” handling of WHT whereby simultaneously the risk on tax abuse could be appropriately mitigated.

One may consider a system with Authorized Intermediaries at EU level, i.e. as applied in the US WHT system and TRACE, to create a relief at source system across the EU capital market. In this way the risk of tax abuse is more appropriately addressed for MS (i.e. limited counterparties for the MS). Full recourse may be obtained from the recipient in the event that incorrect statements are made to the Authorized Intermediary.

Question 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: [EU tax register of recognised pension institutions](#)**

Question 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: [EU tax register of recognised pension institutions](#)**

III.A. Improving withholding tax refund procedures

Question 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="checkbox"/>
Central repository at EU level to store tax residence certificates issued by Member States' tax administrations	<input checked="" type="checkbox"/>
E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalized verification system	<input checked="" type="checkbox"/>
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="checkbox"/>

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	X
Allowing alternative ways of proving tax residence (i.e. investor self-declaration)	
Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim	X
Issuing digital passport to attest investor's entitlement to tax treaty benefits for a period of time	X
Refund claim made on the investor's residence country instead of on the country of the investment	

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

Central tax register at EU level to store the tax status of pension funds in the EU. The above-mentioned digital passport could contain this information; however, these passports should also be stored centrally within the EU.

Standardized approach within the EU is being used to determine whether a recipient could be considered the Beneficial Owner of the Securities income received in a source MS.

Question 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

Question 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	
Dividends in general	
Dividends and interest	X

Dividends, interest, royalties, other passive income payments	
Other	

Question 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*

Note: Based on the above metrics large institutional investors like pension funds could never be considered low risk. The size of a tax refund and the WHT rate are not the only conditions to determine whether a situation could be considered low risk. A pension fund, which invests passively in shares and holds these instruments directly through its custody account could in our view also be considered low risk (irrespective of the heighted of the securities income or the WHT levied in this case).

Question 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

Note: in addition to the above conditions, we could also think of other conditions that would be considered low risk and should therefore have access to RAS (see in more detail our note on the question 24).

Question 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

Note: provided the tax-status information about the non-EU Investor could be sufficiently secured by the Source MS.

Question 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

Question 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

Question 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 related to the payments received

- *Strongly agree*
- *Agree*
- **Agree to some extent**
- *Do not agree*
- *Don't know*

Question 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**

Question 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**

Question 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

Question 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

Question 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

Note: In principle, if RAS is set-up appropriately a low chance of tax abuse could be achieved, however, in high-risk situations (that cannot be mitigated or the Portfolio investor doesn't cooperate) one could consider an improved tax refund procedure system as an alternative.

Question 36. What other options do you deem helpful to prevent or combat tax abuse. Please explain:

For the long term one could consider introducing a WHT blockchain solution within the whole EU which has the potential to reduce the risk of tax abuse. However, these technologies and systems have yet to be developed and it has to be demonstrated that they can tackle issues relating to WHT. Therefore, this should not distract from setting up an EU-wide relief at source system.

Question 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: From a practical point of view it can be considered that the Financial intermediary, which could often be the withholding agent, will be liable towards the tax authorities of a source MS. We are probably talking about fewer entities, often located in the source MS, than the number of non-resident investors (located in resident MS). However, based on the chain of contractual relationships the Financial intermediary can ask for reimbursement from the Non-resident investor.**

Question 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?

- *Liable for any underreporting detected*
- **Liable for underreporting when acting without due diligence**

Note: besides the identification of the non-resident investor, i.e. to determine its tax status it is also relevant to establish the beneficial ownership of the relevant securities income. This should be explicitly arranged for in the legal relationship between the authorized intermediary and the non-resident investor (e.g. like the W-8BEN form used in the US context).

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 18 EU Member States and 4 other European countries⁶.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents **€ 7 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **19 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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⁶ EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.