
Opinion Statement FC 5/2022 on the European Commission Consultation on Introducing a Common EU-wide System for Withholding Taxes

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CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Bruno Gouthière, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Director of Tax Policy at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

1. Introduction

CFE Tax Advisers Europe welcomes the work of the European Commission in examining methods of improving issues facing EU citizens in relation to cross border investment which result in double taxation, as well as other tax obstacles.

Although much has been achieved in the past, EU citizens continue to face excessively complex administrative procedures, other barriers, or divergent interpretation of tax treaties. As a result, citizens and companies often are prevented from fully exploring the possibilities of the Single Market and the four freedoms guaranteed within the EU treaties, and from the benefit of EU directives and double taxation treaties. CFE equally welcomes that more attention is now being brought to cases of double taxation throughout the EU, and hope EU Member States can arrive at unanimous solutions to these problems.

CFE is supportive of the initiative to introduce an EU-wide system for relief at source of withholding tax on dividend, interest, royalty payments and service fees, and for exchange of information and cooperation between tax authorities under the system.

2. Comments on an EU System for Withholding Tax

From a legal theory perspective, double juridical taxation, if not relieved by a treaty or unilaterally, is in breach of the principle of fair and equal treatment. Relief of double taxation falls in the ambit of the principles of tax good governance and, also, the principle of good administration as established in Article 41 of the Charter of Fundamental Rights of the European Union. Double juridical taxation might be also seen as a violation of the principle *ne bis in idem*, which is enshrined in Article 4 of the European Convention of Human Rights.

CFE has a strong preference for a harmonized **relief at source** system and strongly support that there should be a harmonized means to obtain via e-request a tax residence certificate, with swift online provision of the tax residence certificate, and a digitalised verification system. **Refund procedures** are costly, time-consuming and often result in taxpayers having their refund claims refused for various administrative-related reasons. It is illogical that if one invests in the US, the treaty rate is automatically applied based on very simple and straightforward procedures, whereas this is not the case automatically if one were to invest in shares in another EU Member State.

Further to CFE's view that the ideal means to resolve issues of double taxation in withholding taxes is by ensuring relief at source at the treaty rate, CFE believes that the ultimate goal should be that dividends should only be taxed once in the residence state, and thus not also in the source state. This is the only means to truly ensure that there is no double taxation. CFE also believes such a mechanism should be extended to interest/royalty/service fee payments. If this is not be possible, the goal should be at the least to make sure that payments of dividends,

interest or royalty (service fees) income that comes from another Member State should not be subject in total to a higher burden of taxation than domestic payments.

If relief at source is not possible, CFE would strongly support the streamlining of withholding tax refund processes through the introduction of a one-stop shop where an investor could log in and make a refund claim irrespective of the source Member State, based on standardised forms. A tax residence certificate should be issued in a harmonized format within the EU, both in local language and in English, and it should certify the residence of the taxpayer under the applicable domestic law and not for the purposes of particular tax treaties failing which a taxpayer would have to request many certificates if it receives income from various foreign countries. CFE believes in this respect that Form 6166 as applicable in the US should be seen as a good example of good administrative practice as it generally certifies the name, address, and tax identification number of the taxpayer without any other information and with no mention of any specific tax treaty, which makes it relevant for the application of many tax treaties at the same time. In our view, it should also be possible 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).

If a financial intermediary makes a refund claim on behalf of a non-resident investor based on information provided by that investor, then in the event of any under-reporting to the investment country, it would be appropriate for the non-resident investor to be responsible for any liability arising. Any potential liability for under-reporting of withholding taxes should only arise for the financial intermediary where they have failed to carry out reasonable actions to properly verify the investor's entitlement to the tax treaty benefit.

3. Extending the Cooperation Framework to Third Countries

In conjunction with the implementation of measures to improve the withholding tax refund procedures and establish a common EU relief at source system, CFE is of the view that there are solid public policy arguments for Option 3 (enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits) and extending this to third countries. This could build on existing multinational arrangements including, for example, FATCA, though the focus there is on individuals. This would minimise de facto economic losses to investors etc and does the most to promote transparency and cooperation among tax authorities.

It would obviously benefit financial intermediaries in third countries if the benefits of any directive was extended to them, for instance through a treaty. CFE recalls that in the past the EU Commission reached an agreement with Switzerland (on the implementation of the Savings Directive) which provided Switzerland with benefits, equivalent to those in the Parent/Subsidiary Directive. This agreement was negotiated by the Commission after receiving the necessary authorisation from the EU Council (cfr council decision of 16 October

2001 and June 2 2004 published 29 December 2004) in the name of all Member States. CFE would be supportive if a similar mechanism could be used to extend the application to third countries of any EU-wide system on withholding taxes.

4. Conclusion

CFE stands ready to support the Commission in addressing the issues identified in the above and in any Commission action that would alleviate the problems of double taxation in relation to withholding tax.

From the CFE perspective, double taxation in general continues to be an issue, despite positive developments such as the enactment of the EU Dispute Resolution Mechanisms Directive. Relief of double taxation should continue to be a priority for Member States and the European Union in areas of shared competence.

From the CFE perspective, it is not acceptable for citizens to be subject to double or multiple taxation due to lack of coordination by two or more Member States. Therefore, we support projects that eliminate this extra tax burden and as such can significantly improve the cross-border activity of EU citizens.