

Brussels, 24 June 2022

EFAMA COMMENTS ON THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION NEW EU SYSTEM FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF TAX ABUSE IN THE FIELD OF WITHHOLDING TAXES

EFAMA is once again grateful for the opportunity to engage with the Commission and comment on this initiative on Withholding Taxes (WHT). **Burdensome WHT procedures for reliefs and refunds have long proved a barrier to a well-functioning capital market.** They hinder cross-border investment, disrupt financial processes such as clearing and settlement, increase the cost of cross-border investment and are an obstacle to achieving a Capital Markets Union (CMU).

EFAMA has generally supported the Commission's Code of Conduct on WHT as well as all the efforts of the Commission to launch the CMU and all related initiatives to remove tax barriers within the EU. EFAMA also appreciates the follow-up work currently carried out by the Commission with Member States to improve the efficiency of procedures applicable to WHT.

The existing WHT procedures are generally demanding, resource-intensive and costly for investors. As mentioned in the Commission's survey, as well as in the roadmap, the overall cost of ineffective WHT refund procedures was estimated in Europe alone as reaching **EUR 8.4 billion per year** in foregone tax relief, costs of reclaim procedures and opportunity costs. In practice, it is often too complex and costly for investors to effectively claim and receive relief. **The resulting misallocation of financial resources undermines investment within the EU.**

WHT issues are solved via possible domestic tax exemption, treaty relief at source and/or tax reclaim processes. **From an industry standpoint, relief at source is always the preferred system. EFAMA further believes that investment funds must be generally entitled to double tax treaties so that the fund itself can claim benefits in its own right.** Below you will find some comments on why this is our preferred option considering our industry's tax operational models.

In a nutshell, **EFAMA's position and key concerns on WHT barriers remain consistent and we would advocate for Member States (MSs) to abolish the WHT for payments made to UCITS and AIFs, or as an alternative (if that is not feasible at this time), support an EU-wide WHT rate limited to 15% in all MS and for recognition of the treaty entitlement of UCITS and comparable investment funds.**¹

¹ It is not the first time EFAMA is calling all Member States to recognize treaty entitlement to UCITS and comparable investment funds. Please refer to EFAMA's response to the CMU consultation on barriers to the cross-border distribution of investment funds from [2016](#), as well as to our comments on the implementation of [TRACE](#), and to the public reactions to the 2017 Commission's Code of Conduct on WHT as well as the developments on WHT that have taken place on the

Why tax neutrality is a key element of our industry's tax operational models? How is the tax neutrality principle being acknowledged?

The role that investment funds have to play in providing investors to global market access and a diversified portfolio is crucial and not to be underestimated.

Tax neutrality of investment funds is a generally recognised principle notably by the European Commission² and must be preserved. Investors in investment funds should indeed not be penalised when compared to investors that invest directly in securities. As far as possible, the overall final tax burden for direct or indirect investments should be the same, irrespective of the vehicle used. The economic double taxation of income received by the fund should be avoided to protect the interests of European consumers that should not see the return on their investments reduced for tax inefficiencies.

Investment returns are thus generally taxed at the investor level upon distribution in order to prevent distortion for investors in investing on a pooled basis compared to investing directly into the underlying asset and **investment funds are treated as tax-neutral investment pooling vehicles as a matter of public policy and are therefore generally exempt from taxation to fulfil that tax neutrality objective.** This is particularly important for payments of dividends, interest and capital gains.

We remain available to share with the Commission additional information on our industry tax operational models.

The tax neutrality principle also involves avoiding double taxation through withholding taxes incurred by investment funds. In that respect, there should be no doubt funds should have access to tax treaties and be granted treaty benefits in their own right. All the achievements reached both at the level of the OECD and EU where several stakeholders have been called to address several challenges in the tax treatment of investment structures must be borne in mind and more in particular, the work of the OECD Committee on Fiscal Affairs (CFA), regarding the granting of treaty benefits for Collective Investment Vehicles (CIVs) and the subsequent work on the principal purposes test or "PPT" rule for non-CIVs.^{3 4}

Why funds should get treaty entitlement in their own right and why relief at source should be favoured?

Tax treaties often foresee limitation on benefits (LoB) rules for the funds to achieve treaty entitlement. LoB-rules **require the funds to prove their "end" investor base (nationality/residence) – which is often very difficult or sometimes even impossible to achieve.**

markets since 2017. Worth mentioning that since its inception, EFAMA has always seen TRACE as a means to overcome withholding tax issues, provided a unified system was set up in advance of its implementation.

² European Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union - 19 July 2016 - Para. 161: "... **Member States generally seek to reduce adverse taxation effects on investments through investment funds or companies compared to direct investments by individual investors and, as far as possible, to ensure that the overall final tax burden on the basket of various types of investments is about the same, irrespective of the vehicle used for the investment.**"

³ CIVs - On 23 April 2010 the OECD CFA adopted the report on "*The Granting of Treaty Benefits with respect to the Income of Collective Investment Vehicles*" (2010 CIV Report) – here **the OECD explicitly recognized the importance of CIVs and suggested solutions with a view to ensuring CIVs could access tax treaties with a view to avoiding double taxation.** Following to the work of the Committee on these issues, on 22 July 2010, the OECD Council approved an update to the Model Tax Convention addressing those issues.

⁴ Non-CIVs - Furthermore, EFAMA urges you to remember the BEPS Action 6 Final Report on "*Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*". As, this Report and the subsequent further work addressed the inadvertent effects of the MLI (Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting) on non-CIVs – **the OECD explicitly recognized that non-CIVs should not be penalised** by the proposals. As mentioned in paragraph 14 of the Action 6 Final Report "**the OECD recognises the economic importance of these funds and the need to ensure that treaty benefits be granted where appropriate.**" Please refer to EFAMA's comments on several public discussions regarding the implementation of BEPS Action 6 - from 2014, 2015 and 2017.

We should bear in mind that – in addition to difficulties arising from different withholding tax rules and documentation requirements in the EU – the main difficulty for some funds is that many of them, UCITS as well as AIFs, are widely distributed and held through Central Securities Depositors and all the information concerning the end investors lies with the distributors (account holder banks) which – mostly for commercial and legal reasons – are not able to share the information with the issuer (the fund) but at extraordinary expenses.

The fact that in many cases investment funds do not have direct access to reduced withholding tax rates available under tax treaties acts as a barrier. This is why for EFAMA the best solution would be that the fund is always considered as the beneficial owner (or a qualified person) and benefits for the double tax treaty without further requirements (i.e. no LoB-requirement). This solution, which has already been acknowledged at the OECD and EU levels, should be applied at least to all widely held open-ended funds inside the EU.

Digitalisation of existing WHT refund and relief at source processes and digital Certificates of tax residency

In the context of the legislative proposal currently being prepared, EFAMA calls in the short term for a harmonisation at EU level and a digitalisation of existing WHT refund and relief at source processes to make them paperless. EFAMA further calls for the introduction of tax residency certificates that provide a clearer way to ensure the validity of certificates. While the system may involve some initial costs of set up, the long-term advantages and reduction in administrative burden for both tax authorities and the industry would be significant.

Enhancing the existing administrative cooperation using technology, not new legislative measures

Rather than exploring new legislative measures (risking imposing additional costs and unintended consequences on end-investors) EFAMA encourages **Member States and the Commission to focus on making more effective use of the existing EU legal framework to tackle tax avoidance and aggressive tax planning.**

As the effectiveness of existing tools (tax transparency packages, administrative cooperation tools, other anti-avoidance measures e.g., DAC's, ATADs) was not fully explored, and all of which are placing an increasing compliance burden on taxpayers and strain on tax authorities' resources, **any amendments to the existing framework in the context of current initiative may be premature.**

Following our long-term vision to solve WHT issues (including the need to address tax avoidance and aggressive tax planning issues, not to mention tax fraud), **EFAMA advocates for an industry-public sector collaborative implementation of technical solutions** (e.g. DLT-based solutions) **where experts from both tax administrations and industry experts will work together to build a common, standardised system the Commission is seeking in its Action Plan.**

The solution EFAMA wants to see implemented will substantially reduce administrative costs and allow regulators/tax authorities to concentrate and focus on compliance⁵ rather than on the administration of compliance.

We remain available to share additional information on EFAMA's views on how technology can help solve these issues. We believe that significant **enhancements around areas such as security, digitalisation of procedures, should substantially reduce the chance for any fraudulent claims as well as create significant efficiencies for all participants compared to a paper-based claim process.**

⁵ Please refer to Appendix 4 of EFAMA's [presentation](#) where we explain participants will own/control the DLT utility via a tokenized contribution allowing them to systemically perform the Proof of Stake calculations and update the chain. With the use of technology, in the future Tax Authorities and regulators will be able to witness, validate and confirm any updates in the chain.

Below you will find our comments on the questions raised in the public consultation survey and our industry’s main concerns/views on the most critical points that should be considered by the Commission.

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

EFAMA comments – To provide you with some examples: i) countries where reclaim processes are widely known to be problematic could drive investment elsewhere; ii) index products are likely to be adversely impacted in a bigger way as you have to follow the Index weighting; iii) active funds may have some flexibility to invest in alternative countries/securities; iv) lower fund performance as a result of impacted relief could see investors reduce exposure to Euro Equity in favour of other investment jurisdictions e.g. North America.

Question 2.

For which of the following payments, do you think that the issue of inefficient WHT procedures is relevant:

Multiple options are available

Check the box where applicable

Nature of the cross-border payment	
<i>Dividends from listed companies</i>	<input checked="" type="checkbox"/>
<i>Dividends from unlisted companies</i>	<input checked="" type="checkbox"/>
<i>Interests related to debt instruments in listed companies</i>	<input checked="" type="checkbox"/>
<i>Interests related to debt instruments in unlisted companies</i>	<input checked="" type="checkbox"/>
<i>Royalties</i>	<input type="checkbox"/>
<i>Other</i>	<input type="checkbox"/>

EFAMA comments – Equity and Debt on listed companies is where the vast amount of volume is. Where you have greater volume, is where you need procedures to be most efficient. Small improvements in efficiency can create great value impact where volumes are high.

Question 3.

What is in your opinion the nature of the problems with existing WHT refund procedures?

1) Low importance; 2) Medium importance; 3) High importance

Nature of the problem	1	2	3
<i>Lack of knowledge by the investor about the existence of refund procedures and/or mechanism available to claim the refund</i>	<input checked="" type="checkbox"/>		
<i>Lack of digitalization in WHT procedures and non user-friendly forms</i>			<input checked="" type="checkbox"/>
<i>Lengthy WHT refund procedures</i>			<input checked="" type="checkbox"/>
<i>Costly WHT refund procedures in monetary terms (administrative and opportunity costs included)</i>			<input checked="" type="checkbox"/>
<i>Country of investment does not accept tax residence certificates from the residence state</i>			<input checked="" type="checkbox"/>
<i>Conflict on tax residency</i>	<input checked="" type="checkbox"/>		
<i>Country of investment requires information which the investor is unable to deliver</i>			<input checked="" type="checkbox"/>
<i>Other</i>			<input checked="" type="checkbox"/>

EFAMA comments – EFAMA’s members experience several difficulties due to **inconsistent WHT recovery processes** which are defined and applied at national level, across several jurisdictions. As stated in our initial remarks, this is of high-importance and EFAMA calls for an harmonisation/digitalization of existing WHT refund and relief at source processes. If the process of reclaiming WHT can be made to be simple and consistent across different investment countries, then this would tackle many of the issues listed in this consultation.

Question 4.

What are in your view the consequences of the problems encountered with WHT refund procedures?

1) Low importance; 2) Medium importance; 3) High importance

Consequences	1	2	3
<i>Delays in effectively receiving the excessive WHT refund</i>			<input checked="" type="checkbox"/>
<i>High compliance costs associated with the WHT refund procedures</i>			<input checked="" type="checkbox"/>
<i>Giving up the right of submitting WHT refund claims</i>			<input checked="" type="checkbox"/>
<i>High opportunity costs due to the delay in receiving the WHT refunds</i>			<input checked="" type="checkbox"/>
<i>Permanent double taxation suffered</i>			<input checked="" type="checkbox"/>
<i>High risk that the system is abused</i>	<input checked="" type="checkbox"/>		
<i>Other</i>			

EFAMA comments – UCITS and UCITS like AIFs (widely distributed open-ended AIFs) represent a low risk of being used for treaty shopping purposes.

First, they are open-ended vehicles, i.e. an unlimited number of investors can subscribe and redeem their fund units freely and daily. This limits the capacity of a single investor to control the vehicle. Second, they must fulfil risk-spreading requirements, i.e. cannot be used to hold large investment positions with the view to benefit from specific treaty relief provisions. Due to the generally limited share of investment allowed, widely-held UCIs should normally not be able to exert any influence on the entities in which they invest. Please refer to our initial remarks to learn more about our industry’s needs and EFAMA’s position in this respect.

Worth mentioning that delays in receiving reclaims create uncertainty and potential risk of procedural change that could negatively impact claims collectability. One of the main risks is that reclaim entitlement is lost through procedural complications. Double taxation is a potential risk if home tax authority doesn’t allow for tax returns to be retrospectively adjusted in event of reclaims never repay – this issue may be exacerbated where there is a time limit to re-file/adjust domestic tax return, and WHT reclaim timeframes are high.

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?

- 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

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

EFAMA comments – We have acknowledged the efforts made in several jurisdictions, but to achieve more efficiency, EFAMA advocates for complete standardisation of procedures i.e. a single set of forms and declarations. All stakeholders should be working together with a focus, not on individual Member States WHT procedures, but on testing each entity and its entitlement in all Member States. That needs to be done only once but still, allow for Member State flexibility on existing beneficial ownership control (to hope for unanimity on the future Directive).

Being consistent with the OECD Model for Residency and “if liable to tax under that Contracting State's laws”, we would suggest the use of generic forms (with a domestic look at beneficial ownership and onus on investee country to have to test and reject on their own beneficial ownership criteria).

Whilst certain countries make steps to improve efficiency, this does not always translates to being easier or better for investors. TRACE is seen as an efficient system for supporting tax relief, but liability concerns has prevented the wide spread roll out. As mentioned above, TRACE can be seen as a means to overcome withholding tax issues, provided a unified system was set up in advance of its implementation. Please refer to our initial remarks – to start building this unified system, for now, our focus should be on the streamlining of the existing paper-based procedures e.g. on the delivery of a digital tax certificate of residency.

Question16.

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

EFAMA comments – EFAMA is calling for a consistent and harmonized framework with standardized procedures (e.g. tax documents/forms, timeframes, etc) as we believe it will help drive much more efficiencies into the system. This initiative should also be seen as an opportunity to level playing field and enhance/exchange best practices amongst tax authorities across the EU and beyond.

III. POLICY OPTIONS

Question17.

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 ^[6] (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

^[6] A relief at source system would mirror TRACE model (“treaty relief and compliance enhancement”). Find more information in the link: <https://www.oecd.org/ctp/exchange-of-tax-information/aboutthetracegroup.htm>

EFAMA comments – As stated in our initial remarks, relief at source is the most efficient way to obtain tax relief. However this is not always possible as it relies on investor(s) being able to obtain, and submit up the investment chain, certain documents such as residence certificates before the income event pays.

Sometimes there are delays in domestic tax authorities issuing residence certificates (for example; some tax authorities will not issue residence certificates until after first tax return filed by a fund – i.e. the year after launching). In a number of instances, relief at source may be missed, so an efficient reclaim process is needed to ensure investors can still claim the WHT relief they are entitled to.

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 source⁶
- Harmonized system of improved refund procedures
- A combination of the above systems (relief at source and refund system)
- Other

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

EFAMA comments – As we understand this question is targeted at Tax Administrations, EFAMA is not in a position to answer.

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 cross-border payment	
<i>Standardized and same language forms for refund requests across Member States' tax administrations</i>	<input checked="" type="checkbox"/>
<i>Central repository at EU level to store tax residence certificates issued by Member States' tax administrations</i>	<input checked="" type="checkbox"/>
<i>E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalized verification system</i>	<input checked="" type="checkbox"/>
<i>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.)</i>	<input checked="" type="checkbox"/>
<i>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</i>	<input checked="" type="checkbox"/>
<i>Allowing alternative ways of proving tax residence (i.e. investor self-declaration)</i>	<input checked="" type="checkbox"/>
<i>Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim</i>	<input checked="" type="checkbox"/>
<i>Issuing digital passport to attest investor's entitlement to tax treaty benefits for a period of time</i>	<input checked="" type="checkbox"/>
<i>Refund claim made on the investor's residence country instead of on the country of the investment</i>	

⁶ Please refer to our previous comments to question 17.

EFAMA comments – A refund claim is not always viable. In many instances, investors would not be able to credit the WHT against their domestic tax liability. While discussing the enhancement/streamlining of procedures, EU Member States could consider the introduction of a common timeframe (e.g. 1 year) by which Tax Authorities must meet when processing and refunding tax reclaim applications. Where tax authorities process/refund reclaim applications over this time limit, accrued interest should also be paid by the tax authority.⁷

Question 21.

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

EFAMA comments – Please refer to our initial remarks - our focus should be on the delivery of a digital tax certificate of residency.

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

EFAMA comments – WHT reclamation, in the vast majority of cases, is handled by financial intermediaries on behalf of investors. Often large financial intermediaries are set up to support WHT relief for investors alongside key service functions such as custody services. Providing the financial intermediary is managing the process correctly, it should be very clear to the withholding agent or tax authority that the claim for tax relief is being made by an investor that is the beneficial owner, but the financial intermediary is facilitating this on their behalf. Proof of this is usually facilitated by a Power of Attorney from the investor to the financial intermediary. Not allowing these financial intermediaries to file claims on behalf of investors would create dramatic inefficiency as investors would not have the necessary knowledge, technology/systems or market network/connections to do this themselves.

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	
Dividends from listed companies	<input checked="" type="checkbox"/>
Dividends in general	<input checked="" type="checkbox"/>
Dividends and interest	<input checked="" type="checkbox"/>
Dividends, interest, royalties, other passive income payments	
Other	

⁷ This already happens in some instances and this should incentivise tax authorities to ensure processes are made as efficient as possible, whilst compensating investors where processing takes longer than should be expected.

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

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

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

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 ^[7]

^[7] as far as there is automatic exchange of information and mutual assistance in place between the relevant non-EU country and the EU source country

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

EFAMA comments – As mentioned above, TRACE-like systems can be seen as a means to overcome withholding tax issues, provided a unified system was set up in advance of its implementation. The first option would probably provide Custodians and Tax Authorities with more certainty. Please refer to our initial remarks - our focus should be on the delivery of a digital tax certificate of residency.

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 ^[8] related to the payments received

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

^[8] DAC2 already comprises as reporting items the amount of dividend received in the holder account. Conversely, it does not comprise any additional relevant data for the correct checking of refund/relief procedures (e.g. WHT agent, intermediaries in the financial chain, gross dividend paid, date of payment, etc.)

EFAMA comments – Please refer to our initial remarks - **any amendments to the existing framework in the context of current initiative may be premature.**

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*

EFAMA comments – Please refer to our initial remarks - **any amendments to the existing framework in the context of current initiative may be premature** – we should try to leverage existing reporting frameworks and, as much as possible, Member States should focus in making more effective use of the existing EU legal framework to tackle tax avoidance and aggressive tax planning.

IV. COMBATING TAX ABUSE

Combating tax abuse is one of the main goals of this initiative. Bearing this in mind we would like to hear your views on which system would be best suited to fight against any kind of tax abuse. The question of who should be held liable in case of flaws or incorrect information in any of the systems eventually implemented plays a crucial part to minimize or avoid failures in compliance. Therefore, we would like to hear your opinion on who should be accountable in case of any underreporting during WHT procedures in order to avoid tax abuse and loss of tax revenue.

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

Question 36.

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

EFAMA comments – Please refer to our initial remarks - We believe that significant enhancements around areas such as security, digitalisation of procedures, should substantially reduce the chance for any fraudulent claims as well as create significant efficiencies for all participants compared to a paper-based claim process. The solution EFAMA wants to see implemented will substantially reduce administrative costs and allow regulators/tax authorities to concentrate and focus on compliance rather than on the administration of compliance.

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

EFAMA comments – At a very high level, its the responsibility of the beneficiary/investor to provide the correct information and for the intermediary to correctly facilitate the tax relief.

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

^[9] The authorized intermediary closest to the investor is considered the best placed to check non-resident investor's identification (via KYC and AML due diligence), hence, he would normally be deemed liable under a relief at source system



ABOUT EFAMA

EFAMA, the voice of the European investment management industry, represents 27 member associations, 58 corporate members and 26 associate members. At end Q4 2021, total net assets of European investment funds reached EUR 21.9 trillion. These assets were managed by more than 35,000 UCITS (Undertakings for Collective Investments in Transferable Securities) and more than 30,000 AIFs (Alternative Investment Funds). At the end of Q3 2021, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 31.3 trillion.

More information is available at www.efama.org

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