



To European Commission,  
DG TAXUD

Stockholm 23 June 2022

## **Input on the European Commission's initiative for a new system for the avoidance of the double taxation and prevention of tax abuse in the field of withholding taxes**

FAR, the institute for the accountancy profession in Sweden, takes the opportunity to respond on the European Commission's initiative for a new system for the avoidance of the double taxation and prevention of tax abuse in the field of withholding taxes.

### **Introduction**

On September 29, 2021, the Commission has published its initiative for the avoidance of the double taxation and prevention of tax abuse in the field of withholding taxes.

FAR shares the Commission's description that the process of obtaining a reduction and correct level of withholding tax on e.g. a dividend from another EU country according to the applicable tax treaty is often complicated, time-consuming, administratively burdensome, legally uncertain and inefficient. A situation based on the fact that each of EU's 27 member states currently has its own national system and procedures for allowing reduction of withholding tax in accordance with internal tax rules and in accordance with applicable tax treaty. The process and the formal requirements in the various EU countries for reducing withholding taxes differ substantially in several aspects, e.g. in terms of the scope of the information that have to be provided, design of residence certificate, deadlines, requirements for authorized certification, etc.

In the long run, this means that the European capital market is functioning worse than it should and that foreign investors are being discriminated against in relation to domestic investors, completely contrary to the basic principles of the EU-collaboration. Even in situations of withholding taxes being levied in an EU neighbouring country, where the process of reducing withholding tax could be expected to work more easily, the procedure is still often complicated and time-consuming and further emphasizes the need for uniform rules throughout the EU to achieve a more efficient and legally secure regulatory framework.

As the Commission also identifies, there is a natural difficulty in the system of withholding taxes reduction being efficient, legally secure and transparent for taxpayers and for capital market



participants, while at the same time preventing the use of tax evasion schemes. A somewhat natural contradiction which, of course, must be taken into account when creating an EU-harmonized administrative system for reducing withholding taxes.

### **General remark**

Against the presented background, it is from FAR's perspective necessary that the national systems for reducing withholding tax on e.g. dividends between subjects in different EU countries are harmonized at an EU level. FAR therefore welcomes the Commission's initiative to create a harmonized and uniform administrative system for the reduction of withholding taxes.

### **Proportionality**

From FAR's point of view, it is important that, in accordance with the principle of proportionality fundamental to EU law, the scope of the information that needs to be provided for the reduction of withholding tax is limited as far as possible and is also coordinated with the information that taxpayers and participants in the capital market already provide to the authorities of the Member States. Information that the taxpayers etc. already submitted to national authorities in one context should normally not need to be submitted again.

### **Existing register and information**

According to FAR, it should also be considered whether existing registers / information exchanges that the EU countries have already developed within the EU framework, e.g. information of beneficial owners, can be used, possibly after certain modifications to streamline the processes for achieving a correct level of different withholding taxes. Perhaps that such existing information structures within the EU can replace the requirement for a residence certificate, which is currently regularly required for recipients of a dividend to obtain a reduction of withholding tax. For residence certificates, another alternative could be to create an EU-wide database where the taxpayer can obtain the necessary residence certificate themselves, electronically.

### **Main tax rate approach**

Based on the fact that the process of reducing withholding taxes between EU countries is in general a mass process, it is according to FAR necessary that the main tax rate that follows from the applicable tax treaties is presumed to be correct and only in special cases may be questioned if complete information has been provided for reduction of withholding tax.

At the same time, this starting point also requires that the tax authorities in the member states should not have too limited opportunities to question a reduced withholding tax afterwards and be able to demand a repayment of a tax that has been levied too low.

### **Different investors**

In FAR's opinion, there are a notable difference between various situations, for example when it comes to portfolio investments where the participants in the capital market are responsible for and also handle much of the process collecting withholding taxes compared to transactions in groups or otherwise between affiliated companies. Another situation that stands out is when the investors are monitored by



special supervisory authorities in each Member State, e.g. pension funds established within the EU. In this latter case, it should be possible with a simpler procedure and in principle a fully automated procedure to obtain a reduced withholding tax.

In this context, it must also be taken into account that in recent years and for fully legitimate reasons, e.g. in order to prevent aggressive tax planning, rules have been introduced with the purpose that the reduction of various withholding taxes that otherwise follow from internal tax law or from tax treaties shall not apply. Rules of a tax evasion nature which, of course, are often difficult and complicated to apply. This in turn has meant that the assessment of which withholding tax to be levied in a certain situation has in some cases become increasingly complicated and time-consuming. A situation which, of course, must also be taken into account when introducing a harmonized EU process for reducing and withdrawing withholding tax.

Since the collection of withholding tax is in most cases is a mass procedure, while in other situations it is a matter of complicated assessments, it is according to FAR important that the Commission consider whether the process of reducing of withholding taxes should be completely uniform for all situations and subject or whether it is appropriate to distinguish between different cases.

### **Preferable option**

In the initiative, the Commission presents three different options to achieve a more uniform and harmonized system for reducing and collecting withholding taxes between EU countries, but where the final options can consist of a combination of parts from the various proposals.

Of the various proposals, FAR prefers an alternative which is based on option 2 and which means that a fully-fledged common system is introduced at EU level where the correct level of withholding tax on e.g. a dividend or interest is directly deducted at source according to internal tax legislation or according to the applicable tax treaty. This can be compared with option number 1 and which is more based on the procedure for reduction and recovery of withholding tax being simplified and harmonized and with e.g. standardized forms for reduction and recovery and with requirements for digitized processes. Although a system based on option number 2 is more ambitious and probably requires more work and effort to implement, FAR believes that in the long run a system based on option number 2 is more efficient and cost-saving for the taxpayers concerned, the participants in the capital market and the tax authorities.

### **Refunds**

Even with a uniform and harmonized regulatory framework for a direct reduction of withholding tax between EU countries, there will also in the future be a need for rules for the refund of withholding taxes that has been levied at too high tax rates. At present, the efficiency of these refunds processes varies considerably and in some EU countries it can take several years for taxpayers to recover overcharged withholding taxes, an unacceptable situation.

Also, with regard to withholding tax it is important that the process is harmonized and made more uniform and it should, according to FAR, be considered if time requirements should be imposed on the



tax authorities of the Member States to process withholding tax refunds claims. According to FAR, it should also be considered whether it is advantageous to introduce an EU-centralized system where taxpayers have an opportunity to apply for refunds of withholding taxes from all EU member states.

A special issue in this context is the claim for refunds, which is based on rulings of the European Court of Justice. According to FAR, in the event that the claim for a refund is based on a judgment of the ECJ, it should be considered whether a uniform system should be introduced at EU level where e.g. the EU institutions issues, guidelines and directives for the tax authorities of the member states so that refund claims for recovery that follow from the judgments of ECJ can be enforced in an effective manner. A system that should be beneficial both for the taxpayers and for the tax authorities.

### **Intermediaries**

It is important to keep in mind that the systems for reducing withholding tax are a mass procedure and where various forms of intermediaries in the capital market play a crucial role. Important in this context is that the responsibility that the intermediaries have for the collection of correct withholding tax must be proportionate and where an excessive responsibility imposed on the intermediaries' risks making the costs of compliance for the intermediaries unjustifiably high. A situation which in turn will make a new harmonized system of withholding tax ineffective contrary to the basic intentions of the European Commission's initiative.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Johansson'.

Michael Johansson

Chairman of the Comment Letter group Tax, FAR