Public consultation *withholding taxes* – Final Remark

To	The European Commission
From	The Dutch Fund and Asset Management Association
Date	24 June 2022
Subject	Public consultation: New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes
Contact details	Iris van de Looij, director DUFAS, ivdl@dufas.nl

The Dutch Fund and Asset Management Association (DUFAS) welcomes the opportunity to respond to the public consultation on the new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes, as published by the European Commission on 1 April 2022.

We welcome this consultation as the goal of the consultation is to enhance administration around effectuating the correct withholding taxes, i.e. after potential reduction based on applicable tax treaties. In today's practice we face administrative hurdles and inefficiencies which ultimately have an impact on end investors, such as pension funds and retail investors.

In addition to the answers to the questions in this questionnaire, we would like to take the opportunity to make some further remarks and suggestions.

First, as DUFAS represents the Dutch investment fund industry, we would like to highlight a very commonly used investment vehicle that is used in the Dutch market: the tax transparent fund for mutual account (in Dutch: "*Fonds voor Gemene Rekening*, or "FGR"[1]). The FGR is mostly used to pool assets of Dutch pension funds and is therefore a very important investment vehicle for Dutch pensions. As the FGR is transparent, resulting in a look through approach, the withholding taxes on investments due by the participants should be similar to the situation where the participants invest directly, i.e. without the interposition of a FGR. In practice there are however some hiccups, decreasing the FGR's efficiency. An example is the fact that the transparency of the FGR is not always accepted in a source country, or only upon delivery of a specific ruling confirming the transparency. We would therefore welcome a central repository at EU level documenting the FGR -and other commonly used investment vehicles- confirming its fiscal features, such as transparency, upfront which should prevent scrutiny on a case by case basis. We believe this would be in the interest of all relevant stakeholders in the chain of withholding taxes.

[1] An FGR can also be non transparent, depending on its level of transferability of participations. In this document, where we reference to FGR, we refer to the tax transparent FGR only. An FGR is comparable to the following commonly used investment vehicles in other markets: Common Contractual Fund or "CCF" in Ireland, "Fonds Commun de Placement" or "FCP" in France and Luxembourg.

Secondly, we would like to make a few suggestions that would in our view enhance the application of reduced or exempt withholding taxes. In general we point out that we have a strong preference for a relief at source system, but we acknowledge that we should also aim to enhance existing refund procedures in cases where relief at source is not available.

Suggestion 1
Enhancement of Certificate of Residence ("**COR**") document; in today's practice, Member States issue and require different COR's, the time to obtain them can be long, and their validity is limited. We would welcome a harmonization with respect to COR's such as: central repository at EU level, uniform COR at EU level (with limited deviations possible to meet non EU Member States' specific requirements), digitalization of COR's etc. An enhanced COR model would benefit both relief at source and refund procedures.

Suggestion 2
We welcome a system that takes into account the features of the OECD Trace model for relief at source of withholding taxes, provided the system is workable and does not discourage intermediaries to register as authorized intermediaries ("AIs"). The system should include an efficient refund process for those cases where relief at source is not possible.

Suggestion 3
Quick refund would be a welcome alternative if relief at source is not available in a market: a mechanism where beneficial owners are allowed to obtain quick withholding tax refunds after dividend payment date (4-6 weeks). In certain markets this is already in place. The fact that the refund would be effectuated quickly would take away the main arguments against refunds, i.e. big delays in refunds and costly and operationally intensive procedures.

Suggestion 4
A more general suggestion would be to keep striving for more harmonized, standardized and clear rules in each Member State on the concepts of beneficial owner, transparency, definitions (e.g. of pension fund) so that entitlement to tax-treaty benefits is more clear and not leading to unnecessary inefficiencies, legal procedures etc.

Suggestion 5
The implementation of a harmonized EU relief at source withholding tax system is in our view a small step away from harmonized withholding tax rates on portfolio income. For EU tax residents the default tax rate on portfolio dividend in almost all tax treaties concluded between EU member states is 15%. To mitigate the burden and liabilities for withholding agents we would suggest investigating whether it would be helpful to harmonize within the EU the statutory withholding rates on portfolio income and set these rates by default on 15% for portfolio dividends and 10% for interest income.

Suggestion 6
We agree that safeguards are needed around liability for RAS. These safeguards need to be proportionally and not discourage intermediaries from applying for AI status to make the system workable.

One final remark about the various questions relating to the scope of EU withholding taxes and whether procedures should also affect non- EU Member States. It speaks for itself that we would welcome a larger scope, also outside EU as that would further reduce administrative obstacles and delays in withholding tax procedures. But we believe that achieving some level of harmonization within EU should be the first priority and is more likely to succeed if 'only' within EU domain. If and when some level of harmonization is achieved, then the next step could be to broaden the scope to outside the EU.

DUFAS: Dutch Fund and Asset Management Association
Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.
Visit our website for more information: www.dufas.nl

More information
Would you like to respond, or should you have any questions? We would be pleased to hear from you. Please feel welcome to e-mail Iris van de Looij, Director DUFAS, at ivdl@dufas.nl