

Ms Lourdes Bustos

European Commission  
Directorate General Taxation and Customs Union

*uploaded to the EC's WHT public consultation website*

**ECB-UNRESTRICTED**

09.03.03.02/2022/000145

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**The AMI-SeCo's response to the public consultation on withholding tax procedures**

June 2022

Dear Ms Bustos,

I am writing to you in my capacity as chair of the Eurosystem's Advisory Group on Market Infrastructures for Securities and Collateral (AMI-SeCo). The AMI-SeCo represents a wide community of financial market stakeholders including national and international Central Securities Depositories (CSDs), market participants, Eurosystem central banks and industry associations. In addition to fulfilling its governance responsibilities with respect to the Eurosystem's TARGET2-Securities service (T2S), the AMI-SeCo focuses on fostering harmonisation of securities settlement and post-trade services in Europe.

The AMI-SeCo welcomes the European Commission's public consultation on a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT). The AMI-SeCo fully supports the objective set out by the European Commission to improve the efficiency of WHT procedures and to prevent tax abuse in the single market. This will be an important deliverable to further develop the Capital Markets Union, which will benefit the entire EU economy. On behalf of the AMI-SeCo, I am pleased to provide you with the AMI-SeCo's answers and views in particular on those questions that the AMI-SeCo deems most relevant from its post-trade harmonisation perspective.

Throughout its work, the AMI-SeCo has been giving close attention to the need for harmonising WHT procedures across EU Member States. This is an area which has been highlighted as one of the key barriers to European capital markets integration consistently by all relevant industry and Commission-sponsored

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analyses since the [2001 / 2003 Giovannini reports](#).<sup>1</sup> The AMI-SeCo and its predecessor, the T2S Advisory Group, have actively contributed to this discussion by expressing their views consistently with the findings included in earlier analyses when answering to public consultations on the Capital Market Union ([2015](#), [2017](#) and [2020](#)) and in letters sent to the European Commission ([2018](#), [2020](#)).

I take the opportunity to briefly lay out the key points of the broad financial industry consensus:

- The single capital market of the EU would benefit greatly from a robust, common framework for withholding tax relief at source based on fully harmonised definitions, procedures and reporting / information exchange (e.g. standardised electronic, machine-readable forms).<sup>2</sup> Such common framework should rely on authorised intermediaries which are regularly audited and which should be allowed to provide WHT services with respect to all source countries and all countries of residence within the EU. The framework should provide for the possibility of (auditable) self-certification by beneficial owners and pooled beneficiary information to be passed up the custody chain.
- WHT reclaim / refund procedures should be used as an exception, i.e. only where relief at source is not feasible or has not worked. Such reclaim / refund procedures should be based on a fully harmonised framework within the EU building on fully electronic processing and communication (standardised reclaim forms and messaging, common processing deadlines)
- The EU should have a harmonised framework for tax-payer identification based on existing international (ISO) standards (e.g. Legal Entity Identifier - LEI) and allowing a fully digital identification leveraging the e-IDAS framework. Such framework could be created on the basis of, and complemented by, the existing national tax payer identification frameworks.
- Creating a common EU standard for the certification of residence for tax purposes (CoR) would greatly improve processing efficiency of withholding tax (together with also processing of other types of tax in a cross-border context).

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<sup>1</sup> For example the [2006 / 2007 FISCO Reports](#), the [EC's own impact analysis related to the 2009 EC Recommendation on WHT](#), the [T-BAG report of 2013](#), the [EPTF Report of 2017](#), or, most recently, in the [2020 report by the High-level Task Force on the CMU](#).

<sup>2</sup> The AMI-SeCo is aware that a potential model and inspiration for a common EU framework for WHT relief at source could be the Treaty Relief and Compliance Enhancement by the OECD (TRACE, <https://www.oecd.org/ctp/exchange-of-tax-information/treatyreliefandcomplianceenhancementtrace.htm>). However, it is important to note that TRACE in itself does not fully harmonise WHT procedures and needs further practical evidence with respect to its implementation.

- Clarification and a common EU approach are warranted with regards to the definition of ‘beneficial owner’ for tax purposes (covering also situations where the legal and economic definition might differ) and with regards to the effect of market transactions other than outright purchases / sales of securities on the identity of the beneficial owner for tax purposes (e.g. impact of securities financing transactions on the taxable entity and the taxable income). Such clarification should take into account, and leverage on, the existing framework of the market harmonisation standards for corporate actions. In particular, there needs to be full consistency with the ‘record date’ principle similarly as applied for corporate actions, i.e. clear rules regarding the date on which the holder of a security is recorded for tax purposes.
- Whenever corporate actions on pending securities transactions, such as for example market claims, are necessary due to the beneficial owner being different from the holder of a security on the record date, such claims could be treated by national tax laws as indemnities rather than ‘manufactured’ income.<sup>3</sup> Such approach could help eliminating the need for ex / cum indicators and could contribute to preventing tax abuse.

The AMI-SeCo stands ready to provide its continued support with respect to fostering harmonisation of WHT procedures across Member States and to provide additional technical and operational expertise from the entire community of financial market stakeholders represented in the AMI-SeCo.

Yours sincerely,



Ulrich Bindseil

Chairperson of the AMI-SeCo

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<sup>3</sup> The T2S Advisory Group analysed this issue in detail and formulated its proposals accordingly in 2016, please see

[https://www.ecb.europa.eu/paym/groups/shared/docs/a226b-20161130\\_ag\\_discussion\\_note\\_on\\_harmonisation\\_of\\_tax\\_processing.pdf](https://www.ecb.europa.eu/paym/groups/shared/docs/a226b-20161130_ag_discussion_note_on_harmonisation_of_tax_processing.pdf)