

MEMO# 34318

October 24, 2022

For Your Review: Draft Coalition Submission to European Commission on Withholding Tax Proposal

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TO: Global Tax Committee

Tax Committee RE: For Your Review: Draft Coalition Submission to European Commission on Withholding Tax Proposal

The attached draft submission follows up on a meeting that a coalition of business groups^[1] held with the European Commission on September 28 regarding a proposed EU-wide withholding tax regime. The proposal, which is part of the European Union's Capital Markets Union (CMU) initiative, is designed to facilitate cross-border investment and prevent tax abuse.

The Institute has actively supported withholding tax relief efforts, including the [Treaty Relief and Compliance Enhancement \(TRACE\) implementation package](#) developed by the Organisation for Economic Co-operation and Development (OECD).^[2] This June,^[3] we responded to the Commission's public consultation by addressing the consultation's specific questions, providing a separate submission, and coordinating a fund industry response signed by nine associations.^[4] Last October,^[5] we also responded to the Commission's inception impact assessment.

The proposal currently under consideration by the Commission, as described in the attached survey, would limit the availability of expedited treaty relief to clients of financial institutions organized in the European Union. Specifically, clients that open accounts with non-EU financial institutions would not be eligible for the proposal's expedited relief but instead would file tax reclaims using existing (slower and more cumbersome) procedures.

The draft coalition submission first identifies key features that are essential for the proposal to provide sufficient benefits to investors, financial intermediaries, and governments to ensure wide use. The submission then proposes an eight-step process, illustrated by a diagram, for providing expedited tax treaty relief on cross-border investments. Finally, the letter identifies additional improvements to withholding tax procedures for a later consultation.

The key features identified in the draft coalition submission include:

- allowing all financial institutions (both EU and non-EU) to participate fully, on behalf of their clients, in the expedited relief procedures,
- providing only minimum standards that would not preclude Member States from providing expedited relief (including relief at source) in additional situations,
- protecting confidential client data from competitors,
- providing certainty regarding due diligence requirements and reporting responsibilities,
- reporting to the country (the "source country") in which the investment is made,
- using a standardized schema for relevant information,
- transmitting the information electronically,
- preferably allowing claims to be made on investor self-declarations (ISDs) rather than tax residency certificates (TRCs), and
- permitting Member States to craft their own parameters for deeming transactions or investors "low risk" and therefore eligible for the most expeditious relief.

Please provide any comments on the draft coalition submission to Katie Sunderland (katie.sunderland@ici.org or 202-326-5826) by Friday, October 28.

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Notes

[1] The business attendees represented the ICI, the European Fund and Asset Management Association (EFAMA), the Investment Association (the IA), the Association of the Luxembourg Fund Industry (ALFI), the Association for Financial Markets in Europe (AFME), the Association of Global Custodians (AGC), the European Banking Federation (EBF), Euroclear, and Clearstream.

[2] See, e.g., ICI Memo [24515](#), dated August 27, 2010.

[3] See ICI Memo [34206](#), dated June 30, 2022.

[4] The eight other fund industry associations were AFG - Association Française de la Gestion financière, ALFI - The Association of the Luxembourg Fund Industry, Assogestioni, BVI Bundesverband Investment und Asset Management e.V., EFAMA - European Fund and Asset Management Association, Financial Services Council (Australia), The Investment Association, and Irish Funds.

[5] See ICI Memo [33862](#), dated October 26, 2021.