MEMO# 34342

November 7, 2022

Business Coalition Response to European Commission's Withholding Tax Relief Proposal

[34342]

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TO: ICI Members
ICI Global Members
Global Tax Committee
Tax Committee SUBJECTS: International/Global
Tax RE: Business Coalition Response to European Commission's Withholding Tax Relief Proposal

A coalition of financial services industry organizations[1] submitted the attached letter to the European Commission regarding a proposed withholding tax relief procedure.[2] The letter, crafted by the ICI, summarizes several key observations and thoughts from coalition members that met in Brussels with the Commission staff.

The Commission, pursuant to the Capital Markets Union (CMU) initiative, is proposing a withholding tax relief procedure that would apply throughout the European Union (EU). Because the initiative involves a tax matter subject to the unanimity requirement, the proposal must satisfy the concerns expressed by every EU Member State. The ICI has commented previously on this initiative both individually[3] and by leading a coalition of associations representing collective investment vehicles (CIVs).[4]

The current proposal, which the coalition members received in draft form a few weeks ago, includes several provisions that would limit its benefits to investors and intermediaries—thereby making the proposal less likely to enhance the CMU. First, only those investing directly through an EU-based financial intermediary (FI) would be eligible for the relief. Second, financial intermediaries would report information regarding the payments on which their clients are seeking treaty relief to their resident (EU Member State) tax authority. Third, investors would be required to provide a digital tax resident certificate issued by their resident tax authority.

The business coalition response urges, among other things, that:

- all FIs (both within and without the EU) be eligible to apply the procedure,

- reporting be made to the tax authority of the country from which the dividend was paid (the source country), and
- treaty relief be based on an investor self-declaration.

Additional key features identified by the business coalition that would be necessary for a successful withholding tax initiative include:

- Member States should be free to exceed the minimum standards (such as by providing treaty relief "at source" when the dividend is paid);
- confidential client data must be protected from competitors in the payment chain;
- certainty must be provided regarding due diligence requirements and reporting responsibilities;
- relevant information should be reported using a standardized schema and transmitted electronically;
- information reported to the source country should be exchanged automatically with the jurisdictions of the investors and, to the extent useful, the FI's jurisdiction;
- expedited relief for low-risk investors, such as those requesting treaty relief at the standard 15 percent rate, should be provided; and
- any enhanced process must not create administrative or technical hurdles that effectively undermine benefits provided under existing law.

The coalition proposed an alternative quick refund procedure based largely on the Organisation for Economic Cooperation and Development's (OECD's) Treaty Relief and Compliance Enhancement (TRACE) initiative[5] that has been largely adopted in Finland. The coalition letter explains the proposal by illustrating the steps that an FI would take from the moment a client seeks to invest through the point at which treaty relief is provided and confirmed. These steps also are illustrated in the attached diagram.

Finally, the letter describes several features for improving the proposal that should be included in a later consultation. Specifically, consideration should be given to:

- mechanisms for EU-wide relief at source procedures (particularly for low-risk investors);
- treaty relief clarifications for CIVs and other investment vehicles; and
- additional guidance regarding beneficial ownership, and how investors would attest their ownership status to address specific concerns.

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Notes

[1] The other coalition members are Association for Financial Markets in Europe (AFME); Association of Global Custodians (AGC); Association of the Luxembourg Fund Industry (ALFI); European Banking Federation (EBF); European Fund and Asset Management Association (EFAMA); and The Investment Association (IA).

[2] The proposal is described in the attached survey that was distributed by the Commission to business representatives who had attended the recent meeting.

[3] See ICI Memos 33862, dated October 26, 2021, and 34206, dated June 30, 2022.

[4] See ICI Memo 34206, dated June 30, 2022. The eight other CIV 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, e.g., ICI Memo 24515, dated August 27, 2010.
