

CFE response to the public consultation paper on taxation problems that arise when dividends are distributed across borders to portfolio and individual investors and possible solutions

I. General identification of the stakeholder

Name: Confédération Fiscale Européenne (CFE)

State of residence: CFE is a European organisation. The legal seat of CFE is in France but currently being transferred to Belgium.

Contact details:

CFE Brussels Office
Avenue de Tervueren 188a
B-1150 Brussels

brusselsoffice@cfe-eutax.org
Tel : +32 2 761 00 91
Fax : +32 2 761 00 90

Are you:

- | | |
|---|--|
| <input type="checkbox"/> An individual investor | <input type="checkbox"/> A portfolio shareholder |
| <input type="checkbox"/> An organisation representing such shareholders | <input type="checkbox"/> An equity fund |
| <input type="checkbox"/> Tax administration of a Member State | <input type="checkbox"/> Academic |
| <input type="checkbox"/> Tax advisor or tax practitioner | <input checked="" type="checkbox"/> Other (please specify) |

CFE is a European body representing 33 tax adviser organisations in 24 countries in Europe:

These are Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

CFE is in the European Commission's register for interest representatives (entry 3543183647-05).



II. Problems encountered

1) Which problems, if any, have you encountered due to the EU cross-border levying and refunding of withholding taxes on dividends?

- Double taxation
- Discrimination (please provide details)
- Other (please specify)

2) What was the source of the problem?

- Denial of credit for foreign withholding tax
- Higher taxation of foreign dividends than in purely domestic situations
- Difficulties in obtaining a refund of foreign withholding taxes – the procedures were (please specify): **too complex, costly, time-consuming**
- Other (please specify)

National procedural rules, e.g. on time limits and on the competent authorities for refund claims often render an effective refund procedure impossible, e.g. where refunds have to be claimed from a large number of local tax authorities. This may particularly be the case if investments are held via collective investment vehicles.

We refer to our explanations in the attached “CFE Opinion Statement on the right to an effective recovery of taxes levied in violation of EU law”, in particular to paras 14 – 28.

III. Additional costs

1) Have you suffered any additional costs due to the cross-border investment in dividends?

- Yes
- No

The costs were suffered by clients of tax advisers in a number of cases involving several EU member states.

2) What is the amount of these additional costs and what were they due to?

They were due to difficulties in obtaining a refund of foreign withholding taxes, see attached “CFE Opinion Statement on the right to an effective recovery of taxes levied in violation of EU law”, in particular to paras 14 - 28.

Also some countries, for instance Belgium and Italy, do not give credit for withholding taxes levied on dividends from overseas jurisdictions.

3) Have these additional costs dissuaded you from investing cross-border?

We cannot give an answer for all European countries where CFE has member organisations. However, we consider that double taxation and/or burdensome refund procedures are likely to discourage cross-border investments.

4) Which was the Member State of source of the dividend (please indicate for each separate case in which you have suffered additional costs)?

A few Member States were involved.

5) Which is/ was your Member State of residence?

A few Member States were involved.

IV. Possible solutions

1) Which (combination) of the above outlined solutions do you consider most appropriate to tackle any taxation problems that arise when dividends are paid across border to individual investors or to companies that are portfolio investors? Why do you prefer that option?

The ideal solution from the perspective of individual and portfolio investors to tackle taxation problems on dividends is the one under Option 1 (elimination of withholding tax on dividends paid to individual and portfolio investors).

It presents a number of advantages (such as, elimination of double taxation and elimination of discrimination between domestic and outbound dividends).

Another important point is that the first option solves the cash flow disadvantage of taxpayers, as the Commission has rightly identified in the consultation paper. This issue of economic importance for businesses has been neglected by the recent ECJ case

law (see attached “CFE Opinion Statement on case C-540/07 Commission v. Italy”, para 22).

Lastly, the solution proposed under Option 1 is consistent with the tax treatment of dividends under the parent-subsidiary directive.

Of course, in implementing the solution under Option 1 it is important to adopt any measures to reduce the impact of the outlined disadvantages (for example, an automatic exchange of information system should considerably reduce any foreseeable risk of tax evasion).

If Option 1 should prove to be politically unachievable, the second best solution would be Option 4 which would reduce the risk of tax evasion by investors as the reduced rate of withholding tax would only be available with information exchange.

2) Would you prefer a completely different solution and if so what solution do you suggest?

At this stage, Option 1 seems to be the best solution to the problem.

3) What, if anything, else do you think could be done at EU level to overcome any difficulties that exist in the area of cross-border withholding taxes on dividends paid to individual and portfolio investors?

At this stage, Option 1 seems to be the best solution to the problem.

4) Are you aware of any statistics or legal or economic studies which could further contribute to the analysis of the costs and benefits of implementing any of the above solutions?

No

5) Do you have any other comment or thoughts to share as regards cross-border taxation of dividends paid to portfolio and individual investors?

No