

Finansdepartementet

Fi2023/02121
2023-10-31

Remissyttrande – Remiss av kommissionens förslag till rådets direktiv om snabbare och säkrare nedsättning av överskjutande källskatt

SVCA har beretts tillfälle att avge yttrande över rubricerat förslag och ansluter sig till vad vår europeiska systerorganisation Invest Europe anfört i sitt yttrande, se bilaga.

Swedish Private Equity & Venture Capital Association, SVCA

Isabella de Feudis, VD

18 September 2023

Feedback to the European Commission’s Withholding taxes: Faster and Safer Relief of Excess Withholding Taxes directive proposal

Invest Europe welcomes the European Commission’s proposal of the Directive on Faster and Safer Relief of Excess Withholding Taxes and the initiative to introduce a common EU-wide system for withholding tax on dividend or interest payments, as we encourage the idea of removing tax barriers to cross-border investment.

We fully support the principles of the tax simplification and closure of abusive practices, and the initiatives to make such processes clearer and to decrease any cross-border tax frictions. With reference to that, a simplified and streamlined EU-wide system, if implemented correctly, is a part of the solution.

Invest Europe sees this proposal as a positive step to speed up withholding tax refund procedures and reduce administrative costs and barriers for cross-border investors, especially due to the overall lack of implementation of the previously adopted Code of Conduct on the withholding tax in 2017.

The solutions suggested in the proposal of the directive contain good ideas when it comes to facilitating the effective application of reduced withholding tax rates or withholding tax exemptions. Nonetheless, the directive proposal leaves room for Member States to interpret its provisions. Considering the existing differences in withholding tax regulations throughout Europe, the final version of the legislation should ensure more clarity and uniformity rather than minimum standards. It should require that national interpretations can only be permitted when a country can substantiate the necessity for maintaining the coherence of its national tax system. Otherwise, even with the implementation of the FAST directive, the situation for international investors would likely remain largely unchanged from the status quo and will not encourage cross-border investments within the EU and in particular to further investments in diversified portfolios of EU securities, which ultimately should be an outcome of its implementation.

Although we are confident in the considerate drafting of this proposal and pleased that the principle of tax neutrality has been attained, we still find it necessary to clarify certain aspects:

- Article 8 “Removal from the national register”

While encouraging the idea of the national register of certified financial intermediaries and the digital tax residence certification in the form currently suggested by the proposal, the concept of “voluntary removal” had not been clarified enough compared to when intermediary no longer meets the requirements. It appears that CFI on a voluntary basis will be granted also to the entities established in a third country jurisdiction acting as financial intermediaries, also in the UK - a market still extremely relevant from a European private equity perspective.

At the same time, art. 8 does not specify, which entities can ask for the voluntary removal from the national register and if EU-based large entities can still opt-out from the register, which in the

future may lead to the further uncertainty. We therefore suggest that the additional clarification be introduced to address these concerns.

- Article 10(3)(a) “Request for relief at source or quick refund”

The provisions included in the exclusion requests from the relief do not effectively apply to EU-listed shares and bonds that are ultimately held by non-EU financial intermediaries. In practice, these non-EU financial intermediaries are reluctant to handle local withholding tax procedures, deferring them to their respective local EU-based sub-custodians. Consequently, within this framework, there will inevitably arise financial intermediaries that do not qualify as Certified Financial Intermediaries, with no subsequent intermediaries in the chain meeting these criteria. This scenario results in the exclusion of such transactions from the benefits of the directive.

To facilitate this process, an additional scenario where the responsibility for providing the necessary information would be placed on the last CFI in the chain before the transactions cross the EU border should be considered either at the EU or at the national level.

- Article 15 “Standard refund system”

We consider it essential to expand on a definition of the term "dividend." The proposed version lacks specificity regarding the nature of dividends, limiting the comprehension of how this article applies. To be consistent with the art. 1 also this article should refer explicitly to dividends on publicly traded shares and interest on publicly traded bonds. Lack of further clarification will have a negative impact on the “relief at source” principle.

While encouraging the idea of a common EU-wide system for withholding tax, we believe that the exemptions from withholding tax under EU tax directives granted by the Parent-Subsidiary Directive must be protected, as well as the double tax agreement or any double tax avoidance agreement. These are essential to ensure tax neutrality, a concept particularly important for the private equity industry, as funds function as collective investment vehicles that pool funds from multiple investors to make multiple investments. As they operate across various industries and jurisdictions, ensuring tax neutrality and double tax agreements is necessary for the functioning of the market.

Additionally, in the private equity industry, intermediaries such as holding companies are set up for various genuine and substantive commercial or legal purposes. Legitimate reasons for establishing such entities with the residence in another country might include providing lenders with a streamlined enforcement process, facilitating governance among different shareholders, segregating investments by specific investor categories (e.g., management), adhering to regulatory requirements, and preparing for an IPO. These holding companies might have relatively minimal independent operations, and their functional needs may not demand extensive economic substance in the place of operation in terms of staff or office space, but they become essential during investment activities. Although their operational scope might be limited, they fulfil essential investment functions, promote international investment and create jobs. Hence, fund structures can be considerably more complicated than it might appear. Without a comprehensive understanding of how funds operate, there is a significant risk that legislation or taxation system could unintentionally disrupt the landscape of international investment. Therefore, it must be secured that they are not targeted and that withholding taxes are not charged at portfolio company level because of the existence of such intermediaries, irrespective of whether the holding companies decide to re-invest the proceeds or to distribute the proceeds derived from the portfolio companies to the funds and their investors soon after receipt of the proceeds.

Due to all above mentioned factors, it is essential to emphasize that any forthcoming proposal by the European Commission concerning unlisted securities should not be regarded as a simple extension of FAST. Instead, if the Commission was to pursue such a proposal in the future, it must carefully consider the significantly more fragmented and varied conditions involved in comparison to listed entities. Additionally, it should consider the potentially extensive and disruptive consequences that altering withholding tax procedures for unlisted securities could have on the operation of the common European market.

The “Santander case law” (C-274/14) and the “Aberdeen case law” (C-303/07), which grant a full exemption of withholding tax on capital gains or dividends for the Undertaking for collective investment in transferable securities (UCITS) and the Alternative Investment Funds (AIFs), should also be reflected in the text of this proposal. While the harmonization of the EU framework for the application of withholding tax exemptions is a welcomed initiative, it is also imperative to take action at EU level in light of the above-mentioned cases in the context of cross-border investments. This approach would prevent any potential confusion or discrimination regarding the withholding tax procedure and ensure a level playing field for the fund industry across Europe. The fact that the 2017 Code of Conduct on withholding tax hasn't been widely put into action in Europe shows that we need clear rules that national authorities can easily follow.

Lastly, we also encourage the European Commission to carry out the assessment of the FAST (and in fact any other upcoming legislation tackling the issue of tax harmonisation) and its interactions with existing proposals or expected initiatives, such as ATAD III (Unshell Directive), the EU Directives on cross-border tax arrangements or the Treaty relief and compliance enhancement (TRACE). The main objective to carry out such an assessment is to find any gaps or identify shortcomings in interactions among different European and multinational tax agreements. From the private equity industry, we want to avoid redundancy of rules and ensure that these laws don't stop investors from engaging in the European economy. This approach will also help prevent legal disputes about whether these measures follow EU laws, which has happened before with withholding tax.

Contact

For further information, please contact Martin Bresson (martin.bresson@investeurope.eu) or Klaudia Piaseczna (klaudia.piaseczna@investeurope.eu) at Invest Europe.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe is the guardian of the industry's professional Code of Conduct . By demanding accountability, good governance and transparency from our members we set the standards for the entire European industry.

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