PensionsEurope position paper on smoothing WHT procedures beyond Code of Conduct - EU tax register of recognised pension institutions

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About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace pensions. Some members operate purely individual pension schemes. PensionsEurope Members are large institutional investors representing the **buy-side** on the financial markets.

PensionsEurope has **23 member associations** in 18 EU Member States and 3 other European countries with significant – in size and relevance – supplementary pension systems[1].

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people.** Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **25 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns;

Our Members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often "not-for-profit" and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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[1] EU Member States: Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Iceland, Norway, Switzerland.

1. Summary and key messages

- PensionsEurope welcomes the European Commission's (EC's) recent Code of Conduct ("Code") on Withholding Tax, and we hope and believe that the Code can be a remarkable step forward in smoothing WHT procedures in Europe;
- In the Code, we find particularly important to encourage to use efficient and user-friendly digital WHT procedures and efficient internal IT systems. Preferably Member States start working on a single, pan-European, IT platform to accommodate WHT procedures;
- In order that the Code will be useful and it will deliver, all EU Member States and national tax authorities should make a strong commitment to the Code and follow it. That should also apply to everyone in each tax authority of the Member States. The Commission should continue being very engaged together with Member States, and it should actively coordinate the work and thoroughly follow up;
- The Commission should establish an expert group consisting of tax experts from industry representatives to follow the developments in line with the Code and to provide further comments and expertise from industry side;
- We have emphasised that a relief at source is the best practice for pension funds, and the Commission and Member States should further work to make it possible. Member States should reciprocally and automatically recognise pension funds to save pension funds' efforts and costs to prove their status in a host Member State. If a pension fund qualifies as a pension fund according to the law of its home Member State, it should automatically get a recognition as a pension fund according to statutory terms or categories in a host country;
- PensionsEurope proposes to the EC to establish an EU tax register of recognised pension institutions[2] in order that Member States can reciprocally and automatically recognise pension institutions. Furthermore, in many countries pension institutions invest cross border via specialised investments funds and/or vehicles to increase the economies of scale, and it is important to ensure a tax-neutral treatment of these investment structures as well;
- PensionsEurope is ready and willing to further provide our expertise to the EC and other policymakers to smoothen WHT procedures in Europe.

2. Introduction

PensionsEurope warmly thanks the EC for a good and constructive dialogue with us during the last years on removing the withholding tax (WHT) refund barriers to cross-border investment in the EU. We have very much appreciated this dialogue. We all know that these are longstanding problems from which pension funds have suffered already for decades. We also know that tax issues are not something were 'quick wins' are achieved.

[2] This paper refers to pension institutions (instead of pension funds), because pension schemes are carried out by different entities or arrangements in some countries.

This position paper is a natural follow on from our previous papers on WHT procedures[3]. We are ready and willing to further provide our expertise to the EC and other policymakers to smoothen WHT procedures in Europe.

3. The Code should be respected and thoroughly followed up

PensionsEurope welcomes the EC's recent Code[4] that is one of the main deliverables of the EC's Capital Markets Union (CMU) action plan in the area of taxation. The Code addresses the longstanding problems of long delays and high costs faced by investors seeking to claim WHT refunds. The Commission has estimated that the annual cost to investors of WHT refund procedures amounts to around 8.4 billion euro.

We hope and believe that the Code can be a remarkable step forward in smoothing WHT procedures in Europe. The Code is straightforward, and it contains good practical and concrete guidance. It can deliver small, but very important, improvements in various steps of refund procedures. In the Code, we find particularly important to encourage to use efficient and user-friendly digital WHT procedures and efficient internal IT systems. Preferably Member States start working on a single, pan-European, IT platform to accommodate WHT procedures.

In order that the Code will be useful and it will deliver, all EU Member States and national tax authorities should make a strong commitment to the Code and follow it. That should also apply to everyone in each tax authority of the Member States. The Commission should continue being very engaged together with Member States, and it should actively coordinate the work and thoroughly follow up in accordance with the Section 11[5] of the Code. Second, the Commission should establish an expert group consisting of tax experts from industry representatives to follow the developments in line with the Code and to provide further comments and expertise from industry side.

The Code mainly focuses on improving refund procedures, but it also contains references to relief at source which PensionsEurope has emphasized to be the best practice for pension funds. Ideally, tax relief is granted by means of a relief at source, to reduce operational impact for tax payers and Member States (including double refunds by mistake), but also to prevent any unwarranted delays in receiving such refunds. The Commission and Member States should further work to make it possible.

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[3] See PensionsEurope position paper on the withholding tax refund barriers to cross-border investment in the EU (April 2016) and PensionsEurope Position Paper on the EC's Code of Conduct for relief-at-source from the withholding tax procedures (December 2016).

[4] See the European Commission's Code of Conduct on Withholding Tax (December 2017).

[5] See the Section 11 of the Code of Conduct on follow up: Member States are encouraged to commit to the code and to follow it to improve the status quo by 2019. With a view at arriving at a comprehensive EU wide review of developments in line with the code, Member States are encouraged to collect information about progress achieved and to share this information and best practices with the Commission and with each other. To keep each other informed of progress achieved and of possible obstacles encountered, Member States' tax experts will meet at least twice in 2018. After 2019, the code of conduct could be reviewed to take into account any significant change. The need for such a review will be considered regularly.

4. Removing WHT barriers to cross-border investment beyond the Code – Member States should reciprocally and automatically recognise pension funds

Each Member State has its own procedures for obtaining tax relief (as also the EC notes[6]), either in the form of a refund or an exemption at source. These procedures are currently not aligned within the EU, and they are inconsistent, inefficient, costly and time consuming - and they form barriers to efficient cross-border investing.

Because of these barriers, pension institutions experience unnecessary and material complications when investing in the European capital markets, particularly because pension institutions use various investment vehicles in different Member States (each requiring different documentation currently). Within the EU (regulated) pension institutions are typically effectively exempt or nearly exempt from tax in their respective Member States, and in many Member States they are eligible for a WHT relief. The reason being that double taxation for pension beneficiaries is typically prevented. In most Member States this is based on the Exempt Exempt Taxed ("EET") model (or a variant thereof), which entails that pension contributions and investment income are exempt from tax at the level of the pension institution, whilst pension payments are taxed with the individual pension beneficiary upon receipt. However, this tax system also entails that if any (foreign) taxes would be incurred on investment income received by the pension institution, such taxes cannot be credited in the residence state of the pension institution and would result in double taxation for individual pension beneficiaries.

Furthermore, tax that is withheld but which needs to be refunded pursuant to local procedures, inherently results in inefficiencies on investments held by pension institutions. These situations negatively impact the return on pension savings. We believe that the position of pension institutions as important long-term investors in the European capital markets and the issues that they face in this regard warrant specific consideration when developing a system for a more efficient tax relief system.

From a pension institution perspective, the cornerstone for achieving a more efficient WHT relief system should be a reciprocal and automatic recognition by Member States of tax status of pension institutions across the EU. This approach would demonstrate that the EU is a territory, regardless of the sovereignty for direct taxes of each Member State, in which a pension institution of a Member State is recognised as such for tax purposes throughout the EU. So, Member States should reciprocally and automatically recognise pension funds to save pension funds' efforts and costs to prove their status in a host Member State. If a pension fund qualifies as a pension fund according to the law of its home Member State, it should automatically get a recognition as a pension fund according to statutory terms or categories in a host country.

5. EU tax register of recognised pension institutions

PensionsEurope proposes to the EC to establish an EU tax register of recognised pension institutions ("RPI Register") in order that Member States can reciprocally and automatically recognise pension

[6] See the Section 4.2. of the EC report on "Accelerating the capital markets union: addressing national barriers to capital flows (24 March 2017)".

institutions. Furthermore, in many countries pension institutions invest cross border via specialised investments funds and/or vehicles to increase the economies of scale, and it is important to ensure a tax-neutral treatment of these investment structures as well.

For the purpose of the RPI Register, we propose the EC to use the definition of a pension scheme in the OECD Model Tax Convention on Income and on Capital (21 November 2017)[7]. Furthermore, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (7 June 2017)[8] should be taken into account in order that also investment entities (which are established and operate exclusively or almost exclusively to invest on behalf of pension institutions) qualify as such.

How the Register could work in practice

After a pension institution has been registered and accepted to the RPI Register, it should qualify for tax relief within the EU based on domestic tax law or a tax treaty. The RPI Register provides up front authorised certainty that a pension institution (or an investment entity which operates exclusively or almost exclusively to invest on behalf of pension institutions) qualifies for tax relief, preferably at source, or otherwise by means of a refund.

The EC should be the supervising body of the Register (e.g. accepting registration and in charge of ongoing monitoring). This supervising responsibility could also be delegated to local regulators or tax authorities but with the EC keeping oversight on the consolidated RPI Register. In this respect: pension institutions are regulated so information may (to a large extent) be readily available.

The RPI Register should allow market participants to grant tax relief for pension institutions solely by consulting the RPI Register and without the need to go through the time-consuming, costly and inefficient procedures currently in place. The introduction of the RPI Register could solve the barriers and inefficiencies identified in the EC report on accelerating the CMU. Furthermore, the RPI Register could solve the concerns raised by market participants in relation to the OECD's proposal Treaty Relief and Compliance Enhancement ("TRACE") to simplify the procedures to obtain tax relief for cross border investments.

The TRACE-package provides for a self-contained set of agreements and forms to be used by any country that wants to implement the so-called Authorised Intermediary ("AI") system. The AI system is a standardized system for claiming WHT relief at source on portfolio investments. However, TRACE has not been successful to date as it contains different challenges, such as:

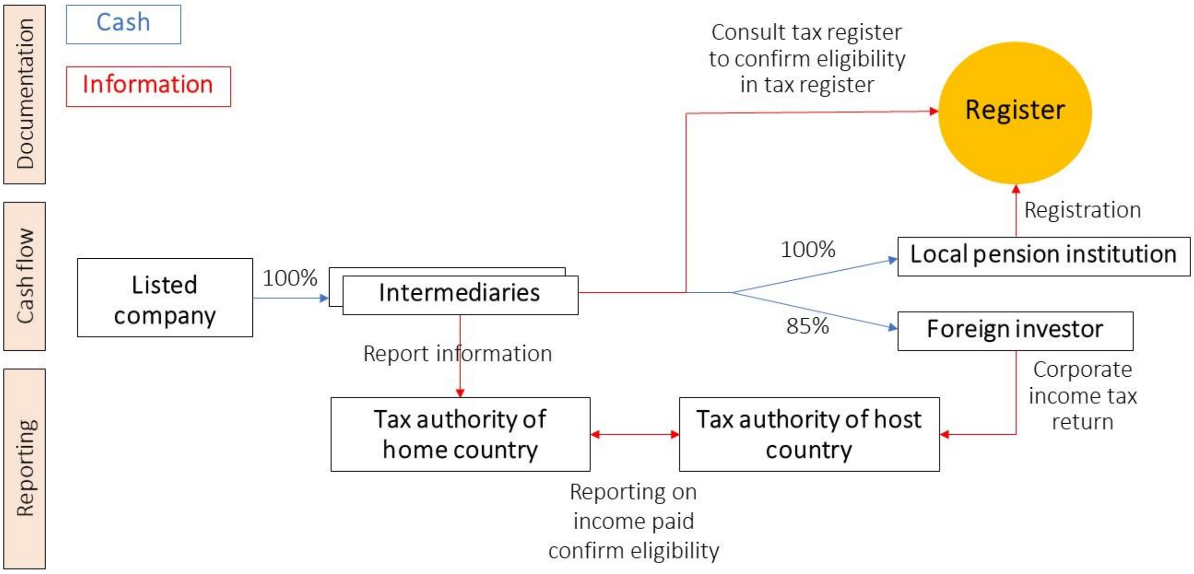
- One of the key drawbacks of TRACE is that is does not provide a solution for the liability incurred by AI's (e.g. custodian banks) towards tax authorities of source countries if the AI erroneously provides tax relief at source.

[7] See pages 351-359 of [OECD Model Tax Convention on Income and on Capital (21 November 2017)](#).

[8] See [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (7 June 2017)](#).

- Although self-certification by the pension institution may solve the liability concern, and although the TRACE package contains a 'standard' self-certification, the expectation is that AIs will ask for additional documentation to mitigate their liability and worse, in case of unfamiliarity with an investors investment structure, cause an AI to withholding even if there is no need to (in which case refunds will still need to be obtained). Consequently, TRACE would likely still give rise to administrative burden or may even create more administrative inefficiencies.

A simplified example how the Register could work in practice is illustrated below.



In addition, 'inspiration' could be derived from existing 'relief at source' (RAS) systems, preferably complemented by the RPI Register. We experience that RAS systems tend to create far less practical issues and thus less inefficiencies compared to tax relief by means of a refund. Particularly where there is an effective (digital) system in place that allows for market participants to self-certify.

The US system and its digital forms are an example in that regard. Although that system is not perfect (due to the extent of the forms and the information required), it does appear to be functioning far more efficient than most refund procedures. As suggested by the EC, a uniform RAS approach across the EU should also take away much of the inefficiencies identified above and allow for a uniform tax relief system. In particular, if it is coupled with the Register as suggested above as that would prevent the need for self-certification through individual forms and procedural formalities across Member States. Such an EU wide RAS system would be a great step in the direction of a more efficient capital market.

Intermediate solution for recognised pension institutions

We recognise that developing the RPI Register or a self-certification across the EU can be a medium-term project. In a short run, another, less far-reaching, alternative which would take away much of the inefficiencies identified above, would be that Member States develop and use one (standardized) form[9] across the EU to determine whether a pension institution qualifies for tax relief in a respective Member State.

Both the self-certification option and the standardised form option could also be used as steps towards ultimately achieving the RPI Register to which all Member States participate. In this respect, it could also be considered to grant Member States a phase in period for a number of years. Of course, such self-certification form or standardised form should provide for e-signing.

[9] See for instance OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition (27 March 2017).