

11 February 2010

**AFME/ESSF¹ Position Paper
European Commission's Adoption of a Recommendation on Withholding Tax
Relief Procedures of October 2009**

AFME/ESSF strongly supports the European Commission (EC) Recommendation to simplify the procedures for investors in one EU Member State to claim withholding tax relief on dividend, interest and other securities income from issuers in other Member States.

The Recommendation is an important milestone in the fiscal area towards dismantling the so-called Giovannini Barriers on which ECOFIN has repeatedly focused. We believe that the Recommendation will address the current variations between Member States in their procedures for withholding tax relief which have a significant negative impact on cross-border investment, cost of capital and GDP. Equally importantly, the recommended measures on the authorisation and monitoring of intermediaries in the withholding tax relief chain and on a system to enable verification that the correct rate of withholding tax is applied, will protect Member States tax revenues against errors and fraud

The recommended simplification is much needed. Although withholding taxes on securities income are often reduced under Member State tax conventions, the current varied procedures for reducing tax rates at the payment stage or for claiming refunds of tax withheld are often so complicated and costly that investors either forego the relief or are discouraged from investing cross-border. This impact is exacerbated by the practice in many Member States to only allow domestic financial intermediaries to provide withholding agent services. A study by the EC estimates the costs of the current reclaim procedures to be EUR 1.09 billion/annum and the amount of foregone tax relief to be EUR 5.47 billion/annum².

¹ AFME (Association for Financial Markets in Europe) was formed on 1 November 2009 following the merger of LIBA (the London Investment Banking Association) and the European operations of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with SIFMA in the US, and the ASIFMA (Asian Securities Industry and Financial Markets Association) through the GFMA (Global Financial Markets Association). AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. For more information please visit the AFME website, www.AFME.eu.
AFME/ESSF (AFME/European Securities Services Forum) is the European post trading centre of competence of the Association of Financial Markets in Europe (AFME). Our members are the major users of international securities markets. Representing its members as towards market infrastructure organisations and public authorities, the ESSF acts as an agent for change providing and supporting solutions in the securities clearing, settlement and custody space to reduce risks and costs to market participants

² See page 59 of June 2009 European Commission Working Document on 'The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals'.
http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/study_fisco.pdf

The recommended measures address these issues and will to a significant degree promote cross-border investment in securities, reduce the cost of capital, and increase EU GDP. The EC study estimates that adoption of the Recommendation proposals will lead to increase in EU GDP of more than EUR 37 billion over a ten-year period³.

In addition to increasing the efficiency of withholding tax relief procedures for the benefit of investors and the broader economy, the recommended measures will protect Member State tax revenues against errors and fraud. The Recommendation thus envisages that only authorised financial institutions be permitted to intermediate in the withholding tax relief chain and that Member State lay down conditions for such authorisation and e.g. make authorised institutions liable for under-withholding of taxes. The Recommendation also proposes procedures for Member State monitoring of the compliance of authorised intermediaries' with their obligations and a system to ensure that Member States have the information required to verify that the correct rate of withholding tax has been applied to payments made from that country to investors in other Member States.

We strongly encourage Member States to implement the Recommendation on a timely basis. In this context, we are aware of the OECD work on withholding tax relief and urge Member States to work towards globally consistent solutions.

AFME/ESSF and its members, particularly through its Tax Committee, are committed to cooperate with public authorities in supporting the implementation of the Recommendation providing their experience and expertise focusing on the integrity of the process while improving the efficiency for the benefit of investors at the same time.

³ See page 60 of June 2009 European Commission Working Document on 'The Economic Impact of the Commission Recommendation on Withholding Tax Relief Procedures and the FISCO Proposals'.
http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/study_fisco.pdf