

CMU Policy Update

December 2017

European Commission

Commission publishes Code of Conduct on withholding tax – 11 December

The Commission has published its long-awaited new [guidelines](#) on withholding taxes to help member states reduce costs and simplify procedures for cross-border investors in the EU.

This new Code of Conduct offers solutions for investors who, as a result of how withholding taxes are applied, end up paying taxes twice on the income they receive from cross-border investments. The Code is a part of the CMU project.

Implementation of the Code of Conduct is voluntary for member states. It provides a snapshot of the problems faced by cross-border investors and explains how more efficient tax procedures can be put in place, drawing notably on existing best national practices.

The Code outlines a range of practical ways for member states to address key issues including:

- Measures to help smaller investors for whom the rules on the refund of withholding tax are overly complex
- The creation of user-friendly digital forms to apply for withholding tax relief in the case of overpayment
- A reliable and effective timeframe for tax authorities for the granting of withholding tax relief
- A single point of contact in member states' tax administrations to deal with questions from investors on withholding tax

Commission launches public consultation on facilitating SME listings – 18 December

The Commission has launched a [public consultation](#) on building a more proportionate regulatory regime for SME listings.

In its July 2017 CMU Mid-term Review, the Commission committed to assessing whether targeted amendments to EU rules could deliver a more conducive regulatory environment to support SME listings on SME Growth Markets. The consultation forms a part of this exercise, and will help the Commission to identify ways to cut red tape and build a more proportionate and supportive regulatory environment for SMEs.

The Commission seeks, in particular, a balance between creating a lighter regime without undermining investor protection and market integrity.

The public consultation will focus on three broad categories:

- Identify how the SME Growth Market concept created by MiFID II can be further improved
- Identify areas where the administrative burden placed on listed SMEs can be lightened
- Identify where targeted regulatory changes could help (re-)build the local ecosystems surrounding SME-dedicated exchanges

The deadline for providing comments is 26 February – meaning that the consultation period is shorter than the usual 12 weeks granted by the Commission. A possible legislative proposal is to be expected for May this year.

Commission proposes a reform of the prudential framework for investment firms – 20 December

The Commission has proposed a review of the prudential framework for investment firms. The legislative proposal consists of an amending [Directive](#), [Regulation](#) as well as a staff [Working Document](#) which outlines the reform's rationale and objectives.

The scope of the proposal is defined as targeting investment firms that provide services which give investors access to securities and derivatives markets. These services include investment advice, portfolio management, executing orders for clients, trading in financial instruments and helping companies raise funds on capital markets.

The proposal, notably, classifies investment firms into three categories, each capturing different risk profiles. This aims to ensure that prudential requirements are tailored to the size, nature and complexity of the firm:

- Class 1: investment firms with total assets above €30bn and which provide underwriting services and dealing on own account
 - The proposal requires that such "bank-like" systemic investment firms are subject to the same treatment as large credit institutions. The European Central Bank (ECB) and the Single Supervisory Mechanism would supervise such systemic investment firms in the Banking Union
- Class 2: any firms that are above any of a set of size thresholds, including for example:
 - Assets under management under both discretionary portfolio management and non-discretionary (advisory) arrangements higher than €1.2 billion
 - Client orders handled of at least €100 million per day for cash trades and/or at least € 1 billion per day for derivatives
 - Balance sheet total higher than €100 million
 - Total gross revenues higher than €30 million
- Class 3: those below all of the thresholds. They would be subject to the least complex requirements

For each Class, the following prudential regimes would apply:

- Capital requirements:
 - Class 2: their minimum capital would be set either as for Class 3 investment firms, or according to the new K-factor approach for measuring their risks, whichever is higher. The K-factors specifically target the services and business practices that are most likely to generate risks to the firm, to its customers and to counterparties. The capital requirements are set according to the volume of each activity

- Class 3: their minimum capital would be either the level of initial capital required for their authorisation or a quarter of their fixed costs (overheads) for the previous year, whichever is higher
- Corporate governance and remuneration:
 - Class 1: will continue to apply the Capital Requirements Regulation (CRR) and Directive (CRD IV)
 - Class 2: continue to apply some provisions of the CRR/CRD IV, including specific governance arrangements and rules on remuneration which are made to be better suited to the business models of investment firms. However, the rules will allow further proportionality. Class 2 firms will be free to choose between the types of instruments used to pay out part of the variable remuneration. The requirements which are considered as the most burdensome for such smaller investment firms (deferral and pay-out instruments) do not apply to firms below €100 million of total assets and for staff with low levels of variable pay. Competent authorities can still decide that investment firms below the threshold are not subject to the derogation
 - Public disclosures: firms which are subject to the K-factors (see above) must publicly disclose their levels of capital, capital requirements, remuneration policies and practices, and governance arrangements. Small and non-interconnected firms shall not be subject to public disclosure requirements
 - Class 3: remuneration and governance rules provided under the Markets in Financial Instruments Directive (MiFID) are considered to be sufficient

Stakeholders have eight weeks to provide views on the new proposals, which the Commission would then relay to the European Parliament and the Council. European Parliament and the Council will now have to co-legislate on an equal footing on the file. Each of the two first forms its respective position, after which they must agree on a compromise before the proposal can become EU law. This process will take several months, at the very least,

ECB & ESAs

ESMA publishes report on access to public capital markets for SMEs – 4 December

ESMA has published a [report](#) on the access of SMEs to public capital markets. It focuses, in particular, on SME Growth Markets and corporate bonds issued by SMEs.

On SME Growth Markets, the report argues that the concept is not yet fully developed and in operation. Moreover, the report highlights the need to clearly define success parameters and recognizes that no single measure of success would be sufficient.

With regard to corporate bond issuance, the report notes that European corporate bond markets for SMEs are highly fragmented. Different regulatory frameworks and degrees of maturity of public bond markets coexist. The report notes that credit risk assessment of mini-bonds may be an issue. Retail investor protection is a source of concern. Restrictions to professional investors only might be considered. Indirect investment in mini-bonds through institutional investors' investments might lessen investor protection concerns.

Finally, the report also raises additional issues that are related to SMEs funding. Unintended consequences may arise from the MiFID II provisions on investment research, especially on the liquidity of small cap stocks. The new Prospectus Regulation, in turn, generally achieves its purpose of introducing rules designed to facilitate access to

capital markets financing for SMEs. However, the Prospectus Regulation is missing provisions providing for the ability to easily move from a SME Growth Market to a regulated market.

Events

- 30/01/2018, **Public hearing on simpler withholding tax procedures for Europe**, European Commission, Brussels. [Source](#)