BETTER FINANCE
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DSW
Die Anlegerschützer

Withholding taxes on dividends in the European Union:
An uphill battle for individual shareholders

May 2023

A BETTER FINANCE & DSW fact-checking report

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About BETTER FINANCE

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation dedicated exclusively to representing the interests of European citizens as financial services users vis-à-vis legislators and the public, by promoting research, information and education on investments, savings and personal finances. Through its member organisations, BETTER FINANCE represents over 4 million private, non-professional investors and shareholders. BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Its activities are supported by the European Union since 2012.

About DSW

Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) is Germany's leading association for private investors. Its main goal is to foster an equity culture in Germany and to improve investment skills. Founded in 1947, DSW now has about 30 000 members. DSW represents its members at approximately 700 general meetings per year. Next to the representation of private investors' interests both at general meetings and at a political level, DSW acts as the head office of 7 000 investment clubs in Germany.

Authors

Christiane Hölz
Martin Molko

Contributors

Jella Benner-Heinacher
Guillaume Prache
Aleksandra Mączyńska
Arnaud Houdmont

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Executive summary

Withholding Tax Across Europe

The taxation of income from securities (i.e. income from investments; usually dividends and interest) paid to individual investors is not harmonised at EU-level[1]. Cross-border investment income can therefore be subject to double taxation contrary to EU Law, and since tax rates remain a national competence, only a bilateral convention can be applied to alleviate – and retrieve – such withholding taxes (WHT). However, those conventions often lack a harmonised application process across EU countries and various double taxation issues remain, including those linked to administrative barriers or deficient cross-border procedures.

Survey scope

BETTER FINANCE and DSW conducted a fact-finding exercise to measure the extent of the problems investors face across the EU when dealing with equity income from companies domiciled in another Member State – namely withholding tax on cross-border dividends in the EU.
Conducted between December 2022 and January 2023, the public survey was targeted at individual investors. Altogether, this represents a large sample of over 3 000 responses from EU tax residents and organisations in 22 Member States of residence with cross-border investments in 19 source Member States of issuers.
The main data of the survey were shared with the European Commission to feed its WHT revised Impact assessment of 2023.

Barriers to WHT refund procedures

WHT refund procedures are far too cumbersome, and often too costly (especially if a bank/third party is mandated) to enable the average, non-professional investor to reclaim – and thus retrieve – the excess withholding tax rate on cross-border dividend income. Moreover, substantial knowledge is required, and high compliance and procedural burdens exist, while delays can also be significant. Overall, these issues undermine investors' confidence in cross-border investment within the EU.

Example of double taxation within the EU: Belgium

Even if a Belgian-resident investor manages to obtain (or reclaim) the reduced withholding tax rate from the bilateral tax treaty with France, the 'Belgian-French Tax Treaty to avoid double taxation' de facto allows for double taxation. In fact, Belgian residents holding shares of French-domiciled companies pay much higher taxes on the dividends received from French issuers than for Belgian-domiciled ones. Besides, the taxation of Belgian residents will be significantly higher than that of French residents receiving dividends from the same French issuer.[2]

[1] https://taxation-customs.ec.europa.eu/taxation-securities-income-received-individuals_en, accessed March 2023
[2] Under the FR-BE tax treaty's reduced withholding tax of 15%, the Belgian owner of shares of a French domiciled company will end up being taxed at 40.5% on dividends (15% by FR and 85% x 30% = 25.5% by BE) – versus 30% for dividends from Belgian-domiciled issuers, and versus 30% for a French resident investor holding the same (FR domestic) shares.
Thus, the excess double WHT on dividends amount to 10.5% for Belgian residents holding French shares.

Survey results – overview
Facts on dividends WHT refund across the EU

Proceedings

- Over three fifths of investors reclaim the WHT on their own (63%) while over one third seek their banks' service (33.4%), and a few (3.6%) mandate a third party, e.g. a tax advisor or private service provider.

Difficulty

- Over 90% of European investors find the WHT reclaim procedure overall difficult.
- The WHT reclaim is perceived in the highest levels of difficulty ("difficult" or even "very difficult") for three quarters (74.5%) of all respondents; 76.9% of those who acted alone and 70.2% for those who used bank or third-party services.

Very long delays

- Close to half of the respondents waited over six months to request a refund from the WHT.
- More than one year was needed to obtain the WHT refund for more than a fifth of respondents (21.4%); of these, 25.7% acted on their own and 15.2% used a bank or third-party service.
- Overall, 11.6% of investors had to wait more than two years to receive their WHT refund.

Additional and high costs:

- In almost 70% (67.3%) of cases, costs are borne by the investor through bank or tax service provider. For nearly 10% of those investors (9.4%), costs exceed EUR 100. In total, at least 6.3% of all investors surveyed incurred fees exceeding EUR 100.

A poor success rate:

- About 30% of investors engage in WHT reclaim process, of which less than half (46%) succeed in reclaiming the WHT.
- About 70% of investors do not even start the WHT reclaim process (disengage), as they consider it not worthwhile for reasons such as 'too complicated', 'cumbersome' or 'lengthy' in 58.6% of cases, and 'too costly' in 16.7% of cases.
- 41.5% of engaged investors fail to recover any WHT, while 12.5% report only partial recovery.
- Overall, 83.6% of all responding investors could not eventually manage a WHT reclaim.
- 42.5% of investors report having fully retrieved the WHT by themselves vs. 52.7% through a bank or third-party service.

Consequences:

- Only 27% of EU investors who have engaged in the WHT reclaim process declare not to be discouraged from investing abroad (or from continuing to rightly reclaim the WHT).
- Over one third (31.3%) of investors intend to stop buying foreign EU shares due to cross-border WHT issues.
- Professional services only marginally improve the success rate and length of WHT procedure (by about 10 percentage points). They also fail to substantially improve the ease of the process (by only 6 percentage points) overall.
- WHT procedures across EU countries are viewed as far more complicated and less efficient than those from Switzerland or the US as source country of investment income.

Need for EU action

Discrimination in taxation of investment income within the EU is contrary to the provisions of the Treaty of Rome and against the free movement of capital, and so is hampering tax recovery; this therefore needs to be ended. Beyond a mere "tax cooperation" between EU Member States, a harmonised WHT process must be established at EU level to stimulate cross-border retail investments.

The range of measures must aim to simplify procedures and to avoid EU "retail" investors being taxed twice or having to forego the refund. When investing on a cross-border basis, tax reclaim must be ensured as a right, be quick and as automatic as possible, otherwise the Capital Markets Union will remain a utopia.

Policy Recommendations

The relief at source procedure is the one preferred by investors: it would avoid double taxation from the start. Furthermore, a quick and simplified refund procedure should also be available.

To ensure more efficient withholding tax procedures cross-border, we identify the need for:

- Standardised and harmonised forms (i.e. same language) for refund requests across Member States' tax administrations;
- Standardised document requirements to prove the right to reclaim WHT paid in another Member State whereby a tax residence certificate and the deposit statement showing the tax withheld should be considered as sufficient proof;
- A central repository at EU level to store tax residence certificates issued by Member States' tax administrations;
- E-request of tax residence certificate (swift online provision of the tax residence certificate) and digitalised verification system;
- The obligation for all Member States' tax administrations to digitalise the WHT refund procedures (e-filing of tax reclaim, online website to monitor refund status, e-document sharing, online communication of the outcome, etc.);
- A single web portal (one-stop-shop) where an investor could log in and make a refund claim irrespective of the source Member State, based on standardised forms;
- Accruing interest in case of delays on getting the refund back under a limited period for handling the WHT reclaim;
- Issuing digital residency passports to attest investors' entitlements to tax treaty benefits that are valid over a set timeframe.
- Retain option of direct (not intermediated) reclaim procedure for retail investors, at least for insignificant WHT amounts (e.g. up to EUR 5 000 per refund claim).
- Require intermediaries to process WHT reclaim/exempt forms, if so requested by investors.

Bilateral tax treaties that do not provide for a true prevention of any double taxation of cross-border investment income must also be prohibited (e.g. Belgium-France Tax treaty).

Introduction

Shareholders are the co-owners of the companies they have invested in. As such, they partake in the risks linked to equity, including the potential of a total loss of stock value. In return, they receive dividends as a reward for their investment in the company. When making an investment decision, the ability of a company to pay a stable dividend is often a determining criterion for individual investors who are by nature long-term oriented in their financial goals (saving and investing for retirement, their children's education, etc.). Notably, this can be relevant in times of falling interest rates, as investors may want to adjust their portfolios to include a higher fraction of high-dividend stocks.[3] The reasons for this behaviour are manifold. Derived from profits, the dividends paid represent the conversion of part of the uncertainty in the value of the share. Dividends are therefore the only regular source of income for shareholders in the face of market fluctuations and are valuable for those seeking a steady stream of income from their investment. Moreover, a reinvestment can help compound shareholders' returns over time and increase their overall investment in the company. This is why companies that consistently pay dividends are deemed financially stable and thus profitable for shareholders.

Cross-border investments constitute a means of building up a more diversified portfolio. At the same time, cross-border equity investment helps to improve the financing of companies in the EU single market, thereby providing capital markets' liquidity in support to the real economy.

The two main ways in which companies distribute their profits to investors are through cash dividends and share repurchases. The distribution of dividends is generally subject to tax in the EU. In practice, withholding taxes on cross-border dividends are primarily governed by the national tax laws of the country in which the investor resides (residency tax) and the laws of the country in which the company disbursing the dividends is based (source tax). These laws determine the tax rate for dividends received by individuals and set out the conditions under which taxes on dividends are being withheld and thus can be reclaimed. In Germany, for example, a German investor receiving dividends from a German company is subject to a flat tax of 25% on dividends (plus solidarity charge and church tax, if applicable). The tax on the dividend is withheld once and at source. If that same investor was to receive dividends cross-border (from a company located in another EU Member State), in many cases the dividend income will be taxed twice: once in the country in which the investor resides, and once in the country in which the company is tax resident. Consequently, the shareholder's total tax rate on the same dividend income would increase significantly – in

[3] NBER, "Monetary Policy and Reaching for Income", working paper series, https://www.nber.org/system/files/working_papers/w25344/w25344.pdf, accessed on 2 February 2023.

some case exceeding 50% of the distributed dividend income.[4] Dividend income would thus be subject to an economic double taxation, particularly in the absence of any bilateral conventions or their proper application.

According to Article 14 of the EC Treaty "*The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty*". Article 56 of the EC Treaty elaborates the free movement of capital, stating that *"all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited"*. Such restrictions include those which may discourage non-residents from making investments in a Member State or may otherwise discourage residents of a Member State from making investments in another one, according to several rulings of the European Court of Justice (ECJ).[5] The ECJ has generally held that withholding taxes on dividends for non-resident individual investors are contrary to EU law if they result in discriminatory treatment of taxpayers on the basis of their residency status.

Although direct taxation falls within the competence of the Member States, it should be noted that all Member States must exercise their competence in conformity with Community law.

Although no solution for avoiding economic double taxation has yet been provided at EU level for individual shareholders, all EU Member States have concluded bilateral double taxation treaties with other EU Member States to address the juridical double taxation of dividend income received by shareholders. The content of these double tax treaties is typically based on a model provided by the OECD.[6] Where this is the case, the double taxation agreement (DTA) includes a provision limiting the tax that can be levied to 15% of the gross amounts of the dividends in the source Member State (where the issuer/company paying the dividends is established as tax resident). Double taxation is incurred when the dividend withheld in the source Member State exceeds this threshold, and therefore has to be returned to the shareholder (i.e. the beneficial owner resident in another Member State).

Two procedures exist to support EU shareholders in limiting double taxation of cross-border dividend income: the relief at source procedure (early application of the reduced withholding tax rate), and the refund procedure (subsequent reclaim of the withholding tax surcharge). This report therefore investigates, by means of a survey, the factual cross-border problems encountered by investors in these procedures and, in particular, the main EU-wide obstacles faced in trying to recover such WHT in another (source income) Member States, where the dividend-paying company is domiciled.

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[4] An overview on all withholding tax (WHT) rates in the EU and beyond can be found e.g. on the website of the German Federal Central Tax Office, https://www.bzst.de/DE/Privatpersonen/Kapitalertraege/AuslaendischeQuellensteuer/auslaendischequellensteuer_node.html#:~:text=In%20Deutschland%20wird%20seit%202009,Steuer%20die%20ausl%C3%A4ndische%20Quellensteuer%20anrechnen, accessed February 2023

[5] European Court of Justice, Case C-513/03 van Hilten-van der Heijden [2006] ECR I-1957, paragraph 44; Case C-370/05 Festersen [2007] ECR I-1129, paragraph 24; and Case C-101/05 A [2007] ECR I-11531.

[6] https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page37, accessed on 2 February 2023.

While refund procedures have been implemented in all Member States, relief at source procedures for dividend payments to individual investors are currently only available in a minority of Member States (see table below).[7] This overview sets the scene in terms of variation in withholding tax on dividends' income across the EU. First, we briefly introduce the European policy state of play in the matter, before reporting in detail the EU-wide issues identified in practice (see also the annex for specific cases of cross-border data).

EU Country	Relief at source for dividend payments to individual investors*	WHT tax rate on dividends
Austria	**No**	27.5%
Belgium	**No**	30.0%
Bulgaria	n/a	5.0%
Croatia	n/a	10.0%
Cyprus	n/a	0.0%
Czech Republic	n/a	0%-15%
Denmark	No	27.0%
Estonia	n/a	0%-7%
Finland	**Yes**	30%–35%
France	**Yes**	12.8%
Germany	**No**	26 375%
Greece	n/a	5.0%
Hungary	n/a	15.0%
Ireland	**Yes**	25.0%
Italy	**Yes**	26.0%
Latvia	n/a	0.0%
Lithuania	n/a	0%–15%
Luxembourg	n/a	15,0%
Malta	n/a	0,0%
The Netherlands	n/a	0%–15%
Poland	**No**	19.0%
Portugal	**Yes**	25.0%
Romania	n/a	8.0%
Slovakia	n/a	5%–15%
Slovenia	n/a	15.0%
Spain	**No**	19.0%
Sweden	**Yes**	30.0%

[7] Table based on desk research from data publicly available as of February 2023.
*n/a (non-applicable): WHT on dividends not exceeding threshold (15%) stipulated in OECD DTA.

WHT Relief at source procedure

Under the relief at source process, the lowest applicable withholding tax rate is imposed on the dividend payment in the source Member State (of the dividend-paying company). The shareholder needs to provide documentation to allow the company to verify the shareholder's residence Member State (e.g. residency certificate) and confirm the entitlement to a reduced withholding tax rate (e.g. proof of beneficial ownership). Any such documentation must be provided – and properly recorded – prior to the dividend payment. In the EU, several Member States offer such a relief at source procedure, e.g. Denmark, Finland, France, or Italy.

If the requested documentation is not on file by the time the dividend is paid, the full non-resident withholding rate for dividends will be applied by the source country and shareholders will have to undergo the refund procedure.

Pros and cons of the relief at source procedure

Pros

- Simplicity: The relief at source procedure is a straightforward process where the tax is automatically deducted at the source and no tax is withheld in the country of the dividend-paying company.
- The individual investor does not need to take any further action to claim the relief.
- The individual investor does not have to wait months/years to receive a reimbursement of the double-taxed money.

Cons

- If the shareholder has not applied for the relief at source procedure prior to the dividend payment, the dividend will be double taxed. Unless there is a subsequent refund procedure or set-off (imputation) at times of national tax application, the individual investor will have to forfeit (and thus bear) the double taxed amount.
- Limitations may arise in cases where shares are regularly bought and sold.

WHT Refund procedure

In Member States where there is no relief at source procedure – or where such a procedure has not been requested (in due time) – the shareholder has to undergo the refund procedure to ensure that the withholding tax on dividends is reduced to the amount laid down in the applicable DTA (double tax agreement) and the shareholder is reimbursed.

However, to claim the WHT refund, shareholders need to be aware of the different legal bases supporting the withholding tax reduction on dividends. Similarly, they need to navigate the complex procedures for withholding tax refunds, which are different from one Member State to another, each with its own conditions, forms and documentation requirements. In addition, there may be language barriers, time constraints, and costs associated with the process of reclaiming withholding taxes.

Pros and cons of the refund procedure

Pros

- The refund procedure allows the individual to claim a refund of any excess tax paid.
- The individual investor benefits from long deadlines (several years) to reclaim taxes, after the payment of dividends.

Cons

- The refund procedure can be more complex than the relief at source procedure, as the shareholder may need to collect documentation and submit a refund claim.
- The refund procedure can take several months or even years to complete, and there is no guarantee that the claim will be approved.

Actions at EU Level

In its 2004 Communication 'Taxation of dividends received by individuals', the European Commission pointed out that Member States may not discriminate in the tax treatment of cross-border dividend income received by individuals.[8] In its Communication 'Co-ordinating Member States' direct tax systems in the Internal Market'[9] the Commission considered that international double taxation – whereby a taxpayer is subject to tax in more than one tax jurisdiction – is a major obstacle to cross-border activity and investment within the EU. In this context, the Commission stressed the need for an EU-wide coordinated approach to withholding taxes, among others.

In the European Commission's view, fair taxation and the fight against tax fraud are key foundations of an economy that works for all. At present, fair taxation of individual investors is not always ensured across the EU – quite the contrary: withholding tax procedures continue to be a major deterrent to cross-border investment, leading to significant economic losses for shareholders. In its Report to the Council and the European Parliament

[8] See 'Commission to tackle tax discrimination against foreign dividends', press release, 8 January 2004, https://taxation-customs.ec.europa.eu/taxation-dividends-received-individuals_en, accessed on 9 February 2023; following the communication from the Commission 'Dividend taxation of individuals in the Internal Market' (COM/2003/810), 19 December 2003.
[9] https://eur-lex.europa.eu/EN/legal-content/summary/co-ordinating-member-states-direct-tax-systems.html, accessed on 9 February 2023.

'Accelerating the capital markets union: addressing national barriers to capital flows'[10], it is mentioned that the European Commission's Joint Research Centre estimated the overall cost of WHT refund procedures for investors at EUR 8.4 billion per year in foregone tax relief (due to complex compliance procedures and costly expert advice), the costs of reclaim procedures and opportunity costs (delayed refunds mean that the money cannot be used for other purposes).[11]

Recommendation on Withholding Tax Relief Procedures and Code of Conduct

To facilitate a fair taxation in the area of cross-border investments, the European Commission has therefore undertaken a series of initiatives to address tax barriers to cross-border investment, such as the 2009 Recommendation on withholding tax relief procedures[12] or the 2017 Code of Conduct on Withholding Tax[13], the latter of which was an outcome of the Commission's CMU Action Plan 2015[14] and the subsequent Commission Report on national barriers to capital flows[15]. With the 2009 Recommendation, the Commission asked all Member States to implement well-functioning relief at source procedures or, where this is not possible, to establish quick and standardised refund procedures. The 2017 Code aimed to improve the efficiency of withholding tax (WHT) procedures for shareholders by providing a set of pragmatic approaches that considered withholding tax relief but focused on refunds, such as with the introduction of efficient and user-friendly digital refund procedures and the facilitation of forms and documentation requirements. However, the Code is only a non-binding document, calling for voluntary commitments by Member States, and no formal adoption occurred.

Since the introduction of the Code, it should be noted that several Member States, such as Austria or Denmark, have digitised their withholding tax procedures in an effort to facilitate the process while linking existing information in different parts of the tax system to better detect fraud or evasion.

Tax Action Plan 2020

In its July 2020 Communication 'Action Plan for fair and simple taxation supporting the recovery strategy'[16], the Commission noted, however, that *"despite actions undertaken during the period 2016-2019, 41 tax barriers to cross-border investment persist."* The Commission announced that it would propose a legislative initiative for introducing a common, standardised, EU-wide system for withholding tax relief at source, accompanied

[10] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0147, accessed on 3 February 2023.
[11] Ibid., 10-11.; on the other hand, in 2018, tax fraud has been estimated at EUR 55 billion in the area of WHT on cross-border dividends, see https://www.europarl.europa.eu/news/en/press-room/20181120IPR19552/cum-ex-tax-fraud-meps-call-for-inquiry-justice-and-stronger-tax-authorities.
[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009H0784, accessed on 3 February 2023.
[13] https://taxation-customs.ec.europa.eu/system/files/2017-12/code_of_conduct_on_witholding_tax.pdf, accessed on 3 February 2023.
[14] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0468, accessed on 3 February 2023.
[15] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52017DC0147, accessed on 3 February 2023.
[16] https://taxation-customs.ec.europa.eu/system/files/2020-07/2020_tax_package_tax_action_plan_en.pdf, accessed on 3 February 2023.

by an exchange of information and cooperation mechanism among tax administrations. In addition, the Commission announced it will assess the need for exchange of information and cooperation between tax authorities and financial markets supervisory authorities.

CMU Action Plan 2020

Almost in parallel, in September 2020, the Commission announced in its new CMU Action Plan to remove barriers to the completion of the Capital Markets Union. In this context, the Commission pledged to foster cross-border investment, to tackle tax fraud and to simplify taxation by proposing a common, standardised, EU-wide system for withholding tax relief at source (Action 10).[17] The Commission acknowledged that a *"significant burden ascribed to taxation is caused by divergent, burdensome, lengthy and fraud-prone refund procedures for tax withheld in cases of cross-border investment",* while noting that *"existing OECD 'treaty relief and compliance enhancement' (TRACE) system and other EU initiatives in this area, such as the Code of conduct on withholding tax, already provide orientation on what a mechanism, that would make easier and faster tax refunds possible, could look like"*.

TRACE system

Treaty Relief and Compliance Enhancement (TRACE) is an initiative from the OECD. It aims at allowing the claiming of withholding tax relief at source on portfolio investments and removing the administrative barriers that affect the ability of portfolio investors to effectively claim the reduced rates of withholding tax.[18] In the TRACE system, an Authorised Intermediary from the custody chain takes liability for the correctness of the withholding tax on dividends. However, Finland is the only OECD country to make use of TRACE.[19]

[17] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A590%3AFIN, accessed on 3 February 2023.
[18] https://www.oecd.org/ctp/exchange-of-tax-information/aboutthetracegroup.htm, accessed on 3 February 2023.
[19] Finland has introduced the TRACE system as of 1 January 2021, https://www.clearstream.com/clearstream-en/products-and-services/asset-services/tax-and-certification/a20183-2370724, accessed on 14 February 2023.

The Status Quo: The Investors' Experiences in Data

Have the initiatives at EU level and actions taken by Member States improved the situation of shareholders in the European Union? BETTER FINANCE, in collaboration with DSW, has undertaken a fact-finding exercise amongst individual shareholders to determine whether tax obstacles to cross-border investment still exist and, if so, what the main problems are with dividend withholding tax that individual investors encounter.

The fact-finding research consists of a survey conducted between December 2022 and January 2023 to which over 3 000 tax residents and organisations in 22 residence Member States with cross-border investments in 19 source Member States of issuers responded. The survey featured both targeted and open-ended questions to capture the factual problems of withholding taxes on cross-border dividends in the EU.

The vast majority of respondents were tax residents of Germany (78%), followed by tax residents of Belgium (19.1%), Austria (1.4%) and France (0.3%). The other EU countries are represented by 1.3% (notably Italy and Denmark as the larger subset countries).

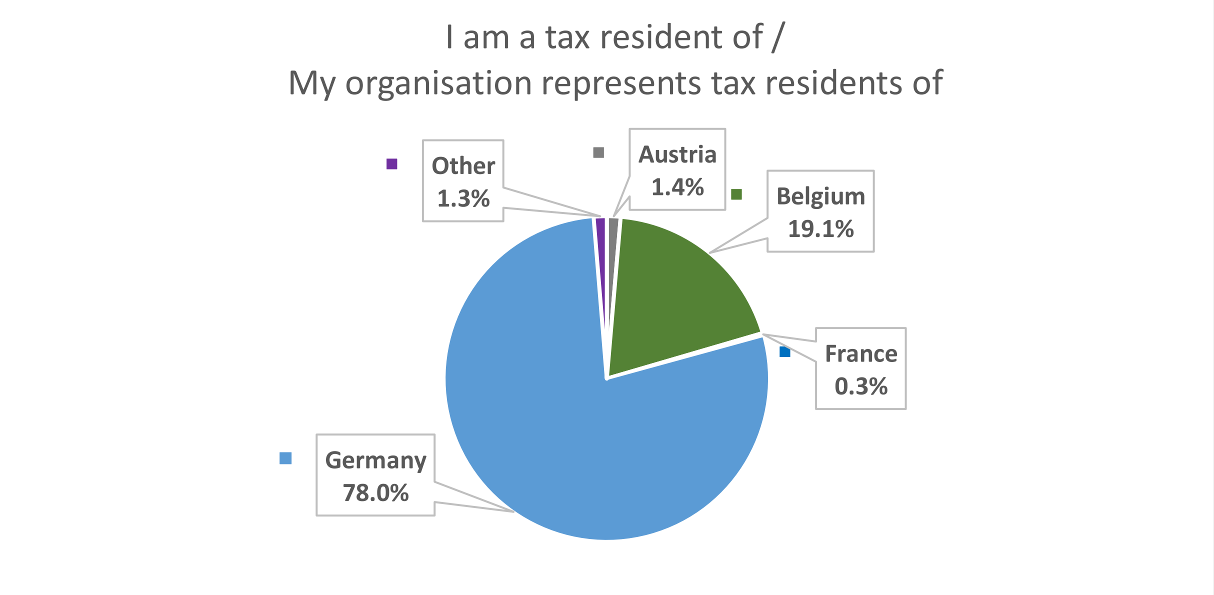


Figure 1 © BETTER FINANCE 2023

The source Member States in which these shareholders tried to reclaim WHT (country of dividend-paying company) were more diverse. Respondents primarily reported their experiences with reclaim procedures on dividends WHT in France (41.5%), Denmark (14.2%), Austria (8.8%), Italy (6%) and Germany (5.6%) – the 14 other countries accounting for 23.9% (notably Spain, Ireland, Finland, Belgium, Sweden and the Netherlands as the main subset countries).

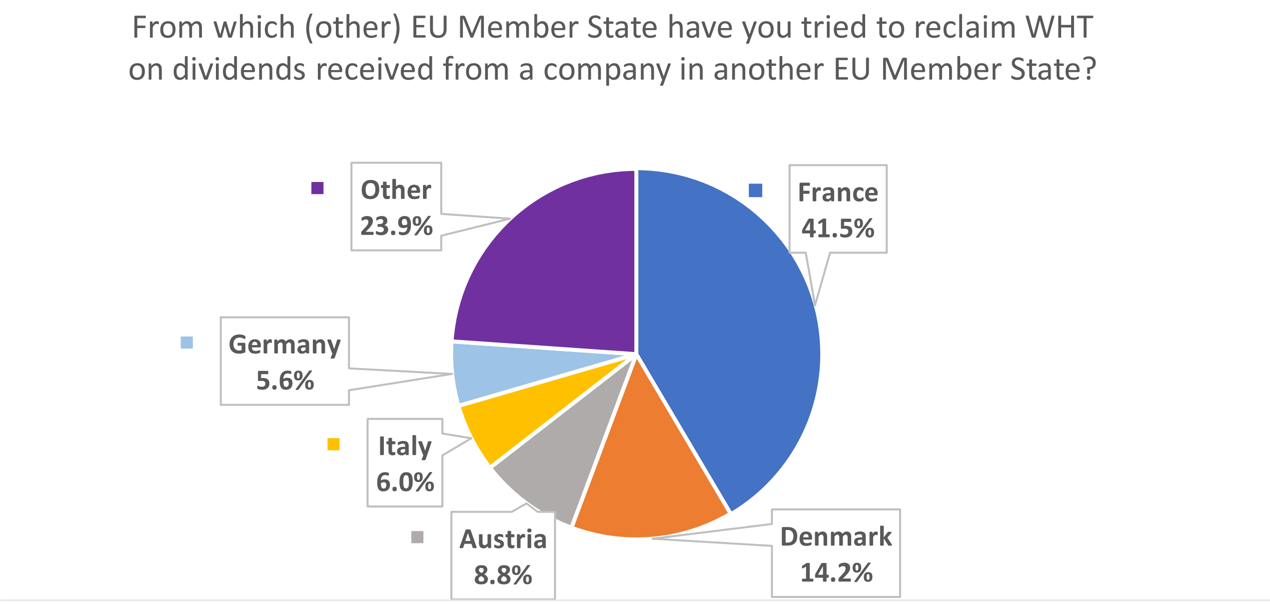


Figure 2 © BETTER FINANCE 2023

The investor's engagement in WHT reclaim

When asked whether or not a refund procedure regarding dividends WHT had been initiated, more than two thirds of respondents negated. As a primary observation, we find that only a minority of 30.5% of investors reported reclaiming the withholding tax on dividends from another Member State, whereas 69.5% reported that they had not initiated such a reclaim.

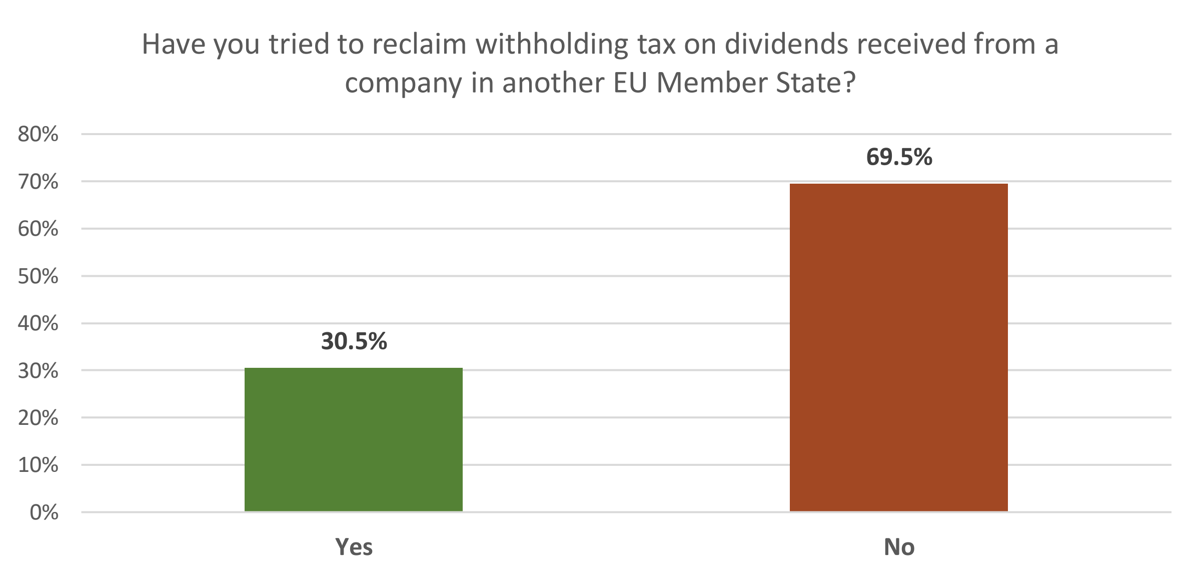


Figure 3 © BETTER FINANCE 2023

Among the roughly 70% of respondents who have not initiated the withholding tax reclaim, the main reasons/obstacles identified are the following (by occurring importance):

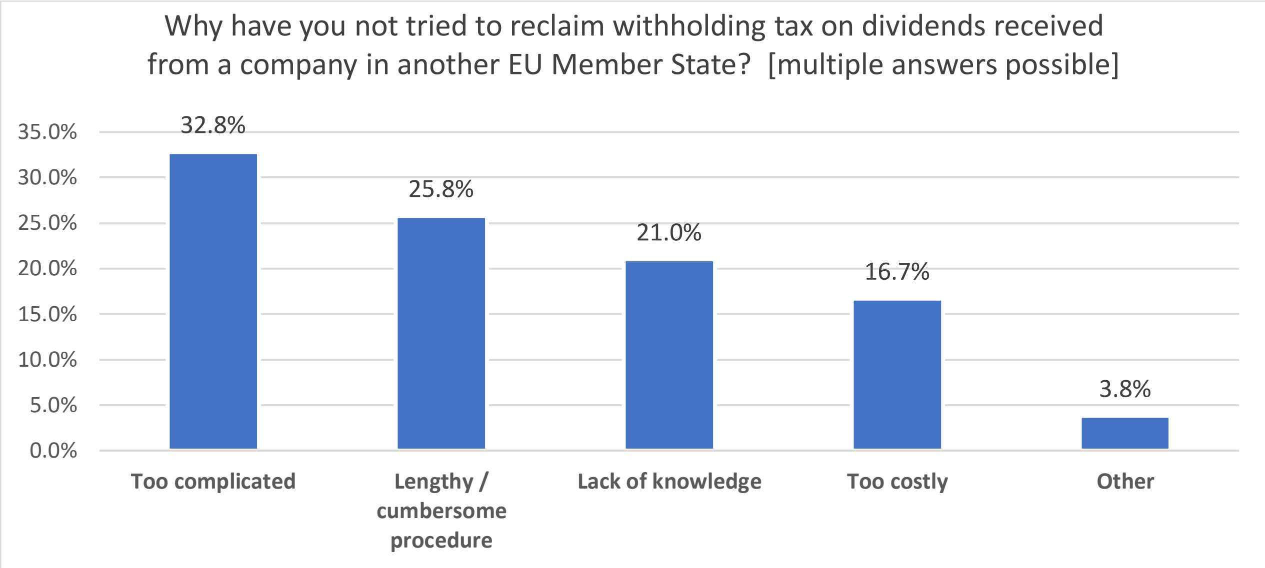


Figure 4 © BETTER FINANCE 2023

Main reasons for not starting the refund procedure were (by order of importance):

i. the complexity;

ii. the length/cumbersomeness of the procedure;

iii. a lack of knowledge of respondents;

iv. costs related to the refund procedure.

Particularly for small refund amounts, the combination of the time and effort required to complete the refund application plus the costs of certain banking services (e.g. for issuing a tax voucher or other documents required by national tax administrations) prevents shareholders from reclaiming double-taxed dividend income. Specifically, we find that complexity and the complexity/length of the procedure account for the majority (58.6%) of the reasons why no WHT recovery procedure was initiated by the majority of about 70% of respondents. The lack of knowledge can be linked to the above-mentioned issues and account for 21%, closely followed by the issue of cost reported in 16.7% of the cases.

Several respondents further indicated that they refrain from investing in shares in countries that have a WHT above the threshold laid down in the double tax treaties, or that the low amount of refundable tax would not be worth the effort.

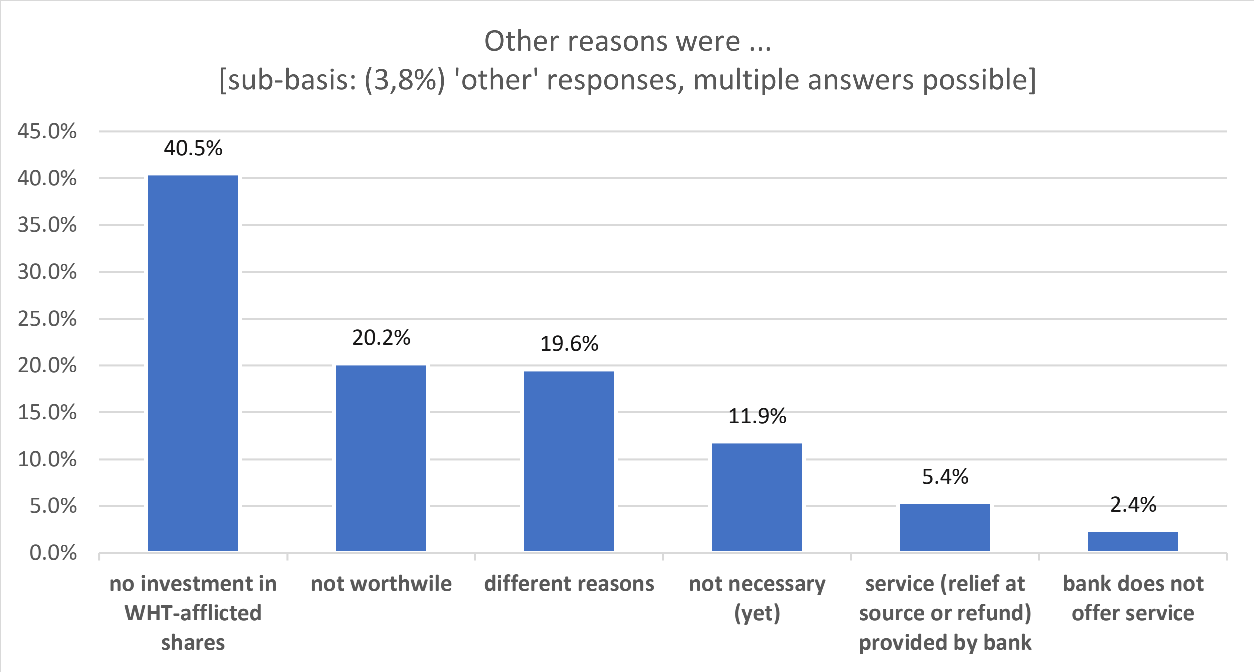


Figure 5 © BETTER FINANCE 2023

It is noteworthy that the reasons why shareholders who have not initiated a dividend-related WHT refund procedure in another EU Member State predominantly point to factual problems such as complexity and length/cumbersomeness of the refund procedure, whereas only a minority perceived costs or a lack of service by their bank as a barrier. This suggests prevailing procedural problems associated with national taxation authorities' set-ups. Tax authorities are responsible for designing forms, prescribing documentation requirements, and ultimately for the length of refund processing.

Among the respondents who have initiated a WHT refund procedure, a vast majority, over three fifths, declared to have undertaken the procedure by themselves (63%), over one third sought their banks' service (33.4%), and few are those who mandate a third party (3.6%) like a tax advisor or a service provider.

Difficulty level: How – and how easily – do investors reclaim the WHT?

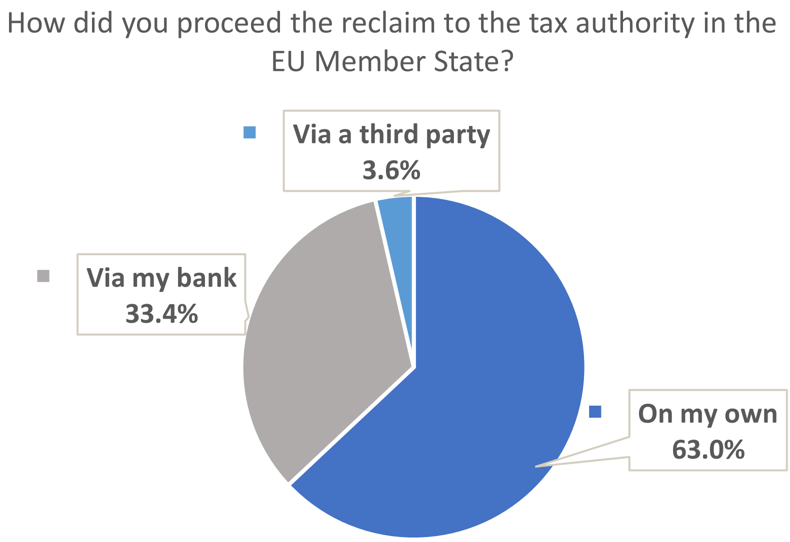


Figure 6 © BETTER FINANCE 2023

Asked about their perception of the ease of the refund process, almost three quarters (74.5%) of respondents found the refund process 'difficult' or even 'very difficult'. Notably, nearly half of investors consider the WHT refund claim to be 'very difficult' (47.3%). By all difficulty levels, over 90% of investors considered the WHT reclaim process to be complicated overall (including 'very difficult', 'difficult and 'moderately difficult' statements).

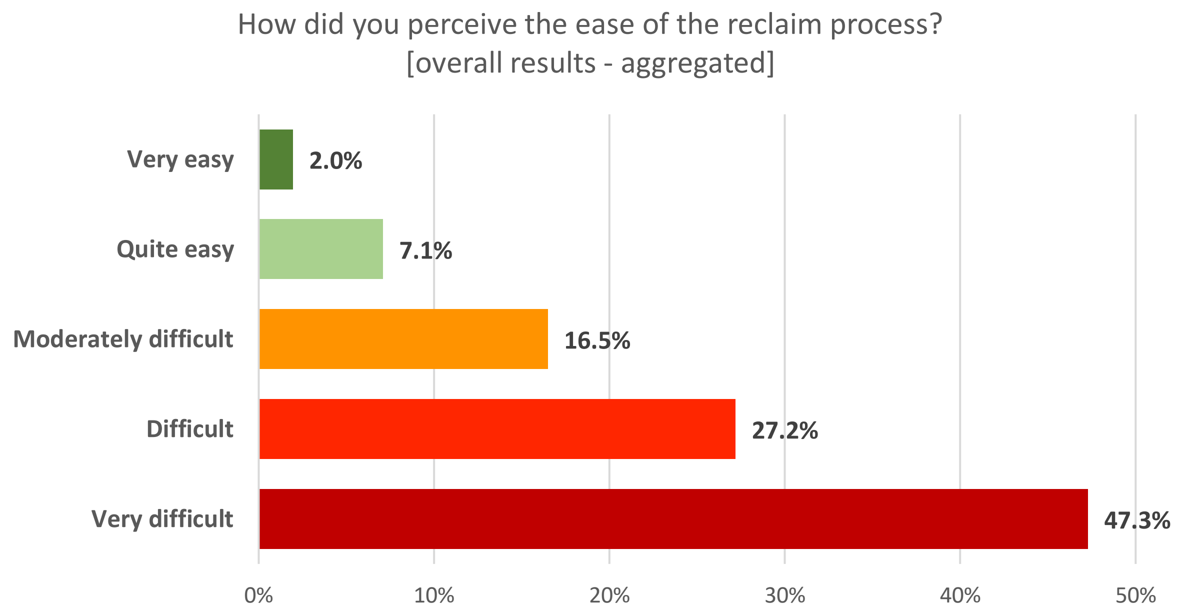


Figure 7 © BETTER FINANCE 2023

Looking at the WHT refund paths for the two highest difficulty scales, we find that, in total, there are no significant differences in the perceived ease of the refund process between the responses of shareholders who requested the WHT refund themselves (76.9%) or those who used a service from a bank or third-party provider (70.2%). Moderate difficulty occurs equally between the two groups, accounting for 16.5% in both cases. Overall, whether an investor proceeds alone or through a bank or third party does not marginally facilitate the recovery of the WHT in over 90% of cases.

A minority of respondents perceived the WHT procedure as quite or very easy (representing a 9.1% in overall average). Only for those few cases, the bank/third party appeared to have facilitated the process twice as much as those who did it themselves, with an overall positive perception rate of 13.2% versus 6.6% respectively.

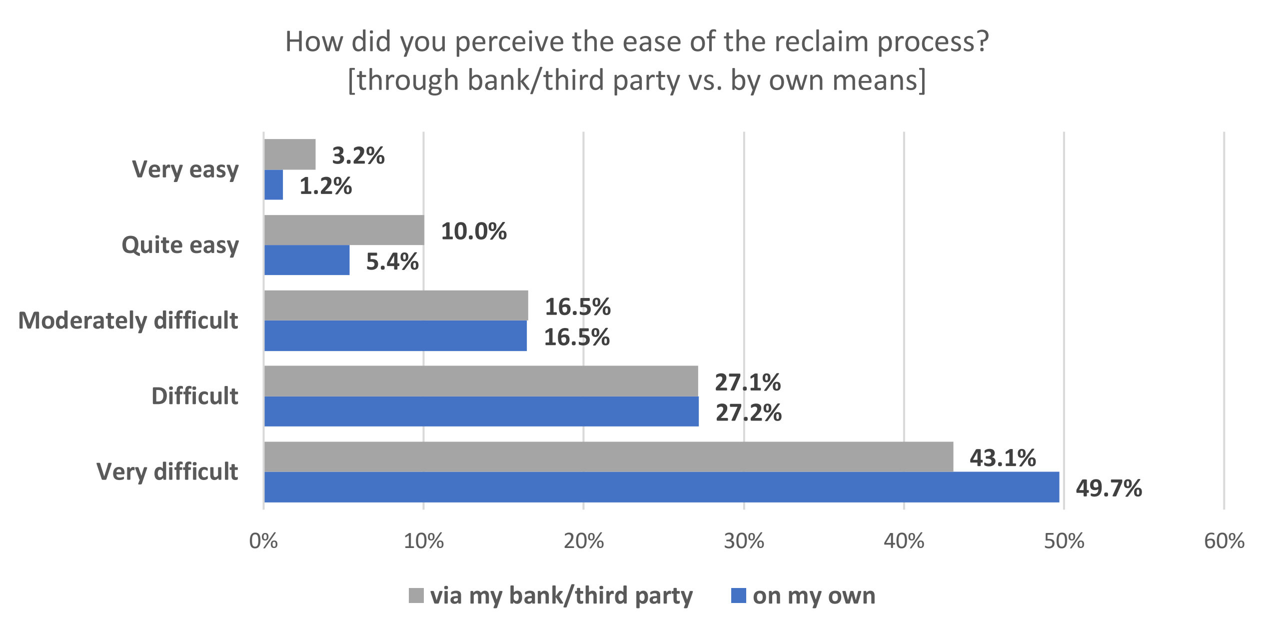


Figure 8 © BETTER FINANCE 2023

The aggregated data (EU-wide) featured by country clustering show differences in the perception of shareholders with regard to different Member States as source of the dividend-paying company. Although it doesn't provide an analysis of specific cross-border cases (i.e. bilateral problems), it is a good indicator of the ease of the WHT reclaim procedures in place in different Member States.

While the process of retrieving the WHT dividend in France and Italy is perceived as "very difficult" by the vast majority of respondents resident in another EU Member State (55% and 60%, respectively), the same perception from respondents having undergone a reclaim procedure in Austria and Denmark tends to be more positive overall, where the highest difficulty level is lower (27.2% and 35.4% respectively). Combining all respondents who found the reclaim procedure "difficult" or "very difficult", reclaiming a WHT refund in Italy had the highest dissatisfaction rate in 85.5% of cases, followed by France in 77.2% of cases. These national variations show that the different procedures chosen by the source income Member States have a strong influence on the ease of the WHT reclaim process for investors resident in another Member State.

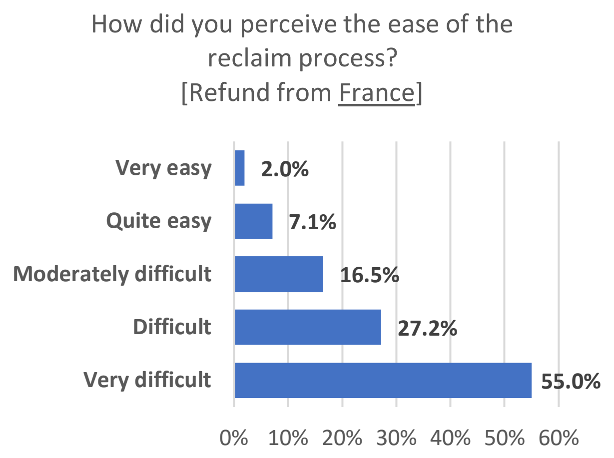


Figure 9 © BETTER FINANCE 2023

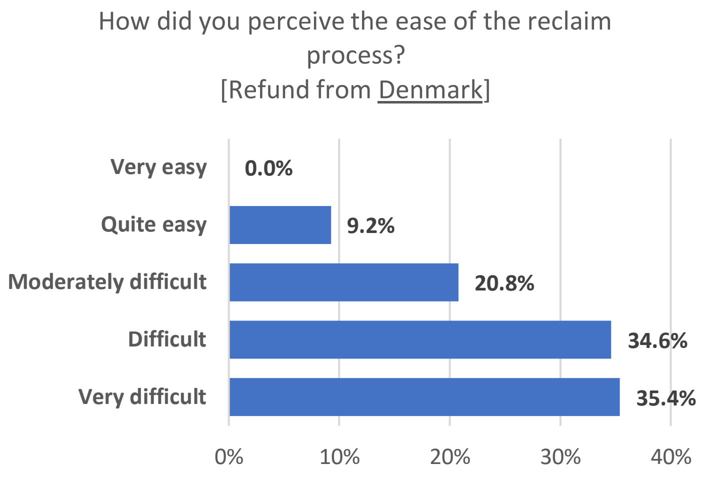


Figure 10 © BETTER FINANCE 2023

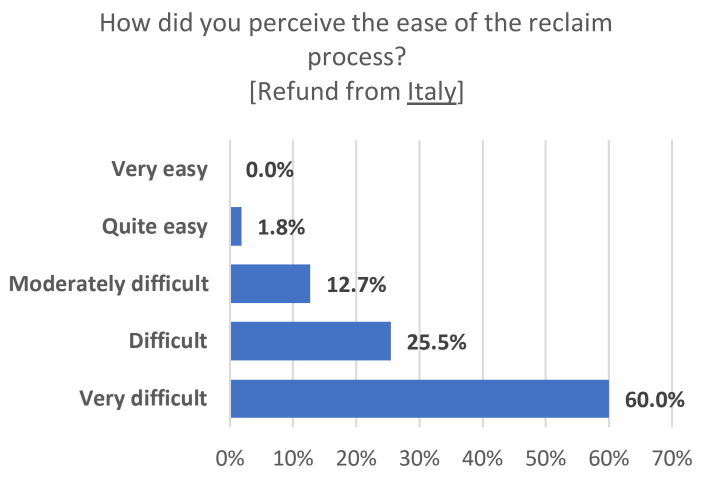


Figure 11 © BETTER FINANCE 2023

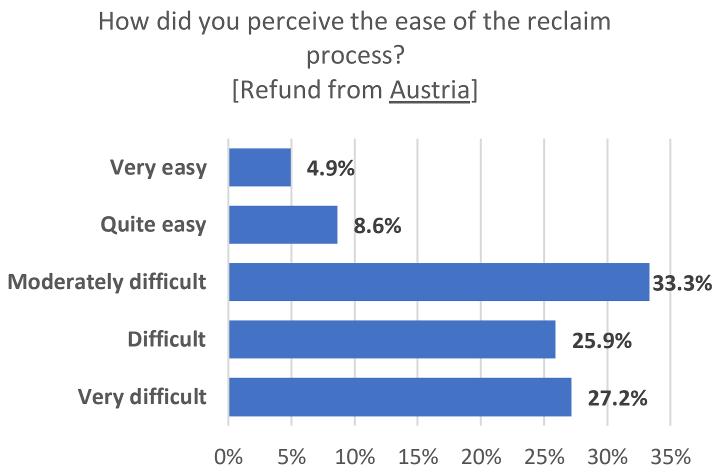


Figure 12 © BETTER FINANCE 2023

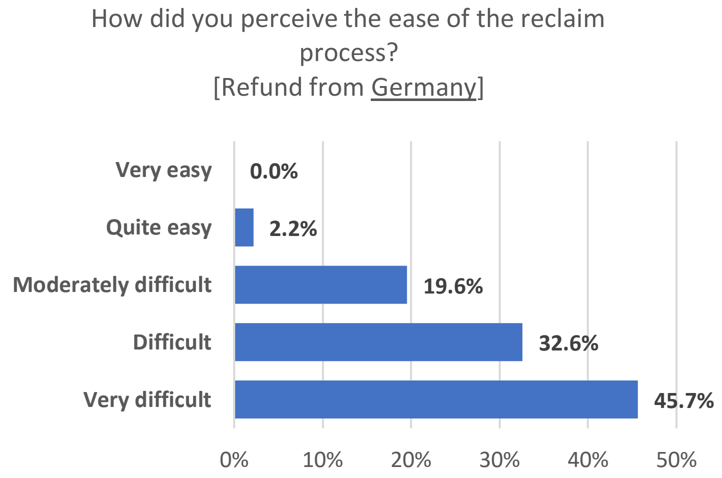


Figure 13 © BETTER FINANCE 2023

Preliminary problems identified in reclaiming the WHT

The main problems identified by investors actually engaged in reclaiming the WHT were cumbersome and lengthy procedures, documentation requirements, or non-intelligible forms.

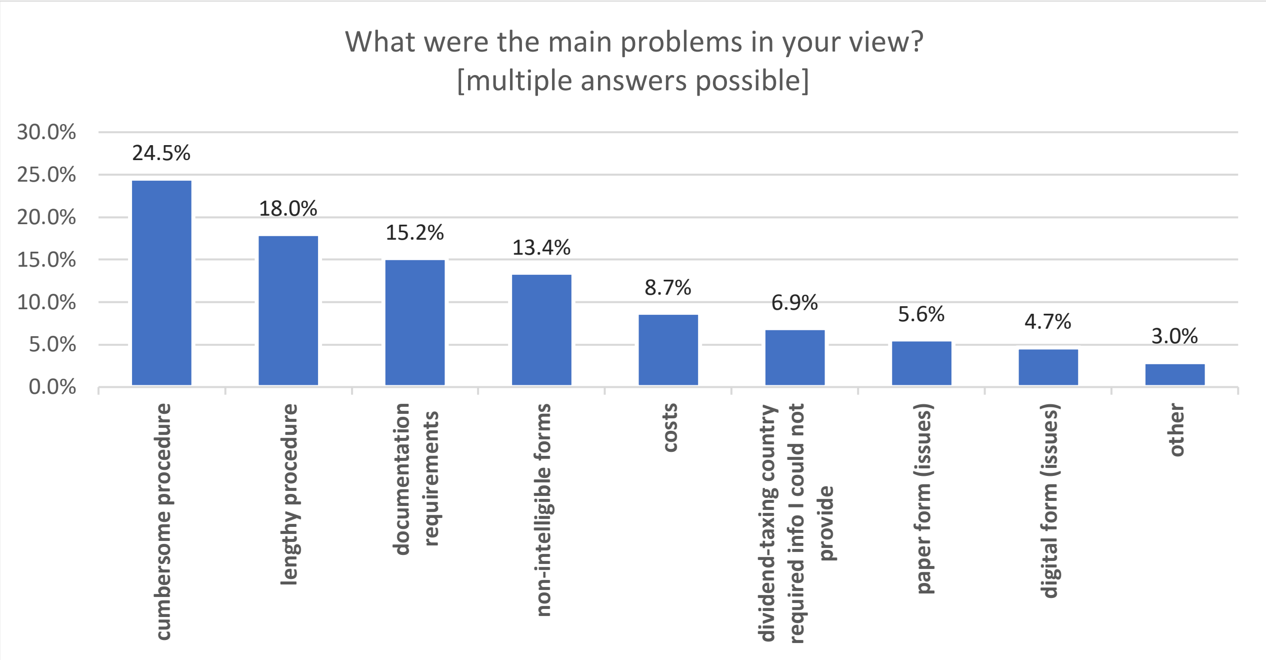
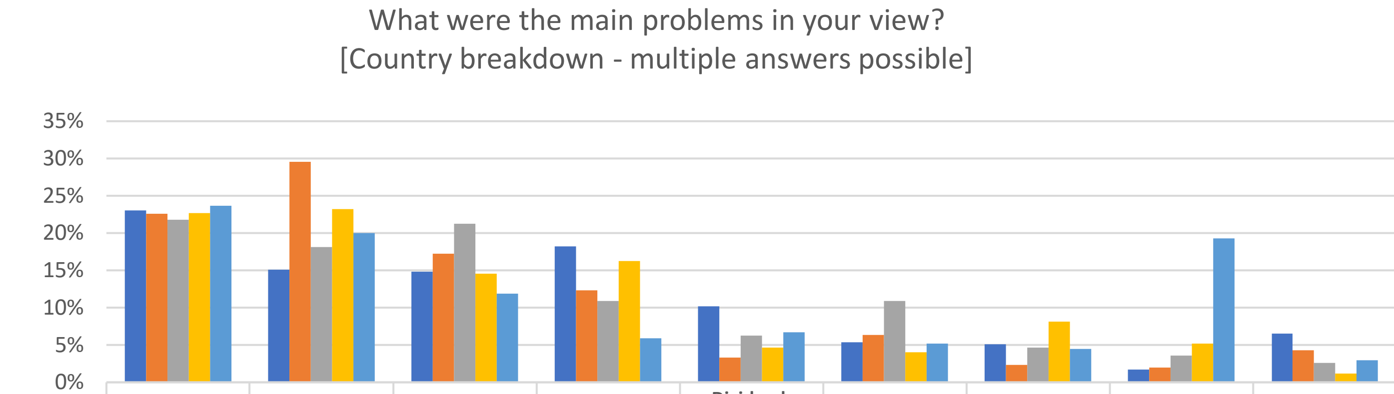


Figure 14 © BETTER FINANCE 2023

A breakdown by selected countries shows that – apart from cumbersome and lengthy procedures which always prevail – the problems differ from Member State to Member State. While a refund from Germany is often linked to costs, this problem seems to be less significant for respondents who claimed a refund from Italy, Denmark or Austria, where respectively the documents required, along with forms intelligibility, the length of procedure or other issues (also digitally) are at stake. On the one hand, one in five respondents indicated that documentation requirements are problematic in Austria, whereas this seems to be less of a problem in other EU Member States. On the other hand, the intelligibility of forms differs significantly across Member States – they seem to be less intelligible especially in Italy,[20] while respondents noted this problem much less often for German forms. Lengthy refund procedures were found to be more common for claims to Denmark[21] and Italy.

[20] To reclaim WHT in Italy, individual shareholders are required to provide the name of the issuer's depositary bank (for custody of securities). This information is generally unknown to individual investors.
[21] After a fraud attack in 2018, the Danish tax authority put on hold all WHT-related payments to non-residents. In 2022, the authority still had a backlog of 62 000 claims. https://www.nytimes.com/2018/10/05/business/denmark-skat-tax-scandal.html, accessed on 13 February 2023.



	cumbersome procedure	lengthy procedure	documentation requirements	non-intelligible forms	Dividend-taxing country required info I could not provide	digital form (issues)	paper form (issues)	costs	other
France	23%	15%	15%	18%	10%	5%	5%	2%	7%
Denmark	23%	30%	17%	12%	3%	6%	2%	2%	4%
Austria	22%	18%	21%	11%	6%	11%	5%	4%	3%
Italy	23%	23%	15%	16%	5%	4%	8%	5%	1%
Germany	24%	20%	12%	6%	7%	5%	4%	19%	3%

Figure 15 © BETTER FINANCE 2023

Pre-refund procedure: documentation collection issues and length

More than 70% of the respondents indicated that it took them more than one week just to gather all the necessary documents for their refund application; another 23% reported that it took them more than three weeks. Notably, various respondents stated that obtaining the certificate of residence from their local tax administration delayed the collection process.

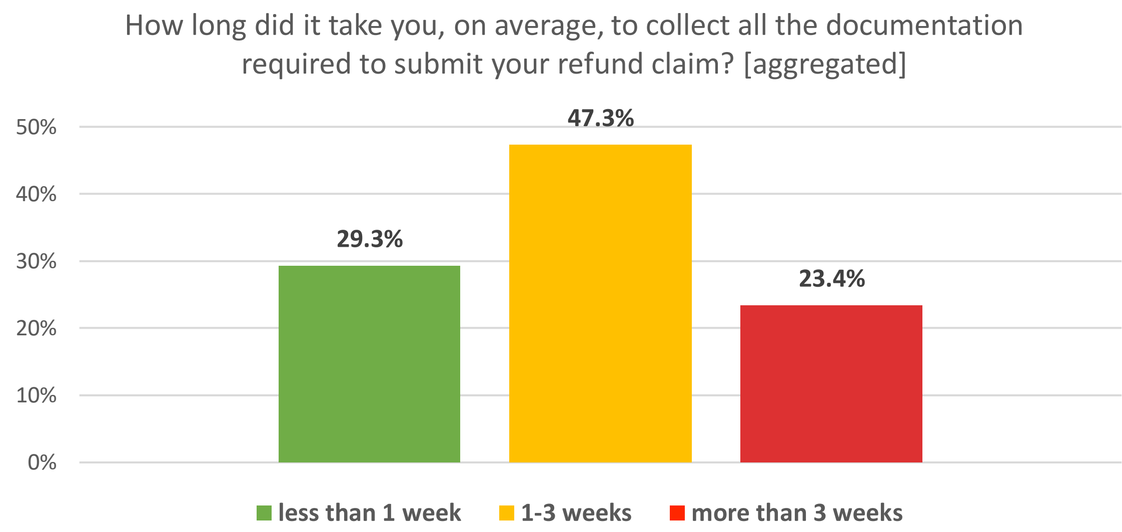


Figure 16 © BETTER FINANCE 2023

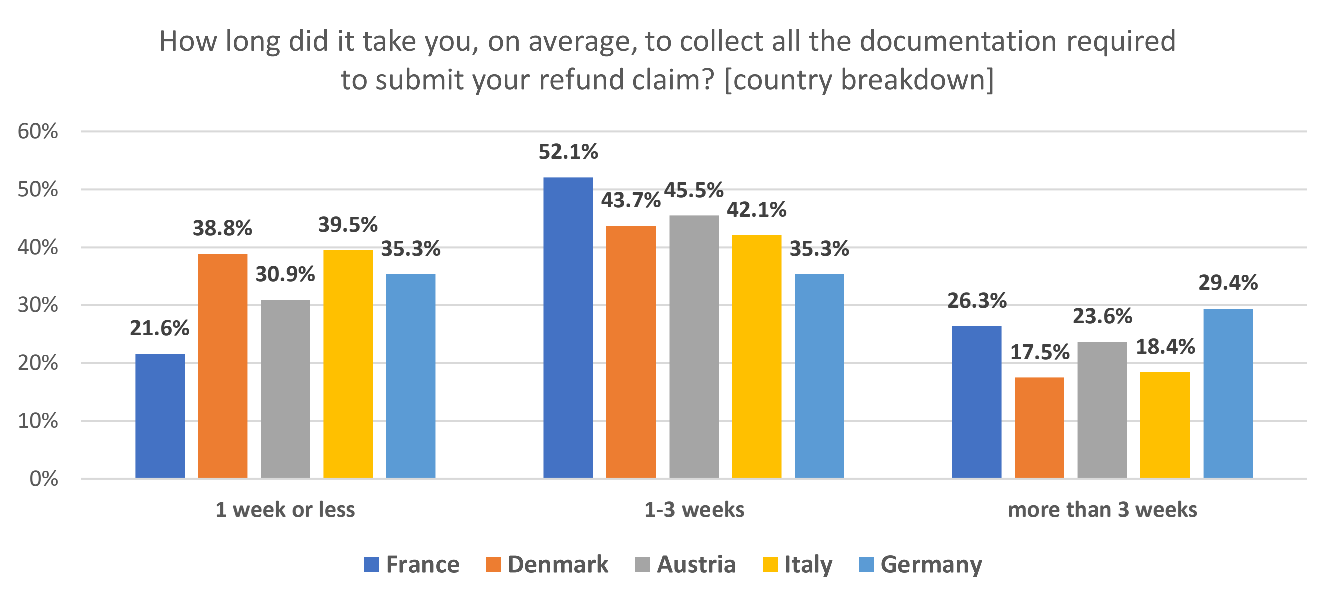


Figure 17 © BETTER FINANCE 2023

At this early documentation stage of the refund claim procedure, respondents also encountered problems with their local or the foreign tax administration, pointing out that: local tax authorities took long to provide the certificate of residence; that the foreign tax authorities were not reachable in case of questions; or that tax authorities were either not cooperative or not responsive – among others. Furthermore, various respondents noted that additional, subsequent documentation requests had prolonged the procedure. Several respondents also reported that the mere collection of the documents required for the reimbursement procedure proved difficult.

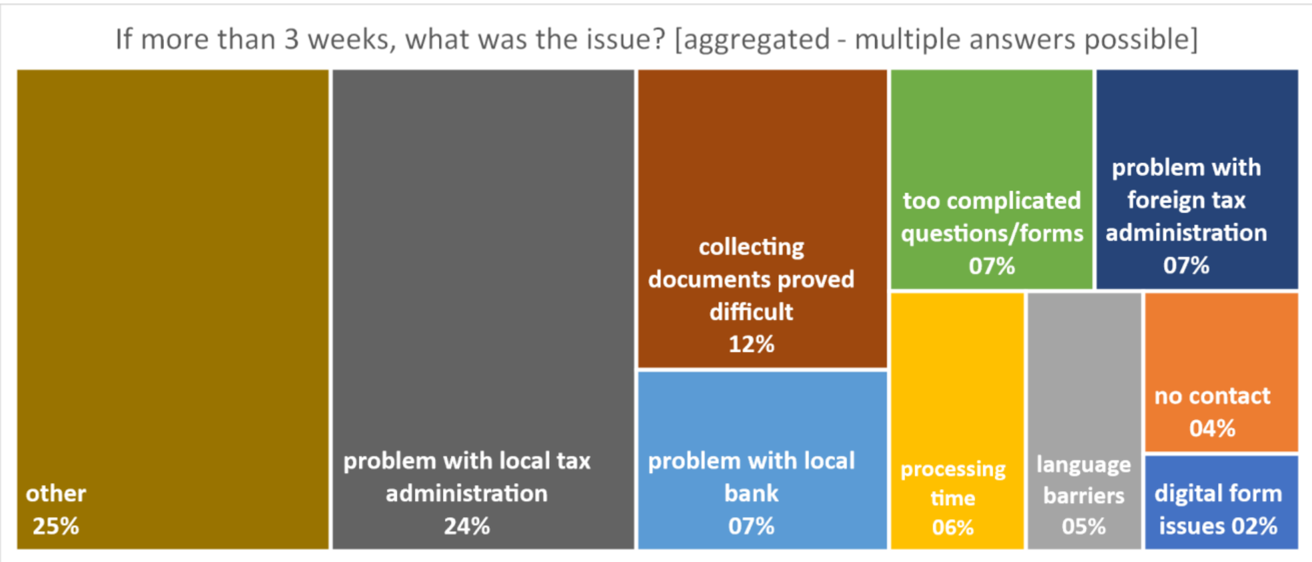


Figure 18 © BETTER FINANCE 2023

Duration of WHT refund procedure

After filing the claim, the length of the refund procedure itself varied significantly among respondents. In general, when successful, refund periods ranging from 1 to 3 months to over 60 months were reported, with one case going up to 10 years. The data collected suggests that the average time taken to process repayments can be marginally shorter when administered by a bank or third-party provider than when self-conducted by the investor, but this trend is less evident the longer the delays (i.e. when assessed as over one year).

In fact, it took more than 6 months for almost half of all respondents (49.3%) to obtain reimbursement from the WHT; of these 53.2% acted on their own and 43.8% through a bank or third-party. Besides, more than one year was needed to obtain the WHT refund for more than a fifth of all respondents (21.4%); of these, 25.7% acted on their own and as opposed to 'only' 15.2% of those who used a bank or third-party service – translating in just about 10 percentage point difference in favour of professional services.

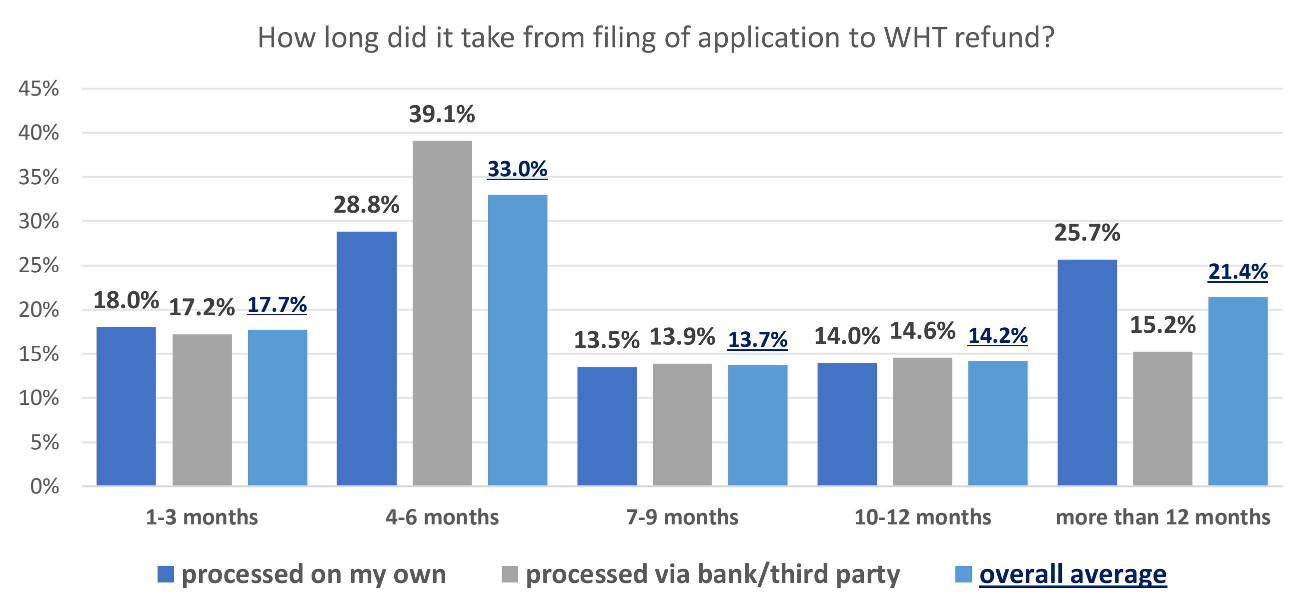


Figure 19 © BETTER FINANCE 2023

These worrying figures are further underpinned by the fact that out of the total respondents having to wait over one year (21.4%), more than half of those that (54.6%) had to wait two years or more before receiving their double-taxed dividend in the form of a refund from the foreign tax authorities, whether they processed the claim themselves, through their bank or through a third-party provider.

Ultimately, over ≈11% of all investors had to wait two years or more to receive their WHT refund, and over ≈4% of all investors had to wait "several years" (or more than 60 months).

As shown below in detail, the longer the waiting periods the less the use of a bank of third party may reduce the processing time of the WHT refund (i.e. considering only the proportion of responses indicating a period of over 12 months). For the longest specific period of over 60 months, very little difference persists according to whether the process was managed by the investor him/herself or by a service provider, with 9.3% and 8.7% of occurrences respectively for an average of 9.1%. As for the “several years” statements, the average of 10.4% covers 11.1% of investors acting alone compared to 8.7% using a bank/third party.

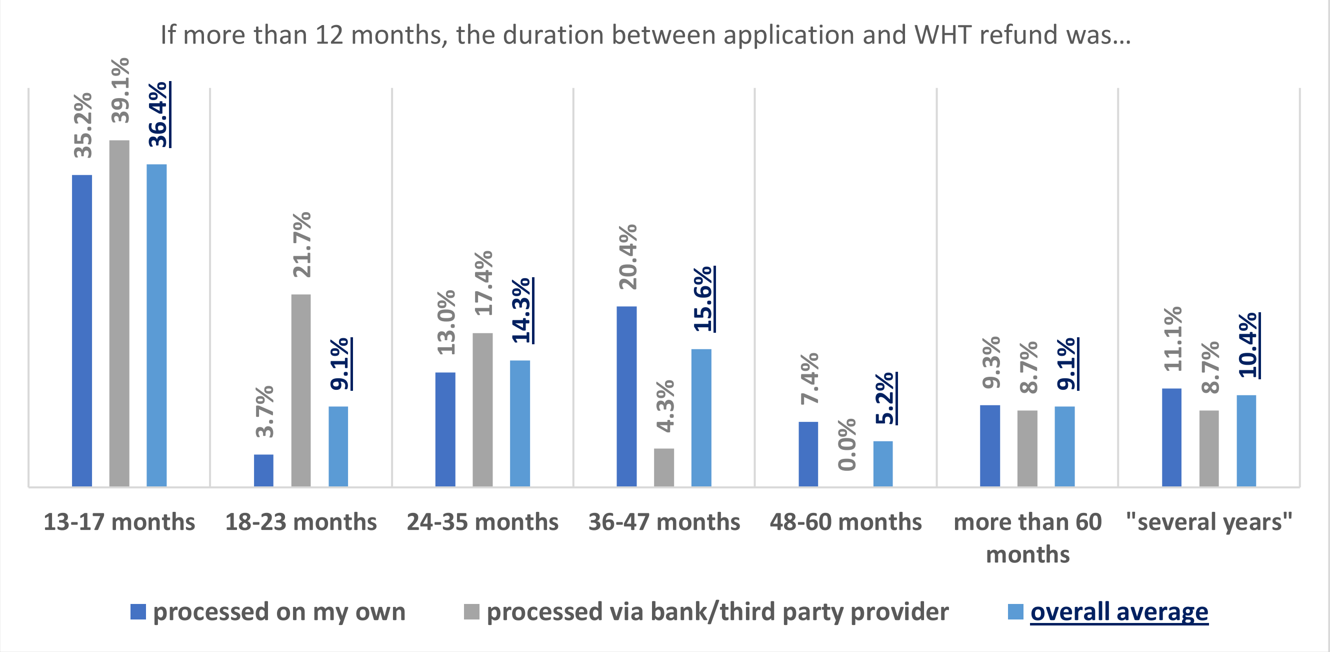


Figure 20 © BETTER FINANCE 2023

Looking at the country specific data (from the source Member State of equity income), the length of the procedure varies considerably from one Member State to another. Requesting the WHT refund from Italy and Denmark in particular, respondents most often reported waiting periods of 12 months or more for their application, with occurrences of 37.5% and 24.6% respectively.

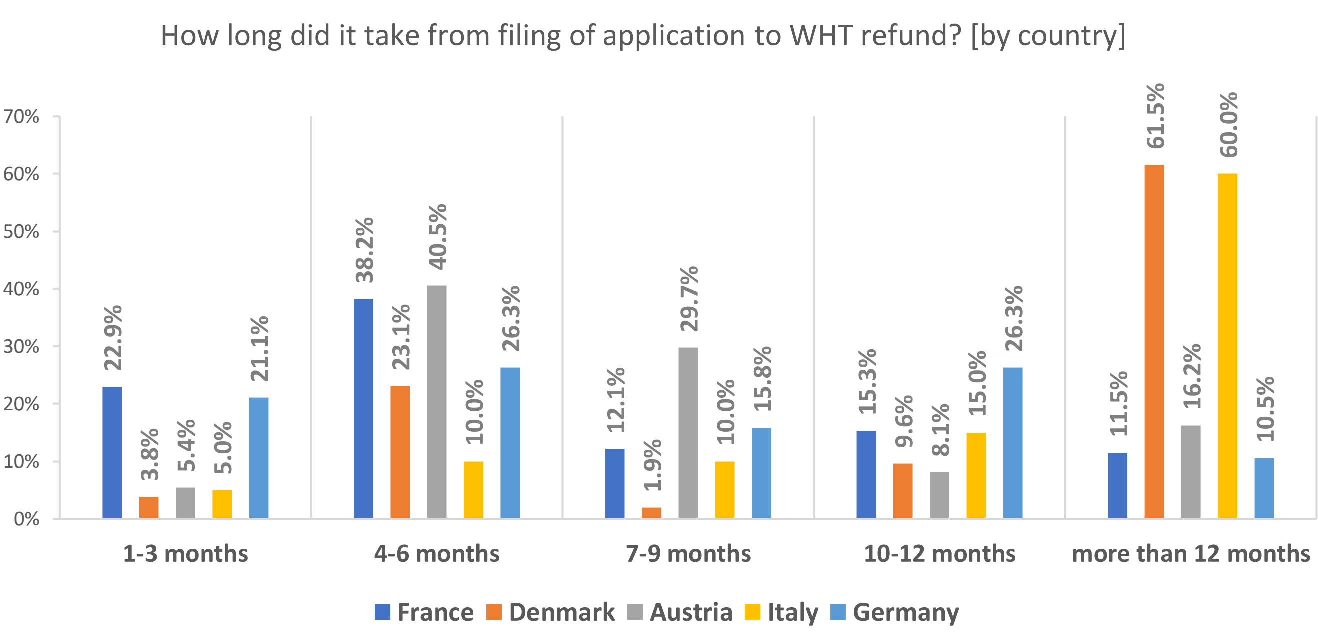


Figure 21 © BETTER FINANCE 2023

Supporting feedback from a private bank in Germany, servicing both individual and institutional investors, indicates that, in France and Denmark in particular, the refund process would usually take 3 years or more. During our desk enquiry, this bank also indicated that it did not offer the possibility to recover the WHT in Italy due to the excessive length of the procedure.

Desk enquiry (German bank statement)	
Refund requested from [source income country]	**Refund duration**
Spain	9 months
Ireland, Switzerland	1 year
Austria, Belgium	1-2 years
France	3 years
Denmark	3-5 years

Figure 22 © BETTER FINANCE 2023

Specific barriers to WHT refund

In terms of the type of barriers identified to reclaim WHT on dividends mentioned by respondents, these can vary in occurrence or degree of importance, depending on whether they had tried to reclaim WHT by their own means or through the service of their bank or a third party.

In fact, ≈12% of respondents who processed their refund claim on their own noted problems with tax administrations (local or foreign) as an obstacle to tax refunds. When banks were involved in the process, only 8% of respondents noted that this was an obstacle.

While almost one quarter of respondents (24.6%) who processed the refund claim on their own complained about the lengthy procedure, this figure was decisively lower in case of respondents who processed their claim via their bank or a third party (11.8%). This trend is reflected in our previous analysis on the duration of refund procedures. Consequently, the latter group using a service more often noted costs (28.6%) and lack of support from their bank (13.7%) as barriers. Yet the issue of cost was raised by 13.0% of respondents acting on their own, suggesting that in certain cases they still have to resort to administrative or banking documents that they cannot obtain for free.

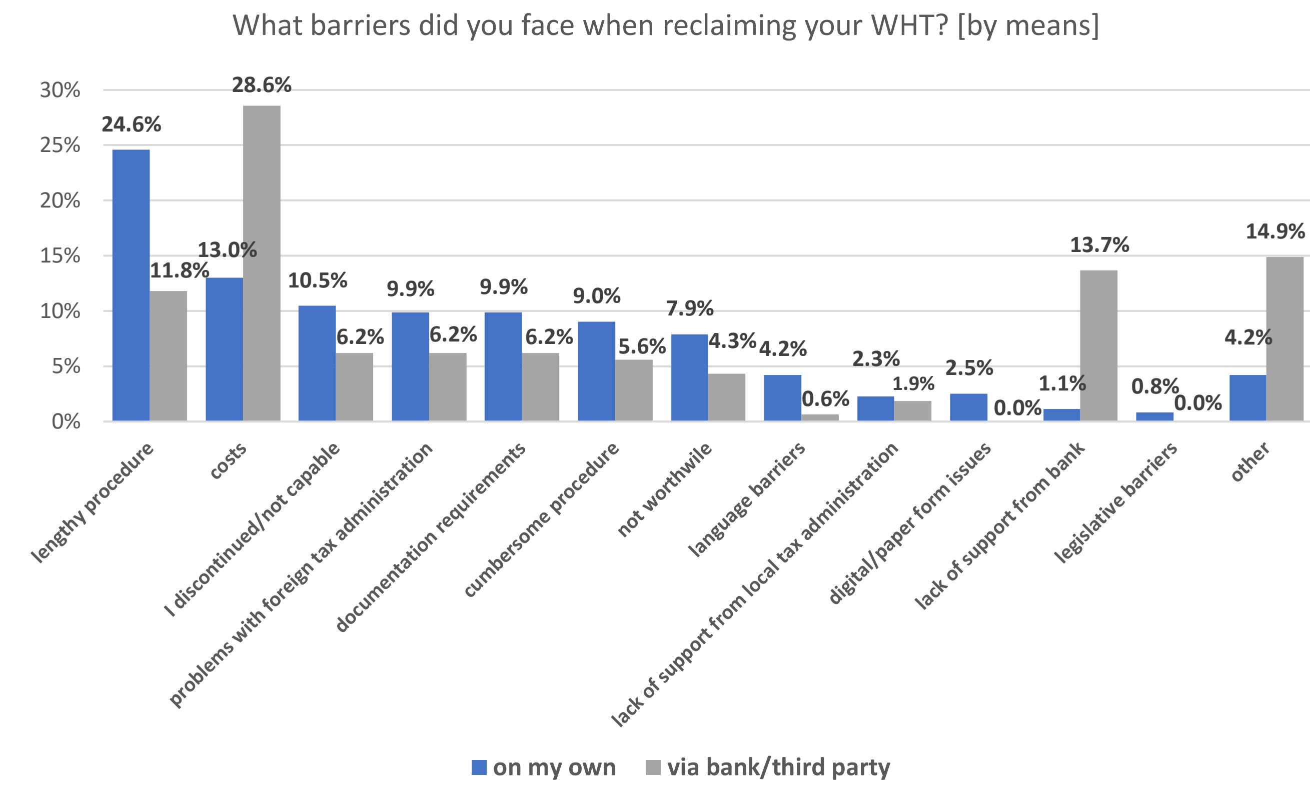


Figure 23 © BETTER FINANCE 2023

The figure below shows the aggregated barriers identified, regardless of the means of proceedings. Notably, the two main problems, namely the length and the cost of the procedure, are jointly identified by close to a quarter of the respondents (38.5%), while 9.1% of respondents stated that they had given up ('not capable'). This seems to be caused by the further obstacles identified, such as problems with the tax authorities or documentation requirements, which taken together account for 17.4%.

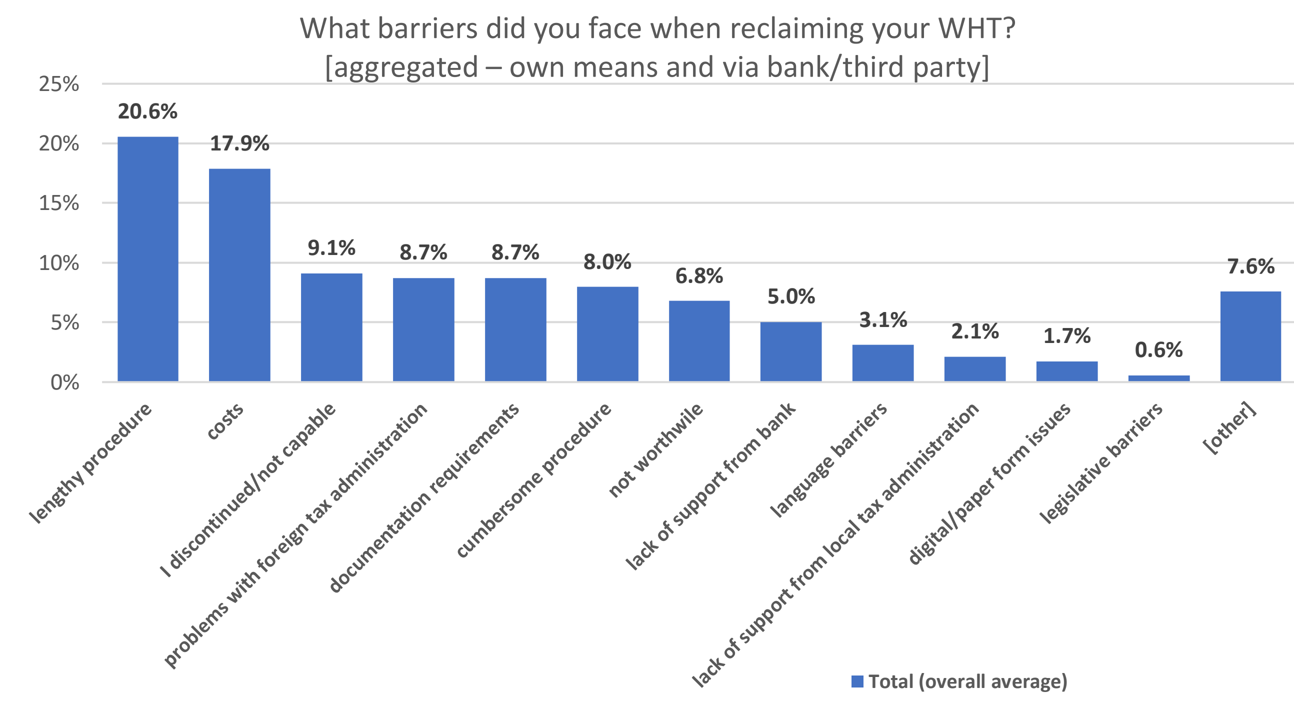


Figure 24 © BETTER FINANCE 2023

Cost of WHT Refund Procedure

In a cross-border context, several intermediaries may be involved in processing a refund claim from the investor to the tax administration. We have already observed that costs are the second most common obstacle for about 18% of the investors involved in the WHT reclaim process, while those who do not proceed would cite costs in 16.7% of cases.

Barriers to Reclaim WHT From France

While in many Member States a copy of the dividend payment from the shareholder's bank showing the WHT deduction is considered sufficient proof to obtain the refund, the French tax administration requests a confirmation from the (issuer's) paying agent that the dividend has been paid to the foreign shareholder (e.g. German shareholder). Such confirmation can only be obtained when the shareholder makes the refund request via the intermediary chain.[22] Consequently, shareholders need to make use of bank services to claim a refund from France whereas in other Member States a confirmation requirement from the paying agent does not exist.

Not surprisingly, where tax administrations do request information from shareholders that can only be provided through the intermediaries' chain, this comes at a cost: in fact, in 67% of cases, respondents who processed their refund claim through the intermediaries' chain or involved a third party, were charged with fees. The cost range for WHT refund services indicated by respondents differs significantly: from 1-10 EUR to up to EUR 300.

Barriers to Reclaim WHT From Ireland

To reclaim taxes on Irish dividends, several respondents noted that the Irish tax administration requires a certified WHT reclaim form that must accompany each refund claim, as well as numerous documents to prove that the dividend has been received, (e.g. original dividend voucher or nominee statement if shares are held in a nominee capacity by the bank).[23] In fact, the shareholder has to justify the full custody chain between the paying agent and the bank, which is a practically unfeasible undertaking and, without the support of participants in the custody chain, impossible in practice. For individual shareholders, however, even with the support of the custody chain, this is a factual barrier because in such cases fees have been reported to be as high as EUR 500 per dividend payment.

Conversely, even in cases where the costs may seem moderate, as long as they are equal to or higher than the amount of tax to be recovered, this constitutes a factual deterrent to engage in the reclaim – particularly for individual shareholders who tend to recover rather small amounts of withholding tax from their dividend payments. Besides, even when an investor submits the refund request on his/her own, it still cannot be excluded that supporting document from the bank will be required, potentially leading to costs (as indicated by respondents).

[22] Given the complex and long intermediaries' chain, confirmation is very often not obtainable. In practice, the paying agent may deny issuing such confirmation, under the claim of not having knowledge of the actual identity of the dividend's beneficiary from whom the tax has already been withheld.

[23] https://www.revenue.ie/en/companies-and-charities/documents/dwt/dwt-claim-for-refund.pdf, accessed on 7 February 2023.

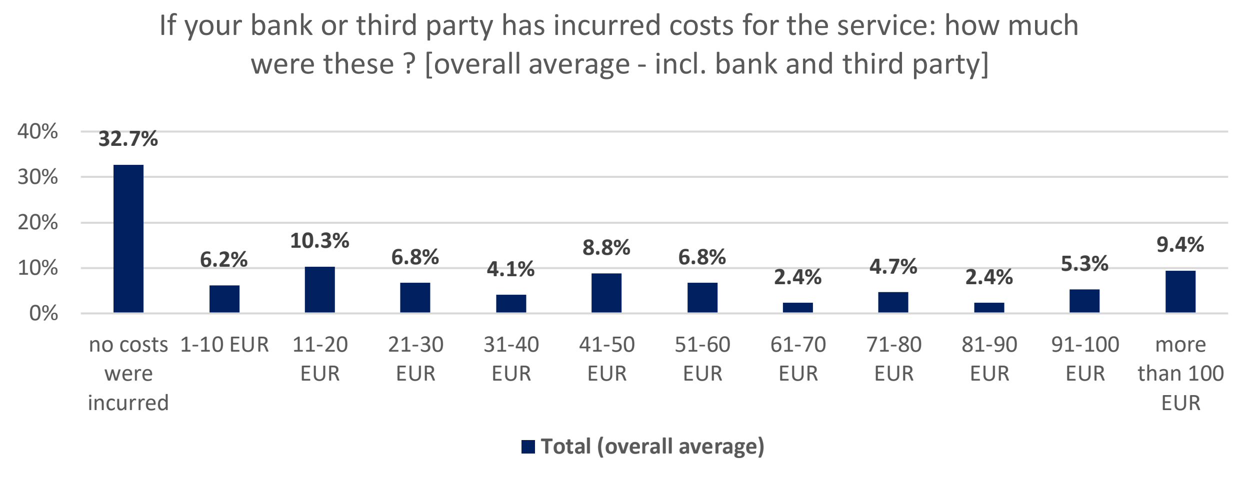


Figure 25 © BETTER FINANCE 2023

In almost 70% of the cases (67.3%), WHT recovery operations through a financial service provider (bank or third party) invoked costs for the investor, and in close to 10% of such cases (9.4%) costs even exceed EUR 100. Overall, only about one investor out of three did not seem to have incurred costs, while at least 6.3% of investors were charged over EUR 100 for a WHT reclaim service.[24]

Interestingly, the amounts of costs charged for WHT services do not differ substantially between provider types (bank or third party, see graph below) – and the prevalence of cost range remains in line with the overall aggregated results (graph above).

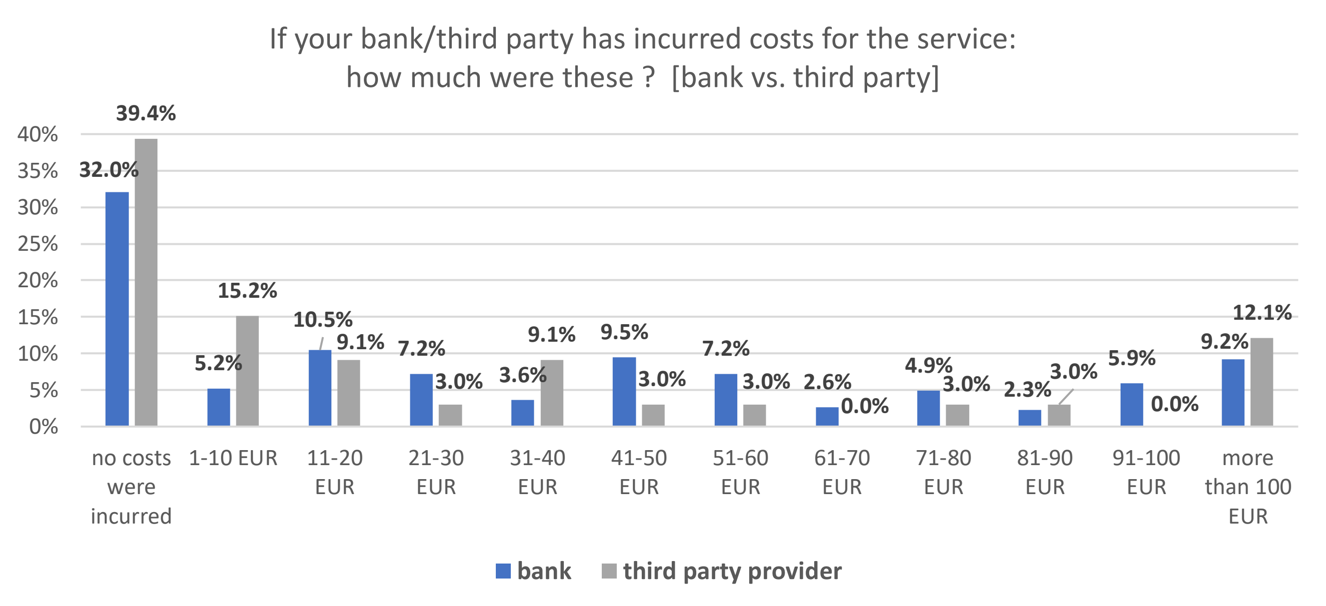


Figure 26 © BETTER FINANCE 2023

Illustratively, a recent investigation into the costs charged by German banks for WHT services in selected EU Member States, found these to range from 0 to 122 euros.[25] In few cases, however, higher costs of up to EUR 500 were recorded in our survey sample.

[24] NB: excluding investors acting ‘by own means’ who did not report potential costs, but including all investors who used or paid for a WHT service.
[25] Handelsblatt, “Bei Dividenden-Aktien aus drei Ländernsollten Sie aufpassen”, 16 March 2023.

Low Success Rate of WHT Reclaim

WHT refund procedures are difficult, cumbersome, lengthy and in most cases not successful for individual shareholders. For small shareholders, they are often not even worth it, either in terms of the costs involved, or even in light of the uncertainties of the process.

Including those respondents that had not initiated a refund procedure from the start, more than 83% of EU resident investors did not manage to recover any money that had been subject to double taxation and therefore was owed to them by the source/issuer state. Adding the partial recovery of the WHT, the failure to successfully reclaim the WHT amounts to up to 87.2% of EU investors. Those high and worrying figures show the dire need for action by the EU Commission and Member States to ensure that WHT on dividends for non-resident individual investors no longer discriminates against EU taxpayers based on their residency status – and thus no longer infringes EU law, especially the free movement of capital.

Undeniably, we see a poor success rate of the WHT on dividend refund procedures for investors engaged in the process, as – on average – 41.5% of investors fail to recover any WHT by themselves, and an extra 12.5% only partially succeeds in doing so (e.g. due to discrepancy in tax return calculation; or only a partial reduction of double taxation). Overall, this means that 54.0% of investors initiating a WHT reclaim on EU cross-border dividends fail to do so and incur a double/partial unjustified taxation. Conversely, only 46.0% of engaged investors manage to recover the WHT.

By detailing the success rate according to the means undertaken by the investors (via a service or on their own) to obtain the WHT refund, we find that: 42.5% managed to recover it by themselves, while 52.7% did so by acting through the custody chain (as a service). This slight difference (about 10 percentage points) means that banking or third-party services only marginally improved the success rate in reclaiming the WHT.

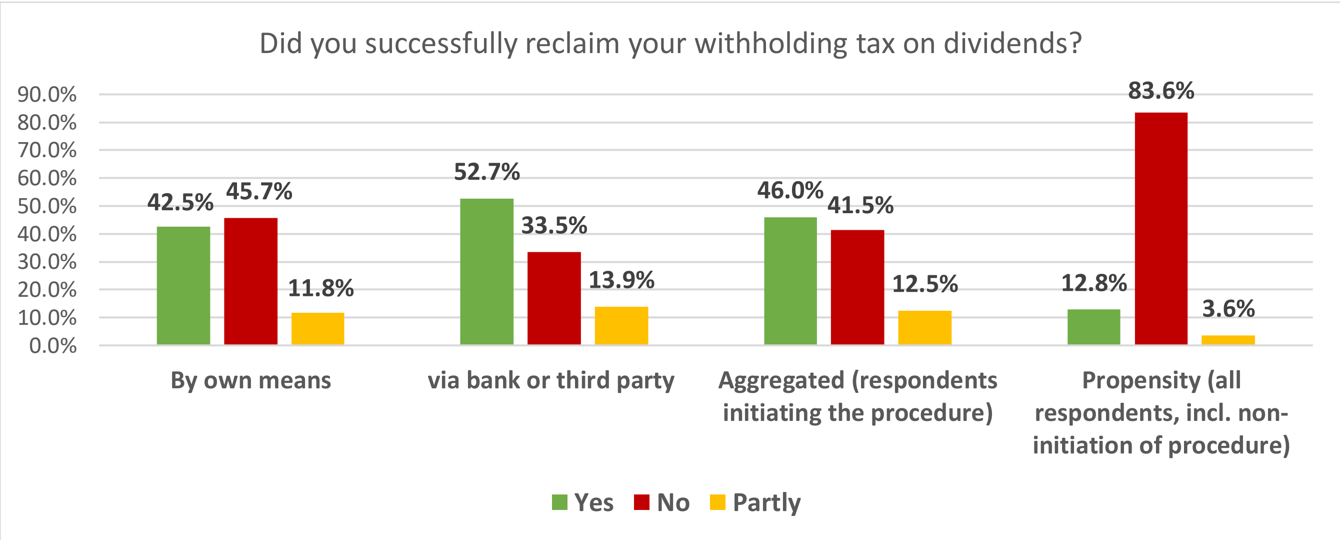


Figure 27 © BETTER FINANCE 2023

Consequences drawn by shareholders

Major impacts of WHT issues for investor

This fact-finding exercise shows that WHT refund mechanisms for cross-border dividend payments have proven to be lengthy, resource-intensive and costly for shareholders, especially individual ones, due to the existence of complex and divergent forms across Member States as well as cumbersome procedures or language barriers. The effort required with these refund procedures in various Member States very often outweighs the small amount of excess WHT. These barriers drive non-resident taxpayers to forego their right to apply for the tax treaty benefits that they are entitled to, leading to double taxation and consequently less attractive net returns than in case of domestic investments. Individual tax administrations make this even more difficult due to complex formal requirements and additional requests communicated in a foreign language.

Due to these difficulties and uncertainties related to the recovery of the WHT across EU countries, 31.3% of the investors concerned decided to sell their foreign EU shares, while among 'other reasons' a further 4.4% reasserted that they would no longer buy shares issued in specific EU countries. Ultimately, the fact that only 26.5% of respondents do not seem to be discouraged from investing in another EU Member State or to (rightly) reclaim the double-taxed amount poses a serious threat to the CMU and the Single Market. Overall, less than a third of investors may continue to buy foreign EU shares under the current WHT system.

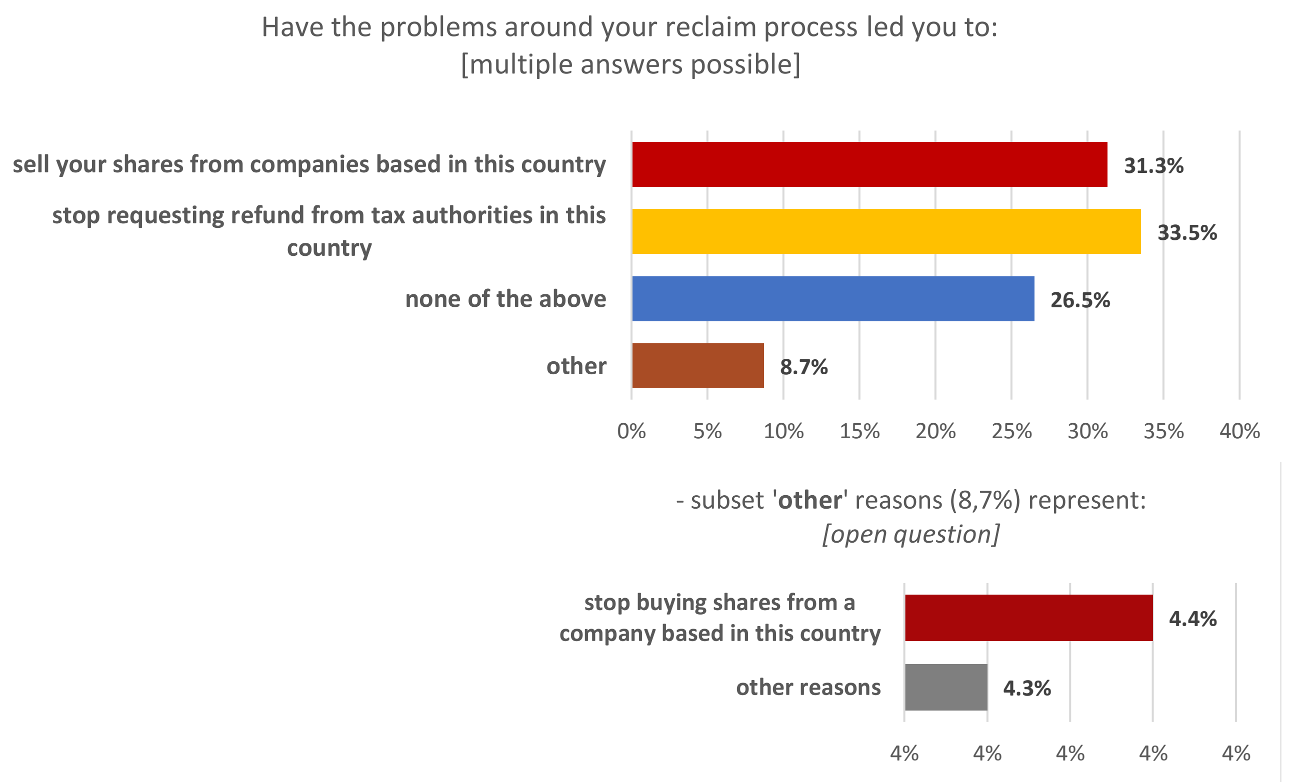


Figure 28 © BETTER FINANCE 2023

Countries with good practices identified

When asked which countries offer an easy and smooth refund procedure, more than two thirds of respondents (67.5%) answered “none”, suggesting that refund procedures are generally perceived as inadequate.

For the remaining investors, the country most often cited as ‘investor-friendly' is Switzerland, followed by the US and Norway. We note that the US, as second-best country named by 4.2% of respondents, has a relief at source procedure in place that is perceived to work smoothly and easily. Worryingly, none of the first three countries referred to is an EU Member State as far as efficiency and procedural WHT ease are concerned.

In fourth place of the ranking, Austria is the best perceived EU country with regard to WHT procedures, closely followed by the UK and the Netherlands. Notably, the Netherlands has a WHT threshold in line with the OECD tax treaty model and the UK does not impose WHT on dividends at all, which explains their positive ranking by investors. The next countries in the ranking are Sweden, France and Finland.

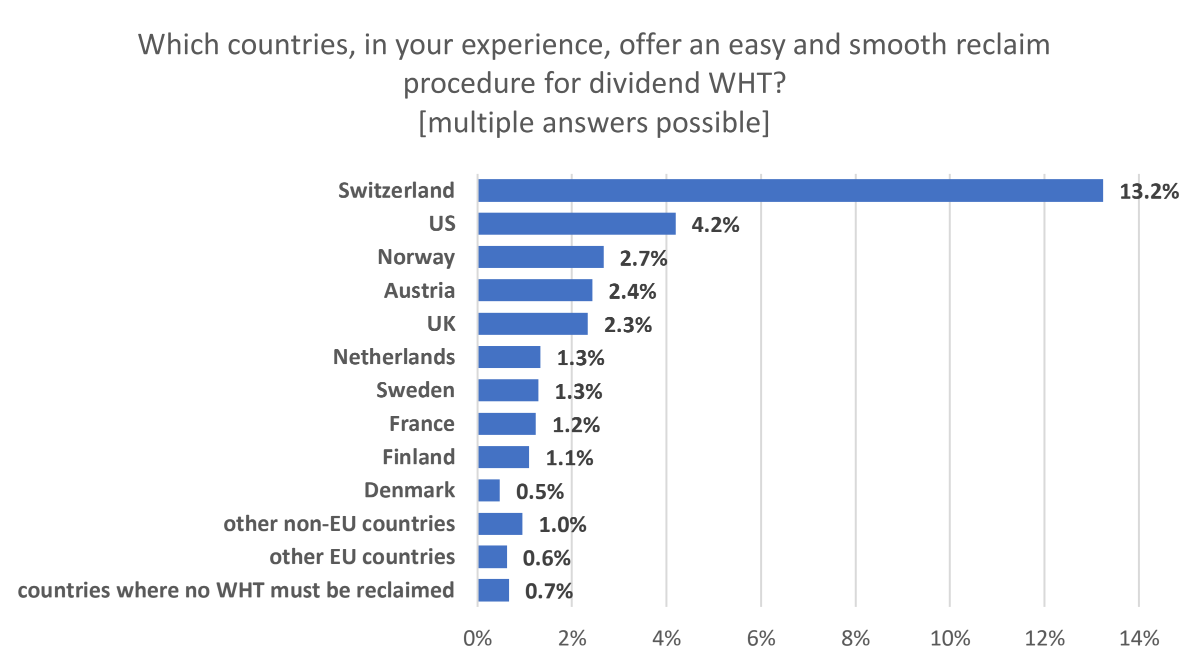


Figure 29 © BETTER FINANCE 2023

US relief at source model

The US tax administration only requires a so-called W8-BEN form[26] to prove the foreign tax status of an individual investor receiving dividends from a US company in order to relieve him/her from taxes above the threshold laid down in the double tax treaties. The form requires only a minimum set of personal data and a certification of correctness of the investor him/herself. No certificate of residence or other additional documentation is required. This form then has to be forwarded to the US tax authorities via the intermediaries' chain and remains in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances renders any information on the form incorrect.

Being asked for reasons why the countries named by respondents offer a smooth and easy process, a quick refunding of double-taxed dividend income was mentioned by the largest number of respondents. Also, respondents considered digitalisation of the refund procedure (e.g. by the introduction of online portals/digital forms) as an important factor.

Further, it should be noted that through this open question on best practices for refund procedures, 16% of respondents explicitly mentioned preferring countries with a relief at source procedures, or those without a WHT above the threshold set in the double-tax treaties (following the OECD 15% tax rate model).

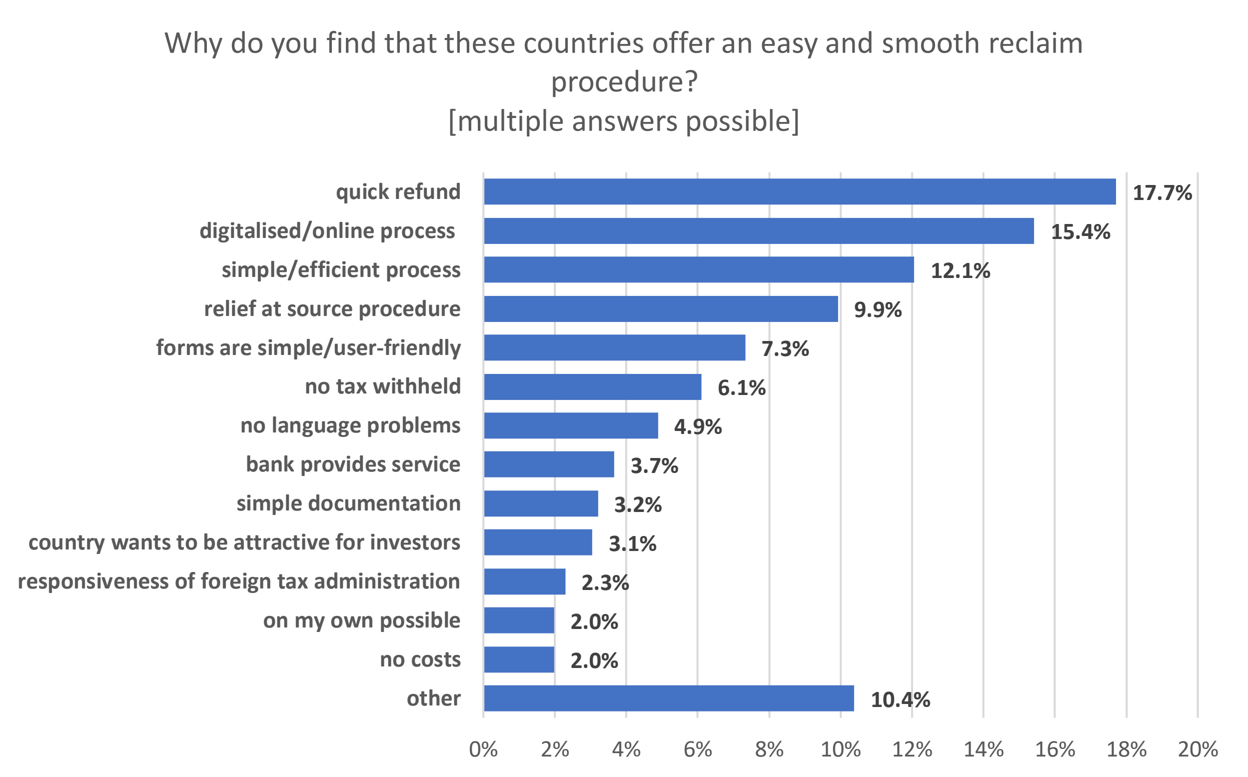


Figure 30 © BETTER FINANCE 2023

[26] https://www.irs.gov/forms-pubs/about-form-w-8-ben, accessed on 8 February 2023.

Investors' procedural preferences

The preference of individual investors becomes much clearer when they were asked which procedure (refund or relief at source) they would prefer. The overwhelming majority – up to 82% – of respondents opted for the relief at source procedure, whilst only 11% preferred the refund procedure. A small proportion of investors (1%) indicated that both procedures should be available by choice.

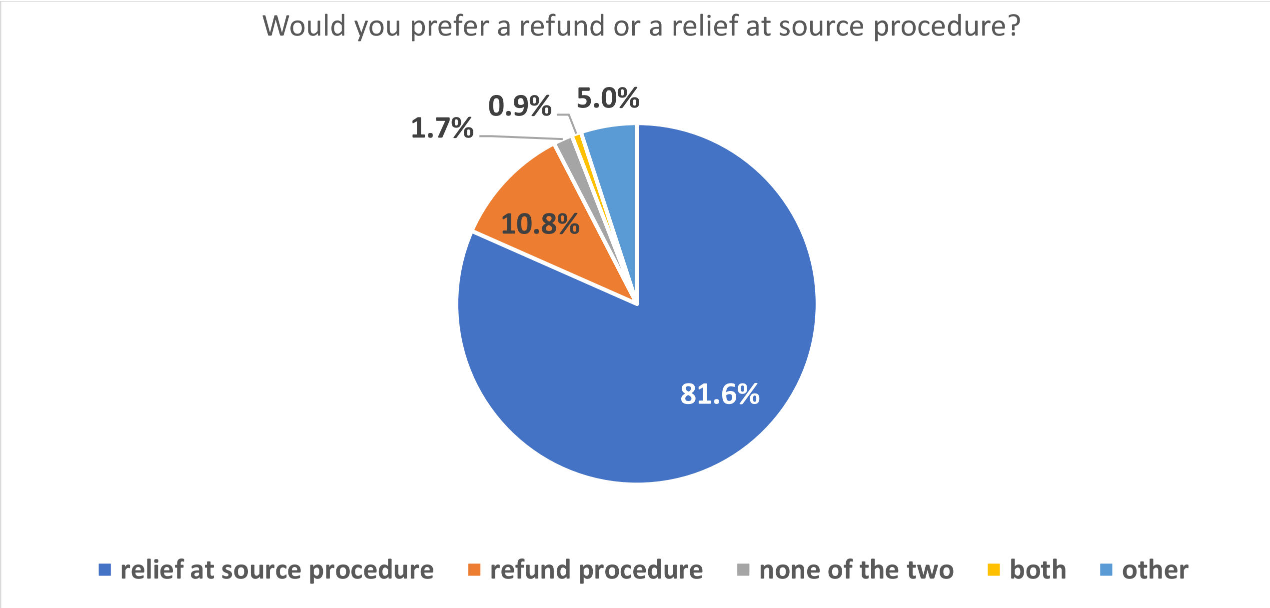


Figure 31 © BETTER FINANCE 2023

Notably, respondents have also identified a variety of other options, for example:

- Taxation only in the shareholder's Member State
- EU-wide tax rate reduction to 15% (DTA threshold, following the OECD model)
- Simplification and harmonisation of refund/relief at source procedures to reduce the burden for shareholders
- EU-wide harmonised tax rate: tax shared equally between the two Member States involved
- Tax-exempt amounts/threshold for individual shareholders

Inception Impact Assessment by the European Commission

The results of the BETTER FINANCE/DSW fact-finding exercise mirror well the outcome of the European Commission's public consultation on a new EU system to avoid double taxation[27] from 2022. This consultation built on an Inception Impact Assessment[28] which concerned the procedures for relief from the withholding tax for dividend and/or interest payments on investments made in the source country by a non-resident investor. In its Impact Assessment, the Commission noted three policy options:

Option 1: Improving withholding tax refund procedures to make them more efficient. This option entails implementing several measures whose object is to simplify and streamline withholding tax refund procedures by making them quicker and more transparent, for example by establishing common EU standardised forms and procedures for withholding tax refund claims irrespective of the Member States concerned, or by introducing the obligation to digitalise current paper-based relief processes.

Option 2: Establishing a fully fledged common EU relief at source system. This option entails implementing a standardised EU-wide relief at source system. Here, the correct withholding tax rate, as provided in the double tax treaty, would be applied at the time of payment by the issuer of the security to the non-resident investor and so would not incur double taxation.

Option 3: Enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits by introducing a reporting and subsequent mandatory exchange of beneficial owner-related information on an automated basis to reassure both the residence country and source country that the correct level of taxation has been applied to the non-resident investor.

The results of the consultation[29] following the Impact Assessment were clear: 89% of respondents agreed that the current functioning of WHT refund procedures in Member States hinders cross-border investment in the EU securities market. According to the results of the European Commission's investigation, it is mainly dividends from listed companies that suffer from inefficient WHT procedures. The main concerns outlined were the lengthy WHT procedures, the lack of digitalisation and of user-friendly forms, as well as costs involved. More than 94% of respondents saw a strong need for action at EU level and favoured an EU-wide framework in this area. 84% of responding citizens expressed their preference for a harmonised relief at source system.

[27] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation/public-consultation_en, accessed on 9 February 2023.
[28] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation_en, accessed on 9 February 2023.
[29] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation/public-consultation_en, accessed on 9 February 2023.

WHT Relief at Source as Preferred Solution

The Commission's efforts to establish a common system of relief for withholding taxes on dividends are therefore greatly appreciated by BETTER FINANCE and DSW. The current strains and efforts required of investors to receive relief from double taxation on their investments are often unreasonable, particularly for individual investors. The modalities are regulated differently, according to the variety of national legal systems. Besides the complexity of tax laws and regulations which vary between EU Member States. There are language barriers, costs and cumbersome procedures and documentation requirements associated to the refund procedure. Furthermore, many individual investors are unaware that they are eligible to reclaim WHT on dividends or do not know how to do so and therefore do not benefit of their rights. Several industry initiatives exist next to the services offered by banks, to support individual and institutional investors in reclaiming WHT on dividends.[30]

Furthermore, the process of reclaiming taxes can be lengthy and may take several months – or even years – to complete. This can be particularly distressing for individual investors who may lack financial flexibility and need to receive their tax refunds quickly.

The individual shareholders' preference is a relief at source system. The Commission in its Impact Assessment had investigated this as 'Option 2', which allows for relief at source in accordance with the relevant double tax treaty.

If a relief at source procedure is to be introduced by the EU Commission, it needs to be simple and automated without creating additional hurdles for individual investors, for example by requiring a pooling of shareholdings in omnibus accounts to prove eligibility or by requiring the processing of information through the custody chain.

Any application for a relief at source procedure should be valid for several years. The Commission is invited to further explore the benefits that the OECD's TRACE system[31] could bring in this area, building on the Finnish example while ensuring that no new obstacles hinder the free movement of capital, and that tax fraud is prevented. Any relief at source procedure should not, however, prevent shareholders from claiming a refund in case the reduced tax rate has not been applied for whatever reason.

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[30] For example, the German startup Divizend offers (individual) investors an automated process for the refund procedure in eight EU Member States. www.divizend.com, accessed on 14 February 2023.

[31] TRACE "allows the claiming of withholding tax relief at source on portfolio investments. It removes the administrative barriers that affect the ability of portfolio investors to effectively claim the reduced rates of withholding tax to which they are entitled pursuant to tax treaties or to domestic law of the country of investment. It minimises administrative costs for all stakeholders and enhances the ability of both source and residence countries to ensure proper compliance with tax obligations." https://www.oecd.org/tax/exchange-of-tax-information/treaty-relief-and-compliance-enhancement-trace.htm, accessed on 9 February 2023. TRACE also serves to prevent the abuse of cum-cum and cum-ex transactions and the associated unlawful recovery by third parties. It must be noted, though, that TRACE requires custodian banks to participate in the system and act as Authorised Intermediary, where they do not the higher rate will apply.

A Standardised WHT Reclaim as Complementary Solution

If a source relief procedure cannot be introduced throughout the EU, the refund procedure must become a viable alternative. To this end, it needs to be considerably improved and standardised across the EU, as illustrated by our fact-finding exercise.

To be effective, the WHT reclaim procedure requires to:

1. Simplify and standardise WHT refund forms and procedures across all Member States to reduce complexity and language barriers.
2. Streamline the process of WHT refunds by reducing the resource and time intensity of the process to increase the likelihood of shareholders applying for their entitlements.
3. Digitalise the process, e.g. by encouraging national tax administrations to issue electronic tax certificates.
4. Encourage national tax administrations to simplify and harmonise their formal requirements, to provide clear and concise communications in a language that is easily understood also by non-resident taxpayers and to speed up the processing time for refunding non-resident taxpayers.
5. Consider implementing an EU-wide automatic WHT refund mechanism that would reduce the need for individual taxpayers to apply for refunds and would help eliminate double taxation.
6. Ensure that costs do not hinder the refund of withholding taxes. When having to process the refund claim through the custody chain, this comes at a cost which creates an obstacle for individual investors. It is therefore necessary to keep available the option for individual investors to reclaim the refund directly from the tax administration (without having to process the information through the custody chain). A cap of e.g. EUR 5 000 of refund claim could be introduced below which a direct refund procedure should be available for non-professional, individual investors.
7. Lastly, the Commission is invited to investigate if there are sufficient legal remedies for (individual) shareholders, especially in cases where national tax administrations remain inactive and do not refund the double-taxed amounts or significantly delay the refund procedure. In addition, the SOLVIT service[32], which is provided by national administration in each EU country should cover problems connected to WHT refund procedures for individual taxpayers when these problems are based on a breach of rights by the tax administration, i.e. due to a failure to act.

[32] https://ec.europa.eu/solvit/what-is-solvit/index_en.htm, accessed on 14 February 2023. Solvit helps EU citizens where their rights are breached by public authorities in another EU country. It already deals with VAT issues but not (yet) with WHT problems.

The European Commission is responsible for overseeing the functioning of the single market, including the free movement of capital, and has a role in ensuring that cross-border tax issues do not create undue obstacles to investment within the EU. The Commission therefore should take the aforementioned steps, either through its own initiatives or in cooperation with the Member States.

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