

**Regulatory solutions to end dividend arbitrage**  
**Discussion at the European Parliament, 3 June, 2021**  
**Organized by MEP Sven GIEGOLD**

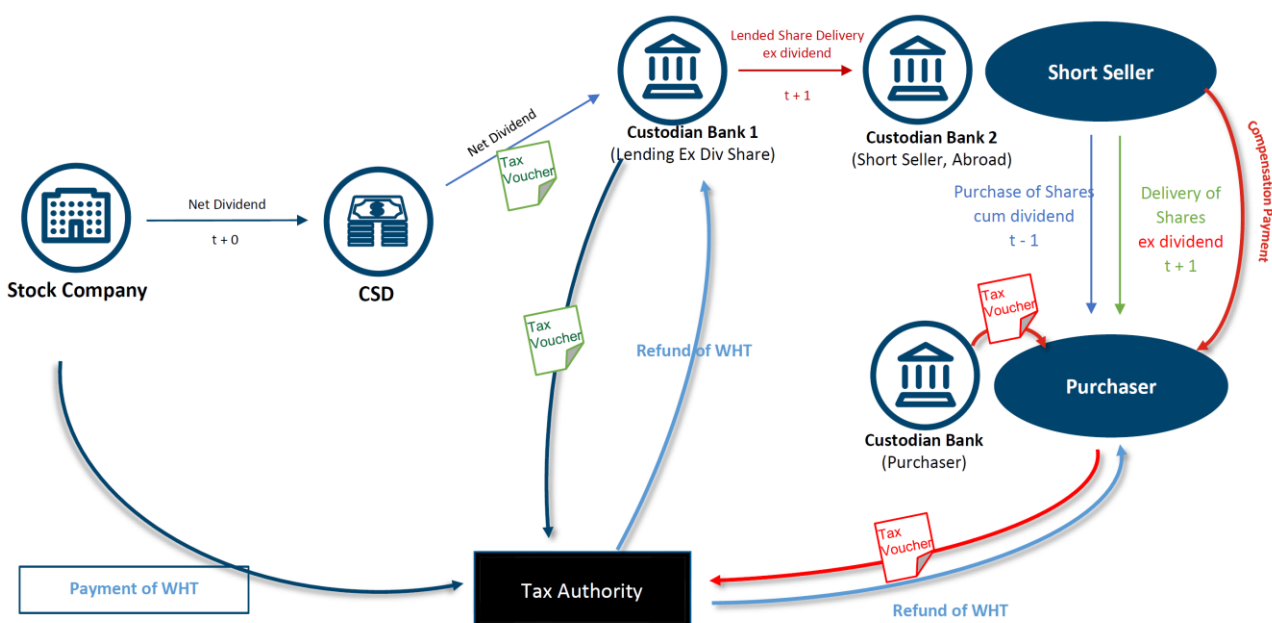
**Efficient Prevention of CUM/EX fraud**

Cum/Ex fraud is an organized refund of unpaid withholding tax. Since 2007, there have been repeated attempts by German law to prevent cum/ex fraud, but it was like fighting the Hydra: if you knocked off a head, two new ones grew up.

In mid-March 2021, the German Federal Government presented a tax proposal (AbzStEntModG) which is intended to prevent this fraud once and for all. On more than a hundred tightly printed pages, financial institutions are subject to many additional reporting obligations, which are administratively complex and, moreover, cannot be adequately audited in practice. Financial institutions are now to be fully liable for these notifications, although in many cases they cannot be legally fulfilled, according to a joint statement by large German business associations. Instead, the opinion proposes an electronic reporting procedure for tax certificates.

**Why is CUM/EX fraud possible?**

Cum/Ex fraud has been possible until now because many different financial institutions have issued withholding tax certificates without actually having paid the certified withholding tax. The following slide shows the system of multiple production of tax vouchers.



Source: HEIST A: Ending Dividend Arbitrage. Failure of the System, p. 8. HEIST Legal Rechtsanwaltsgesellschaft mbH, Frankfurt. Presentation at Regulatory solutions to end dividend arbitrage. Discussion at the European Parliament, 3 June, 2021.

26 **How can CUM/EX fraud efficiently be prevented?**

27 In fact, Cum/Ex fraud can be easily prevented by means of an electronic reporting procedure for tax  
28 certificates, namely by a database-based comparison of all claims for reimbursement with corre-  
29 sponding withholding tax payments. However, this comparison is not made possible by the actual  
30 German bill, so the bill does not prevent cum/ex fraud.

31 In future, only a central organization, e.g. in Germany the Federal Central Tax Office, should issue  
32 a certificate of withholding tax paid with an order number, and only after the financial institution has  
33 transferred the withholding tax to the Federal Central Tax Office with detailed information on the  
34 taxable person (name, address, tax number, competent tax office, etc.).

35 This certificate may be provided by the taxable person with his tax return. The responsible tax office  
36 can then automatically check with the Federal Central Tax Office whether the certificate is valid and  
37 whether it has already been used. The strictly personal certificate can prevent the use by third  
38 parties.

39 Such a comparison of claims for reimbursement with actual tax payments can safely and easily  
40 prevent unlawful withholding tax refunds. Additional reporting and liability obligations, as provided  
41 for in the actual German draft law, would then not be necessary. The Hydra could no longer grow  
42 heads.

43 By the way: A similar solution would work for the efficient prevention of VAT-fraud.

44 **Author**

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47 Advisory Board for the Reform of Municipal Finances of the German Bundestag. He has explained  
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