



Position paper on a Proposal for a Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER)

Introduction

The European Tax Adviser Federation (ETAF), which represents 215 000 regulated tax advisers, would like to thank the European Commission for the opportunity to comment on its proposal for a [Directive](#) on Faster and Safer Relief of Excess Withholding Taxes (FASTER), published on 19 June 2023.

In line with our [answer](#) to the public consultation in June 2022, we agree with the need of an EU initiative to simplify and standardize the relief of withholding taxes and therefore welcome this proposal.

Currently, Member States have very different systems, which cause a disproportionate administrative burden for taxpayers. We do believe that these isolated solutions represent a competitive disadvantage for the EU Member States.

Our members reported several problems linked to the systems in place in their own countries, frequently quoting the cost and the length of the relief procedure, the lack of digitalisation as well as recognition problems of residence certificates issued by other tax authorities.

In ETAF's view, standardization would create an urgently needed level playing field while complying with the free movement of capital within the EU.

I. Scope and definitions

We note that the scope of the proposal is limited to excess withholding taxes on dividends from publicly traded shares and interest from publicly traded bonds. The problem to get relief from unduly withheld taxes is however not limited to these payments but to all kinds of payments triggering withholding taxes, such as royalty payments, payments for service, etc.

For this reason, we believe that the scope should be extended to all payments which are subject to withholding taxes. This should be done by the Council of the EU during the upcoming negotiations on the proposal or if not, by the European Commission through a new proposal in the near future.

In terms of definition, we note that the Commission proposes to define the "excess withholding tax" as *"the difference between the amount of withholding tax levied by a Member State on payments to non-resident owners of dividends or interest from securities by applying the general domestic rate and the lower amount of withholding tax applicable by that Member State on the same dividends or interest in line with a double tax treaty or specific national legislation, as the case may be"*.

Resulting from this definition, a withholding tax relief procedure would happen when a registered owner receiving dividends or interest from securities that can be subject to excess withholding tax is relieved or reimbursed for such excess tax.

In general, we agree with the definitions of “excess withholding tax” and “withholding tax relief procedure”. For more legal certainty, we would only suggest adding in the definition of “excess withholding tax” the following: “(...) *in line with a double tax treaty, an EU directive or specific national legislation (...)*”.

II. New relief procedures

Alongside with the existing standard refund procedure, the proposal provides Member States the choice between two new fast-track procedures a “relief at source” procedure and a “quick refund” system, or a combination of both.

Under the “relief at source” procedure, the tax rate applied at the time of payment of dividends or interest would directly be based on the applicable rules of the double taxation treaty provisions.

Under the “quick refund” procedure, the initial payment would be made taking into account the withholding tax rate of the Member State where the dividends or interest is paid, but the refund for any overpaid taxes would be granted within 50 days from the date of payment.

We generally agree that both systems will bring a clear improvement of the existing status quo and will save compliance costs, for both investors and tax authorities.

However, as outlined by several stakeholders including ETAF during the consultation process, the relief at source system would provide the best results i.e., early relief for investors and a limited burden on intermediaries. Moreover, we fear that the current large flexibility given to Member States could be counterproductive and lead again to fragmentation.

For this reason, we believe that the relief at source system should be the mandatory system by default and that the quick refund system should only be used as a back-up solution when relief at source is not possible.

III. EU digital tax residence certificate

To make the reclaim faster, the Commission proposes to introduce an EU-wide digital tax residence certificate (eTRC), which will allow investors to submit their withholding tax refund request digitally via an online portal. The digital tax residence certificate should be issued by the investor’s residence state within one working day after the submission of a request.

ETAF strongly supports the eTRC, especially as only one digital tax residence certificate will be needed for an investor to reclaim several refunds during a calendar year.

In general, we support the proposed design of the eTRC. Regarding the information it would contain, it should be, in our view, reconsidered whether the date and place of birth are really needed as the certificate will already contain the tax identification number (TIN).

We also recommend deleting paragraph 2 (g) in Article 4 stating that the eTRC should include *“any additional information that may be relevant where the certificate is issued to serve purposes other than relief of withholding tax under this Directive or information required to be included in a tax residence certificate under EU law”*. This provision is clearly out of scope, indefinite and lacks data protection safeguards. If the eTRC is to be used for purposes other than relief of withholding tax, the proposal should at least clearly specify the additional tax purposes for which it could be used.

Moreover, according to Article 4 paragraph 4, if more than one working day is required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay. We believe that this possibility should be strictly framed and that the possible reasons for deferring should be clearly defined in the Directive.

Considering that Member States will need to introduce fully automated electronic systems to meet the requirement of one working day, we believe that the implementation date of 1 January 2027 is a realistic one.

IV. Certified financial intermediaries

According to the proposal, in order to benefit from the two new relief procedures, investors will need to be able to engage with financial intermediaries that are certified to provide those services.

Member States that levy a withholding tax on dividends from publicly traded shares paid to registered owners resident for tax purposes outside that Member State and that provide relief of excess withholding tax will be obliged to establish a national register of Certified Financial Intermediaries (CFI).

As a preliminary remark, ETAF agrees that this measure will help reducing the risks of tax fraud and abuse in the field of excess withholding tax relief procedures, especially those exposed by the CumEx files scandal.

For more legal certainty, we believe that a definition of “certified financial intermediaries” could be added to the proposal.

However, it has to be noted that the fact that the procedures can only be applied for by a certified financial intermediary and not by the registered owner himself also comes with a downside. Indeed, the certified financial intermediary could take advantage of the situation and charge disproportionate money for these additional services. Ultimately, this behaviour would make the procedure still very costly for investors, which may in turn discourage the use of the two new fast-track systems.

To prevent this situation and introduce more transparency, we think that the financial intermediaries should be obliged to publish their fees in the national register foreseen in Article 5.

We also support the anti-abuse provisions set out in Article 10 paragraph 2 and 3 on the exclusion of requests from relief. We suggest introducing a new paragraph 4 in Article 10 including an obligation for the Member State to inform the registered owner in those cases of exclusion in due time. In case of exclusion because at least one of the financial intermediaries in the securities payment chain is not a certified financial intermediary (paragraph 3a), we believe that the registered owner should also be informed about the identity of the non-registered financial intermediary.

V. Standardized reporting obligation

The proposal foresees that Member States will require CFIs to have the adequate procedures in place to ensure taxpayers are eligible for the refunds. CFIs will then have to report the payment of dividends or interest to the relevant tax administration so that the latter can trace the transaction and easily check eligibility for the reduced rate and detect potential abuse.

Although ETAF supports this anti-fraud measure, we want to warn against the trend that the burden of proof is continuously outsourced from tax authorities to taxpayers and intermediaries in the EU. Care should always be taken to ensure that the system introduced by the directive is proportionate and feasible, consistent with existing directives and requires little additional bureaucracy.

For more clarity, we believe that article 9 of the proposed Directive should clearly state that CFIs only have to report the part of the transaction that is visible for it, as stated in the detailed explanation of the specific provisions of the proposal.

We also welcome the fact that a limited amount of personal data will be processed only for the purposes of verifying that the correct rate is applied to the taxpayer and mitigating the risk of tax fraud and abuse.

Notes

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About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is set as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 215,000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.