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The European Commission Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes, COM(2023) 324 final

Opinion

Näringslivets skattedelegation (NSD) welcomes the Commission's work to make the procedures for withholding tax relief in the EU faster and more efficient. In a global economy, flexibility in capital structure and efficient systems for financial flows, including dividends, are becoming increasingly important. Access to finance is vital for companies and growth. It is therefore crucial for Europe that cross-border capital flows are strengthened.

The current withholding tax refund system is acting as a brake on cross-border investment. It is outdated, paper-based and unsuitable for the current business environment. In many Member States in the EU, withholding tax procedures are time-consuming, bureaucratic, and costly. Taxpayers are confronted with unreasonable administrative burden having to collect different forms of evidence, responding to various questionnaires and are subject to a protracted withholding tax procedure.

NSD believes that it is urgent that the withholding tax refund procedures are simplified, harmonized, and digitalized and therefore welcomes the Commission's ambition to do so. Overall, NSD supports the current proposal. However, we believe that there are some shortcomings in the proposal that needs to be addressed.

NSD believes that a system based solely on relief at source would be more efficient. In addition, NSD is of the opinion that the Commission could indeed go further e.g., extending the scope to include intra-group dividend and interest payments and, more generally, royalty payments where the risk for abuse is low.

NSD welcomes the introduction of a common EU electronic tax residency certificate (eTRC) since it would significantly alleviate the burden on investors. However, to achieve sufficient efficiency and simplification NSD believes that the eTRC should be valid for at least three years. Furthermore, NSD believes that it is not clear if the eTRC could be declared invalid

The principals of NSD are:

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retrospectively, and if so, what responsibility would lie on the withholding tax agent and the relevant tax authorities respectively.

NSD wants to highlight that country practices differ when a person might be considered a tax resident of a given jurisdiction and that a jurisdiction may want to contemplate a split-year concept. This means that the taxpayer could transfer tax residence from one jurisdiction to another during the same calendar year.

The proposal undoubtedly imposes additional compliance burden on certified financial intermediaries (CFI). NSD therefore believes that financial institutions should be able to choose to undertake the responsibility voluntarily. In addition, NSD proposes that the CFI registration, administration of the eTRC and the fulfilling of the reporting requirements should be handled through common portals rather than individually in each Member State.

Furthermore, NSD believes that the proposal in particular misses one key point by not tackling the potential mismatches across the EU with respect to the definition of the concept of beneficial ownership. This is specifically important since the proposal imposes on the CFI to perform several tests to identify situations that may impair beneficial ownership.

Lastly, to avoid creating discrepancies, NSD wants to emphasize the importance of carefully analyzing the penalty systems, especially in relation to Member States that choose to apply both relief options. For example, a stricter liability applicable to the relief at source system could lead to the refund process being the norm.

Background

The Commission first published its plans to introduce a common, standardized and EU-wide system for withholding tax relief at source, accompanied by an exchange of information and cooperation mechanism among tax authorities, in its 2020 “Action Plan for fair and simple taxation”¹ and an “Action Plan on a Capital Markets Union”.² On April 1, 2022, the Commission launched a public consultation on the proposal which concluded that there is a broad consensus among Member States that there is need for EU action to tackle the fragmented and inefficient withholding tax system across the Member States.

On June 19, 2023, the Commission presented the current legislative proposal to make withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries (e.g., banks) and tax authorities (FASTER).³ The aim of this initiative is to promote fairer taxation, fight fraud, and support cross-border investment throughout the EU.

Once adopted by Member States, the proposal is expected to come into force on January 1, 2027.

¹ [An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy COM\(2020\) 312 final.](#)

² [A Capital Markets Union for people and businesses – new action plan COM\(2020\) 590 final.](#)

³ [Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes COM\(2023\) 324 final.](#)

The proposal in short

The objective of the proposal is to: i) remove barriers to cross-border investment by providing a harmonized withholding tax regime across the EU and thus enhance the functioning of its capital markets union, ii) improve withholding tax processes for the benefit of (portfolio) investors and iii) strengthen Member States' ability to prevent and fight against potential fraud and abuse.

To achieve the above-mentioned objectives, the proposal is based on three core building blocks (explained in more detail below):

- A common EU electronic tax residency certificate (eTRC),
- A system of relief: two fast-track procedures, working alongside the existing standard refund procedure available under domestic legislation, and
- A standard reporting obligation for certified financial intermediaries (CFI).

The proposal lays down rules applicable to all EU Member States for all persons that are residents for tax purposes in their jurisdiction. Member States that levy withholding tax on dividends paid from publicly traded shares are in scope, whereas non-listed equities are out of scope. Member States that provide relief of excess withholding tax on interest paid for publicly traded bonds may also choose to apply the procedures.

Comments

eTRC

The purpose of the eTRC is to make the procedures for withholding tax relief faster and more efficient by replacing the current paper-based certificate of tax residence. Investors with a diversified portfolio in the EU will only need one digital certificate of tax residence to be able to obtain multiple tax reliefs within the same calendar year as the certificate will no longer need to state the source state.

The current withholding tax refund system is acting as a brake on cross-border investment. It is outdated, paper-based and unsuitable for the current business environment. Taxpayers are confronted with unreasonable administrative burden having to collect different forms of evidence, responding to various questionnaires and are subject to a protracted withholding tax procedure. NSD therefore welcomes the move to a single eTRC since it would significantly alleviate the burden on investors and strengthen cross-border capital flows in Europe.

However, NSD wants to highlight that country practices differ when a person might be considered a tax resident of a given jurisdiction. In addition, a jurisdiction may want to contemplate a split-year concept so that a taxpayer may be tax resident for the first part of the calendar year and then transfer the tax residence to another jurisdiction at a later stage during the same calendar year.

According to the proposal, the certificate must be valid for at least the calendar year for which it is issued but can be declared invalid by the Member State if there is proof that the person is no longer a resident in its jurisdiction. To achieve sufficient efficiency and simplification NSD believes that the eTRC should be valid for at least three years. In our

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view this should not be a problem since the proposal provides for the possibility to declare the eTRC invalid before the expire date.

Furthermore, NSD believes that it must be clarified if the certificate could be declared invalid retrospectively, and if so, what responsibility would lie on the withholding tax agent and the relevant tax authorities respectively.

CFI

Reporting

The purpose of the CFI reporting regime is to better enable tax authorities to identify potentially abusive transactions. CFIs will have to report the payment of dividends and interest to the relevant tax authority within a certain number of days from the record date. If the reporting obligation is not met, sanctions should be imposed.

According to NSD, Article 9 of the proposal imposes a CFI to report to each source Member State, as opposed to reporting to one central repository. This means that CFIs must comply with potentially 27 country specific reporting schemes and monitor these for change. NSD believes that this clearly will increase the complexity and compliance cost for CFIs and therefore suggests a common portal for fulfilling the reporting requirement.

National Register

According to the proposal, Member States must establish a national and public register of CFIs. Financial intermediaries eligible to be CFIs are credit institutions (as defined in the Capital Requirements Regulation (CRR))⁴, investment firms (as defined in MIFID II⁵), and central securities depositories (within the Central Securities Depositories Regulation⁶) or those providing comparable services in third countries.

Registration will be mandatory for all large institutions that handle payments of dividends and, where relevant, interest on securities originating in their jurisdictions, and central securities depositories that provide withholding tax agent services for such payments. Other financial intermediaries (including those established in third countries) will be able to apply for registration, which is voluntary on their part.

NSD believes that the role of a CFI entails significant responsibility and substantial risks. The registration requirements, reporting obligations which includes setting up new processes and workflows, collecting data, adapting systems to work with new standardized and computerized forms etc., will undoubtedly impose additional compliance burden on CFIs.⁷ NSD therefore believes that financial institutions should be able to choose to undertake the responsibility voluntarily. Furthermore, NSD wants to advocate for registration in a common portal rather than individually in each Member State.

⁴ [Regulation \(EU\) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012](#),

⁵ [Directive 2014/65/EU of 15 May 2014 on markets in financial instruments](#).

⁶ [Regulation \(EU\) No 909/2014 of 23 July 2014 on improving securities settlement in the EU and on central securities depositories](#).

⁷ The Commission estimates that financial intermediaries will face implementation costs of EUR 75.9 million and recurring costs of EUR 13 million.

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System of Relief

To complement the existing standard refund procedures, two different fast-track procedures are proposed. One “relief at source” procedure and one “quick refund” system. Member States may choose to introduce either one or a combination of both.

The “relief at source” procedure will allow for the relevant reduced tax rate to apply at source, i.e., at the point of payment of dividends or interest. The “quick refund” procedure will allow for quick refunds to be made, the maximum withholding tax rate will be withheld at the payment, but the excess amount will have to be refunded within 50 days from the date of the payment (or 25 days from date of request). In certain cases, when the requirements for obtaining tax relief are not met, Member States should instead apply their existing regular refund procedures.

In a global economy, flexibility in capital structure and efficient systems for financial flows, including dividends, are becoming increasingly important. Access to finance is vital for companies and growth. In many Member States the withholding tax procedures are however time-consuming, bureaucratic and costly. NSD believes that it is urgent that the withholding tax refund procedures are simplified, harmonized, and digitalized and therefore welcomes the Commission’s ambition to do so.

However, NSD believes that a system based solely on relief at source would be more efficient. In addition, NSD is of the opinion that the Commission could indeed go further e.g., extending the scope of to include intra-group dividend and interest payments and, more generally, royalty payments where the risk for abuse is low.

Furthermore, NSD believes that the proposal misses a key point by not tackling the potential mismatches across the EU with respect to the definition of the concept of beneficial ownership. This is specifically important since Article 11 of the proposal imposes the CFI to perform a due diligence which includes several tests to identify situations that may impair beneficial ownership. The purpose of the tests is to identify transactions that the tax authorities may want to scrutinize in more detail through a longer review process, which is the case if the holding period is not met, or a financial arrangement exists linked to the underlying share for which relief is requested. NSD believes that this uncertainty will result in an extensive obligation for CFIs to verify if relief at source and/or the quick refund processes will be available, or if the standard refund claim will be applicable.

Penalties

According to the proposal, it is up to each Member State to determine penalties for non-compliant CFIs and related civil liability. To avoid discrepancies, NSD wants to underline the importance of carefully analyzing the penalty systems, especially in relation to Member States that choose to apply both relief options. For example, a stricter liability applicable to the relief at source system could lead to the refund process being the norm.

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Concluding Remarks

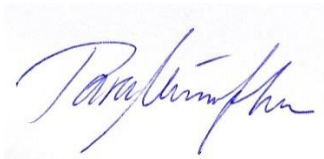
Access to finance is vital for companies and growth. It is therefore crucial for Europe that cross-border capital flows are strengthened. A fundamental prerequisite for the competitiveness of European companies is a well-functioning capital market, where European companies are provided with the opportunity to efficiently access international venture capital through the issuance of shares.

The current withholding tax refund system is fragmented, inefficient and in need of reform. Consequently, NSD fully supports the Commission's initiative to harmonize and digitalize the withholding tax procedures in the EU. However, to better align with the objectives of the proposal and to achieve sufficient efficiency and simplification, NSD believes that it is important that the above-mentioned concerns are addressed.

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