
Opinion Statement FC 7/2023 on the EU Commission FASTER Withholding Tax Proposal

Issued by CFE Tax Advisers Europe

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CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Bruno Gouthière, Chair of the CFE Fiscal Committee, Jos Goubert, Chair of the Direct Taxes Subcommittee, or Aleksandar Ivanovski, Director of Tax Policy at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

1. Background

In June 2022, CFE Tax Advisers Europe submitted [representations](#) to the European Commission's consultation concerning its plan to introduce legislation on a new EU system for the avoidance of double taxation and prevention of tax abuse: Faster and Safer Relief of Excess Withholding Taxes.

As CFE set out in its initial representations, CFE is supportive of the initiative to introduce an EU-wide system for relief at source of withholding tax on dividend, interest, royalty payments and service fees, and for exchange of information and cooperation between tax authorities under the system.

We are not seeking in this Statement to repeat all those points which we continue to endorse from our previous statement. However, we believe there is merit in making some observations concerning issues identified with the current legislative proposal.

2. General Comments

As set out in our earlier statement, CFE has a firm preference for a harmonized relief at source system and strongly supports that there should be a harmonized means to obtain via e-request a tax residence certificate, with swift online provision of the tax residence certificate, and a digitalised verification system. In this respect, CFE very much welcomes the proposal that Member States shall provide for an automated process to issue digital tax residence certificates. Such an initiative would be extremely useful, as currently, taxpayers receiving income from various foreign sources must deal with multiple administrative processes, which is extremely burdensome and time consuming.

In effect, EU citizens continue to face excessively complex administrative procedures, other barriers, or divergent interpretation of tax treaties. As a result, citizens and companies often are prevented from fully exploring the possibilities of the Single Market and the four freedoms guaranteed within the EU treaties, and from the benefit of EU directives and double taxation treaties. CFE equally welcomes that more attention is now being brought to cases of double taxation throughout the EU, and hopes EU Member States can arrive at unanimous solutions to these problems.

3. Comments on Scope & Implementation

CFE Tax Advisers Europe welcomes the work of the European Commission in examining methods of improving issues facing EU citizens in relation to cross border investment which result in double taxation, as well as other tax obstacles.

CFE strongly supports the streamlining of withholding tax refund processes through the introduction of a one-stop shop where an investor could log in and make a refund claim

irrespective of the source Member State, based on standardised forms. However, CFE wishes to stress the following.

Firstly, CFE believes that a tax residence certificate should be issued in a harmonized format within the EU, both in the local language and in English. Furthermore, it should certify the residence of the taxpayer under the applicable domestic law and not for the purposes of particular tax treaties. Otherwise, a taxpayer would have to request numerous certificates if it receives income from various foreign countries. CFE believes in this respect that the Form 6166, which applies in the US, should be considered an excellent example of good administrative practice, as it generally certifies the name, address, and tax identification number of the taxpayer without any other information and with no mention of any specific tax treaty making it applicable to many tax treaties at the same time. In our view, it should also be possible for financial intermediaries to make refund claims on behalf of non-resident investors on a bulk basis (rather than on a case-by-case basis).

Secondly, CFE is of the view that the scope of the currently proposed directive is much too restricted, given the extremely limited application to only publicly traded bonds and shares which is much narrower than was originally envisaged at the time of the EU Commission's consultation process in 2022. CFE is disappointed that the proposed directive is limited in scope and does not address further issues which allow for relief of double taxation not addressed by the mechanism. CFE is of the view that relief at source via a digital certificate mechanism should be applicable to all types of dividend, interest and royalty payments and to service fees.

Thirdly, while obviously recognizing that Member States should effectively fight tax fraud and abuse, CFE believes that the right that they have in this respect should be exercised "after-the-facts" and not before. For that reason, CFE Tax Advisers Europe is of the view that a taxpayer should not have to provide information on the purposes of the certificate (this refers to Article 4(2)(g) of the Proposal) and that the financial intermediary should not be required to verify that information including undertaking a "risk assessment that takes into account the credit risk and fraud risk" as is notably provided by Article 10(1)(b) of the Proposal. More generally, the role of financial intermediaries should be revisited as set forth in section 4 below.

Finally, CFE observes that the currently proposed directive will not enter into force until January 2027, which is a relatively long transition period as compared with other direct tax proposals, for what would seemingly be a less complicated implementation.

4. Burden on Financial Intermediary/Institutions

CFE Tax Advisers Europe have concerns with the fact that the proposal operates by placing financial institutions in the role of intermediary in order to benefit from the reduction of rate or exemption.

CFE has serious concerns about putting financial institutions in a position to have to certify and verify information concerning the beneficial ownership and genuine nature of treaty relief being sought. CFE queries the legal basis for these institutions to verify treaty relief and what types of onerous information taxpayers will be required to provide as part of this process to demonstrate that they are the beneficial owner and to negate suspicions of fraud.

CFE is of the view that investigations into potential tax fraud is a matter to be determined via tax audit which must take place ex post, not ex ante. Requiring institutions to examine issues of beneficial ownership and certify, verify and establish this will be hugely problematic in practice. Ex ante processes should be limited to matters of verifying identity, versus burdensome verification of the nature of transactions. The policy intention of Article 10 is that application at source is possible, however, if this is effectively taking place after the fact, it is simply a refund process and not application at source.

For example, it is foreseeable that any transactions involving transactions between parties or transactions on investment accounts, that financial institutions will not certify the beneficial ownership of these transactions. It will essentially result in the tax audit process being outsourced to financial institutions, which would require thousands of employees to investigate matters effectively. It is highly unlikely that banks would be able to perform these functions. It is incredible in a time when documentation is becoming increasingly digitised that the proposed directive would require taxpayers to provide financial institutions with onerous amounts of documentation and increase complexity.

It is the view of CFE that the Commission through this proposal is putting a premium on obtaining tax treaty relief, contrary to the intention of simplifying measures. Instead, the proposal creates an additional burden to be able to obtain tax treaty relief.

5. Conclusions

CFE hopes that the comments on the legislative proposal are of use. CFE remains of the view that there should be one harmonised system of certification for the entire EU, and that this proposal falls short of its apparent aim of simplifying administrative processes for taxpayers.

As set out in CFE's earlier statement, relief of double taxation falls within the ambit of the principles of tax good governance and, also, the principle of good administration as established in Article 41 of the Charter of Fundamental Rights of the European Union. Double juridical taxation might also be regarded as a violation of the principle *ne bis in idem*, which is enshrined in Article 4 of the European Convention of Human Rights.

CFE stands ready to support the Commission in addressing the issues identified above and in any Commission action that would alleviate the problems of double taxation in relation to withholding tax.