

MEMO# 35367

July 3, 2023

FASTER: EU Directive on Withholding Taxes

[35367]

July 03, 2023

TO: Global Tax Committee
Management Company Tax Subcommittee
Tax Committee RE: FASTER: EU Directive on Withholding Taxes

The European Commission recently proposed a Council [Directive](#) (known as "FASTER")^[1] for improving tax treaty relief on cross-border investments.^[2] FASTER is designed for cross-border dividend payments—for which investors resident in treaty partner countries typically are eligible for lower withholding tax rates.

The only investors who would benefit (at least initially) from the proposal are those residing in European Union (EU) Member States. Importantly, however, the proposal would allow EU Member States to continue to provide treaty relief to non-EU investors under existing mechanisms and to revise those mechanisms to expand their scope.

FASTER is designed to benefit both investors and governments. Investors would benefit from accelerated recoveries of treaty benefits to which they are entitled. Governments would benefit from enhanced reporting by financial institutions that would limit opportunities for tax abuse such as those that arose from cum/cum and cum/ex transactions.

To benefit from FASTER, investors would need to receive from their residence country tax authority an electronic tax residence certificate (an eTRC). This certificate would be standardized across the EU. Tax authorities would be required to issue an eTRC, in general, within one day after it was requested. Any non-EU jurisdictions that followed the EU's eTRC requirements could provide eTRCs for use by their resident investors.

A financial institution would need to register on one or more National Registries and become a Certified Financial Intermediary (CFI) for FASTER's benefits to be available for its customers. Registrations would be required for certain large institutions in each country in which their customers reside and each country in which their customers invest. For other institutions, registration would be required only in countries in which their customers invest. CFIs would be required to collect from each customer seeking treaty relief an eTRC and a declaration that the investor is the beneficial owner of the payment; this beneficial owner

determination would be made based upon the rules of the Member State in which relief is requested.

A common reporting format would be used for providing to the source Member State information regarding customers' dividends, taxes withheld, and claimed treaty relief. So long as every financial institution reported correctly all dividend payments received and all payments credited to each underlying investor, governments could confirm that no excess treaty relief—such as that arising from cum/cum and cum/ex transactions—was claimed. CFIs that do not comply, intentionally or negligently, with their obligations would be liable for all or part of the loss of withholding tax revenue incurred by the source Member State.

FASTER's objective of minimizing risks to governments would be addressed further by reporting requirements related to holding periods and certain "financial arrangements." First, reporting would be required to the extent shares are acquired within two days before the ex-dividend date. Second, certain information would be required regarding "financial arrangements" linked to securities for which the investor is seeking relief. A "financial arrangement" might include a repurchase agreement, a securities loan, or certain derivative products such as single stock futures. CFIs would be required to verify only the information available to it regarding the possible existence of a financial arrangement.

Tax relief would be provided under either a relief at source (RAS) mechanism or a quick refund system (QRS). The Commission's [Impact Assessment Report](#) suggests that the QRS is more likely to be adopted. Under the QRS, relief would be provided within the 25 days from the later of the date relief was requested or the date the required reporting was fulfilled. In general, this relief would be provided within 50 calendar days from the payment date—although in certain circumstances, such as when financial arrangements may be present, relief may not be provided until later.

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Notes

[1] The proposed Directive officially is known as the proposal for "Faster and Safer Relief of Excess Withholding Tax."

[2] ICI Global has been actively engaged on the FASTER initiative which is one part of the EU's Capital Markets Union (CMU) initiative. See, e.g., ICI Memo No. 34342, dated November 7, 2022. See also, ICI Memos No. 34206, dated June 30, 2022, and No. 33862, dated October 26, 2021.