









Procedure file

Basic information		
CNS - Consultation procedure Directive	2023/0187(CNS)	Awaiting final decision
Faster and Safer Relief of Excess Withholding Taxes		
Subject		
2.50 Free movement of capital		
2.70 Taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 DORFMANN Herbert	27/06/2023
Council of the European Union European Commission	Commission DG Taxation and Customs Union	Shadow rapporteur	
		 FUGLSANG Niels	
		 HLAVÁČEK Martin	
		 ANDRESEN Rasmus	
		 MOŽDŽANOWSKA Andželika Anna	
		 GUSMÃO José	
	Commissioner	GENTILONI Paolo	

Key events			
19/06/2023	Legislative proposal published	COM(2023)0324	Summary
11/09/2023	Committee referral announced in Parliament		
23/01/2024	Vote in committee		
26/01/2024	Committee report tabled for plenary, 1st reading/single reading	A9-0007/2024	Summary
28/02/2024	Results of vote in Parliament		

28/02/2024	Decision by Parliament	T9-0102/2024	Summary
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Technical information	
Procedure reference	2023/0187(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/9/12336

Documentation gateway					
Legislative proposal		COM(2023)0324	19/06/2023	EC	Summary
Document attached to the procedure		SEC(2023)0243	19/06/2023	EC	
Document attached to the procedure		SWD(2023)0215	19/06/2023	EC	
Document attached to the procedure		SWD(2023)0216	19/06/2023	EC	
Document attached to the procedure		SWD(2023)0217	19/06/2023	EC	
Committee draft report		PE752.746	09/10/2023	EP	
Document attached to the procedure		N9-0081/2023 OJ C 000 13.11.2023, p. 0000	13/11/2023	EDPS	
Amendments tabled in committee		PE756.221	16/11/2023	EP	
Amendments tabled in committee		PE756.226	20/11/2023	EP	
Economic and Social Committee: opinion, report		CES3253/2023	13/12/2023	ESC	
Committee report tabled for plenary, 1st reading/single reading		A9-0007/2024	26/01/2024	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T9-0102/2024	28/02/2024	EP	Summary

Additional information		
Research document	Briefing	16/02/2024

Faster and Safer Relief of Excess Withholding Taxes

PURPOSE: to make withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries and Member State tax administrations.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: ensuring fair taxation in the internal market and the good functioning of the Capital Markets Union (CMU) are political priorities for the European Union (EU). In this context, removing obstacles to cross-border investment, while combating tax fraud and abuse is critical.

In the EU, investors may be generally obliged to pay tax twice on the income they receive from holding securities (namely dividends on holdings of equities and interest on holdings of bonds) in a cross-border context.

First, taxes may be levied in the country of the issuer of the securities (the source country) in the form of a tax withheld from the gross securities income, (withholding tax (WHT)). Secondly, taxes may be levied in the investors country of residence (the residence country) in the form of income tax.

To avoid double taxation, many EU Member States have signed double taxation treaties, which avoid the same individual or company being taxed twice. These treaties allow a cross-border investor to submit a refund claim for any excess tax paid in another Member State.

The problem is that these refund procedures are often lengthy, costly and cumbersome, causing frustration for investors and discouraging cross-border investment within and into the EU. Currently, the withholding tax procedures applied in each Member State are very different.

Some Member States have experienced large-scale tax abuse schemes known as Cum/Ex and Cum/Cum. Cum/Ex schemes work as fraudulent multiple reclaim schemes when entitled to a single reclaim.

In order to strengthen Member States ability to prevent and fight against potential fraud or abuse, it is necessary to put in place a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse.

CONTENT: the aim of this Commission proposal is to make EU withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and abuse.

In particular, the proposal lays down rules on the issuance of a digital tax residence certificate by Member States and the procedure to relieve any excess withholding tax that can be withheld by a Member State on dividends from publicly traded shares and, where applicable, interest from publicly traded bonds paid to registered owners who are resident for tax purposes outside that Member State.

The following actions intend to make life easier for investors, financial intermediaries and national tax authorities:

A common EU digital tax residence certificate (eTRC) will be introduced by all Member States and will make withholding tax relief procedures faster and more efficient. For example, investors with a diversified portfolio in the EU will need only one digital tax residence certificate to reclaim several refunds during the same calendar year. The digital tax residence certificate should be issued within one working day after the submission of a request. At present, most Member States still rely on paper-based procedures.

Two fast-track procedures complementing the existing standard refund procedure: a relief at source procedure and a quick refund system, which will make the relief process faster and more harmonised across the EU. Member States will be able to choose which one to use including a combination of both.

- under the relief at source procedure, the tax rate applied at the time of payment of dividends or interest is directly based on the applicable rules of the double taxation treaty provisions;

- under the quick refund procedure, the initial payment is 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 is granted within 50 days from the date of payment.

These standardised procedures are estimated to save investors around EUR 5.17 billion per year.

A standardised reporting obligation will provide national tax administrations with the necessary tools to check eligibility for the reduced rate and to detect potential abuse. Certified financial intermediaries will have to report the payment of dividends or interest to the relevant tax administration so that the latter can trace the transaction. In particular, large EU financial intermediaries will be required to join a national register of certified financial intermediaries. This register will also be open to non-EU and smaller EU financial intermediaries on a voluntary basis.

Taxpayers investing in the EU through certified financial intermediaries will benefit from fast-track withholding tax procedures and avoid double taxation on dividend payments. The more financial intermediaries register, the easier it will be for tax authorities to process refund requests, regardless of the procedure used.

Budgetary implications

The main budgetary implications of the initiative for the Commission include implementing the electronic tax residence certificate and establishing the formats and communication channels to be used by financial intermediaries to report to the national tax authorities.

Faster and Safer Relief of Excess Withholding Taxes

The Committee on Economic and Monetary Affairs adopted, following a special legislative procedure (consultation), the report by Herbert DORFMANN (EPP, IT) on the proposal for a Council directive on Faster and Safer Relief of Excess Withholding Taxes.

The committee responsible approved the Commission proposal subject to the following amendments:

Digital tax residence certificate (eTRC)

Member States should provide for an automated process to issue digital tax residence certificates (eTRC) to a person deemed resident in their jurisdiction for tax purposes. Members stated that Member States should issue the eTRC based on the available information within three working days from submission of a request. The eTRC should include information on the double tax treaty.

If more than five working days are required to verify the tax residency of a specific taxpayer, the Member State should inform the person requesting the certificate of the additional time needed and the reasons for the delay that, in any case, should be no longer than five working days.

Certified financial intermediary

Member States should:

- ensure that a financial intermediary is registered in their national register of certified financial intermediaries within two months from submission of a request;

- inform all other Member States about rejections of registration as soon as possible;

- update their national registers to reflect the status of financial intermediaries no longer holding certification;
- take the necessary measures to require certified financial intermediaries in their national register to report to the competent authority the information referred to in Annex II as soon as possible within a maximum of 20 calendar days after the record date;
- provide that certified financial intermediaries do not need to report information referred to in Annex II, heading E, if the total dividend paid to the registered owner on the owners shareholding in a company does not exceed EUR 1500;
- require certified financial intermediaries in their national register to keep the documentation supporting the information reported for six years.

Request for relief at source or quick refund

Member States should take the necessary measures to ensure that certified financial intermediaries requesting relief on behalf of a registered owner verify the risks of residence and citizenship by investment schemes that present a potentially high risk.

Quick refund system

Member States should process a refund request made in accordance with the directive within 25 calendar days from the date of such request. They should apply interest on the amount of such refund for each day of delay after the 25th day, unless the Member State has reasonable doubts on the legitimacy of the refund request.

Member States may reject a refund request if any verification procedure or tax audit, based on risk assessment criteria and according to the national legislation, is initiated.

Monitoring and exchange in information

To ensure the integrity of the internal market the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) should regularly monitor the risk for cum-cum and cum-ex in the Union.

Member States should introduce coordinated cooperation and mutual assistance between national competent authorities, tax authorities and other law enforcement bodies, such as the European Public Prosecutors Office (EPPO) to detect and prosecute illegal withholding tax reclaim schemes.

Evaluation

The Commission should examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every five years. A report on the evaluation of the Directive and on the applicable rules to withholding taxes in the Member States, including on a potential need to amend specific provisions of this Directive, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.

In the evaluation report, the Commission should:

- examine further possible measures to facilitate self-processed withholding tax claims for small investors who engage directly with tax authorities without the intermediation of certified financial intermediaries;
- assess how the procedures for withholding tax relief can be further simplified for retail investors;
- conduct a comprehensive analysis of the development of the service fees financial intermediaries charge registered owners for the implementation of the quick refund procedure and the relief at source procedure;
- examine whether a relief at source system could be envisaged as a procedure for all Member States; and introduce further measures to facilitate such a system for small and medium-sized enterprises;
- examine whether Member States are still impacted by or prone to dividend arbitrage and dividend stripping schemes such as the cum-ex and cum-cum schemes and whether existing measures within the field of withholding taxes are sufficient to combat tax fraud, tax evasion and tax avoidance;
- consider further measures, if necessary, to ensure that all dividends, interest, capital gains, royalty payments, professional service payments and relevant contract payments generated in the Union are taxed at least once at an effective rate;
- examine the potential of distribution ledger systems or other technological tools to render the system more efficient and fraud proof through better identification of the beneficial owner;
- examine possible measures to digitalise relief and refund processes, and claims;
- assess the acceptance of electronic or digital signatures and use of e-ID to facilitate the verification process for individual investors.

Where appropriate, the evaluation report should be accompanied by a legislative proposal.

Faster and Safer Relief of Excess Withholding Taxes

The European Parliament adopted by 541 votes to 36, with 23 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council directive on Faster and Safer Relief of Excess Withholding Taxes.

Parliament approved the Commission proposal subject to the following amendments:

Cum-ex and cum-cum schemes

Parliament stressed that these schemes both involve reclaims of dividend withholding tax to which the beneficiaries were not entitled and are estimated to have imposed a total cost to taxpayers of about EUR 55 billion between 2001 and 2012 in the 11 Member States concerned. The cum-ex and cum-cum schemes have been ruled illegal and should be prosecuted according to national law. The tax administrations should be equipped with tools to deal with refund/relief at source procedures in a secure and timely manner and increase their efforts in providing digitalised, automated and better-coordinated key features.

Digital tax residence certificate (eTRC)

Members stated that Member States should issue the eTRC based on the available information within three working days from submission of a request. The eTRC should include information on the double tax treaty. If more than five working days are required to verify the tax residency of a specific taxpayer, the Member State should inform the person requesting the certificate of the additional time needed and the reasons for the delay that, in any case, should be no longer than five working days.

In any case, Member States may prove the residence for tax purposes in their jurisdictions. Member States should take the appropriate measures to require an individual or entity deemed resident in their jurisdiction for tax purposes to inform tax authorities issuing the eTRC about any change that could affect the validity or the content of the eTRC.

Certified financial intermediary

Member States should:

- ensure that a financial intermediary is registered in their national register of certified financial intermediaries within two months from submission of a request;
- inform all other Member States about rejections of registration as soon as possible;
- inform without undue delay all other Member States that maintain a national register of the rejection of a certified financial intermediary from their national register, stating the reasons for the rejection;
- update their national registers to reflect the status of financial intermediaries no longer holding certification;
- take the necessary measures to require certified financial intermediaries in their national register to report to the competent authority the information referred to in Annex II as soon as possible within a maximum of 20 calendar days after the record date;
- provide that certified financial intermediaries do not need to report information referred to in Annex II, heading E, if the total dividend paid to the registered owner on the owners shareholding in a company does not exceed EUR 1500;
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Member States should introduce coordinated cooperation and mutual assistance between national competent authorities, tax authorities and other law enforcement bodies, such as the European Public Prosecutors Office (EPPO) to detect and prosecute illegal withholding tax reclaim schemes.

Evaluation

A report on the evaluation of the Directive and on the applicable rules to withholding taxes in the Member States, including on a potential need to amend specific provisions of this Directive, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.

In the evaluation report, the Commission should:

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Where appropriate, the evaluation report should be accompanied by a legislative proposal.

Transparency				
ANDRESEN Rasmus	Shadow rapporteur	ECON	14/11/2023	Bürgerbewegung Finanzwende e. V.
DORFMANN Herbert	Rapporteur	ECON	08/09/2023	European Federation of Investors and Financial Services Users