

Faster and Safer Relief of Excess Withholding Taxes

2023/0187(CNS) - 26/01/2024 - Committee report tabled for plenary, 1st reading/single reading

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.