

“FASTER” withholding tax relief procedures to bolster EU capital markets by 2030

By Eric CENTI, Partner, Gregory JULLIEN, director and Cem Mikail BAS, Assistant Manager, Deloitte Luxembourg

On 14 May 2024, the Council of the European Union reached an agreement (general approach) on “FASTER” – the Directive on the Faster and Safer Relief of Excess Withholding Taxes. Once the EU completes the necessary legislative procedures, likely in early 2025, EU Member States will have until 31 December 2028 to transpose the legislation into national law, with the new rules entering into force from 1 January 2030.

Currently, divergent withholding tax relief procedures across Member States lead to inefficiencies and high costs for non-resident investors seeking tax relief. FASTER aims to address this issue and to bolster the EU capital markets union through various measures.

Creation of a common EU tax residency certificate

FASTER introduces the digital tax residence certificate (eTRC) to ensure that Member States swiftly issue digital proof of tax residency to natural persons or entities deemed residents within their jurisdiction for tax purposes.

Tax authorities from the relevant Member State should issue an eTRC within 14 calendar days after the request. Delays may happen when additional verification of a taxpayer's tax residency is required, obliging tax authorities to inform the taxpayer about the need for more time and the reason(s) for the delay.

The eTRC provides considerable information about the taxpayer. This information includes name, tax identification number, legal entity identifiers, the European Unique Identifier (EUID), address, date of issuance, the covered period, and related tax treaties for which the taxpayer seeks tax relief. The eTRC covers a duration not exceeding a calendar or fiscal year. It remains valid unless the taxpayer's tax residency changes within the covered period. It should be both human and machine-readable and should contain an open text box for additional information.

FASTER highlights that the eTRC can serve as proof of tax residence for purposes beyond withholding tax procedures. Despite that, for withholding tax relief procedures, the eTRC should not include any additional information. Hence, Member States will need to implement the appropriate systems for the eTRC to function.



Pivotal role of certified financial intermediaries in the functioning of FASTER

Registration obligation of CFIs

Certified financial intermediaries (CFIs) are key financial intermediaries involved in securities' payment chains, including substantial institutions such as those defined under Regulation (EU) No 575/2013 (dealing with capital requirements) and central securities depositories acting as withholding tax agents. They are required by FASTER to register on national registers of Member States. Other financial intermediaries, including non-EU ones, can also request registration.

FASTER provides flexibility in registration depending on the organization's structure. CFIs can register at the group, individual branch, subsidiary level, or a combination thereof. To streamline the process and reduce administrative burdens, intermediaries could either undertake self-registration or nominate another intermediary to assume this role. All registration requests commence with an application via the European Certified Financial Intermediary Portal, which is a centralized platform. This application is then forwarded to the respective Member State(s) for a comprehensive evaluation, followed by a decision on the registration made within three months from the submission.

Once confirmed, intermediaries would be qualified as “certified financial intermediaries,” thus becoming subject to the FASTER's reporting and due diligence obligations. FASTER outlines clear parameters for removing intermediaries from the national register or denying access to relief systems.

Due diligence obligations of CFIs

CFIs play a key role in maintaining the integrity of procedures for relief from excess withholding taxes. Their responsibilities include verifying investor eligibility for re-



lief, gathering crucial documentation, such as tax residence certificates, and ensuring declarations from registered owners are in order. CFIs may also need to request beneficial ownership declarations to aid source Member States in verifying their ownership status, depending on national legislation or bilateral tax treaties.

Based on the investor information, CFIs must determine the appropriate withholding tax rate and identify any outstanding financial arrangements associated with the securities. CFIs need to ensure the information provided aligns with data collected through standard practices like Know Your Customer (KYC) rules. Quick communication of any changes in circumstances from investors is crucial. CFIs' due diligence requirements may be implemented annually unless indications of changes or inaccuracies are noted. CFIs also need to adhere to specific procedures when the registered owner and the party entitled to tax relief are not the same, especially in indirect investment scenarios involving collective investment undertakings (CIUs). Even in these cases, CFIs remain responsible for fulfilling due diligence requirements and may be liable for any tax losses incurred.

Reporting obligations of CFIs

CFIs must submit a set of information in XML format to the competent authority where they are registered within the second month following the month of the payment date. This information includes details about notably the recipient, the payer of the dividend or interest, the payment itself, and the application of anti-abuse measures. The reporting is either direct (CFIs report directly to the competent authority of the source Member State), or indirect (information is provided along the securities payment chain, ensuring it reaches the withholding tax agent or a designated intermediary).

Financial intermediaries not registered as CFIs are exempt from FASTER's reporting



obligations. However, information handled by them may still be important for the reconstruction of the payment chain before relief systems application.

CFIs that are not directly involved in a specific payment chain may act as a financial intermediary within that chain, carrying the responsibilities and liabilities linked to information reporting and the relief system. The directive allows CFIs to outsource tasks related to their obligations, but they remain ultimately responsible for these tasks.

While FASTER delineates CFI liability, the specific scope and nature of potential sanctions and penalties are left to individual Member States, which must ensure that CFIs failing to meet obligations can be held accountable for withholding tax losses.

Implementation of two fast-track withholding tax reclaim procedures for increased harmonization at EU level

FASTER allows Member States to implement two fast-track withholding tax reclaim procedures to complement their existing standard refund processes, making relief and refund processes faster and more harmonized across the EU.

Under the “relief at source” procedure, the suitable tax rate is applied at the time of payment. While in the “quick refund” system, CFIs request a refund of overpayment within the second month following the payment. If the refund is not processed within 60 days from this period, the Member State could be liable for interest on each day of delay after the 60th day.

Member States must introduce at least one of the two fast-track procedures if they offer relief from excess withholding tax on dividends paid on publicly traded shares. FASTER includes provisions for indirect investments where the investor invests through a collective investment undertaking (CIU).

CFIs requesting relief for a registered owner must conduct due diligence on the owner's eligibility and report relevant information to competent authorities.

Some Member States would have the option to maintain their current procedures without implementing FASTER reclaim procedures if:

- They have a comprehensive relief-at-source system for excess withholding tax on dividends paid from publicly traded shares issued by a resident in their jurisdiction; and
- Their market capitalization ratio (total value of publicly traded shares of listed companies in a member state weighted at EU level) is below a threshold of 1.5% for four consecutive years, otherwise these provisions would apply irrevocably.

Member States also have the option to use fast-track procedures for excess withholding tax relief on interest paid on publicly traded bonds.

Certain situations may cause a Member State to either fully or partially exclude withholding tax relief requests from fast-track procedures to prevent fraud or apply threshold of €100,000 on gross dividend amount per registered owner or investor, with exceptions made for certain entities subject to stringent regulatory oversight, such as CIUs.

The standard refund system remains available for all other cases.

What's next for financial intermediaries?

Overall, CFIs play a crucial role in making FASTER function effectively and in efficiently implementing two fast-track withholding tax reclaim procedures. At the same time, their responsibilities are significant. CFIs will be required to establish necessary procedures, processes, and controls to facilitate efficient data collection, thorough due diligence, and ensure compliant reporting. FASTER compliance will be challenging, as CFIs will bear important risks, notably facing potential sanctions and penalties. Investments in automation, information management systems, and staff training are crucial, along with robust internal controls to maintain data integrity and mitigate compliance risks.

Even though national rules will take effect on 1 January 2030, future CFIs will need to proactively anticipate changes required to comply with FASTER, involving strategic planning, resource identification, and process transformation. Such pre-emptive actions will enable CFIs to seize opportunities while upholding strict compliance standards. The set-up of a robust governance structure for FASTER purposes will help manage associated risks, control implementation and compliance costs.

ING arrête ses services pour les particuliers au Luxembourg

ING a annoncé le 29 mai sa décision d'arrêter ses services de banque de détail au Luxembourg pour les clients particuliers.

"Nous évaluons constamment nos activités, notamment pour déterminer si elles sont susceptibles d'atteindre l'échelle souhaitée sur le marché dans un délai raisonnable. Nous en sommes venus à la conclusion qu'il n'y a pas de croissance durable possible dans un avenir proche pour ING au Luxembourg dans la banque de détail pour les clients particuliers", a déclaré Michael Burch, CEO d'ING au Luxembourg.

"Nous sommes conscients que la demande de transfert des avoirs vers une autre banque a causé de la frustration à nos clients. Afin de les soutenir au mieux, nous avons mis en place des mesures supplémentaires avec effet immédiat".

ING s'est engagé à accompagner étroitement les clients concernés et a déjà pris plusieurs mesures afin de les soutenir. Elle a notamment augmenté le nombre d'employés dans ses agences situées à Ettel-



bruck, Esch/Alzette, Strassen et Luxembourg Gare pour répondre aux questions et expliquer le processus de transfert de compte. ING a également renforcé l'équipe de son Contact Center pour traiter les appels et les messages entrants.

Sur son site internet ing.lu, ING a publié une section spéciale contenant des informations clés sur le processus de clôture de compte et d'autres questions fréquemment posées : ing.lu/resiliation.

"Nous comprenons que l'approche de la période estivale soit une source d'inquiétude pour beaucoup", note Michael Burch. "Alors que la procédure standard prévoit le blocage du compte après un préavis de deux mois, nous veillerons à ce que ces derniers restent accessibles afin de permettre à nos clients de prendre les mesures nécessaires."

ING continuera à développer des mesures supplémentaires pour soutenir les clients concernés afin d'éviter toute interruption des services bancaires.

ING se concentre sur le Wholesale Banking et Private Banking

ING constate qu'il existe au Luxembourg un besoin de relations bancaires privilégiées et une connaissance sectorielle accrue. ING est bien positionnée pour répondre à ce besoin et offrir des services pour lesquels la banque peut faire la différence pour ses clients. "Nous sommes fermement déterminés à rester un acteur clé au Luxembourg dans les activités Wholesale et Private Banking, aux fins de conti-

nuer à être un partenaire financier solide et durable", déclare Michael Burch. Avec son offre dédiée à l'industrie des fonds d'investissement, aux clients institutionnels et aux entreprises, ING a pour ambition de rester le partenaire Wholesale Banking de référence. Pour devenir un acteur majeur dans le domaine du Private Banking, ING est sur le point de lancer une offre différenciante pour ses clients avec des besoins d'investissement à long terme.

L'ABBL organise le transfert des avoirs des clients

Face aux préoccupations que suscitent cette décision, l'Association des Banques et Banquiers, Luxembourg (ABBL) et les banques de détail luxembourgeoises se sont concertées en vue de prendre toutes les mesures nécessaires pour accompagner les clients concernés dans le transfert de leurs avoirs vers une autre banque. « Cette décision démontre deux choses », explique Jerry Grbic, CEO de l'ABBL. « D'une part, qu'au Luxembourg, le marché de la banque de détail est très concurrentiel. D'autre part, que l'ampli-

tude des contraintes réglementaires existantes peuvent mener certains acteurs à s'interroger sur la continuation de certaines offres de services ». En effet, l'approfondissement et l'élargissement de la réglementation depuis une dizaine d'années a pour conséquence une mobilisation accrue de moyens financiers et humains dans le chef des banques mettant à l'épreuve leur rentabilité.

Consciente de la situation délicate dans laquelle se trouvent les clients concernés, l'ABBL s'est concertée avec ING, les autres banques de détail et les autorités compétentes pour organiser le transfert de leurs avoirs vers un autre établissement de leur choix et ainsi garantir une continuation de services.

« Dans ces discussions nous avons pu constater la ferme volonté de nos membres actifs dans le segment des clients personnes privées à continuer à maintenir et développer cette offre dans notre pays. Elles se sont également déclarées être en capacité d'accueillir un nombre important de clients tel qu'évoqué dans le cas d'ING Luxembourg », souligne Jerry Grbic.