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2023/0187 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**on Faster and Safer Relief of Excess Withholding Taxes**

{SEC(2023) 243 final} - {SWD(2023) 215 final} - {SWD(2023) 216 final} -  
{SWD(2023) 217 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

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 investor's country of residence (the **residence country**) in the form of **income tax**.

To avoid this double taxation, many countries have agreed to share taxing rights between the source and residence countries by signing double tax treaties (DTTs). Under the terms of these treaties, non-resident investors may be entitled to a lower rate of WHT or to an exemption in the source country. Besides tax treaties, some source countries have introduced rules that provide for lower rates or exemptions for specific non-resident taxpayers with specific policy objectives in mind.

This reduction or exemption of WHT may be granted in two ways. Either the reduced tax rate or exemption is applied directly at the moment the dividend/interest is paid (**relief at source**), or the excess tax withheld is refunded on the basis of a reclaim by the investor (**refund procedure**).

However, the **WHT procedures** that allow non-resident investors to benefit from tax treaty or domestic benefits are often **burdensome, costly, and lengthy** as they vary considerably across Member States both in terms of documentation to be submitted by the taxpayers to obtain the relief from WHT and as regards their level of digitalisation. **WHT procedures** are also still **prone to risk of tax fraud and abuse**, leading to revenue losses for Member States, as shown by a series of tax scandals, notably the so called Cum/Cum and Cum/Ex cases. This is due to the lack of accurate information in the hands of tax administrations, which owes to the low level of transparency within the financial chain and to the lack of information on the presence of financial arrangements linked to the underlying security

The procedures to submit a refund claim usually involve the following steps and requirements: the taxpayer (i.e. the recipient of the payments) needs to prove that it is a resident of the country with which the source Member State has signed a tax treaty. To do so, the taxpayer will need to request a certificate of residence from the tax administration of its state of residence. In addition, a number of additional forms and documents will have to be provided, depending on the source country. While typically, in the EU, source Member States will require proof that the taxpayer is the owner of the security and beneficiary of the income, they may also require all kinds of documentation related to the payment chain or specific bank certificates (e.g. dividend voucher) before refunding the excess taxes withheld. Due to recent and very significant cases of sophisticated fraud, some Member States have introduced or are about to introduce even more stringent documentation requirements as part of their procedures.

One of the most obvious forms of tax abuse are situations where taxpayers who have no entitlement to a lower WHT rate engage in transactions (e.g. securities lending or sale and buy back) with entities that would be able to benefit from a reduced WHT rate (e.g. based on the relevant tax treaty or due to their specific status) if they were the owner of the security, so as to split the savings among themselves.

This type of abuse is also known as dividend arbitrage or ‘Cum/Cum’. Another form of abuse is ‘Cum/Ex’ schemes, which work as fraudulent schemes for making multiple refund claims: deliberate short selling practices around the distribution day seek to create confusion between the economic and legal owner of the securities, which enables both parties to claim tax refunds that exceed the amount that was initially withheld by the WHT agent.

The current status quo discourages cross-border investments within the EU, especially for retail investors: in a recent survey<sup>1</sup>, close to 70% of retail investors who would be eligible to a reduced WHT rate did not claim it, citing as the main reasons lengthy, costly and too complicated procedures, which led to 31% of them to decide to sell their foreign EU stocks. Fundamentally, this goes against the objectives of the Capital Markets Union (CMU) and the retail investment package adopted 24 May 2023<sup>2</sup>, and undermines the competitiveness of the EU market as a whole. Besides taking up significant resources for tax authorities, the persistent risk of fraud or abuse also has a negative impact on Member States’ tax revenues and, ultimately, on tax fairness.

The European Commission and international organisations have been analysing and trying to address the inefficiencies and the risk of fraud or abuse associated with WHT procedures for decades. In particular, the Commission put forward in 2009 a Recommendation to the Member States on simplifying WHT procedures<sup>3</sup>. In 2017, the Commission published a Code of Conduct on withholding tax<sup>4</sup>, which called for a voluntary commitment by Member States. At the international level, in 2013, the Organisation for Economic Cooperation and Development (OECD) approved the Treaty Relief and Compliance Enhancement (TRACE) Implementation Package aimed to address the inefficiency of WHT procedures as well<sup>5</sup>.

Even though these actions at EU and international level resulted in some improvement, cumbersome WHT procedures still discourage cross-border investment, especially by retail investors, remain a barrier to a well-functioning EU capital market and are still prone to risk of fraud or abuse. The overall costs of WHT procedures are estimated to be EUR 6.62 billion<sup>6</sup>.

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<sup>1</sup> Withholding tax on dividends, survey for investors in the European Union, Better Finance, March 2023.

<sup>2</sup> [https://finance.ec.europa.eu/publications/retail-investment-package\\_en](https://finance.ec.europa.eu/publications/retail-investment-package_en)

<sup>3</sup> Commission Recommendation of 19 October 2009 on withholding tax relief procedures (OJ L 279, 24.10.2009, p. 8–11).

<sup>4</sup> European Commission (2017), Code of conduct on withholding tax, Directorate-General Taxation and Customs Union, [https://taxation-customs.ec.europa.eu/system/files/2017-12/code\\_of\\_conduct\\_on\\_withholding\\_tax.pdf](https://taxation-customs.ec.europa.eu/system/files/2017-12/code_of_conduct_on_withholding_tax.pdf) .

<sup>5</sup> OECD (2013), TRACE implementation package for the adoption of the authorised intermediary system: A standardised system for effective withholding tax relief procedures for cross-border portfolio income (<https://www.oecd.org/ctp/exchange-of-tax-information/treatyreliefandcomplianceenhancementtrace.htm>).

<sup>6</sup> See impact assessment report accompanying this proposal.

It is for those reasons that, in 2020, in the Action Plan for fair and simple taxation supporting the recovery strategy<sup>7</sup> and in the Action Plan on a Capital Markets Union for people and businesses<sup>8</sup>, the Commission announced a legislative initiative in the area of WHT procedures. In March 2022 the European Parliament welcomed the Action Plan for fair and simple taxation and supported its thorough implementation<sup>9</sup>. Moreover, the European Parliament strongly welcomed the Commission's intention to put forward a proposal establishing a common and standardised system for withholding taxes, accompanied by a mechanism for the exchange of information and cooperation among tax administrations of Member States<sup>10</sup>. In 2020, the European Parliament resolving on the Action Plan on a Capital Markets Union stressed the need to reduce tax obstacles to cross-border investments, including procedures for a cross-border refund to investors, including retail investors<sup>11</sup>.

The objective of this proposal is twofold: supporting the good functioning of the CMU by facilitating cross-border investment and ensuring fair taxation by preventing tax fraud and abuse.

To achieve the objectives, this proposal introduces more efficient WHT procedures while, at the same time, providing Member States with the necessary tools to effectively fight tax fraud and abuse. The proposed changes will also have very practical and useful impacts for investors and lead to very significant costs savings for investors, estimated approximately at EUR 5.17 billion per year<sup>12</sup>.

- **Consistency with existing policy provisions in the policy area**

This initiative is fully consistent with other initiatives taken by the Commission in the last years to achieve the key priority of fighting against tax fraud and abuse:

- In 2016, the Commission adopted that Anti-Tax Avoidance Directive (ATAD)<sup>13</sup> to ensure a coordinated implementation in the Member States of key measures against tax avoidance stemming from the international Base Erosion and Profit Shifting actions.
- The Directive on Administrative Cooperation (DAC)<sup>14</sup> has, since its adoption in 2011, been revised and expanded on several occasions to allow a large-scale and

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<sup>7</sup> Communication From The Commission To The European Parliament And The Council An Action Plan For Fair And Simple Taxation Supporting The Recovery Strategy (COM/2020/312 final)

<sup>8</sup> Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions A Capital Markets Union For People And Businesses-New Action Plan (COM/2020/590 final)

<sup>9</sup> European Parliament resolution of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy (EP follow-up to the July Commission's Action Plan and its 25 initiatives in the area of VAT, business and individual taxation) (2020/2254(INL)) (OJ C 347, 9.9.2022, p. 211–222)

<sup>10</sup> European Parliament resolution of 10 March 2022 on a European Withholding Tax framework (2021/2097(INI))

<sup>11</sup> European Parliament resolution of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI))

<sup>12</sup> See impact assessment report accompanying this proposal.

<sup>13</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1)

<sup>14</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1)

timely exchange of tax related information across the EU. In particular, DAC2<sup>15</sup> establishes a framework for greater tax transparency within the EU in terms of financial account information.

- DAC6<sup>16</sup> requires intermediaries to inform tax authorities of cross-border arrangements that could potentially be used for aggressive tax planning.
- In 2021, the Commission adopted a proposal for a Directive to fight against the misuse of shell entities (i.e. entities in the European Union that have no or minimal economic activity)<sup>17</sup> to avoid or evade taxes.

However, the existing EU instruments do not contain specific measures to tackle abusive tax practices with regards to the WHT procedures. The existing rules do not provide for the reporting of information on securities transactions to tax administrations of the source Member States (including details of the payment chain with regard to the payment of dividends or interest by financial intermediaries).

As a result, they do not adequately address the specific problem of abuse. This Directive will expand transparency to allow Member States to check if the WHT rate is applied correctly to each eligible taxpayer. It will ensure that transparency is achieved in a timely manner so as to justify and permit a quick and efficient processing of applicable refund or relief requests.

As this proposal is about withholding tax procedures it will only complement the Parent-Subsidiary Directive (PSD)<sup>18</sup> and the Interest-Royalties Directive (IRD)<sup>19</sup>, which exempt from WHT, respectively, dividends and other profit distributions, and interest and royalty payments made by subsidiaries to their parent companies and eliminate double taxation of such income at the level of the parent company. The PSD and IRD could be applicable in relation to the listed securities that are in scope of this proposal and this proposal will not restrict Member States in complying with the PSD and IRD but rather facilitate it in terms of procedure.

- **Consistency with other EU policies**

The proposal is fully consistent with and will contribute to support the good functioning of the CMU. The CMU seeks to make financing more accessible to EU companies, to facilitate investment by individuals and firms, and to integrate national capital markets into a genuine single market. Divergent, burdensome and lengthy WHT procedures lead to considerable costs that dissuade cross-border investment and undermine the CMU. Making WHT

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<sup>15</sup> Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1–29)

<sup>16</sup> Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1–13)

<sup>17</sup> Proposal for a Council Directive of 22 December 2021 laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021)565).

<sup>18</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast) (OJ L 345, 29.12.2011, p. 8–16)

<sup>19</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49–54)

procedures faster, more efficient and less costly, will support cross-border investment and contribute to building a true single market for capital in the EU.

By addressing a key barrier to cross-border investment by retail investors, this proposal complements the Retail Investment Strategy that was adopted on 24 May 2023<sup>20</sup> to empower consumers to take full advantage of EU capital markets.

This Directive also complements the Shareholders Rights Directive<sup>21</sup> (SRD) as they both share the aim of requiring transparency in relation to the final investor. The SRD facilitates shareholder identification and information flows between the shareholders and the securities issuer. Companies have the right to identify their shareholders and obtain information on shareholders' identity from any intermediary who holds that information.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The legal basis for legislative initiatives on taxation is Article 115 of the Treaty on the Functioning of the European Union (TFEU). Although no explicit reference to direct taxation is made in this article, it does refer to issuing directives for approximating national laws that directly affect the establishment or functioning of the single market. It follows that, under Article 115 TFEU, directives are the appropriate legal instrument for the EU in this field. Based on Article 288 TFEU, directives will be binding as to the result to be achieved upon Member States but leave the choice of form and methods to the national authorities.

### **• Subsidiarity (for non-exclusive competence)**

This proposal complies with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). The cross-border nature of the problem at stake requires a common initiative across the single market.

The source of the problem stems mainly from the fact that among those Member States that levy withholding taxes on dividend or interest payments, different systems are being applied to provide for relief of excess taxation in cross-border situations. The following systems are being used and different thresholds or different requirements may apply in different Member States: relief at source system, quick refund system, the standard refund system or a combination thereof.

Maintaining an increasingly fragmented framework of WHT procedures in the EU causes high compliance costs for investors and financial intermediaries involved. The prevailing cross-border nature of the issue at stake requires action at EU level to simplify administrative procedures and reduce compliance costs. In the absence of such an initiative, the fragmentation of national WHT procedures impedes the effective functioning of relief procedures for cross-border operations, and subsequently the proper functioning of the single market. Therefore, EU action is required to level the playing field for national and foreign investors and for domestic and non-resident intermediaries alike.

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<sup>20</sup> Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules (COM/2023/279 final)

<sup>21</sup> Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

The initiative also aims to respond to the recommendations made by ESMA in the ‘Final report on Cum/Ex, Cum/Cum and withholding tax reclaim schemes’ which concluded that specific action on taxation would be needed at EU level to effectively fight fraud and abuse.

A legislative initiative is therefore in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union.

- **Proportionality**

The envisaged measures do not go beyond the minimum necessary level of protection for the single market and are therefore compliant with the principles of proportionality. The proposal does not prescribe full harmonisation but only sets out common features that would enhance the Member States' WHT systems and strengthen them against fraud and abuse.

The implementation of a common digital tax residence certificate (eTRC) would benefit investors, financial intermediaries and tax administrations. The current system, which is fragmented and partly paper-based, will be replaced by a fully digital system. This would increase the digitalisation of administrative processes in Member States and achieve efficiency gains, also enabling financial intermediaries to improve their own processes. This is an important first step forward to achieve more efficient WHT procedures.

Introducing reporting obligations for financial intermediaries would imply some costs and administrative burden. However, these costs are outweighed by the positive impact that the information received would have for tax administrations in improving WHT procedures in terms of security and effectiveness.

Moreover, this burden should be assessed against the initiatives recently adopted or announced in some Member States in response to recent scandals of tax fraud and abuse of WHT procedures – these initiatives introduce new and extensive reporting requirements for intermediaries.

A common EU-wide reporting standard would save compliance costs for financial intermediaries operating across borders as they would be faced with one reporting standard across the whole EU, instead of a patchwork of different reporting requirements.

- **Choice of instrument**

The proposal is for a Directive, which is the only instrument permissible under the legal basis (Article 115 TFEU).

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks on existing legislation**

There is no previous existing binding legislation in the field of WHT relief procedures therefore no ex-post evaluations or fitness checks were performed.

- **Stakeholder consultations**

The stakeholder consultation strategy for this initiative consisted of both public and targeted consultations. An Inception Impact Assessment<sup>22</sup> was published on 28 September 2021 with a four-week consultation period, followed by a public consultation that ran between April and June 2022, leading to 1682 responses.

Member States were consulted through the Working Party IV, bilateral meetings and two meetings at the TADEUS Forum. Moreover, meetings took place with various stakeholders, such as representatives of financial intermediaries and retail investors.

Out of all these exchanges and input received from various stakeholders, it can be concluded that there is a broad consensus on the problems arising from the different WHT procedures across Member States and on the need for EU action to tackle the fragmented and inefficient situation.

However, there are differences between the main stakeholder groups on possible options to do this:

- Investors and financial intermediaries clearly considered that relief at source would provide the best results such as early relief for investors and a limited burden on intermediaries. They also acknowledged that a relief at source system would likely need to be complemented by WHT refund systems, as a back-up. Therefore, they were supportive of an initiative that would also aim to standardise the current processes and forms WHT refunds.
- Member States expressed support for introducing a common **EU-wide digital tax residence certificate**. Regarding the reporting obligation and a standardised procedure:
  - (a) Member States where the domestic rate for non-resident investors is lower or the same as the DTT rate would not be directly impacted by a standardisation of WHT procedures or reporting. Some of those Member States expressed support for action at an EU level as it will improve the position of their investors.
  - (b) Member States where the internal WHT rate is higher than the respective DTT rate broadly agreed on enhancing transparency and standardising WHT procedures, stressing the importance of striking a balance between making those procedures efficient and keeping the control over processes to prevent tax abuses.

All of the above-mentioned insights received from stakeholders were carefully considered in this proposal which introduce more efficient WHT procedures while, at the same time, providing Member States with the necessary tools to effectively fight tax fraud and abuse.

- **Collection and use of expertise**

The Commission consulted widely and received input from various sources during the preparation of the proposal. Among others, the Commission relied on publicly available

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<sup>22</sup> Inception Impact Assessment - Ares(2021)5900310 ([https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation_en))



information and input received from the private sector via calls and onsite sessions to discuss technical elements.

- **Impact assessment**

An impact assessment was carried out to prepare this initiative. The draft impact assessment report was submitted to the Commission's Regulatory Scrutiny Board (RSB) on 16 November 2022. Following a meeting on 14 December 2022, the RSB delivered a negative opinion on 16 December 2022, suggesting some areas for further improvement. Main areas for improvement were: more clarity on the balanced weight of the two specific objectives of the initiative (improving efficiency and fighting tax abuse), an accurate description of the content, functioning and complementarity of the options and clear and complete picture of the costs and benefits of each option.

A revised Impact Assessment report was resubmitted to the RSB on 20 March 2023 with revisions introduced in response to the RSB previous opinion. In particular, it was clarified that both objectives - improving efficiency and fighting tax abuse – are of equal importance; additionally, the presentation of the options was amended to reflect three options instead of four (merging previous option 1 and 2 in current option 1 and slightly redrafting and changing the order of option 2 and 3); finally, the impact assessment was revised to provide for a more comprehensive overview of the costs and benefits and a summary chart was added to reflect the net cost/benefits of each current option for each stakeholder.

On this resubmitted Impact Assessment, the RSB issued a positive opinion with reservation on 21 April 2023. RSB asked for further clarification on the available options and on costs/savings in scope of the One In, One Out approach. Furthermore, it was requested to better reflect in the impact analysis the fact that the preferred option was giving Member States a choice between applying the relief at source and/or the quick refund system. Abovementioned reservations were addressed in the last version of the impact assessment.

The Impact Assessment, as revised following the recommendations from the RSB, examined three policy options:

**Option 1 – Setting-up a common digital tax residence certificate (eTRC) + common reporting**

Under this option, Member States could continue to apply their current systems (i.e. relief at source and/or refund procedures) but should introduce the following new elements:

- a common eTRC(with a common content and format) which would be issued/verified in a digital way by all Member States.
- a common reporting standard to increase transparency as every financial intermediary throughout the financial chain would report a defined set of information to the source Member State. It would be accompanied by standardised due diligence procedures, liability rules and common refund forms to be filed on behalf of clients/taxpayers using automation.

**Option 2 - Implementing a Relief at Source System**

This second option builds on the elements included in option 1 but makes it compulsory for Member States to establish a relief at source system that allows for the application of reduced rates pursuant to DTT or domestic rules directly at the moment of the payment. Under option 2, tax administrations would have to monitor the taxes due after the payment takes place.

### **Option 3 – Implementing a Quick Refund System within a set time frame or/and a Relief at Source**

This option encompasses option 1 with the added requirement that Member States applying a refund system should ensure that the reclaim is handled within a pre-defined timeframe, a so-called the Quick refund system. Member States can introduce or continue to implement a relief at source system (as a main system or for certain low-risk payments).

The various options were compared against the following criteria: effectiveness, efficiency, coherence and proportionality.

Of all the options, option 3 is the preferred option. Option 3 is highly effective to tackle the problems identified in the EU in terms of speed, simpler processes and more digitalised procedures. While option 2 would lead to even higher cost savings for investors, option 3 gives Member States the option to retain an ex-ante control over refund requests, thus providing a way forward that should be politically feasible in all Member States. Fighting abuse is especially relevant for Member States that have been heavily hit by Cum/Cum and Cum/Ex practices during recent years. Because of political reasons, those Member States might be more reluctant to adopt a relief at source system in the short-term, as such system gives a more prominent role to financial intermediaries.

#### **Economic impacts**

##### *Benefits*

The proposed initiative will lead to costs savings for investors, estimated approximately at EUR 5.17 billion per year, including EUR 730 million per year related to a decrease in paperwork (EUR 409 million concerning EU investors). This owes to the fact that investors will incur less compliance costs, will face less instances of double taxation and will be able to reinvest the refunded money in a timely manner. This initiative will thus tackle a structural, longstanding obstacle to cross-border investment and will help EU companies raise capital from a wider base of investors, which is a core CMU objective.

While financial intermediaries would incur significant costs in the short-term to put in place the systems needed to comply with the new Directive, they are expected to benefit in the longer term from costs savings (estimated approximately at EUR 13.5 million per year) due to streamlined procedures, notably thanks to the digitalisation of some aspects of the initiative like the use of the eTRC or relief request in bulk basis.

Finally, tax administrations will be better equipped to fight tax abuse, which should have a positive impact on tax revenues eventually. The GDP is expected to be positively impacted by this initiative, in a range of 0.025%.

##### *Costs*

Financial intermediaries will face implementation costs and annual recurring costs of EUR 75.9 million and EUR 13 million respectively. Tax administrations will also incur IT development costs for implementing the eTRC (estimated in a range of EUR 4.9-54 million of development costs and EUR 0.97-10.8 million of recurring costs) and the reporting systems needed to receive data (estimated at a one-off cost of EUR 18.2 million and EUR 3.5 million per year of recurring costs). Finally, given that there will be less instances of double taxation, Member States will face a reduction in tax revenues estimated at EUR 2.2 billion.

- **Regulatory fitness and simplification**

The proposal has, as one of the main specific objectives, the introduction of digitalisation in the WHT procedures in order to achieve fully automated ways of issuing the eTRC, the

reporting of information, the submitting of a request for relief or refund and checking the data. Another objective sought by the initiative is to avoid the proliferation of different systems in Member States by standardising some elements of the WHT procedures.

In terms of the One In, One Out approach, the initiative will lead to cost savings for investors related to a decrease in paperwork (EUR 409 million per year) and cost savings for financial intermediaries related to streamlining procedures (EUR 13.5 million per year). At the same time, financial intermediaries will bear implementing costs of EUR 75.9 million one-off and EUR 13 million in recurring costs.

The proposal will introduce reporting obligations for financial intermediaries. Obtaining granular information is crucial for the tax administration of the source Member State to be able to assess and apply the appropriate reduced WHT rates and efficiently identify abusive practices, therefore achieving one of the objectives of the initiative. To limit the burden stemming from the reporting, the information to be reported by financial intermediaries has been limited to what is necessary to Member States to reconstruct the payment chain for dividends and interest and to the extent such information is available to reporting financial intermediaries. Moreover, reporting will be done by using standard computerised forms and common requirements for the communication channels to be laid down by the Commission by means of implementing acts.

In addition, for the sake of simplification and bringing lighter requirements to the WHT procedures for small investors, a de minimis rule has been introduced for the reporting obligations and due diligence procedure. It consists of not requesting information about financial arrangements or minimum holding period to investors with dividend payments below a threshold of EUR 1000.

- **Fundamental rights and equality**

Fundamental rights, in particular the requirements concerning the protection of personal data under the General Data Protection Regulation ('GDPR'), are safeguarded. The personal data will only be processed for the purposes of verifying that the correct WHT rate is applied to the taxpayer and mitigating the risk of tax fraud and abuse. Personal data will be transmitted only between entities which are involved in the WHT relief procedures under this Directive. The amount of personal data to be transmitted will be limited to what is necessary to detect underreporting, non-reporting or tax fraud or abuse, in line with the GDPR requirements. Personal data will be retained only as long as necessary for this purpose.

Equality, including gender equality, is not significantly impacted by this initiative.

- **Other impacts**

No other significant impacts. However, the initiative is expected to have limited positive social impact, since it would ensure fairer taxation; as well as a limited positive environmental impact, given the expected reduction in paper-based refund processes. Therefore, the current initiative is consistent with the fulfilment of the climate-neutrality objective as requested by the European Climate Law.

The proposal upholds the 'do no significant harm' and 'digital by default' principles and contributes to achieving the European way for a digital society and economy.

The relevant Sustainable Development Goals partially addressed by the initiative are 8 (Decent work and economic growth), 9 (Industry, innovation and infrastructure) and 16 (Peace, justice and strong institutions) as presented in Annex 3 of the impact assessment.

#### 4. 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. The legislative financial statement provides details regarding the human and administrative resources required.

#### 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

For the purpose of monitoring and evaluating the implementation of the Directive, Member States shall provide the Commission with data on an annual basis reflecting relevant information on the functioning of the Directive. The relevant information is to be defined via an implementing act as stated in Article 19 of the Directive.

The Commission shall evaluate the Directive five years after national rules transposing the Directive come into effect and every five years thereafter.

- **Detailed explanation of the specific provisions of the proposal**

The proposal is structured in two building blocks which are covered in chapters 2 and 3, respectively. Chapter 2 provides for the creation of an EU-wide digital tax residence certificate, whilst Chapter 3 deals with the WHT relief procedures. It includes the procedure to establish National Registers for specific financial intermediaries (Certified Financial Intermediary - CFI), standardised reporting obligation for such CFI, and the obligation for Member States to set up a relief at source system or a quick refund system or a combination of both to ensure swift and secure relief from WHT, based on DTT or domestic rules, for EU and non-EU investors, when certain transparency conditions are met. As these procedures concern only specific Member States that need to provide relief of excess withholding taxes, Chapter 3 is binding only on those Member States.

- (i) **Common digital tax residence certificate (eTRC)**

The eTRC is to be introduced by all Member States and will provide a fast, easy and secure administrative process to confirm EU taxpayers' tax residency.

As laid down in article 4 there will be a **common content** for the eTRC, regardless of the issuing Member State, i.e. the Member State of residence. The elements established in paragraph 2 as common content for the eTRC are those identifying the requesting taxpayer and confirming that they are resident in the Member States according to its national rules.

Targeted consultations with Member States revealed that in terms of establishing investor residency, the same rules apply to deem the investor resident or not in a given Member State, regardless of the country of investment. Therefore, the Member State of the investment does not need to be mentioned in the eTRC. Such information will however be included in the relief request in order to identify the applicable reduced rate.

As the aim is to set up a standardised eTRC, which can be used to streamline WHT procedures, but which can also be used for other purposes, the proposal allows for adding information for those purposes.

Given that one of the objectives of this initiative is to reduce the administrative burden for tax administrations, investors and the financial industry, it is proposed that the eTRC covers at least the full calendar year in which it is requested. However, if the circumstances at the end

of the year do not support the content of the eTRC issued during the year, such eTRC can be deemed not valid by the issuing Member State and any other Member State concerned. The minimum covered period of the eTRC (one calendar year) should not be interpreted as preventing Member States from issuing eTRC with a longer covered period, depending on the concept of tax residence and internal decision of each Member State. Member States shall recognise the eTRC issued by another Member States as adequate proof of residence of a taxpayer in that other Member State, to the extent that such eTRC continues to be considered valid by the issuing Member State.

Member States will be required to issue an eTRC within one day, as long as they have been provided with a specific set of information and provided that no exceptional circumstances occur justifying a delay. In cases where the one-day issuance will not be met, the requested party should be notified by the Member State concerned. To meet the requirement of one-day issuance, a fully **automated system** to issue the eTRC should be implemented by Member States, which allows for requests via an online portal accessible to the taxpayer and parties authorised thereby (e.g. financial intermediaries requesting the eTRC on behalf of their clients).

The eTRC will be secured using an electronic seal in conformity with Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation)<sup>23</sup>. The envisaged method offers the possibility of both human and machine-readable versions of the digital tax resident certificate with PDF documents, or similar other formats, which can be used by automated systems.

#### (ii) Member States' National Registers

In order to benefit from the WHT relief procedures at the core of the Directive, investors will need to be able to engage with financial intermediaries that are certified to provide those services. There are two grounds for being certified as a Certified Financial Intermediary (CFI) and thus accessing the procedures of this Directive:

- On a compulsory basis: for (1) large institutions, as defined in article 5 paragraph 2 of Regulation (EU) No. 575/2013<sup>24</sup>, and (2) Central Securities Depositories in the scope of Regulation (EU) No. 909/2014<sup>25</sup> that are providing withholding tax agent services and that as such need to register with those Member States in which securities' issuers are located and where any of their clients have invested in.
- On a voluntary basis: for all other entities (including those that are established in a third country jurisdiction) acting as financial intermediaries and meeting specific requirements by registering in one or several of the National Registers set up in accordance with this Directive, at the discretion of the concerned intermediary; it is expected that registration should be with those Member States where their clients have investments in.

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<sup>23</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73–114)

<sup>24</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337)

<sup>25</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1–72)

Member States that do not need to provide relief of excess withholding tax, due to an exemption on WHT over dividend payments or in case the relevant domestic tax rate is always lower than or equal to the rate that could be applied under DTTs, do not need to have a National Register in place. Member States opting-in for providing relief at source or quick refund on excess tax withheld on interest on bonds as foreseen under this Directive should by default use the National Register already established to provide relief on excess tax withheld on dividends, or otherwise set up a National Register.

Non-compliant CFIs, including those non-compliant with registration requirements, will be subject to removal from the National Registers and/or penalties.

### **(iii) Common reporting**

This Directive aims to help in the fight against tax fraud and abuse in the field of excess WHT relief procedures and to make these procedures effective. Introducing transparency in the financial chain serves these two objectives since it enables the source Member State to receive the information needed to check that the correct WHT rate applies and to assess if anti-abuse rules needs to be applied. Setting up a common standard for reporting across the EU saves compliance costs for investors and financial intermediaries and allows for swifter and safer WHT relief procedures.

*Who has to report and to whom?*

The reporting obligations derive from the registration in one of the National Registers. All CFIs included in one or more of the National Registers are subject to reporting to the authority maintaining the register, and where applicable to the withholding tax agent, regardless of their country of residence (EU or outside the EU; or in a Member State with or without an own National Register in place).

CFIs registered in any National Register need to report where their clients' investment takes place in a Member State that has a National Register. Such source Member State will need to provide for relief and therefore needs to reconstruct the securities payment chain and identify the final investor. The Directive does not exclude the possibility that CFIs outsource the reporting obligation to another financial intermediary within the custodial chain insofar as the respective CFI remains accountable of the completion and correctness of such reporting.

Non-compliance with the reporting obligation will lead to penalties.

*What has to be reported?*

The Directive lays down a common set of reporting elements in Annex II. Each CFI shall report only on the part of the transaction that is visible for it, i.e., from whom it is receiving the dividend/interest and to whom it is paying the dividend/interest. Thus, the recipient of the full reporting, either the source tax administration or a WHT agent designated on its behalf, will have all the information needed to reconstruct the financial chain of the transaction from the investor to the securities' issuer.

The information reported to the tax administration will enable it to ascertain the identity of the final investor and his/her potential entitlement to the reduced WHT rate. Hence, the risk of double refunds is mitigated and the capacity for tax administrations to identify and combat other abusive and fraudulent practices, such as Cum/Cum, is enhanced.

Heading E of Annex II provides for two reporting requirements that are aimed at helping to combat WHT abuse, mainly Cum/Cum abuse schemes, (i) information about the holding period of underlying securities and (ii) information about financial arrangements linked to the securities for which the taxpayer is requesting relief.

The first element seeks information on whether the underlying securities have been bought within 2 days before the ex-dividend date, with the objective of helping prevent further fraudulent/abusive schemes for multiple reclaim of the same WHT when only one single reclaim should apply (Cum/Ex schemes).

The second element seeks information on whether the reporting financial intermediary is aware of any financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated at the ex-dividend date, with the objective of helping the tax administration to detect abusive tax arrangements (Cum/Cum schemes). A financial arrangement may be for example a repurchase agreement (repo) or securities lending but also derivatives products such as single stock futures. More specifically, a repurchase agreement involves the sale of securities at a specific price with a commitment to repurchase the same or similar securities at a fixed price on a specified future date. Securities lending involves transfer of the ownership of a security in return for collateral, usually another security, on the condition that the ownership of that security or similar securities will revert to the original owner at a specified future date. The definition is broad in order to allow to comprise different types of arrangements.

As the above schemes have been observed only in relation to dividend payments, the reporting elements under Heading E are not required in relation to interest paid on bonds. The same approach is followed with regard to very low amounts of dividends paid, which are considered to be low-risk cases that cannot justify the relevant reporting burden on CFIs. This does not preclude however Member States from applying appropriate consequences where they actually identify abuse, even for a low amount.

*How will the reporting take place?*

The reporting will take place via a standardised XML format scheme that will be set out in an implementing act to be adopted by the Commission. The automated channel to deliver the information from the economic operators to the corresponding tax administration or WHT agent acting on its behalf will be standardised and set out in this implementing act.

*When is the reporting obligation arising?*

The timeline to report the information comprised in Annex II is 25 days at the latest from the record date. Reporting should take place as soon as possible after the record date, unless a settlement instruction in respect of any part of a transaction is pending on the record date, in which case the reporting for that transaction should occur as soon as possible after the settlement. In practice all positions are normally settled within 10-15 days from the record date. If this has not happened by the 20th day, in order to achieve efficient relief of excess withholding taxes, the Directive requires that CFIs should still proceed with reporting the situation as on the 20th day and within the next 5 following days.

In Member States where relief at source will apply and the dividend payment date is earlier than 25 days from record date, the financial intermediaries should have a mechanism in place to timely provide information to the WHT agent on the rate to be applied.

#### **(iv) Systems of relief**

The proposal provides: (a) a relief at source system; and (b) a quick refund system. Under a relief at source system, the correct amount of taxes is applied by the WHT agent at the time of the dividend/interest payment (article 12). Under a quick refund system, the tax is withheld at the higher rate applied in the source country but the excess tax is then given back within a set time frame of maximum 25 days from the date of the request or from the date when the required reporting is fulfilled, whichever the latest. This should take place within 50 calendar days from payment date (article 13). In both cases, the relevant actors in the procedures would

be CFIs acting on behalf of their investors. Articles 10 (request for relief at source or quick refund) and 11 (due diligence procedures) lay down elements that are common to both systems.

While applying the relief procedures, the competent tax administration may decide to outsource the relevant tasks to a nominated withholding tax agent instead of managing the tasks alone.

Each Member State that applies relief procedures for excess withholding tax may decide to apply the relief at source or quick refund system or both as well as whether or not to use the above outsourcing possibility. However, such Member States need to ensure that at least one of the two systems is available to all investors and actually activated and, in all cases, that the conditions set out by this Directive are met. Within these two systems Member States have the discretion, for instance, to only allow low risk taxpayers to request relief at source whilst other taxpayers can only request a quick refund. Member States that do not use excess withholding tax relief procedures because they do not provide for withholding tax at all or they do not provide for different rates of withholding tax in different circumstances are not concerned by these systems and are not required to take action.

In all cases, with respect to evidence of the residence of the investors, Member States should rely primarily on the eTRC, as defined in article 4, or an appropriate proof of tax residence from a non-EU country.

A major goal of this Directive is to prevent abusive/fraudulent tax practices and in particular Cum/Ex and Cum/Cum schemes. Member States' tax administrations that wish to have more time to do some checks before agreeing to give relief have the possibility to not apply the relief at source or quick refund systems to be introduced under this Directive in some specific circumstances. This possibility is specifically envisaged in the case of a request for exemption and when information provided under heading E of Annex II indicates that the underlying securities have been acquired within two calendar days of the ex-dividend date and/or that the financial intermediary reports being aware of a financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated at the ex-dividend date.

Where the relief at source and quick refund systems set out in this Directive do not apply, a standard refund procedure will be applied, where the taxpayer or its appointed representative, which does not necessarily have to be a financial institution, are able to directly request a refund to the tax authority. This Directive also ensures that at least the content of the information to be reported to the tax authority will cover the information envisaged under heading E of Annex II.

### **General Provisions**

Chapter 4 deals with general and final provisions and in particular, implementing acts, evaluation and monitoring, data protection rules, transposition and entry into force. This proposal, once adopted, should be transposed into Member States' national law by 31 December 2026. It should come into effect as of two years after the implementing acts have been adopted, which is expected to be by 1 January 2027.



Proposal for a

## **COUNCIL DIRECTIVE**

### **on Faster and Safer Relief of Excess Withholding Taxes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>26</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>27</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) 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. Such obstacles exist, for example, through inefficient and disproportionately burdensome procedures to relieve excess taxes withheld at source on dividend or interest income paid on shares or bonds traded publicly to non-resident investors. In addition, the status quo has proven inadequate in preventing recurring risks of tax fraud, evasion and avoidance, as shown by the recent Cum/Ex and Cum/Cum scandals. This proposal seeks to make EU withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and abuse. It draws on relevant previous actions at EU and international level, such as the 2009 Commission Recommendation on the simplification of withholding tax procedures and the OECD's Treaty Relief and Compliance Enhancement (TRACE) initiative<sup>28</sup>.
- (2) In order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by fragmentation and a general lack of reliable and timely information on investors, it is therefore 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. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such

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<sup>26</sup> OJ C , , p. .

<sup>27</sup> OJ C , , p. .

<sup>28</sup> Commission Recommendation of 19 October 2009 on withholding tax relief procedures (Text with EEA relevance) (OJ L 279, 24.10.2009, p. 8–11)

as the digitalisation of the certificate of tax residence (in terms of procedure and form), which is a pre-requisite for investors to have access to any relief or refund procedures. Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ensuring greater convergence and providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance.

- (3) To ensure a proportionate approach, rules regarding the procedures to relieve excess withholding taxes should be binding only on those Member States that apply withholding tax on dividends at different rates depending on the specific investor's tax residence. In this case, Member States need to provide relief where a higher rate has been applied in a situation for which a lower rate is applicable. In addition, Member States should have the opportunity to implement similar procedures in relation to interest payments to non-residents on publicly traded bonds, to improve the efficiency of the relevant relief procedure and ensure a higher level of taxpayers' compliance. Member States that do not need relief procedures in relation to excess withholding taxes on dividends, and interest, as the case may be, are not concerned by the procedures set out in this Directive and therefore not bound by these rules. Given that investors may be located in any Member State, rules for a common and digital tax residence certificate should apply in all Member States and the same is the case for general and final provisions.
- (4) To ensure that all EU taxpayers have access to a common, appropriate and effective proof of their residence for tax purposes, Member States should use automated procedures for the issuance of tax residence certificates in the same recognisable and acceptable digital form and with the same content. To allow for greater efficiency, the certificate should be valid at least for the whole year during which it has been issued and recognised by other Member States for that period. Member States can rescind an eTRC issued where the tax administration has proof to the contrary of the tax residence for that year. In order to allow for an efficient identification of EU companies, the certificate should include information on the European Unique Identifier (EUID).
- (5) To fulfil the objective of more efficient relief of excess withholding tax, common procedures should be implemented that allow to quickly obtain clear and secure information on the identity of the investor especially in the case of large investor bases, i.e., in relation to investment to publicly traded securities, where identifying the identity of the individual investors is challenging. Such procedures should also, as a second step, allow for the application of the appropriate tax rate at the time of payment (relief at source) or for the quick reimbursement of any excess amount of tax paid. Given that cross-border investments usually involve a payment chain of financial intermediaries, relevant procedures should equally allow for the tracing and identification of the chain of intermediaries and hence of the income flow from the issuer of the security until the final recipient, i.e., the sole investor or registered owner. Relevant Member States, i.e., those applying withholding tax on income from securities and providing relief for excess tax, should therefore establish and maintain a national register of those financial intermediaries that have a significant role in the payment chain, and once registered require them to report information available to them about the dividend or interest payments, if applicable, they handle. The information required should be limited to information that is crucial to reconstruct the payment chain and therefore useful to prevent risk of fraud or abuse, to the extent that such information is available to the reporting intermediary. Member States that apply

withholding tax on interest at varying rates and need to engage in similar relief procedures may also consider using the established national register, as the case may be.

- (6) As the financial intermediaries most often engaged in the securities' payment chains are large institutions as defined in the Capital Requirements Regulation (CRR)<sup>29</sup> as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States established as above. Other financial intermediaries should be allowed to request registration at their discretion. Registration should be requested by the financial intermediary itself by submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. The purpose of the requirements is to verify that the requesting intermediary meets the requirements of relevant EU regulation and supervised for compliance therewith. Where the financial intermediary is established outside the EU, it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list). Compliance of a third country financial intermediary with the relevant EU requirements relates solely for the purposes set out in this Directive and has no impact on the exercising or application of any other rights and obligations under other EU legislation. Once registered, financial intermediaries should be considered "certified financial intermediaries" in the respective Member State and be subject to the relevant reporting and notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of certified financial intermediaries found to have violated their obligations a number of times. Where a Member State takes such action of removal, it should inform other Member States that maintain a national register accordingly in order to allow them to assess the removal of the same certified financial intermediary from their own national register. National legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.
- (7) To ensure greater transparency on the identity and the circumstances of the investor receiving a dividend or interest payment as well as on the flow of the payment from the issuer, certified financial intermediaries should report to the authority designated to maintain the national register, within specific timelines, a relevant set of information. This information should also be reported to the withholding tax agent, where relief at source is possible. This data should include information on the eligibility of the investor concerned, but should be limited to the information that is available to the reporting certified financial intermediary. Financial intermediaries that are not under an obligation to register as certified financial intermediaries and have also opted not to

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<sup>29</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

register as such, do not have reporting obligations under this Directive. Nevertheless, information on the payments handled by such intermediaries that are not certified financial intermediaries remains relevant and may be considered necessary by a Member State, at its discretion, to ensure transparency and to allow for the proper reconstruction of the payment chain before applying the relief procedures set out in this Directive (relief at source or quick refund). Therefore, Member States may request that certified financial intermediaries obtain this information from such intermediaries and report accordingly in order for the relief procedures laid out in this Directive to be applicable.

- (8) In order to render the Capital Markets Union more effective and competitive, procedures for relief of excess withholding taxes on securities' income should be facilitated and accelerated, where adequate information has been provided by relevant certified financial intermediaries, including on the identity of the investor. The relevant certified financial intermediaries consist of all the certified financial intermediaries in the payment chain between the investor and the issuer of the securities, which might be required to also provide information on payments effected by non-certified financial intermediaries in the chain, as per the policy choice of each Member State. Taking into account the different approaches in Member States, two types of procedures are envisaged: (i) relief at source by direct application of the appropriate tax rate at the time of withholding and (ii) quick refund within a maximum of 50 days of the date of payment of the dividend or, as the case may be, of the date when the bond issuer must pay interest to the bond holder (coupon date). Member States should be free to introduce any of the two or a combination of both procedures, as they deem appropriate while ensuring that at least one is available for all investors, where the requirements of this Directive have been met. To ensure the proper and timely implementation of these procedures by the Member States concerned, it is appropriate to apply interest on late refunds of excess withholding taxes that are covered by this Directive and meet the conditions to benefit from these procedures. Where relevant requirements are not met, or the investor concerned so desires, Member States should apply their existing standard refund procedures to relieve excess withholding taxes. In any case, registered owners, in particular retail investors, and their authorized representatives, should preserve the right to reclaim excess withholding tax paid in a Member State where they provide proof of meeting the conditions set out in national law.
- (9) In order to safeguard the systems for relief of excess withholding taxes, Member States maintaining a national register should also require certified financial intermediaries to verify the eligibility of investors that wish to claim a relief. In particular, certified financial intermediaries should collect the tax residence certificate of the relevant investor, and a declaration that such investor is the beneficial owner of the payment according to the legislation of the source Member State. They should also verify the applicable withholding tax rate based on the investor's specific circumstances and indicate if they are aware of any financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated at the ex-dividend date. Certified financial intermediaries should be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of these obligations, to the extent that national law of the Member State where the loss incurred so provides. In order to ensure proportionality of the burden and liability imposed on certified financial intermediaries, reduced verification obligations should apply to all relief procedures, where the risk of abuse is low and in particular where the total amount of the dividend paid to the investor for a shareholding in a company is lower

than EUR 1000. Should such abuse be proven otherwise, Member States can however apply consequences under national law, including denying the systems of relief provided in this Directive, but they cannot hold certified financial intermediaries liable for absence of verification.

- (10) It is acknowledged that financial arrangements can be used to shift the economic ownership, in whole or in part, of a security and/or relevant investment risks. It has also been evidenced that such arrangements have been used in dividend arbitrage and dividend stripping schemes such as the Cum/Ex and Cum/Cum schemes, with the sole purpose to obtain refunds when there was no entitlement thereto or to increase the amount of refund to which an investor was actually entitled. Information on such financial arrangements, which encompass ordinarily legitimate securities transactions such as repurchase agreements or securities lending, and also derivative products such as single stock futures, is therefore necessary for tax administrations to fight tax abuse. To ensure a proportionate approach, reporting on this information should only be required by those certified financial intermediaries that, due to their position within the chain, may have been directly involved in the relevant financial arrangement. Such reporting is not required in the case of bonds and interest payments.
- (11) In order to ensure effectiveness, Member States should establish penalties regime for violations of the national rules transposing this Directive. Such penalties should be effective, proportionate and dissuasive.
- (12) The proper implementation and enforcement of the proposed rules in each Member State concerned is critical for the promotion of the CMU as a whole as well as for the protection of the tax base of Member States and should therefore be monitored by the Commission. Member States should therefore communicate to the Commission on a regular basis, information as specified by means of implementing act, on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive. The Commission should prepare an evaluation on the basis of the information provided by Member States and other available data to evaluate the effectiveness of the proposed new rules. In this context the Commission should consider the need to update the rules introduced by virtue of this Directive.
- (13) In order to ensure uniform conditions for the implementation of this Directive, in particular for (i) the digital tax residence certificate, (ii) the reporting of financial intermediaries and (iii) the request for relief under this Directive, implementing powers should be conferred on the Commission to adopt standard forms with a limited number of components, including the linguistic arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>30</sup>.
- (14) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>31</sup>. Financial intermediaries and Member States may process personal data

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<sup>30</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

under this Directive solely with the objective of serving a general public interest, namely for the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. To allow the effective pursuit of this objective, it is necessary to restrict certain rights of individuals provided by the aforementioned Regulation, especially the right to be notified on the processing of their data and the scope thereof as well as the right to consent on certain types of data processing.

- (15) Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the cross-border nature of the transactions concerned and the need to reduce compliance costs in the internal market as a whole, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (16) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>32</sup>.

HAS ADOPTED THIS DIRECTIVE:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

#### **Subject matter**

This Directive 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.

#### *Article 2*

#### **Scope**

Chapters I and IV shall apply to all Member States. Chapter II shall apply to all Member States with regards to all persons that are resident for tax purposes in their jurisdiction.

The procedures laid down in Chapter III shall apply to all Member States that provide relief of excess withholding tax on dividends paid for publicly traded shares. Member States that provide relief of excess withholding tax on interest paid for publicly traded bonds may apply Chapter III.

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<sup>32</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)

### *Article 3* **Definitions**

For the purposes of this Directive the following definitions shall apply:

- (1) ‘excess withholding tax’ means the difference between the amount of withholding tax levied by a Member State on payments to non-resident owners of dividends or interest from securities by applying the general domestic rate and the lower amount of withholding tax applicable by that Member State on the same dividends or interest in line with a double tax treaty or specific national legislation, as the case may be.
- (2) ‘publicly traded share’ means share admitted to trading on a regulated market or multilateral trading facility as defined under points 21 and 22 of Article 4 of Directive 2014/65/EU of 15 May 2014<sup>33</sup>.
- (3) ‘publicly traded bond’ means a bond admitted to trading on a regulated market or multilateral trading facility or organised trading facility as defined under points 21, 22 and 23 of Article 4 of Directive 2014/65/EU of 15 May 2014 respectively.
- (4) ‘financial intermediary’ means a central securities depository as defined in Article 2 (1) of Regulation (EU) 909/2014 of 23 July 2014<sup>34</sup>, a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>35</sup> or an investment firm, as defined in point (1) of Article 4(1) in Directive 2014/65/EU or a third country legal person that has been authorised to provide services comparable to those provided by a central securities depository, a credit institution or an investment firm under comparable legislation of a third country of residence, which is part of the securities payment chain between the entity issuing securities and the registered owner receiving payments on such securities.
- (5) ‘EUID’ means the European Unique Identifier for companies as referred to in Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council<sup>36</sup>.
- (6) ‘tax identification number or TIN’ means the unique identifier for tax purposes of a registered owner as such in a Member State.
- (7) ‘withholding tax relief procedure’ means a procedure whereby a registered owner receiving dividends or interest from securities that can be subject to excess withholding tax is relieved or reimbursed for such excess tax.
- (8) ‘competent authority’ means the authority which has been designated by a Member State in accordance with Article 5 and includes any person authorised in accordance with national rules by such authority to act on its behalf for the purposes of this Directive.

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<sup>33</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 2.6.2014, p. 349)

<sup>34</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1–72)

<sup>35</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

<sup>36</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169, 30.6.2017, p. 46–127)

- (9) 'security' means a publicly traded share or a publicly traded bond.
- (10) 'large institution' means a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013.
- (11) 'withholding tax agent' means an entity authorised by the source Member State to assume responsibility for the deduction of withholding tax from payment of dividends or interest from securities and the transfer of such withholding tax to the tax authority of the source Member State.
- (12) 'record date' means the date set by the issuer of a security, on which the identity of the holder of such security and the rights flowing therefrom, including the right to participate and vote in a general meeting, where relevant, shall be determined, based on the settled positions struck in the books of the financial intermediary by book-entry at the close of its business as defined in Article 1 (7) of Regulation 2018/1212<sup>37</sup>.
- (13) 'settlement' means the completion of a securities transaction where it is concluded with the aim of discharging the obligation of the parties to that transaction through the transfer of cash or securities or both, as defined in point 7 of Article 2 of the Regulation (EU) 909/2014 of 23 July 2014.
- (14) 'registered owner' means any natural or legal person that is entitled to receive dividend or interest income from securities subject to tax withheld at source in a Member State.
- (15) 'investment account' means the account or accounts provided by financial intermediaries to registered owners via which their securities are held or registered and to which the payments related to these securities are made.
- (16) 'ex-dividend date' means the date as from which the shares are traded without the rights flowing from the shares, including the right to participate and vote in a general meeting, where relevant.
- (17) 'financial arrangement' means any arrangement or contractual obligation whereby any part of the ownership of the publicly traded share, on which a dividend is paid, is or could be, either permanently or temporarily transferred to another party.
- (18) 'securities payment chain' means the sequence of financial intermediaries handling the payment of dividends or interest on securities between the securities' issuer and a registered owner to whom dividends or interest from such securities are paid.
- (19) 'double tax treaty' means an agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force between two (or more) countries.
- (20) 'source Member State' means the Member State of residence of the issuer of the security paying dividend or interest.
- (21) 'quick refund system' means a system where a payment of dividend or interest is made taking into account the general domestic withholding tax rate followed by a

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<sup>37</sup> Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholder rights (OJ L 223, 4.9.2018, p. 1).



request for refund of the excess withholding tax within the timeframe set in Article 13.

- (22) ‘relief at source system’ means a system where the appropriate withholding tax rate, in accordance with the applicable domestic rules and/or international agreements, such as the relevant double tax treaty, is applied at the moment of payment of dividends or interest.
- (23) ‘standard refund system’ means a system where a payment of dividends or interest is made taking into account the general domestic withholding tax rate followed by a request for refund of the excess withholding tax outside the procedure set out in Article 13.
- (24) ‘euro short-term rate’ means the euro short-term rate as defined in Guideline (EU) 2019/1265 of the European Central Bank of 10 July 2019<sup>38</sup>.

## CHAPTER II

### DIGITAL TAX RESIDENCE CERTIFICATE

#### *Article 4*

#### **Digital tax residence certificate (eTRC)**

1. Member States shall provide for an automated process to issue digital tax residence certificates (eTRC) to a person deemed resident in their jurisdiction for tax purposes.
2. Member States shall issue the eTRC within one working day from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:
  - (a) the first and last name of the taxpayer and the date and place of birth, if the taxpayer is an individual, or its name and its European Unique Identifier number (EUID), if the taxpayer is an entity
  - (b) tax identification number;
  - (c) address of the taxpayer;
  - (d) date of issuance;
  - (e) the covered period;
  - (f) identification of the tax authority issuing the certificate;
  - (g) any additional information that may be relevant where the certificate is issued to serve purposes other than relief of withholding tax under this Directive or information required to be included in a tax residence certificate under EU law.
3. An eTRC shall cover at least the whole calendar year in which the request for such certificate is made and shall be valid for such covered period unless and until the Member State issuing the eTRC has evidence that the person to which the eTRC refers is not resident in its jurisdiction.

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<sup>38</sup> Guideline (EU) 2019/1265 of the European Central Bank of 10 July 2019 on the euro short-term rate (€STR) (ECB/2019/19) (OJ L 199, 26.7.2019, p. 8–17)

4. If more than one working day is required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay.
5. Member States shall recognise an eTRC issued by another Member State as adequate proof of residence of a taxpayer in that other Member State in accordance with paragraph 3.
6. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and technical protocols, including security standards, for the issuance of an eTRC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18.

### **CHAPTER III**

#### **WITHHOLDING TAX RELIEF PROCEDURE**

#### *SECTION 1*

#### **CERTIFIED FINANCIAL INTERMEDIARIES**

##### *Article 5*

#### **National register of certified financial intermediaries**

1. Member States that levy a withholding tax on dividends from publicly traded shares paid to registered owners resident for tax purposes outside that Member State and that provide relief of excess withholding tax shall establish a national register of certified financial intermediaries. Member States may opt to use this national register also in relation to relief of excess withholding tax on interest from publicly traded bonds, if applicable.
2. Member States that levy a withholding tax on interest from publicly traded bonds while they do not levy withholding tax on dividends from publicly traded shares may opt to establish a national register.
3. Member States establishing a national register according to paragraph 1 and 2 shall designate a competent authority responsible for maintaining and updating that register.
4. The national register shall include the following information on the certified financial intermediaries:
  - (a) name of the certified financial intermediary;
  - (b) date of registration;
  - (c) contact details and any existing website of the certified financial intermediary;
  - (d) the EUID, or, where the certified financial intermediary has no such number, the legal entity identifier (LEI) or any legal entity registration number issued by its country of residence.
5. The national register shall be made publicly accessible on a dedicated website of the Member State and updated at least once a month.

## Article 6

### Requirement to register as certified financial intermediary

1. Member States that maintain a national register according to Article 5 shall require all large institutions as referred to in Article 3(10) that handle payments of dividends and, where relevant, interest on securities originating in their jurisdictions, and central securities depositories as referred to in Article 3(4) that provide withholding tax agent services for the same payments, to register with their national register.
2. Member States maintaining a national register in accordance with Article 5 shall enable, upon request, the registration in that register of any financial intermediary meeting the requirements of Article 7.

## Article 7

### Registration procedure

1. Member States shall ensure that a financial intermediary is registered in their national register of certified financial intermediaries within three months from submission of a request of the financial intermediary that provides evidence of all of the following requirements:
  - (a) a residence for tax purposes in a Member State or third country jurisdiction not included on Annex I of the EU list of non-cooperative jurisdictions for tax purposes<sup>39</sup> nor on the table I of the Annex to Delegated Regulation (EU) 2016/1675<sup>40</sup>;
  - (b) if the requesting financial intermediary is a credit institution, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under points (12) or (14) of Annex I of Directive 2013/36/EU or comparable legislation of a third country; if the requesting financial intermediary is an investment firm, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under Section B(1) of Annex I of Directive 2014/65/EU or comparable legislation of a third country or; if the requesting financial intermediary is a central securities depository, an authorisation in the jurisdiction of residence for tax purposes under Regulation EU 909/2014 or comparable legislation of a third country of residence;
  - (c) a declaration of compliance with the provisions of Council Directive 2014/107/EU<sup>41</sup> or the provisions of Directive 2018/843/EU of the European Parliament and of the Council<sup>42</sup> as applicable or with a comparable legislation of a third country jurisdiction not included on Annex I of the EU list of non-

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<sup>39</sup> Council of the European Union, Economic and Financial Affairs Council, 14094/16, Brussels 8 November 2016

<sup>40</sup> Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1–4)

<sup>41</sup> Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1–29)

<sup>42</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43–74)

cooperative jurisdictions for tax purposes or on the table I of the Annex to Delegated Regulation (EU) 2016/1675.

2. Financial intermediaries shall notify without delay the competent authority of the Member State of any change in the information provided under points (a) to (c).

#### *Article 8*

##### **Removal from the national register**

1. Member States shall remove from their national register any certified financial intermediary, where such intermediary:
  - (a) requests such removal; or
  - (b) no longer meets the requirements of Article 7.
2. Member States may remove from their national register any certified financial intermediary that has been found to have repeatedly and intentionally not complied with its obligations under any of the following instruments:
  - (a) this Directive;
  - (b) Council Directive 2014/107/EU; or
  - (c) Directive 2018/843/EU; or
  - (d) comparable legislation of a third country of residence for tax purposes.
3. The Member State that removes a certified financial intermediary from its national register shall inform without delay all other Member States that maintain a national register according to Article 5.
4. Member States shall ensure that the financial intermediary that has been removed from the national register pursuant to paragraph 1 is re-registered where any non-compliance with the provisions of this Directive has been remedied, including payment or settlement of any amounts outstanding due to non-compliance therewith.

## **SECTION 2**

### **REPORTING**

#### *Article 9*

##### **Obligation to report**

1. Member States shall 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 after the record date, unless a settlement instruction in respect of any part of a transaction is pending on the record date, in which case the reporting for that transaction shall take place as soon as possible after the settlement. If 20 days after the record date, settlement is still pending for any part of the transaction, certified financial intermediaries shall report within the next 5 calendar days indicating the part for which settlement is pending.
2. Member States shall 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 owner's shareholding in a company does not exceed EUR 1000.

3. Member States that opt to use a national register established in accordance with Article 5 in relation to payments of interest, shall require certified financial intermediaries to report the information included in Annex II but shall not require reporting of information under heading E.
4. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and requirements for the communication channels, for the reporting of information referred to in Annex II. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18.
5. Member States shall require certified financial intermediaries in their national register to keep the documentation supporting the information reported for five years and to provide access to any other information, as well as access to their premises for the purpose of audit and shall require certified financial intermediaries to delete or anonymise any personal data included in such documentation as soon as the audit has been completed and at the latest five years after reporting.

### **SECTION 3**

#### **SYSTEMS OF RELIEF**

##### *Article 10*

#### **Request for relief at source or quick refund**

1. Member States shall require a certified financial intermediary maintaining the investment account of a registered owner receiving dividends or interest to request relief pursuant to Article 12 and/or Article 13, on behalf of such registered owner, if the following conditions are met:
  - (a) The registered owner has authorised the certified financial intermediary to request relief on its behalf; and
  - (b) The certified financial intermediary has verified and established the registered owner's eligibility in accordance with Article 11. Such verification may also include a risk assessment that takes into account the credit risk and fraud risk.
2. Notwithstanding paragraph 1, Member States shall not provide relief under the systems as provided for under Articles 12 and 13 for a request, where:
  - (a) the dividend has been paid on a publicly traded share that the registered owner acquired within a period of two days before the ex-dividend date;
  - (b) the dividend payment on the underlying security for which relief is requested is linked to a financial arrangement that has not been settled, expired or otherwise terminated at the ex-dividend date.
3. Notwithstanding paragraph 1, Member States may exclude requests from relief under Articles 12 and 13, where:
  - (a) at least one of the financial intermediaries in the securities payment chain is not a certified financial intermediary and a subsequent certified financial intermediary in the chain has not provided to the competent authority the information that the financial intermediary should report under this Directive if it were a certified financial intermediary; or

- (b) an exemption of the withholding tax is claimed.

#### *Article 11*

#### **Due diligence of registered owner's eligibility**

1. Member States shall ensure that the certified financial intermediary requesting relief under Article 12 and/or 13 on behalf of a registered owner obtains from such registered owner a declaration that the registered owner:
  - (a) is the beneficial owner of the dividend or interest as defined under the national legislation of the source Member State; and
  - (b) has not engaged in a financial arrangement linked to the underlying publicly traded share that has not been settled, expired or otherwise terminated at the ex-dividend date.
2. Member States shall ensure certified financial intermediaries requesting relief under Article 12 and/or 13 on behalf of a registered owner to verify:
  - (a) the eTRC of the registered owner and/or appropriate proof of tax residence in a third country;
  - (b) the registered owner's declaration and tax residence against information from the internal control mechanisms used by the certified financial intermediary in order to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849<sup>43</sup> or comparable information required in third countries;
  - (c) the registered owner's entitlement to a specific reduced withholding tax rate in accordance with a double tax treaty between the source Member State and the jurisdictions where the registered owner is resident for tax purposes or specific national legislation of the source Member State;
  - (d) in case of a dividend payment and based on the information available to the certified financial intermediary, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated at the ex-dividend date, unless the dividend paid to the registered owner for each group of identical shares held does not exceed EUR 1000.
3. Member States shall ensure that certified financial intermediaries have adequate procedures in place to perform verifications in accordance with paragraph 2.

#### *Article 12*

#### **Relief at source system**

Member States may allow certified financial intermediaries maintaining a registered owner's investment account to request relief at source on behalf of a registered owner in accordance with Article 10 by providing to the withholding tax agent the following information:

- (a) the tax residence of the registered owner; and

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<sup>43</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117)

- (b) the applicable withholding tax rate on the payment in accordance with a double tax treaty or specific national legislation.

### *Article 13*

#### **Quick refund system**

1. Member States may allow certified financial intermediaries maintaining a registered owner's investment account to request a quick refund of the excess withholding tax, on behalf of such registered owner in accordance with Article 10 if the information referred to in paragraph 3 of this Article is provided as soon as possible after the payment date and at the latest within 25 calendar days from the date of payment of the dividend or interest.
2. Member States shall process a refund request made in accordance with paragraph 1 within 25 calendar days from the date of such request or from the date reporting obligations under this Directive have been met by all relevant certified financial intermediaries, whichever is the latest. Member States shall apply interest in accordance with Article 14 on the amount of such refund for each day of delay after the 25<sup>th</sup> day.
3. A certified financial intermediary requesting quick refund shall provide the following information to the relevant Member State:
  - (a) identification of the dividend or interest payment as referred to in Annex II, heading B;
  - (b) the legal basis of the applicable withholding tax rate and total amount of excess tax to be refunded;
  - (c) the tax residence of the registered owner;
  - (d) the registered owner's declaration in accordance with Article 11.
4. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and requirements for the communication channels for the submission of requests under this Article. Those implementing acts shall be adopted, in accordance with the examination procedure referred to in Article 18.

### *Article 14*

#### **Late payment interest**

Member States shall apply interest in accordance with Article 13(2) at a rate equal to the interest or equivalent charge applied by the Member State to late payments of income tax by registered owners, or, if the national legislation of the Member States does not include such provision, at the Euro short-term rate plus 50 basis points or the equivalent interest rate used by their Central Bank plus 50 basis points, if they are not part of the European Exchange Rate Mechanism.

### *Article 15*

#### **Standard refund system**

Member States shall adopt appropriate measures to ensure that where Article 12 and Article 13 do not apply to dividends, because the conditions of this Directive are not met, a registered owner or its authorised representative requesting for refund of the excess withholding tax on

such dividends provides at least the information required under Annex II, heading E, unless the total dividend paid to the registered owner on the owner's shareholding in a company does not exceed EUR 1000, and unless this information has already been provided in accordance with the obligations of Article 9.

*Article 16*  
**Civil liability**

Member States shall take appropriate measures to ensure that if a certified financial intermediary does not comply, intentionally or negligently, with its obligations under Articles 9, 10, 11, 12 and 13, the certified financial intermediary can be held liable for all or part of the loss of withholding tax revenue incurred by the Member State in relation to a request under Article 12 or 13.

*Article 17*  
**Penalties**

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. These penalties shall be effective, proportionate and dissuasive.

**CHAPTER IV**  
**FINAL PROVISIONS**

*Article 18*  
**Committee procedure**

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011<sup>44</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 19*  
**Evaluation**

1. The Commission shall examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every 5 years. A report on the evaluation of the Directive, including on a potential need to amend specific provisions thereof, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.
2. Member States shall communicate to the Commission relevant information for the evaluation of the Directive in improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse, in accordance with paragraph 3.

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<sup>44</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18)



3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States for the purposes of evaluation and the format and the conditions of communication of that information.
4. Information communicated to the Commission under paragraph 2 shall be kept confidential by the Commission in accordance with the provisions applicable to Union institutions.
5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

#### *Article 20*

#### **Personal data protection**

1. Member States shall restrict data subject's rights under Articles 15 to 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>45</sup> only to the extent and only as long as it is strictly necessary for their competent authorities to mitigate the risk of tax fraud, evasion or avoidance in Member States, in particular by verifying that the correct withholding tax rate is applied for the registered owner, or by verifying that the registered owner obtains the relief if so entitled in a timely manner.
2. When processing personal data, certified financial intermediaries and the competent authorities of Member States shall be considered as controllers, in the meaning of Article 4, paragraph 7 of Regulation (EU) 2016/679, within the scope of their respective activities under this Directive.
3. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's domestic rules on statute of limitations, but in any case no longer than 10 years.

#### *Article 21*

#### **Notification**

A Member State that establishes and maintains a national register pursuant to Article 5, shall inform the Commission and other Member States thereof and of any subsequent changes to the rules governing such register. The Commission shall publish in the *Official Journal of the European Union* this information and shall update the information as necessary.

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<sup>45</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

*Article 22*  
**Transposition**

1. Member States shall adopt and publish, by 31 December 2026 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2027.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 23*  
**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 24*  
**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes, so-called FASTER (Faster and Safer Tax Excess Relief).

#### 1.2. Policy area(s) concerned

Tax policy.

#### 1.3. The proposal/initiative relates to:

A new action.

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

- 1) Facilitating cross-border investment in the EU by giving taxpayers proper and effective access to tax benefits arising from DTTs and EU Directives
- 2) Preventing tax abuse in the field of WHT
- 3) Economic benefits

##### 1.4.2. Specific objective(s)

- 1) Shorten time for relieving or refunding excess withholding tax
- 2) Ensuring financial intermediaries adhere to customer due diligence requirements and report thereon to tax administrations
- 3) Prevention of WHT abuse (Cum-Ex and Cum-Cum)
- 4) Equip Member States tax administrations with tools to deal with refund/relief at source procedures in a secure and timely manner
- 5) *Effect of the proposal on the economy*

##### 1.4.3. Expected result(s) and impact

The defined time limits within the Proposal would ensure that WHT reclaims would be refunded more quickly or that any lower applicable WHT rate would apply at the time of the payment. The reporting obligations would ensure that information is reported to the tax authorities to allow for major transparency and that such information is effectively used to combat tax fraud, tax evasion and tax avoidance in WHT reclaim/relief systems in the EU while ensuring efficiency of the system. A secondary aim is to have a positive effect on economic indicators like GDP, wages and employment.

##### 1.4.4. Indicators of performance

Specific objective	Indicators	Measurement tools
Shorten time for relieving/refunding excess tax withheld	Whether payment days for WHT reclaims are in line with pre-defined payment time-frames in the proposal	Annual data to be supplied to the Commission by source Member State

	and, where appropriate, late interest payment penalties are paid to investors for late refund payments	
Ensuring certified financial intermediaries adhere to the customer due diligence requirements and reporting obligations	Monitoring activities of the Member State to ensure compliance of EU financial intermediaries (by the Member State where they are registered in the National Register) and non-EU financial intermediaries (by Member State where they are registered)	Annual report to be supplied by Member State with the National Register where the financial intermediary is registered.
Prevention of tax abuse	Annual assessment by the source Member State on the usefulness of data reported by intermediaries/WHT agents to actually detect and prevent tax abuse. The assessment will include the use and benefits (number of abuse cases and related amounts) of reported data for detecting and combatting WHT tax abuse (Cum/Ex and Cum/Cum).	Annual assessment to be supplied to the Commission by the source Member State.
Equip Member States tax administrations with tools to deal with refund/relief at source procedures in a secure manner	Accuracy and completeness of information reported by financial intermediaries/WHT agents to the source Member State tax administration  Annual assessment by the source Member State of the enforceability of liability allocation rules at national level	Annual assessment to be supplied to the Commission by the source Member State.
Effect of the proposal on the EU economy	An assessment of the economic effects of the proposal on GDP, investment, wages and employment. This assessment will include the data source and methodology used in the JRC studies in Annex 4 of the impact assessment accompanying the proposal, including the CPIS security cross-border	An annual assessment to be performed by the Commission

	survey	
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## **1.5. Grounds for the proposal/initiative**

### *1.5.1. Requirement(s) to be met in the short- or long-term including a detailed timeline for roll-out of the implementation of the initiative*

The Commission will need to undertake the following measures for the implementation of the initiative: (1) provide technical support for implementation of the system to issue the eTRC; and (2) provide the framework for the system of reporting and request forms by financial intermediaries to Member States.

The eTRC will be issued with an electronic seal and be in conformity with Regulation (EU) No 910/2014 of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation). At a later stage, Member States will consider introducing a verification process through verifiable credentials if the technical requirements of the EU are met. It is expected that the eTRC and the verification process will be in place within 18 months after the Directive has been adopted.

The Commission will be required to offer the service of a registry of trusted issuers' public keys (assuming public keys need to be changed periodically) for the implementation of the eTRC by Member States.

Further, the Commission will support a Technical Committee regarding possible changes of a technical basis of the digital tax residence certificate or new technical developments.

Financial intermediaries that come within the scope of the Proposal will be required to report to Member States for dividend paid on publicly traded shares and/or interests paid on publicly traded bonds. The information to be reported is laid down in the Proposal. The Commission is empowered to adopt implementing acts concerning the content of the information to be reported. Further, through an implementing act, the Commission will lay down the standardised computerised forms based on xml or an equivalent format, including the linguistic arrangements, for the reporting of the information. The Commission will also specify requirements for the communication channels/protocols for the reporting systems that would be required for financial intermediaries to exchange information with the Member State tax authorities within the scope of the Proposal.

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone*

In order to streamline the excess WHT relief/ refund process and ensure quicker WHT refund payments, it is preferable to avoid a patchwork of requirements, unilaterally implemented by different Member States using different procedures.

By providing a standard reporting system common across the EU, all Member States will have full transparency of the dividend and interest payment chain, which is not currently the case. The data obtained will help identify and prevent WHT relief/refund abuse (Cum/Ex and Cum/Cum).

A solution at EU level that would digitalise and harmonise key features of WHT relief procedures while respecting the principle of proportionality would be expected to result in a lower administrative burden and hence time and costs savings for tax administrations, investors and financial intermediaries.

#### *1.5.3. Lessons learned from similar experiences in the past*

The initiative is a new mechanism at EU level. Only a very limited number of Member States have introduced to date quick refund systems, and these have encountered problems in their implementation.

Currently, the reporting of information by financial intermediaries is limited and is usually only reported by the securities issuer/WHT agent in the financial chain and not by other financial intermediaries. The initiative would provide for full transparency of dividend and interest payments in the financial chain to identify and prevent WHT relief/refund abuse.

#### *1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

This Directive reflects one of the actions laid down in the 'Action Plan for fair and simple taxation supporting the recovery strategy' and the 'Capital Market Union Action Plan 2.0'.

Ensuring fair taxation requires preventing tax abuse. The Proposal will use similar procedures, arrangements and IT tools already established or under development under the DAC.

### 1.5.5. Assessment of the different available financing options, including scope for redeployment

The Commission will assist Member States with the implementation of the eTRC, including on-going technical support. In addition, ongoing support to Member States by the Commission is needed for implementing and monitoring the framework for the reporting arrangements for financial intermediaries. Relevant costs will be financed by the EU budget.

Otherwise, it will be for Member States to implement the measures envisaged.

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

in effect from [DD/MM]YYYY to [DD/MM]YYYY

Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### – unlimited duration

Implementation with a start-up period from YYYY to YYYY, followed by full-scale operation.

## 1.7. Management mode(s) planned

–  **Direct management** by the Commission

by its departments, including by its staff in the Union delegations;

by the executive agencies

–  **Shared management** with the Member States

–  **Indirect management** by entrusting budget implementation tasks to:

third countries or the bodies they have designated;

international organisations and their agencies (to be specified);

the EIB and the European Investment Fund;

bodies referred to in Articles 70 and 71 of the Financial Regulation;

public law bodies;

bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

The Commission will ensure that arrangements are in place to monitor and evaluate the functioning of the intervention and evaluate it against the main policy objectives.

Member States will submit data on an annual basis to the Commission with the information outlined in the above Table on indicators of performance which will be used to monitor compliance with the Directive. As monitoring data is available, and if deemed appropriate, the Commission will assess revising some its features in accordance with the technical support for the eTRC and the implementing act for the reporting system.

An evaluation will take place five years after the implementation of the Directive which will allow the Commission to review the results of the policy with respect to its objectives as well as the overall impacts in terms of improving the WHT refund/relief systems in the EU and also for preventing WHT tax abuse.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The implementation of the initiative will rely on the competent authorities (tax administrations) of the Member States. They will be responsible for financing their own national systems, including the implementation of the eTRC, and the setting up of national systems to receive reporting and requests from financial intermediaries.

The Commission will finance the technical assistance for the eTRC and the establishment at EU level of the frameworks for the reporting systems and the request forms.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

With regard to ensuring that WHT reclaims are refunded/relieved within the time limits, Member States will be required to report to the Commission on an annual basis statistics on how many excess WHT reclaims were refunded/relieved within the time limits and how many beyond the time limits. For the latter, a justification should be provided. Further, Member States will be required to make late interest payments to the taxpayer for refunds beyond the time limits without justification.

With regard to compliance of their certified financial intermediaries in the national registers, Member States will provide an annual report to the Commission on the



audits and activities they have undertaken to ensure the compliance of their financial intermediaries with their obligations of the Directive, including reporting obligations. Further, financial intermediaries shall be held liable for the breach of their obligations under this Directive if their conduct has resulted in a loss of tax revenue.

Member States will be required to provide an annual report to the Commission on the use of data reported under the Directive to detect and combat excess WHT relief/refund abuse.

The main elements of the control strategy are:

#### Procurement contracts

The control procedures for procurement defined in the Financial Regulation: any procurement contract is established following the established procedure of verification by the services of the Commission for payment, taking into account contractual obligations and sound financial and general management. Anti-fraud measures (controls, reports, etc.) are foreseen in all contracts concluded between the Commission and the beneficiaries. Detailed terms of reference are drafted and form the basis of each specific contract. The acceptance process follows strictly the TAXUD TEMPO methodology: deliverables are reviewed, amended if necessary and finally explicitly accepted (or rejected). No invoice can be paid without an "acceptance letter".

#### Technical verification of procurement

DG TAXUD performs controls of deliverables and supervises operations and services carried out by contractors. It also conducts quality and security audits of their contractors on a regular basis. Quality audits verify the compliance of the contractors' actual processes against the rules and procedures defined in their quality plans. Security audits focus on the specific processes, procedures and set-up.

In addition to the above controls, DG TAXUD performs the traditional financial controls:

#### Ex-ante verification of commitments

All commitments in DG TAXUD are verified by the Head of the Finances and the HR business correspondent Unit. Consequently, 100% of the committed amounts are covered by the ex-ante verification. This procedure gives a high level of assurance as to the legality and regularity of transactions.

#### Ex-ante verification of payments

100% of payments are verified ex-ante. Moreover, at least one payment (from all categories of expenditures) per week is randomly selected for additional ex-ante verification performed by the head of the Finances and HR business correspondent Unit. There is no target concerning the coverage, as the purpose of this verification is to check payments "randomly" in order to verify that all payments were prepared in line with the requirements. The remaining payments are processed according to the rules in force on a daily basis.

#### Declarations of the Authorising Officers by Sub-Delegations (AOSD)

All the AOSD sign declarations supporting the Annual Activity Report for the year concerned. These declarations cover the operations under the programme. The AOSD declare that the operations connected with the implementation of the budget have been executed in accordance with the principles of the sound financial

management, that the management and control systems in place provided satisfactory assurance concerning the legality and regularity of the transactions and that the risks associated to these operations have been properly identified, reported and that mitigating actions have been implemented.

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The controls established enable DG TAXUD to have sufficient assurance of the quality and regularity of the expenditure and to reduce the risk of non-compliance. The above control strategy measures reduce the potential risks below the target of 2% and reach all beneficiaries. Any additional measures for further risk reduction would result in disproportionately high costs and are therefore not envisaged. The overall costs linked to implementing the above control strategy – for all expenditures under Fiscalis programme – are limited to 1.6% of the total payments made. It is expected to remain at the same ratio for this initiative. The programme control strategy limits the risk of non-compliance to virtually zero and remains proportionate to the risks entailed.

### **2.3. Measures to prevent fraud and irregularities**

The European Anti-fraud Office (OLAF) may carry out investigations, including on the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/964 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL

#### 3.1 Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number: 03 04 0100	Diff./Non-diff. <sup>46</sup>	from EFTA countries <sup>47</sup>	from candidate countries <sup>48</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1 - Single Market, Innovation and Digital	Improving the proper functioning of the taxation systems	Diff.	NO	NO	NO	NO

New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>46</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>47</sup> EFTA: European Free Trade Association.

<sup>48</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2 Estimated financial impact of the proposal on appropriations

#### 3.2.1 Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	<b>Number</b> 1	Single Market, Innovation and Digital
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DG: TAXUD			2023	2024	2025	2026	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Budget line <sup>49</sup> 03.04.01	Commitments	(1a)	0.150	0.400	0.200	0.330	0.180			<b>1.26</b>
	Payments	(2a)		0.150	0.400	0.200	0.330	0.180		<b>1.26</b>
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>50</sup>										
Budget line		(3)								
<b>TOTAL appropriations</b>	Commitments	=1a+1b +3	0.150	0.400	0.200	0.330	0.180			<b>1.26</b>

<sup>49</sup> According to the official budget nomenclature.

<sup>50</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

<b>for DG TAXUD</b>	Payments	=2a+2b +3		0.150	0.400	0.200	0.330	0.180		<b>1.26</b>
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<b>Heading of multiannual financial framework</b>	<b>7</b>	'Administrative expenditure'
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	2023	2024	2025	2026	2027	<b>TOTAL 2021 -2027 MFF</b>
DG: TAXUD						
• Human resources	0.118	0.157	0.157	0.063	0.016	<b>0,511</b>
• Other administrative expenditure	0.004	0.004	0.002	0.002	0.001	<b>0,013</b>
<b>TOTAL DG TAXUD</b>	<b>0.122</b>	<b>0.161</b>	<b>0.159</b>	<b>0.065</b>	<b>0.017</b>	<b>0,524</b>

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0.122	0.161	0.159	0.065	0.017	<b>0,524</b>
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EUR million (to three decimal places)

	2023	2024	2025	2026	2027	<b>TOTAL 2021 – 2027 MFF</b>	
<b>TOTAL appropriations</b>	Commitments	0.272	0.561	0.359	0.395	0.197	<b>1,784</b>

<b>under HEADINGS 1 to 7</b> of the multiannual financial framework	Payments	0.122	0.311	0.559	0.265	0.347	<b>1,604</b>
<b>TOTAL appropriations</b> <b>under HEADINGS 1 to 7</b> of the multiannual financial framework							

### 3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			2023	2024	2025	2026	2027	2028	TOTAL								
	OUTPUTS																
	Type <sup>51</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost	
SPECIFIC OBJECTIVE No 1 <sup>52</sup> ...																	
Specifications				0.150		0.100										<b>0.250</b>	
Development						0.300		0.200		0.150						<b>0.650</b>	

<sup>51</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>52</sup> As described in point 1.4.2. 'Specific objective(s)...'

Maintenance										0.100		0.100		0.100		<b>0.300</b>
Support								0.020		0.020		0.020		0.020		<b>0.080</b>
Training								0.020								<b>0.020</b>
ITSM (Infrastructure, hosting, licences, etc.),						0.020		0.060		0.060		0.060		0.060		<b>0.260</b>
Subtotal for specific objective No 1			<b>0.150</b>		<b>0.420</b>		<b>0.300</b>		<b>0.330</b>		<b>0.180</b>		<b>0.180</b>		<b>1.560</b>	
SPECIFIC OBJECTIVE No 2 ...																
- Output																
Subtotal for specific objective No 2																
<b>TOTALS</b>			<b>0.150</b>		<b>0.420</b>		<b>0.300</b>		<b>0.330</b>		<b>0.180</b>		<b>0.180</b>		<b>1.560</b>	



### 3.2.3 Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
--	--------------	--------------	--------------	--------------	--------------	-------

HEADING 7 of the multiannual financial framework						
Human resources	0.118	0.157	0.157	0.063	0.016	0,511
Other administrative expenditure	0.004	0.004	0.002	0.002	0.001	0,013
Subtotal HEADING 7 of the multiannual financial framework						
<b>TOTAL</b>	<b>0.122</b>	<b>0.161</b>	<b>0.159</b>	<b>0.065</b>	<b>0.017</b>	<b>0,524</b>

Outside HEADING 7 <sup>53</sup> of the multiannual financial framework						
Human resources						
Other expenditure of an administrative nature						
Subtotal outside HEADING 7 of the multiannual financial framework						

<b>TOTAL</b>	<b>0.122</b>	<b>0.161</b>	<b>0.159</b>	<b>0.065</b>	<b>0.017</b>	<b>0,524</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the

<sup>53</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

### 3.2.3.1 Estimated requirements of human resources

The proposal/initiative does not require the use of human resources.

The proposal/initiative requires the use of human resources, as explained below:

	2023	2024	2025	2026	2027	Total
<b>• Establishment plan posts (officials and temporary staff)</b>						
20 01 02 01 (Headquarters and Commission's Representation Offices)	0.75	1	1	0.4	0.1	<b>3.25</b>
20 01 02 03 (Delegations)						
01 01 01 01 (Indirect research)						
01 01 01 11 (Direct research)						
Other budget lines (specify)						
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>54</sup></b>						
20 02 01 (AC, END, INT from the 'global envelope')						
20 02 03 (AC, AL, END, INT and JPD in the delegations)						
<b>XX 01 xx yy zz</b> 55	- at Headquarters					
	- in Delegations					
01 01 01 02 (AC, END, INT - Indirect research)						
01 01 01 12 (AC, END, INT - Direct research)						
Other budget lines (specify)						
<b>TOTAL</b>	<b>0.75</b>	<b>1</b>	<b>1</b>	<b>0.4</b>	<b>0.1</b>	<b>3.25</b>

*Estimate to be expressed in full time equivalent units*

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Preparation of meetings and correspondence with Member States; work on forms, IT formats and the Central Directory; Commission of external contractors to do work on the IT system.
External staff	N/A

<sup>54</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>55</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.4 Compatibility with the current multiannual financial framework

The proposal/initiative:

can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.5 Third-party contributions

The proposal/initiative:

does not provide for co-financing by third parties

provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>56</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>56</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

### 3.3 Estimated impact on revenue

The proposal/initiative has no financial impact on revenue.

The proposal/initiative has the following financial impact:

on own resources

on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>57</sup>					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>57</sup>

As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



Brussels, 19.6.2023  
COM(2023) 324 final

ANNEXES 1 to 2

**ANNEXES**

**to the**

**Proposal for a Council Directive**

**on Faster and Safer Relief of Excess Withholding Taxes**

{SEC(2023) 243 final} - {SWD(2023) 215 final} - {SWD(2023) 216 final} -  
{SWD(2023) 217 final}

## ANNEX I

### DIGITAL TAX RESIDENCE CERTIFICATE AS REFERRED TO IN ARTICLE 4

#### Technical requirements

1. The digital tax residence certificate shall:
  - be issued with an electronic seal in conformity with Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>1</sup>;
  - offer the possibility of both human- and machine-readable format presentations of the digital tax resident certificate with PDF documents or similar other formats which can be used in the automated systems;
  - be printable;
  - contain an open text box for inclusion of information under Article 4(g).
  
2. Member States may introduce a verification process through verifiable credentials if the technical requirements in the Union are met.

A Committee shall support the Commission with the implementation of the digital tax residence certificate by Member States. In addition, the Committee may provide technical support regarding any possible changes of the technical basis of the digital tax residence certificate or new technical developments.

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<sup>1</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)

## ANNEX II

### REPORTING AS REFERRED TO IN ARTICLE 9 and 15

Certified financial intermediaries shall provide the following information in the corresponding xml format:

Type of information	Specification
<b>A. Information regarding the person that is providing the information</b>	
Name of the financial intermediary	
EUID, Legal Entity Identifier (LEI) or alternative	
Official address	
Other relevant data	Tax identification number and email address
<b>B. Information regarding the recipient of the dividend or interest payment</b>	
Identification of the financial intermediary or final taxpayer receiving the dividend or interest payment	
i. Individual	Name, TIN, date of birth, address
ii. Legal person	Name, LEI, TIN, address, EUID
Investment account number	Number of the safekeeping account where the securities are hold by the financial intermediary/taxpayer receiving the payment
<b>C. Information regarding the payor of the dividend or interest payment</b>	
Identification of the financial intermediary from whom the reporter receives the dividend or interest payment	
i. Individual	Name, TIN, date of birth, address
ii. Legal person	Name, LEI, TIN, address, EUID
Investment account number	Number of the safekeeping account where the securities were hold by the financial intermediary sending the payment
<b>D. Information regarding the dividend or interest payment</b>	



Issuer	Name, LEI or TIN or EUID, official address
ISIN number	Identification of the issuer and the security
Security type	Cash dividends, dividends-in-kind, mixed in-kind and cash dividends and interest
COAF (Official Corporate Action Event Identifier)	Identification of the event (dividend/interest distribution)
Relevant dates	Ex-dividend date, record date, settlement date (if done or a mark in case not yet produced), payment date, coupon date
Amount of dividend or interest received/to be received and currency	Gross amount, net amount, Withholding Tax rate applied or to be applied, amount withheld
Cash account number	Account number to which the payment has been transferred
<b>E. Information regarding application of anti-abuse measures</b>	
Information about holding period of underlying publicly traded shares	Two boxes: 1) for underlying shares acquired 2 days or more before the ex-dividend date – number of shares 2) for underlying shares acquired within a period of 2 days before the ex-dividend date – number of shares  (First In First Out ‘FIFO’ to be used in case of regular trading positions)
Information about financial arrangement	Indicate evidence of any financial arrangement involving underlying publicly traded shares that has not been settled, expired or otherwise terminated at the ex-dividend date