

Faster and Safer Relief of Excess Withholding Taxes

2023/0187(CNS) - 28/02/2024 - Text adopted by Parliament, 1st reading/single reading

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

Parliament approved the Commission proposal subject to the following amendments:

Cum-ex and cum-cum schemes

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

Digital tax residence certificate (eTRC)

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

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

Certified financial intermediary

Member States should:

- ensure that a financial intermediary is **registered** in their national register of certified financial intermediaries within two months from submission of a request;
- inform all other Member States about rejections of registration as soon as possible;
- inform without undue delay all other Member States that maintain a national register of the rejection of a certified financial intermediary from their national register, stating the reasons for the rejection;
- update their national registers to reflect the status of financial intermediaries no longer holding certification;

- take the necessary measures to require certified financial intermediaries in their national register to report to the competent authority the information referred to in Annex II as soon as possible within a maximum of 20 calendar days after the record date;
- provide that certified financial intermediaries do not need to report information referred to in Annex II, heading E, if the total dividend paid to the registered owner on the owner's shareholding in a company does not exceed EUR 1500;
- require certified financial intermediaries in their national register to keep the documentation supporting the information reported for **six years**.

Request for relief at source or quick refund

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

Quick refund system

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

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

Monitoring and exchange in information

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

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

Evaluation

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

In the evaluation report, the Commission should:

- examine further possible measures to facilitate **self-processed** withholding tax claims for small investors who engage directly with tax authorities without the intermediation of certified financial intermediaries;
- assess how the procedures for withholding tax relief can be further simplified for **retail investors**;
- examine whether a relief at source system could be envisaged as a procedure for **all Member States**; and introduce further measures to facilitate such a system for small and medium-sized enterprises;

- examine whether Member States are still impacted by or prone to dividend arbitrage and dividend stripping schemes such as **the cum-ex and cum-cum schemes** and whether existing measures within the field of withholding taxes are sufficient to combat tax fraud, tax evasion and tax avoidance;
- consider further measures, if necessary, to ensure that all dividends, interest, capital gains, royalty payments, professional service payments and relevant contract payments generated in the Union are taxed at least once at an effective rate;
- examine the potential of **distribution ledger systems** or other technological tools to render the system more efficient and fraud proof through better identification of the beneficial owner;
- examine possible measures to **digitalise** relief and refund processes, and claims;
- assess the acceptance of **electronic or digital signatures** and use of e-ID to facilitate the verification process for individual investors.

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