Faster and Safer Relief of Excess Withholding Taxes

2023/0187(CNS) - 30/05/2024 - Amended legislative proposal for reconsultation

The Council reached an agreement (general approach) on safer and faster procedures to obtain double taxation relief, which will help boost cross-border investment and help fight tax abuse. This initiative aims to make withholding tax procedures in the EU safer and more efficient for cross-border investors, national tax authorities and financial intermediaries, such as banks or investment platforms.

As a result of the changes made to the directive by the Council during the negotiations, the European Parliament is once again being consulted on the approved text.

Subject matter

The proposed 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.

Common tax residence certificate (eTRC)

The directive will introduce a common EU digital tax residence certificate (eTRC) that tax paying investors would be able to use in order to benefit from the fast-track procedures to obtain relief from withholding taxes. Member States will provide an **automated process** to issue digital tax residence certificates (eTRC) to a natural person or entity deemed resident in their jurisdiction for tax purposes.

Member States will issue the eTRC, based on the information of which the issuing authority has knowledge on the date of issuance, within 14 calendar days from submission of a request.

Standardised reporting for financial intermediaries

The directive will set a **standardised reporting obligation** for financial intermediaries (like banks or investment platforms). Member States will establish national registers where large (and optionally smaller) financial intermediaries will have to register to be certified. To simplify this registration procedure, the Council agreed to create a European Certified Financial Intermediary Portal. The portal will accommodate information exchange between Member States regarding the registration, the rejection, the removal of a financial intermediary or the measures imposed on certified financial intermediaries.

Once registered such financial intermediaries should be required to report information available to them about the dividend or interest payments, if applicable, that they handle.

Under the new rules, certified financial intermediaries requesting relief on behalf of a registered owner will need to carry out due diligence regarding the registered owner’s eligibility to benefit from tax relief.

Fast-track procedures

The directive allows Member States to have two fast-track procedures complementing the existing standard refund procedure for withholding taxes.

Member States will have to use one or both of the following systems:

- a **‘relief-at-source’ procedure** where the relevant tax rate is applied at the time of payment of dividends or interest

- a **‘quick refund’ system** where the reimbursement of overpaid withholding tax is granted within a set deadline

The Council agreed that Member States must apply the fast-track procedures if they provide relief from excess withholding tax on dividends paid for publicly traded shares.

Member states will have an option to maintain their current procedures, and not apply Chapter III of the Directive, if:

- they provide a comprehensive relief-at-source system applicable to the excess withholding tax on dividends paid for publicly traded shares issued by a resident in their jurisdiction and their market capitalisation ratio is below a threshold of 1.5%. Nevertheless, if this ratio is exceeded for four consecutive years, all rules foreseen by the Directive will become irrevocably applicable. In such cases Member States will have five years to transpose the rules of the Directive into national law;

- they provide relief from excess withholding tax on interest paid for publicly traded bonds.

Lastly, penalties should be imposed by Member States where obligations stemming from this directive are not complied with.