Tax Policy Alert

EU Finance Ministers agree on FASTER but EU Parliament needs to be reconsulted following changes

16 May 2024

In brief

What happened?

On 14 May 2024 the EU Finance Ministers reached agreement on the Faster and Safer Relief of Excess Withholding Taxes (FASTER) Directive. The FASTER compromise proposal seeks to address the problems of double taxation and administrative burden, as well as tax fraud and abuse that can be linked to securities investments, hampering development of the Capital Markets Union (CMU). Although the EU Parliament had already reached consensus approving the proposal, the number of changes made to the proposal in recent months means that the Parliament will need to be consulted again on the updated proposal.

Why is it relevant?

The aims and ambition of the FASTER Directive are clear – that of a faster and safer relief mechanism that would apply broadly across all EU markets, contributing to the CMU. Some elements, such as the creation and delivery of a common digital tax residence certificate (eTRC), clearly will be beneficial and hopefully will be adopted quickly.

On other parts of the proposal, it has been difficult (or impossible) to secure unanimous approval. Therefore, there have been a number of compromises, such as the introduction of the market capitalisation ratio, which means the implementation will not be uniform or ubiquitous. Also, the push back of the start date to six years from now is disappointing.

Actions to consider

The reporting and liability obligations for certified financial intermediaries (CFIs), implemented with the intention of fraud reduction, will be complex for CFIs to implement, possibly resulting in costs being passed through to investors indirectly. In the context of the sweeping internal transformation programmes that CFIs currently are undertaking, awareness of these requirements is vital, as new operational models and processes are created, deployed and implemented.

In detail

Legislative procedure and the impact of seeking EU Parliament updated opinion

A unanimous vote of support was required from all 27 EU Member States (this was achieved on 14 May 2024), as well as support from the EU Commission and Parliament. Although EU Parliament support had already been obtained, the number of changes to the FASTER proposal requires further review. The main changes are listed below.

The EU Parliament's FISC Subcommittee will have to propose a new opinion based on the agreed compromise text as soon as possible, and in any event not later than 31 January 2025.

Observation: This delay will not have any immediate impact for businesses, however it means that the proposal is not yet adopted and may be subject to further changes and scrutiny by the newly formed European Parliament after June 2024. Businesses should continue to plan for FASTER to be applicable from 2030.

Operation of the Directive

The FASTER proposal aims to improve the efficiency and security of withholding tax relief procedures for investments in publicly traded securities within the European Union. The main elements of the new rules are:

- An eTRC that would be issued by Member States to natural persons or entities deemed resident in their jurisdiction for tax purposes, serving as proof of tax residence for the purposes of applying a lower withholding tax rate on dividends or interest from securities in another Member State.
- The option to utilise one of the following fast-track procedures:
    - A 'relief at source' procedure where the reduced tax rate is applied directly when a dividend or interest is paid. This means that where there is a discrepancy in the rate of withholding tax an investor may access, they can automatically access the lower rate of withholding tax under a double tax treaty. This significantly streamlines the process, where in the past investors had to grapple with a complicated refund system for excess taxes withheld.
    - A 'quick refund' system allows CFIs to request a refund of the excess withholding tax on behalf of the registered owners, subject to a period of 60 calendar days after the end of the period to request the quick refund and certain conditions and verification procedures.
- Reporting and verification obligations for CFIs that would require them to register, via a newly created European Certified Financial Intermediary Portal, in a national register of the source Member State. CFIs would be required to report relevant information about the investors and the payments involved in the securities payment chain, to verify the eligibility and entitlement of the investors to the relief or refund and to retain and provide access to supporting documentation on request.

Changes to the proposal

The Directive has changed from the original June 2023 proposal, reflecting various amendments made during the interinstitutional negotiations. Some of the main changes are:

- A market capitalisation ratio criterion has been introduced to determine which Member States need to maintain registers of CFIs and ensure reporting by those CFIs to the competent authority. The market capitalisation ratio is defined as the ratio expressed as a percentage of the total market capitalisation of publicly traded shares issued by residents in a Member State to the total market capitalisation in the

European Union. The threshold for the ratio is 1.5%. Member States may choose to maintain the register and ensure reporting (i.e., they can opt into FASTER) before they are legally required to.

Observation: Limiting the application of the Directive to a smaller cohort of the largest markets is a sensible modification. However, this is likely to mean that there will remain differences in processes and procedures across the European Union. During the ECOFIN vote, EU Member State representatives commented that the exemption is acceptable in the spirit of compromise, but a more harmonised approach would have been preferable and may have led to a better overall outcome for the CMU.

- The reporting obligations and liability for CFIs remain, but additional criteria for exemption have been introduced, as has the flexibility to register at group level or individually. The anti-fraud measures and verification of investor eligibility requirements remain an obligation for CFIs, although additional details are included.
- The date from which the FASTER provisions apply has been pushed back from 1 January 2027 to 1 January 2030. Member States must adopt the provisions by 31 December 2028.

Let's talk

For a deeper discussion of how FASTER might affect your business, please contact:

Tax policy leadership

Will Morris, *United States*
+1 202 213 2372
william.h.morris@pwc.com

Edwin Visser, *Netherlands*
+31 0 88 7923 611
edwin.visser@pwc.com

Tax policy specialists

Phil Greenfield, *UK*
+44 (0) 7973 414 521
philip.greenfield@pwc.com

Chloe Fox, *Ireland*
+353 (0) 87 7211 577
chloe.fox@pwc.com

Nangel Kwong, *Ireland*
+353 87 280 8575
nangel.kwong@pwc.com

Subject matter specialists

Thomas Daffern, *UK*
+44 7483 148636
thomas.daffern@pwc.com

Daniel Dzenkowski, *UK*
+44 7711 589072
daniel.j.dzenkowski@pwc.com

Pat Convery, *Ireland*
+353 87 2809810
pat.convery@pwc.com