Association Européene des Institutions Paritaires
European Association of Paritarian Institutions

Withholding taxes – Faster and Safer Relief of Excess Withholding Taxes (FASTER)

AEIP Position Paper

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European Association of Paritarian Institutions (AEIP)

AEIP's Response and Observations on Pension Funds

AEIP fully supports the initiative to improve Withholding Tax (WHT) procedures and offers the following observation related to pension funds. Current WHT refund procedures are inefficient and costly, resulting in costly and lengthy refund procedures and missed investment opportunities. FASTER encourages cross-border investments by removing obstacles to the well-functioning of the Capital Markets Union (CMU). It has the potential to reduce costs and further stimulate cross-border investments.

Efficient withholding tax relief procedures help Member States attract foreign investment. Long withholding tax relief periods and costly procedures make it less attractive for investors to invest in a country. FASTER promises to increase the availability of capital and credit to domestic businesses; and thereby to decrease financing costs.

Public administrations currently spend a lot of man-hours on cumbersome checks of low-risk and legitimate tax reclaims. In various Member States, documents need to be 'validated', which requires a long chain of administrative actions in which a document passes by various ministries and an embassy before being filed for assessment by a tax authority. FASTER will make more capacity available in public administrations to focus on addressing high-risk cases of tax abuse and tax fraud.

Pension funds are large investors in the European economy. The pension sector thereby contributes significantly to European economic strategic autonomy and the European capital market. Pension funds are generally either exempt from paying taxes on foreign investment income in EU Member States, or they can reclaim most withholding taxes. This encourages citizens to save for their old age. At the same time, pension benefits are taxed. In practice however, due to complex procedures, pension funds experience cumbersome operational activities and delays in withholding tax refunds. As a result, many might decide to forego the opportunity of a refund. This negatively affects the pension of millions of members and beneficiaries.

Smaller pension funds currently often do not reclaim withholding taxes because legal and administrative costs outweigh the tax benefit. On average, pension funds' tax reclaims in EU countries are outstanding for 550 days (!).[1] It takes a long time for reclaims to be paid out and thus for this money to be reinvested. Therefore, pension savers lose out on investment opportunities.

With FASTER, pension funds will be able to reinvest withholding taxes after a maximum of 25 days. We give an indication of its direct benefits, by giving the example of the five largest Dutch pension funds. They collectively had €357 million in tax reclaims outstanding in the EU as of December 31, 2022. Considering they make a 7% average annual return on investments, FASTER gives the largest five Dutch pension funds

[1] Data taken from a survey carried out by some of the Members of PensioenFederatie.

a direct benefit of 36 million euros per year [= 357 million euros * (550-25)/365 days * 7% return]. Additionally, we anticipate significantly lower legal and administrative costs.

The proposed FASTER directive provides advantages for pension funds in its uniformity of the process, required data and forms. That lowers administrative and legal burdens. It will also provide speed in application and payment handling, meaning pension savings can be reinvested faster. Smaller pension funds will see a positive outcome in reclaiming withholding tax. They will be able to effectively exercise their right to tax exemptions and reclaims.

We support fast refund and harmonized reporting

AEIP supports the Commission's proposal to implement relief at source and/or quick refund procedures for excess WHT. AEIP commends the combination of these two procedures, which can yield positive outcomes for national tax authorities and market participants. This approach will expedite the WHT refund process, resulting in shorter processing times and overall improved efficiency. Establishing straightforward, stable and harmonized tax rules can foster public trust, minimise unnecessary costs, and encourage retirement savings. We expect that pension funds, as low risk taxpayers, should be able to use relief at source in such instances.

AEIP believes that the digital tax residence certificates (eTRC), by embracing automated procedures and digitalization, can enhance efficiency, standardize processes, and align with broader goal of utilizing digitalization for public benefits; this approach moves towards fairer taxation. Still, the implementation of the proposal and the possible introduction of new requirements and procedures need (i.e. costs of setting up the required systems by CFIs will be passed on to clients) to comply with the principle of proportionality to avoid unnecessary and burdensome costs for pension funds. Furthermore, it is essential to provide for the necessary transition period and procedures to allow for an orderly transition.

FASTER should be accessible to transparent investment entities

We draw attention to the applicability of digital tax residence certificates to collective investment vehicles. For instance, most Dutch and Belgian pension savings are invested through transparent investment funds. Transparent investment funds make it possible for multiple pension funds to pool resources which are then invested collectively. They have the advantage of spreading investment risk and splitting costs.

A transparent investment fund has a purely operational function; it has a strict mandate from which it has no agency to deviate. Because it is fiscally transparent, it is possible to 'look through', by which it is paramount that its beneficial owners are the taxable subject. We therefore foresee no problem with giving transparent investment funds access to FASTER procedures.

FASTER procedures should be available to transparent investment funds. The current practice is that a custodian starts the tax relief procedure on behalf of the pension fund (the beneficial owner) – claiming tax benefits on a portion of the dividends or interest payments of the transparent investment fund (the registered owner). This practice should be eligible for FASTER procedures. Alternatively, it could be permitted for the transparent investment fund to use the pension funds' digital tax residence certificates.

Make FASTER work for intermediaries

We appreciate the proposal to rely on Certified Financial Intermediaries (CFIs) to map all the steps in the investment chain. Pension funds already work with custodian banks for their WHT procedures. The structure of documentation delivery by CFIs will provide comfort for tax authorities to mitigate tax fraud risks. We support the obligation to create procedures to establish National Registers for CFIs, along with standardized reporting obligations for such intermediaries.

To make FASTER work in practice, it is important to get custodians on board. We currently observe a competitive market of custodians providing tax relief and reclaim services to pension funds. The FASTER framework could change that. CFIs are given a central role in providing trust in FASTER procedures. In doing so, they have a big responsibility to report correct information timely. That comes with a much higher liability over the correctness of that reporting than custodians have in current withholding tax relief and reclaim procedures.

FASTER should offer a sophisticated sharing of responsibilities between investors and intermediaries. It is critically important that FASTER procedures are offered by custodians, in order to make FASTER a success. FASTER must be ambitious, to make significant improvements to the current situation. We fear a situation in which – because of liability considerations – custodians would continue delivering current withholding tax relief and reclaim services, without registering as CFIs to offer FASTER procedures. In this respect, we highlight the experience of Sweden, which has passed a new dividend withholding tax regime, but has recently retracted it, as custodians would not offer services under the new regime.

In their reporting, custodians rely for a large part on the information provided by the investors they work for. In the current proposal, the CFIs is kept liable for this information. In a case where an investor provides incorrect information to the CFI to obtain an illegitimate tax benefit, we think that in principle the investor rather than the CFI should be liable for reporting incorrect information. The Directive could make clear that the CFI can in principle rely on the statements of the registered owner. The CFI would then have no liability for failure to withhold emanating from the statements provided by the registered owner. In such case, tax should be recovered from the taxpayer.

Possibilities to deviate from FASTER should be limited

To work effectively, the FASTER initiative should have a wide application. Working towards a level playing field, there should be limited possibilities for deviating from FASTER procedures. In this light, we are dismayed to note that Member States get the possibility to not apply the relief at source or quick refund systems for taxpayers that are exempt from withholding taxes. Member States could use the exclusion in Article 10, paragraph 3b to not apply FASTER procedures to institutional investors, such as pension funds.

Not applying FASTER procedures to tax-exempt investors could carve out a major volume of withholding taxes and therefore significantly decrease FASTER's impact. Vigilance is required to monitor that domestic pension funds do not get preferential access to FASTER procedures over for instance foreign pension funds. In the future, it would be good to expand harmonization, by scrapping the abovementioned Member State option, at least for collective investment undertakings, including pension funds.

More ambition on bond interest payments

The FASTER proposal has a mandatory character for withholding tax on dividends from publicly traded shares, while it has a voluntary character for withholding tax on interest from publicly traded bonds. We would suggest policy makers explore whether the ambitions in Article 5, paragraph 2 for interest from publicly traded bonds could be increased.

AEIP suggests to seize this opportunity to create a favourable cross-border investment environment

AEIP advises seizing the current momentum to establish a favourable cross-border investment-environment. This can be achieved by removing cross-border financial barriers, implementing tax incentives, and empowering occupational pensions, ultimately leading to increased retirement income for individuals. Additionally, AEIP advice the European Commission to set-up an EU tax register of recognised pension institutions for Member States to recognise pension institutions reciprocally and automatically.

More uniformity in qualifications on tax status of pension funds and an EU-register in which such qualifications are documented would be highly beneficial for the investment climate in the EU and could benefit the pension funds' members and (future) beneficiaries.

We call on all parties involved to work at swift agreement and implementation of FASTER

AEIP applauds the introduction of efficient WHT procedures and the necessary tools for Member States to effectively fight tax fraud and abuse. These measures support the smooth functioning of the CMU, facilitate cross-border investment, and ensure fair taxation. Considering that most pension savings by IORPs are invested through transparent investment funds, it would be a huge blow if such funds have no access to FASTER procedures.

We signal that liability over information that the investor must provide to the CFI should be transferred from the CFI to the investor, to make FASTER work in practice. Civil liability standards vis-à-vis the investors should be as similar as possible in the EU internal market. Possibilities to deviate from FASTER should be limited. Specifically, Member States should not have the possibility to exclude tax-exempt investors from FASTER procedures. Lastly, the proposal's ambitions could be increased on bond interest payments.

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AEIP represents its members' values and interests at the level of both European and international institutions. In particular, AEIP - through its working groups - deals with EU coordinated pension schemes and pension funds, healthcare, unemployment, provident and paid-holiday schemes.

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Based thereon, AEIP prepares recommendations, proposes local programs and influences European decisions to safeguard and promote the interests of its members. AEIP thinks ahead and anticipate modern paritarian social protection systems that take into account changing economic and societal pattern. It furthermore seeks to find a new balance between and across generations.

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