

Joint Position Paper – The minimum requirements for the functionality of the FASTER Directive

5 November 2024

Introduction

The Nordic finance sector is very pleased that the EU Member States reached an agreement on the FASTER Directive in May 2024. The harmonization of withholding tax is an important and anticipated measure, and we believe that, when well implemented, FASTER will streamline withholding tax processes for investors, tax administrations, and industry participants.

The Nordic finance sector is in general rather uniform (taxation as an exception due to different rules in each country). Their operations are largely digital, and the actors are pioneers in electronic solutions. Finland has applied a Relief at Source system since the 1990s, initially using voluntary solutions developed jointly by industry participants and tax authorities, and more recently with a tax regime based on the TRACE model. All Nordic actors have experience, both good and bad, with Finland's withholding tax practices.

We firmly believe that the experiences of the Nordic finance sector on digital solutions and especially the Finnish TRACE system are valuable now when the European Commission is drafting the FASTER implementing acts and possible guidance. For example, it is important that FASTER will not increase the use of tax reclaims in countries which currently have tax relief at source in place.

The main concern for the Nordic finance sector is that the Level 1 text as agreed by the Member States risks creating further complexity and burdens for users and tax authorities. With a view to mitigating such complexity and burdens, this joint Nordic position paper highlights key measures that the Commission can employ in the following work including in drafting the delegated acts.

Risk of creating more complex and unharmonized systems instead of one harmonized system

The usability of the FASTER Directive, and consequently its value to the financial sector, the markets and the investors will be determined by the extent to which European withholding tax procedures can actually be harmonized.

Harmonization is crucial for the FASTER Directive to achieve its goals, but the FASTER Directive, which the Member States finally agreed on in May 2024, allows the Member States to make extensive exceptions from applying reduced tax at source or reclaim under Article 10. Consequently, the goal of harmonization seems to be lost. For example, each member state can decide that relief should not apply if the shares were acquired five days before ex-dividend, the dividend is linked to a financial arrangement, an exemption of withholding is claimed (often applied to investment funds such as UCITS), and the dividend payment exceeds a certain amount.

We see the possibility for Member States to deviate from the directive and the options left to Member States as a risk to the effectiveness of the FASTER Directive. We hope that the Commission will strive in every possible way to eliminate these risk factors, for example, by drafting the implementation regulations as precisely as possible.

In the future, the FASTER Directive will hopefully be amended to be even more harmonized. In this case, the best starting point according to the Nordic finance sector would be to apply only one withholding tax system: the tax relief at source system.

FASTER reporting must be fully harmonized

The FASTER Directive includes significant compliance burdens and liabilities placed on financial intermediaries. The amount of data reported and the frequency of the reporting by FASTER is truly enormous and will significantly increase the administrative burden of the financial intermediaries, especially with regards to the live reporting of data within two months of the payment date as opposed to annual reporting that is currently taken place in the Finnish TRACE-system as well as in the US QI-system.

Regarding the reporting itself, it is extremely important that it is fully harmonized within the EU (single XML schema) and that no country-specific variations are allowed. Member states should not be allowed to deviate, for example, in terms of the content of the data.

A chain reporting is not a desirable solution. In our view it would be best that each CFI would report directly but if (and when) certain Member States will require reporting in chain (indirect reporting) it is important to ensure that each financial intermediary will be responsible for itself and only for itself.

Additionally, it would be advantageous to standardize the procedures for CFIs to promptly settle liabilities, in the form of under-withholding with the appropriate authority of the source Member State when these liabilities result from administrative or manual errors.

Due diligence requirements

Due diligence requirements should be based on a clear and standardized process. The steps required to be carried out by CFIs to verify information under Article 11(2) provided by the registered owners and at common frequency should be clearly defined by the Commission including the required frequency of the controls. Also, the information against which CFIs are expected to perform verification must be available to CFIs highlighting that large financial institutions may run various businesses via different legal vehicles or via the same legal vehicle but not necessarily have legal or practical access to such information, for example, verifying possibility of any financial arrangement.

In our view a common definition of the beneficial owner (BO) should be added to the implementation regulations. As we understand that this may be impossible at this stage, the implementation regulations should include unambiguous provisions on how the CFI can ensure that the BO issue has been sufficiently investigated. There should at least be exact descriptions of what documents and what kind of due diligence measures are sufficient for the CFI when applying the reduced WHT rates.

CFI Registration

It is important to ensure that the CFIs will be able to choose at which level the CFI wishes to be registered – entity level vs. local branch level with each of the respective Tax Authorities. Large financial institutions may operate under two models i.e., global custodians and via direct custody model in a number of EU markets. The compromise¹ made on May 14 2024 must be implemented as precisely as possible so that the CFI can decide independently at what level it wants to register.

¹ Page 9 of the compromise text: "Where these entities, with registration obligation, operate through a branch or branches or one or more subsidiaries in any Member State, these entities should be permitted to choose fulfilling the registration obligation in each

eTRC

In order to enable the system to work smoothly the system must allow CFIs to request eTRC under POA in bulk for multiple registered owners. Also, information required to request eTRC should be available to the CFIs.

It is also important that CFIs will be able to request eTRC as the entity contracted with registered owners and not at the level of employees of the CFI. In addition, Member States should ensure that the eTRC has content which will make it accepted by all Member States as well as third countries. Examples of information which would need to be included in eTRC for this purpose are:

- LEI (or the EU-ID for natural persons) and possibly even the VAT number.
- Clear information regarding status of the entity which is relevant to determine what tax rate can be applied according to DTT etc, e.g. qualified as pension fund or UCITS.

If the Commission could use its influence to make it possible for branches and sub funds to get its unique ID under/within the legal entity or umbrella fund it is part of, that would most likely not only facilitate the tax processing but probably also other important areas.

Regarding eTRCs and the genuine benefits of digital documentation, local requirements for additional documentation should be kept to a minimum. The advantage of handling one document digitally is significantly diminished if there still is a need to provide tax authorities with other documentation in a non-digitalized format. The eTRCs can be considered a positive initial step, which will hopefully act as a catalyst for further digitalization. The Commission should continue its efforts to ensure that all required documentation for the correct withholding of taxes at the time of payment or for reclaiming after the payment is fully digitalized.

It would also be beneficial to extend the validity period of eTRCs from one year to multiple years in the future as proposed later at page 4.

In the below we further elaborate on potential improvement points, which we wish the EU commission to take into consideration.

Extended role of the EU Portal for CFIs

The FASTER Directive creates a framework for an EU relief model, which frames the national models and to some extent reduces the variation, but the model still operates with

- A. Applications for CFI status with each of the Source Countries (Article 7)
- B. Differences in some of the key terms and definitions, such as
 - a. Beneficial Ownership (BO) definition
 - b. Relief entitlement rules and definitions (Article 11 [2][aa]),
 - c. CFI obligations
 - d. CFI liability (Article 16)
 - e. Penalties (Article 17)
- C. Reporting directly to the source countries
- D. Quick refund applications directly to the source countries

source Member State either as one certified financial intermediary at group level or at individual branch or subsidiary level or a combination thereof. “

To mitigate the disadvantages of this variance, we suggest to expand the use of the EU Portal (Article 5a) in the following manner:

- A. Design an online application model via the EU Portal, and divide it in two
 - a. A general part: Uploading of the generally required documents and information for use by all the applicable source countries (Article 7[a]-[c]).
 - b. A country specific part: Request CFI status in the applicable source countries and supplement with source country specific documents (if any) and information as applicable
- B. Present all the applicable source country rules and definitions in a structured and systematic manner in the EU Portal (in English and potentially other translations).

It is of key importance to the efficiency that national sources are not required to be used for information.

- C. Future amendment needed to the directive: Design a filing model for the CFI reporting (Article 9) via the EU Portal/Hub, and let the source country access the reports from there.

It may be considered to upload the file as a joint file for more source countries, if the upload-system can make a subsequent split based on key entries of source information (SI codes)

- D. Future amendment needed to the directive: Design a filing model for the Quick Refund applications (Article 13) via the EU Portal and let the source country access the applications from there.

By substantially using the EU Portal as a one point of interaction between CFIs and source countries, the complexity is reduced and both the operational implementation and the subsequent BAU (Business as Usual) execution will be easier.

Extended validity of the eTRCs

The duration of the eTRC is reduced to one calendar year or fiscal period (Article 4[3])

- A. This is a very short period and does not reflect the fact that the majority of investors (especially legal entities) have a stable tax residency and status over time.
- B. As the directive still requires the CFIs to compare the eTRCs with KYC records, changes are likely to be identified by the CFIs in the ODD procedures.

To reduce the administrative burden of the eTRC renewals, we suggest the following:

- A. Consider if the eTRC can be valid for a longer period (3-5 years) for all or some investor types (future amendment to the directive). A longer validity period of the eTRC should not, however, increase the due diligence requirements of the CFI.

- B. A possible long-term solution: Make better use of the possibilities that digitalisation offers, by replacing the certificates with online real-time validation of stated residency between source country and (stated) residence country.

Conclusion

We kindly ask that the Commission takes the above into consideration when drafting the FASTER implementation acts. In addition, we hope for the opportunity to discuss our perspectives at a joint meeting.

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For more information, please contact:

- Lene Schønebeck, Head of Tax, Finance Denmark, LSC@fida.dk
- Marja Blomqvist, Head of Tax Regulation, Finance Finland, marja.blomqvist@financefinland.fi
- Katrin Fahlgren, Senior Legal Advisor, Swedish Bankers' Association, katrin.fahlgren@swedishbankers.se
- Helene Wall, General Counsel, Swedish Investment Fund Association, helene.wall@fondbolagen.se
- Fredrik Bonthron, Chief Economist, Swedish Securities Markets Association, fredrik@svpm.se