



**FINANCE
DENMARK**

Joint Nordic comments – FASTER liabilities Guidance

We thank the European Commission for the opportunity to respond to the FASTER draft guidelines on liabilities. We believe the topic of liability is crucial to the smooth operation of any withholding tax regime, has far-reaching commercial consequences and requires precision and certainty to ensure financial intermediaries and investors are able to equitably assign contractual liability and obligations amongst themselves.

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Our comments are divided in two sections. First a general section and secondly a more specific/technical section with comments to concrete paragraphs in the Guidance.

General comments

The directive allows the Member States to design and implement national rules on which intermediary should bear liability and to what extent. This will most likely result in large financial institutions having to deal with many different legal frameworks.

We advise that joint and several and secondary liability should be refrained from, since it would result in substantial risk to large banks which process great volumes of reclaims and relief at source events. It is imperative that a single entity is clearly defined as liable and has the opportunity defend itself if accused of wrongdoing. Also, it is important to allow the financial intermediaries to freely negotiate the terms and liabilities and obligations between parties. The EC and the MS should not try to endorse how those contractual agreements should look like.

Specific/technical comments

Comments on 9.1.1

- Distinction between errors and misconduct: There should be a clear distinction between administrative errors or operational errors and deliberate misconduct. Penalties should reflect the severity and intent of the breach, in line with the principle of proportionality set out in Article 19.
- Safe harbors and mitigating factors: The Guidelines should consider explicit mitigating provisions for CFIs acting in good faith who rely on investor documentation that is later found to be falsified or inaccurate. This would reflect practical realities in intermediary -investor relationships and

avoid imposing liability in cases where the CFI has exercised reasonable diligence.

- Recital 26 of the Directive refers to liability for “full or partial non-compliance” by CFIs in fulfilling their obligations. The Guidelines should define what constitutes partial or procedural breaches and specify under which conditions a CFI may be held liable for investor-related failures. Without such clarification, CFIs face uncertainty in assessing their risk exposure under Article 18.

Comments on 9.2.10 and 9.3.11

- The Guidelines should further clarify not only when a CFI must register under Article 7 of the Directive, but also which party bears liability in multi-layered custody chains. This is particularly relevant where functions are divided: one CFI may perform upstream tasks such as client classification and documentation collection, another may act purely as a transmission agent, and a third may execute the withholding.

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While Point 10 introduces the principle that liability should fall on the CFI playing the “core role,” it remains unclear how this is assessed in practice—especially when responsibilities are split across entities. Point 11 suggests that penalties may apply if the Member State of Registration identifies discrepancies or omissions but does not specify how far down the chain these obligations extend.

This creates legal uncertainty. For example, an upstream custodian could face liability even without performing withholding or validating relief claims, depending on how its role is interpreted by the source Member State.

We recommend the Guidelines provide clear distinction between CFIs with operational control, those acting as transmission agents, and those executing withholding - ensuring consistent interpretation of registration and liability obligations across the different CFIs.

Comments on 9.3.14

- It is a concern that the CFIs are required to be able to document and explain to the source tax administration on a case-by-case basis why RAS/QRS is deemed high risk. This could potentially be a very high administrative burden and combined with the large liability placed on CFIs could result in CFIs potentially being pushed to take higher risks than they deem appropriate.

Comments on Example 1

- Please elaborate on the control frequencies, not only for 2031, but in general. Also, some information is payment specific and cannot meaningfully be determined on a yearly basis. If both the eTRC and the ROD must be renewed yearly (or potentially with other frequency), it may be helpful to specify this in the guidelines, as the directives do not present the renewal rules in a symmetrical manner.

For more information, please contact:

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