



THE ASSOCIATION OF
QUALIFIED & AUTHORISED
INTERMEDIARIES

Administrative Offices:
30 Mill Lane, Yateley,
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GU46 7TN

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European Commission
DG TAXUD

By email only

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Commentary and recommendations on the implementation of the FASTER Directive at the Implementing Acts and Guidance phases.

Dear Katja,

As the Directive moves forward towards Implementing Acts and guidance phases, our Association's members felt that it is important for Member States and the Commission to have some practical input and recommendations that will impact tax operations for financial institutions that elect to be CFIs.

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1 General comments

AQAI maintains a standing committee – the FASTER Committee, dedicated to gathering commentary and viewpoints from the members on outstanding aspects of the Directive. Many of our members will be likely to apply for registration to be CFIs or to engage with CFIs to facilitate tax relief and quick refunds for their customers in order to avoid the complex arrangements currently in place for standard refund requests to tax administrations. The membership has collaborated to summarise some of the tax operational challenges associated with the Directive’s concepts that could be alleviated through the Implementing Acts and guidance phases of the project.

An important aspect of the Directive is the length of time prior to its entry into force on January 1st, 2030. We recognise that there are many moving parts to consider in the interim, but we would strongly urge the Commission and Member States, that the earlier certain key aspects of the Implementing Acts and guidance are known to the industry as a whole, such as those noted here, the faster financial institutions, and specialist vendors to them, will be able to plan, develop and test new systems to make the transition in 2030 as frictionless as possible.

2 eTRC

The advent of the FASTER Directive on January 1st, 2030, will bring financial institutions severe documentation challenges, not least, the acquisition of a very large number of eTRCs, storage, validation of the same and connection to existing corporate actions processing systems.

If left to investors to be proactive, we believe that there will be substantial delays and gaps in tax relief due to investors not being aware of the eTRC framework, being challenged by the technology or simply refusing to engage with it and thus putting off applications until the effects are observed in their bank accounts. We therefore have four suggestions for the implementing act and/or guidance phases.

2.1 Third party requests

Chapter II Article 4(1) is very clear that the eTRC systems can only issue eTRCs to natural persons or entities resident in their jurisdictions. The implication of this clause is that a financial institution would be unable to request an eTRC from a Member State because is not the taxpayer and may not even be resident in that jurisdiction. While the preamble to the Directive (15) indicates that outsourcing is to be permitted, this is not explicitly cited in the Directive text itself.

We recommend that, at a minimum, the implementing acts explicitly permit a financial institution to request an eTRC on behalf of a client provided the client has given authority for this kind of request to the financial institution (see Appendix 1). The eTRC system design should allow for a financial institution to submit evidence that it has authority to act for the investor in the form of a limited power of attorney, electronically signed.

2.2 Bulk eTRC requests

Pursuant to the above commentary, financial institutions will face problems, particularly if the obligation to request an eTRC always rests with the investor. Where a financial institution is able to request eTRCs on behalf of its clients (or a non-financial third party is engaged to do so by a financial institution), the system design should be able to accommodate bulk requests.



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One of our members has 2.1 million clients (mostly EU residents) and another has several hundred thousand. Expecting these financial institutions to ask their clients to obtain eTRCs one by one, will be extremely problematic to manage, inefficient and mean that the eTRC systems will be deluged with requests annually. Similarly, expecting financial institutions to submit large numbers of individual requests will also create friction in the system, costs and delays. A bulk application each year by a financial institution, supported by a CFI warranty (see Appendix 2) would substantially reduce costs. If based on a suitable governance framework e.g., audit, we believe that this would be in the best interests of both Member State administrations, the financial institutions and the investors themselves.

2.3 Selection of “All Member States”

Chapter II Article 4(g) makes reference to the content of an eTRC requiring the identification of the double tax treaties for which the taxpayer is requesting the eTRC to apply. This raises the operational question of what happens when an investor, having obtained an eTRC for example specifying Member States A & B, then invests in securities of a corporation in Member State C for which there would be no reference in the eTRC. This could result in multiple eTRC requests from the same investor, referencing different Member States. Apart from the practical issues facing Member States and their eTRC systems, this will create a problem for financial institutions in requesting multiple eTRCs for the same investor covering different markets as the portfolios of the investors change and potentially covering different periods of time.

We recommend that in Implementing Acts the design of the eTRC is constructed to include an investor selection option of “all applicable EU Member States” as well as individual or grouped selections.

2.4 Presumption rules

Chapter II Article 4(2) of the Directive provides a 14-day period following a request for an eTRC in which the Member State can provide the eTRC. The question arises as to whether tax relief would be available to an investor who has applied for an eTRC but has not yet received it, but who is subject to a taxable income event within that 14-day period.

In addition, Chapter II Article 4(4) envisions occasions where a Member State is unable to meet the 14-day deadline cited in Chapter II Article 4(2). This will exacerbate problems and will create uncertainty given the unknown nature of any additional time period required for issuance and the increased likelihood of a taxable income event occurring for which the investor would otherwise be eligible for tax relief.

We recommend that a set of “presumption rules” be included into Implementing Acts and/or guidance to allow a CFI to apply tax relief to an investor provided (i) the investor can provide evidence of the request for an eTRC including the identification of the Member State(s) for which relief was requested, (ii) evidence of any delay notified by a Member State pursuant to Chapter II Article 4(4) and (iii) nothing else in due diligence or KYC indicates that the investor would not otherwise qualify for tax relief should an eTRC ultimately be issued.

In the absence of such a set of presumption rules, it is likely that the number of quick refund requests or standard reclaims under the Directive may increase substantially. One member suggests that, if presumption rules are not acceptable, that Implementing Acts and guidance restrict a Member State’s ability to apply a delay using detail specific, exceptional and limited scenarios. The Commission could also, through Implementing Acts, limit the number of occasions where such delays are permissible in any year.



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2.5 Process clarifications

Several members had questions about the eTRC process based on likely operating scenarios and, as a result, wished the Association to note these for consideration by the Commission and Member States in the guidance phase.

2.5.1 Does the clock stop

With regard to Chapter II Article 4(3)(4). In the event that a Member State has questions regarding an eTRC application, e.g., missing information, and informs the investor that it will take longer than 14 days to process, does the “clock” stop until such questions are resolved or must the Member State act to either accept or deny the application by the end of the additional period required notified to the investor. As drafted, the 14-day period seems to be of little value if the Member State can extend the application review period for any amount of time it sees fit, at its own discretion and provides the investor with no recourse.

2.5.2 Advance eTRC requests

With regard to Chapter II Article 4(3)(a). Given that most current certificates of residence issued by Member States relate only to the year in which the application is made, can an investor request an eTRC in advance for a new fiscal year or must they wait for that year to actually begin. From an operational standpoint, this would appear to mean that applications cannot be filed until January 1st of each year (or the first day of the fiscal year) and that applications will be unlikely to be processed before January 15th (or 14 days after the beginning of each fiscal year)

2.5 Equivalence of Non-EU investors tax residency certificates

Chapter III Section 1 Article 5(4)(d) envisions a CFI that is potentially not resident in an EU Member State and has no EUID.

The largest single source of inward investment to the European Union is the United States of America. The US Internal Revenue Service (IRS) issues tax residency certificates on paper as Form 6166. Form 6166 is not technically or technologically equivalent to an eTRC.

US tax residents commonly also use a self-certification form W-9 to document themselves to financial institutions under US Internal Revenue Code Chapter 4 (FATCA)

Rather than let each Member State decide for itself whether form 6166 is acceptable, we recommend that the Commission confirm in Implementing Acts or issue guidance that confirms that, from the European Union’s perspective, US form 6166 should be considered substantially equivalent for the purpose of determining tax residency in support of an application for tax relief.

While the US represents the largest inward source of passive investment, each Member State will have its own unique sources of non-EU inward passive investment. Commission guidance would be useful, supported by guidance from each Member State, centrally published, to indicate specifically what types of documentary equivalence they will recognise as functionally to an eTRC for the purpose of tax relief. This will help non-EU investors and the non-EU financial institutions where they have accounts, to correctly provide relevant documentation.



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3 CFI Registration

Chapter III Article 8(1)(c) provides that a non-EU financial institution can register for CFI status contingent on a declaration of compliance to Directive 2015/849 or with a comparable set of rules of that third-party jurisdiction.

Chapter III Article 8(3) and Article 8(4)(a) and (b) further provides a procedure for a non-EU financial institution to apply for CFI status provided it meets certain governance requirements to the satisfaction of the Member State to which the application applies. Again, this seems to leave decision making at the Member State level which in turn, provides the possibility of multiple different approaches when a single EU-approach would be preferable.

The technical details of these clauses may not be clear to non-EU financial institutions. We would recommend a clear set of published guidance for non-EU financial institutions so that they have ample time to prepare.

4 Due Diligence

4.1 Eligibility for relief

Article 12(1) requires CFIs to obtain a declaration from the registered owner. The form of the declaration is not set, although the content is specified. Many financial firms and vendors already have systems available to collect investor self-declarations (ISDs) digitally for other purposes e.g., US Chapters 3 (QI), US Chapter 4 (FATCA) and the OECD Common Reporting Standard (CRS).

In the interests of promoting and maintaining an efficient digitally based system, we recommend that Implementing Acts and guidance clarify that (i) a CFI can embed the investor declaration into other business documents and (ii) electronic signatures on such declarations are acceptable within the terms of Regulation (EU) No 910/2014 (the eIDAS regulation).

5 Withholding

5.1 Use of omnibus accounts

In advanced relief at source systems, the use of omnibus accounts to co-mingle assets subject to specified tax rates is common. There appear to be two possible operating models for financial institution in a securities payment chain.

Where there is a single CFI at the top of the payment chain, positioned due to its size as a mandated CFI, all financial institutions below that CFI will be required to disclose their clients to the CFI in order to obtain tax relief. From a cost perspective, it makes more sense to operate omnibus accounts in this model rather than client segregated accounts.

Where there are multiple CFIs in a securities payment chain, it again makes more sense for withholding to be effected using omnibus accounts where each CFI would be responsible for withholding and reporting on disclosed accounts.



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5.2 Use and transmission of withholding statements to request relief

The principle of using omnibus accounts to co-mingle assets subject to a single rate of withholding tax requires a method by means of which an N-CFI can provide investor level data to its counterpart CFI so that, as the Directive requires, the CFI may report at the correct level. The diagram below provides an example of a scenario in which withholding would occur via omnibus accounts and reporting occurs via data contained in withholding statements issued per record date per security in addition to documentation (eTRCs + declarations) to support eligibility.

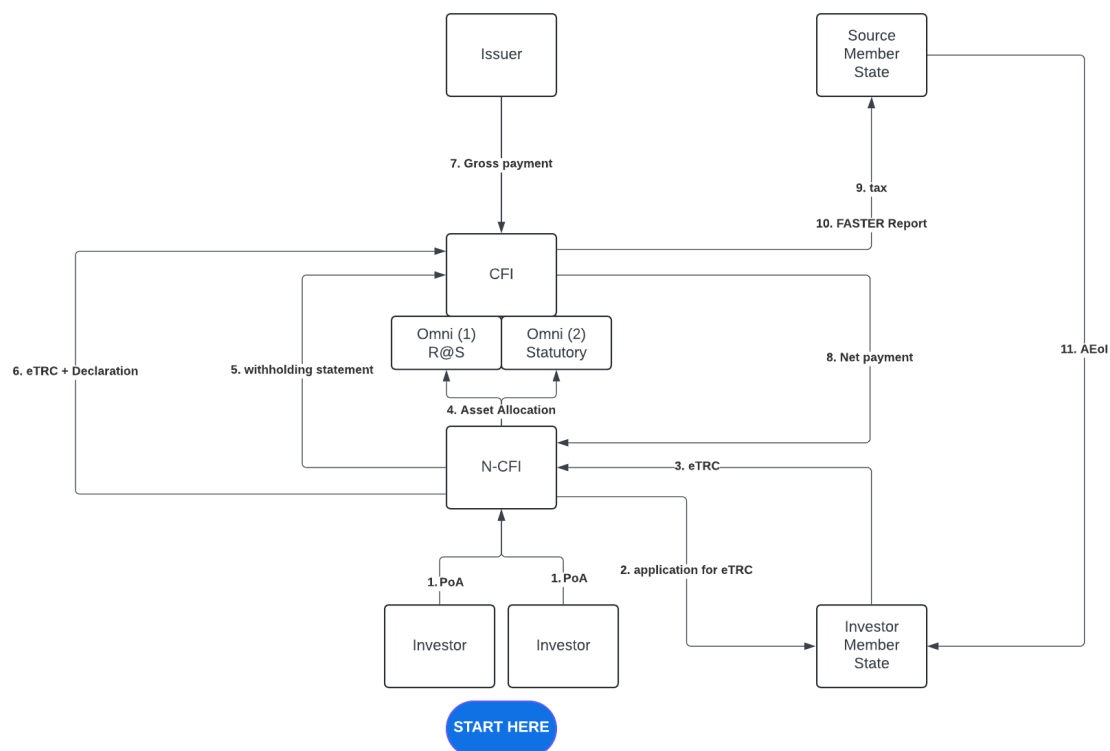


Exhibit 1 Omnibus accounts and withholding statements under FASTER

We would recommend that clear guidance be provided to the industry that would permit the explicit use of omnibus accounts and withholding statements in different scenarios to support the processes of withholding and reporting by CFIs on behalf of NCFIs.

The industry is already pursuing an ISO 20022 standard for withholding statements that would engage well with the Commission's stated direction to have reporting itself conducted as far as possible under ISO20022.



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6 Reporting

6.1 Third party submissions on behalf of CFIs

While mandatory CFIs will likely, by reason of their size, have sufficient resources to gather data, prepare and submit reports under the Directive, many voluntary CFIs may struggle with the technical aspects of the Directive and seek assistance from external subject matter experts and firms.

Annex II(A) of the Directive currently requires the name of the CFI or withholding agent but does not seem to allow for a third-party filer.

We recommend that, within Implementing Acts, provision be made to allow third parties to submit FASTER reports to Member States on behalf of CFIs, provided adequate controls are in place and that the CFI retains strict liability. There is precedent for this in US tax regulations that allow third parties to acquire a Transmitter Control Code (TCC) and subsequently submit reports on behalf of withholding agents. This would require a change to the required data components to identify the filer in addition to identification of the CFI.

7 Standard Refunds

Members of the Association have observed that Chapter III Section 3 Article 17 of the Directive contains only two clauses both of which leave decisions about the standard refund process entirely in the hands of each of the 27 Member States. Prior work by the Commission, notably in FISCO (2009), the Tax Barriers Business Advisory Group (2013) and the Withholding Tax Code of Conduct (2017) highlighted the inefficiencies of the standard ex post facto refund system being paper-based, time consuming and with variable refund times.

The Directive appears to make no substantive change to this portion of the withholding tax framework. In particular Article 17(1) would make no difference to the current and past systems for standard tax refunds as it does not reference the use of technology or technical standards. The term “standard” used in this clause could be interpreted as either standard for that Member State or standard across all Member States. The clause also implies that standard refund processes would only be available in Member States to investors who had previously submitted requests for relief or quick refund under the terms of the Directive but had been excluded under the terms of Article 13. However, Article 13 does not provide any conditions for exclusion other than the lack of provision of a tax residence (Article 13(a)) and applicable withholding tax rate (Article 13(b)) in a system provided by a Member State for use by a CFI. We think this may be or should be referring to Article 14(4)(a)-(c).

Article 17(2) restricts the availability of a standard refund process to dividends not covered by Articles 13 or 14.

While it is understandable, given its remit, that the Directive focuses much attention on the tax relief and quick refund procedures, most Member States already have a legacy standard refund system whose inefficiencies led in large part to the development of the Directive. Notwithstanding this, the Article seems inadequate to provide the holistic approach envisioned by the Member States and the Commission. We strongly urge the Commission and the Member States to include much more detail about standard refunds in the Implementing Acts and guidance phases, to reduce the amount of paper and simplify processes. We believe that, in the absence of such guidance, most Member States will retain their current inefficient standard refund processes. Our suggestions to improve this are included below.



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7.1 EU Standardised Forms & documentation

Article 17 does not reference any development of a standardised form. An analysis of the EU Member States typical standard refund forms indicates that there is a substantial overlap in the data and documentation required currently to support a standard refund process. Within the constraints of Article 17 of the Directive, the membership proposes that the Commission develop and prepare a standard basic tax refund application form to be used in digital ISO20022 format and that the ISO20022 schema for the same includes scope for additional Member State requirements for more complex scenarios. The Association stands ready to assist with this process if required from a business perspective.

Most Member States require evidence of over-withholding to support a standard refund claim. In many cases this is presented as a tax voucher (or consolidated tax voucher CTV) created by the payor. We would recommend that additional documentation such as CTVs, be permitted in digital or even tokenised form, electronically signed by an officer of the payor subject to Regulation (EU) No 910/2014 (the eIDAS regulation).

7.2 Statutes of Limitations

The Directive makes no mention of Statutes of Limitation with regard to standard refunds. Each Member State currently has a different statute of limitations for the acceptance of applications for standard refunds usually either by reference to the pay date of the security or to the end of the year in which the pay date occurred.

We strongly urge the Commission to consider imposing an EU standard Statute of Limitations of one year commencing on the pay date of the security concerned to apply to all investors. This would provide an incentive to the investment community to pay full attention to the effects of withholding tax and to take strenuous efforts to minimise exposure to the standard refund process by making applications within the scope of the Directive in tax relief and quick refund phases.

7.3 Time for Refunds

The Directive has made no mention of the differing times in which refunds are made to investors following the submission of standard tax refund claims. These time differences cause substantial financial harm to investors who do not have access to their funds for reinvestment. CFIs will continue to struggle with paper-based forms, variable statutes of limitation and variable repayment times.

We recommend an EU standard repayment time, included in Implementing Acts and guidance, not to exceed six months commencing on the date of recognition of a standard refund claim by an investor. This aligns with the recommendations of the Tax Barriers Business Advisory Group report of 2013. Such repayment time period could be extended by a Member State in a similar fashion to that envisioned in Chapter II Article 4(3)(4) in complex cases or where required information is not included in the claim.

For and on behalf of the Association

Ross McGill, Chairman



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Appendix 1 Proposed eTRC Power of Attorney

I, the undersigned, hereby make, constitute and appoint [CFI or agent of CFI], a [jurisdiction] corporation having its principal place of business at [address] as its true and lawful attorney-in-fact and agent, to submit to applicable authorities, requests for the issuance of an electronic tax residency certificate (eTRC), for the purpose of substantiating claims for tax relief, quick refund or standard refund of withholding or similar taxes on my behalf in any European Union Member State in accordance with the terms of Directive (EU) 2025/50, its implementing acts or guidance.

IN WITNESS WHEREOF, I have caused this Limited Power of Attorney to be executed [by my duly authorised representative] this [day] of [month] [year].

Electronic signature

Appendix 2 CFI Bulk eTRC Request Warranty

We the undersigned do certify and warrant, under penalty of perjury, that [CFI or agent of CFI] for each eTRC application contained in this bulk application, we hold valid and enforceable powers of attorney to act on behalf of each natural person or entity named therein.

IN WITNESS WHEREOF, I have caused this Limited Power of Attorney to be executed [by my duly authorised representative] this [day] of [month] [year].

Electronic signature