



TEXTS ADOPTED

P9_TA(2024)0102

Faster and Safer Relief of Excess Withholding Taxes

European Parliament legislative resolution of 28 February 2024 on the proposal for a Council directive on Faster and Safer Relief of Excess Withholding Taxes (COM(2023)0324 - C9-0204/2023 - 2023/0187(CNS))

(Special legislative procedure - consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2023)0324),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0204/2023),
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0007/2024),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(1) Ensuring fair taxation in the internal market and the good functioning of the Capital Markets Union (CMU) are political priorities for the European Union (EU). In this context, removing obstacles to cross-border investment, while combating tax fraud and abuse is critical. Such obstacles exist, for example, through inefficient and disproportionately burdensome procedures to relieve excess taxes withheld at source on dividend or interest income paid on shares or bonds traded publicly to non-resident investors. In addition, the status quo has proven inadequate in preventing recurring risks of tax fraud, evasion and avoidance, as shown by the recent Cum/Ex and Cum/Cum scandals. This proposal seeks to make EU withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and abuse. It draws on relevant previous actions at EU and international level, such as the 2009 Commission Recommendation on the simplification of withholding tax procedures and the OECD's Treaty Relief and Compliance Enhancement (TRACE) initiative²⁸.

²⁸ Commission Recommendation of 19 October 2009 on withholding tax relief procedures

Amendment

(1) Ensuring fair taxation in the internal market and the good functioning of the Capital Markets Union (CMU) are political priorities for the European Union (EU). In this context, removing obstacles to cross-border investment, while combating tax fraud and abuse is critical. Such obstacles exist, for example, through inefficient and disproportionately burdensome procedures to relieve excess taxes withheld at source on dividend or interest income paid on shares or bonds traded publicly to non-resident investors. ***Such obstacles pose a particular challenge for retail investors.*** In addition, the status quo has proven inadequate in preventing recurring risks of tax fraud, evasion and avoidance, as shown by the recent Cum/Ex and Cum/Cum scandals. This proposal seeks to make EU withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and abuse. It draws on relevant previous actions at EU and international level, such as the 2009 Commission Recommendation on the simplification of withholding tax procedures and the OECD's Treaty Relief and Compliance Enhancement (TRACE) initiative²⁸.

²⁸ Commission Recommendation of 19 October 2009 on withholding tax relief procedures

(Text with EEA relevance) (OJ L 279, 24.10.2009, p. 8-**11**)

(Text with EEA relevance) (OJ L 279, 24.10.2009, p. 8)

Amendment 2

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The cum-ex and cum-cum schemes both involve reclaims of dividend withholding tax to which the beneficiaries were not entitled and are estimated to have imposed a total cost to taxpayers of about EUR 55 billion^{1a} between 2001 and 2012 in the 11 Member States concerned; revelations in 2021 concerning those practices estimate that they have cost 10 governments, including those of some Member States, a total of EUR 141 billion^{1b}; the cum-ex and cum-cum schemes have been ruled illegal and should be prosecuted according to national law.

^{1a} ***<https://www.dw.com/en/cum-ex-tax-scandal-cost-european-treasuries-55-billion/a-45935370>***

^{1b} ***https://taxation-customs.ec.europa.eu/system/files/2023-06/SWD_2023_216_1_EN_impact_assessment_part1_v2.pdf***

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) In order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by fragmentation and a general lack of reliable and timely information on investors, it is therefore necessary to put in place a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such as the digitalisation of the certificate of tax residence (in terms of procedure and form), which is a pre-requisite for investors to have access to any relief or refund procedures. Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ensuring greater convergence and providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance.

Amendment

(2) In order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by fragmentation and a general lack of reliable and timely information on investors, it is therefore necessary to put in place a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such as the digitalisation of the certificate of tax residence (in terms of procedure and form), which is a pre-requisite for investors to have access to any relief or refund procedures. Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ensuring greater convergence and providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance. ***For the success of this Directive, it is necessary that Member States equip the tax administrations with tools to deal with refund/relief at source procedures in a secure and timely manner and increase their efforts in providing***

digitalised, automated and better-coordinated key features. For that purpose, it is also necessary to train the relevant staff supervising the digital tools.

Amendment 4

Proposal for a directive Recital 4

Text proposed by the Commission

(4) To ensure that all EU taxpayers have access to a common, appropriate and effective proof of their residence for tax purposes, Member States should use automated procedures for the issuance of tax residence certificates in the same recognisable and acceptable digital form and with the same content. To allow for greater efficiency, the certificate should be valid at least for the whole year during which it has been issued and recognised by other Member States for that period. Member States can rescind an eTRC issued where the tax administration has proof to the contrary of the tax residence for that year. In order to allow for an efficient identification of EU companies, the certificate should include information on the European Unique Identifier (EUID).

Amendment

(4) To ensure that all EU taxpayers have access to a common, appropriate and effective proof of their residence for tax purposes, Member States should use automated procedures for the issuance of tax residence certificates in the same recognisable and acceptable digital form and with the same content. To allow for greater efficiency, the certificate should be valid at least for the whole year during which it has been issued and recognised by other Member States for that period. ***The eTRC should also contain a reference to applicable double taxation agreements.*** Member States can rescind an eTRC issued where the tax administration has proof to the contrary of the tax residence for that year. In order to allow for an efficient identification of EU companies, the certificate should include information on the European Unique Identifier (EUID).

Amendment 5

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) To ensure the effectiveness of the tax consequences of entities being determined to be shell entities, as provided for in the Commission proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU^{1a} (UNSHELL Directive), it is necessary to align the procedures for imposing tax consequences in the UNSHELL Directive and the procedures for issuing an electronic tax residency certificate in this Directive. The Council should therefore clarify the interaction between the tax consequences defined in the UNSHELL Directive and the issuing of an electronic tax residency certificate as defined in this Directive.

^{1a} **COM(2021)0565.**

Amendment 6

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) As the financial intermediaries most often engaged in the securities' payment chains are large institutions as defined in the Capital Requirements Regulation

(6) 'Cum-ex' and 'cum-cum' - or dividend arbitrage trading schemes refer to the practice of trading shares in such a way as to conceal the identity of the actual owner and to enable

(CRR)²⁹ as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States established as above. Other financial intermediaries should be allowed to request registration at their discretion. Registration should be requested by the financial intermediary itself by submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. The purpose of the requirements is to verify that the requesting intermediary meets the requirements of relevant EU regulation and supervised for compliance therewith. Where the financial intermediary is established outside the EU, it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list). Compliance of a third country financial intermediary with the relevant EU requirements relates solely for the purposes set out in this Directive and has no impact on the exercising or application of any other rights and obligations under other EU legislation. Once registered, financial intermediaries should be considered “certified financial intermediaries” in the respective Member State and be subject to the relevant reporting and

both or multiple parties involved to claim withholding tax refunds on capital gains tax that had only been paid once and whereas those criminal practices involved financial intermediaries. As the financial intermediaries most often engaged in the securities’ payment chains are large institutions as defined in the Capital Requirements Regulation (CRR)²⁹ as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States established as above. Other financial intermediaries should be allowed to request registration at their discretion. Registration should be requested by the financial intermediary itself by submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. The purpose of the requirements is to verify that the requesting intermediary meets the requirements of relevant EU regulation and supervised for compliance therewith. Where the financial intermediary is established outside the EU, it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list). ***Registration of a third country financial intermediary should***

notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of certified financial intermediaries found to have violated their obligations a number of times. Where a Member State takes such action of removal, it should inform other Member States that maintain a national register accordingly in order to allow them to assess the removal of the same certified financial intermediary from their own national register. National legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.

be implemented with a minimum of administrative efforts. The Commission should assist Member States to ensure that there is a coordinated understanding regarding comparable legislation in third countries.

Compliance of a third country financial intermediary with the relevant EU requirements relates solely for the purposes set out in this Directive and has no impact on the exercising or application of any other rights and obligations under other EU legislation. Once registered, financial intermediaries should be considered “certified financial intermediaries” in the respective Member State and be subject to the relevant reporting and notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of certified financial intermediaries ***or to deny them access to relief system if they are*** found to have violated their obligations a number of times. Where a Member State takes such action of removal ***or denial***, it should inform other Member States that maintain a national register accordingly in order to allow them to assess the removal of the same certified financial intermediary from their own national register. National

legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.

²⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1-**337**)

²⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1)

Amendment 7

Proposal for a directive Recital 8

Text proposed by the Commission

(8) In order to render the Capital Markets Union more effective and competitive, procedures for relief of excess withholding taxes on securities' income should be facilitated and accelerated, where adequate information has been provided by relevant certified financial intermediaries, including on the identity of the investor. The relevant certified financial intermediaries consist of all the certified financial intermediaries in the payment chain between the investor and the issuer of the securities, which might be required to also provide information on payments effected by non-certified financial intermediaries in the chain, as per the policy choice of each

Amendment

(8) In order to render the Capital Markets Union more effective and competitive, procedures for relief of excess withholding taxes on securities' income should be facilitated and accelerated, where adequate information has been provided by relevant certified financial intermediaries, including on the identity of the investor. The relevant certified financial intermediaries consist of all the certified financial intermediaries in the payment chain between the investor and the issuer of the securities, which might be required to also provide information on payments effected by non-certified financial intermediaries in the chain, as per the policy choice of each

Member State. Taking into account the different approaches in Member States, two types of procedures are envisaged: (i) relief at source by direct application of the appropriate tax rate at the time of withholding and (ii) quick refund within a maximum of 50 days of the date of payment of the dividend or, as the case may be, of the date when the bond issuer must pay interest to the bond holder (coupon date). Member States should be free to introduce any of the two or a combination of both procedures, as they deem appropriate while ensuring that at least one is available for all investors, where the requirements of this Directive have been met. To ensure the proper and timely implementation of these procedures by the Member States concerned, it is appropriate to apply interest on late refunds of excess withholding taxes that are covered by this Directive and meet the conditions to benefit from these procedures. Where relevant requirements are not met, or the investor concerned so desires, Member States should apply their existing standard refund procedures to relieve excess withholding taxes. In any case, registered owners, in particular retail investors, and their authorized representatives, should preserve the right to reclaim excess withholding tax paid in a Member State where they provide proof of meeting the conditions set out in national law.

Member State. Taking into account the different approaches in Member States, two types of procedures are envisaged: (i) relief at source by direct application of the appropriate tax rate at the time of withholding and (ii) quick refund within a maximum of 50 days of the date of payment of the dividend or, as the case may be, of the date when the bond issuer must pay interest to the bond holder (coupon date). Member States should be free to introduce any of the two or a combination of both procedures, as they deem appropriate while ensuring that at least one is available for all investors, where the requirements of this Directive have been met. To ensure the proper and timely implementation of these procedures by the Member States concerned, it is appropriate to apply interest on late refunds of excess withholding taxes that are covered by this Directive and meet the conditions to benefit from these procedures. Where relevant requirements are not met, or the investor concerned so desires, Member States should apply their existing standard refund procedures to relieve excess withholding taxes. In any case, registered owners, in particular retail investors, and their authorized representatives, should preserve the right to reclaim excess withholding tax paid in a Member State where they provide proof of meeting the conditions set out in national law.
Member States may reject a refund request when any verification procedure or tax audit, based on risk assessment criteria and according to the national law,

is initiated.

Amendment 8

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) In order to safeguard the systems for relief of excess withholding taxes, Member States maintaining a national register should also require certified financial intermediaries to verify the eligibility of investors that wish to claim a relief. In particular, certified financial intermediaries should collect the tax residence certificate of the relevant investor, and a declaration that such investor is the beneficial owner of the payment according to the legislation of the source Member State. They should also verify the applicable withholding tax rate based on the investor's specific circumstances and indicate if they are aware of any financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated at the ex-dividend date. Certified financial intermediaries should be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of these obligations, to the extent that national law of the Member State where the loss incurred so provides. In order to ensure proportionality of the burden and liability imposed on certified financial intermediaries, reduced verification obligations should apply to all relief procedures, where the risk of abuse is low and

Amendment

(9) In order to safeguard the systems for relief of excess withholding taxes, Member States maintaining a national register should also require certified financial intermediaries to verify the eligibility of investors that wish to claim a relief. In particular, certified financial intermediaries should collect the tax residence certificate of the relevant investor, and a declaration that such investor is the beneficial owner of the payment according to the legislation of the source Member State. They should also verify the applicable withholding tax rate based on the investor's specific circumstances and indicate if they are aware of any financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated at the ex-dividend date. ***The due diligence requirements could be applied on an annual basis.*** Certified financial intermediaries should be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of these obligations, to the extent that national law of the Member State where the loss incurred so provides. In order to ensure proportionality of the burden and liability imposed on certified financial intermediaries, reduced verification obligations should

in particular where the total amount of the dividend paid to the investor for a shareholding in a company is lower than EUR **1000**. Should such abuse be proven otherwise, Member States can however apply consequences under national law, including denying the systems of relief provided in this Directive, but they cannot hold certified financial intermediaries liable for absence of verification.

apply to all relief procedures, where the risk of abuse is low and in particular where the total amount of the dividend paid to the investor for a shareholding in a company is lower than EUR **1500**. Should such abuse be proven otherwise, Member States can however apply consequences under national law, including denying the systems of relief provided in this Directive, but they cannot hold certified financial intermediaries liable for absence of verification.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

(12) The proper implementation and enforcement of the proposed rules in each Member State concerned is critical for the promotion of the CMU as a whole as well as for the protection of the tax base of Member States and should therefore be monitored by the Commission. Member States should therefore communicate to the Commission on a regular basis, information as specified by means of implementing act, on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive. The Commission should prepare an evaluation on the basis of the information provided by Member States and other available data to evaluate the effectiveness of the proposed new rules. In this context the Commission should consider the need to update the rules introduced by virtue of this

Amendment

(12) The proper implementation and enforcement of the proposed rules in each Member State concerned is critical for the promotion of the CMU as a whole as well as for the protection of the tax base of Member States and should therefore be monitored by the Commission. Member States should therefore communicate to the Commission on a regular basis, **statistical** information as specified by means of implementing act, on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive. The Commission should prepare an evaluation on the basis of the information provided by Member States and other available data to evaluate the effectiveness of the proposed new rules. In this context the Commission should consider the need to update the rules

Directive.

introduced by virtue of this Directive.

Amendment 10

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council³¹. Financial intermediaries and Member States may process personal data under this Directive solely with the objective of serving a general public interest, namely for the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. To allow the effective pursuit of this objective, it is necessary to restrict certain rights of individuals provided by the aforementioned Regulation, especially the right to be notified on the processing of their data and the scope thereof as well as the right to consent on certain types of data processing.

Amendment

(14) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council. Financial intermediaries and Member States may process personal data under this Directive solely with the objective of serving a general public interest, namely for the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. **Only entities participating in the WHT relief procedures under this Directive should have access to those data. Only the minimal amount of personal information required to identify underreporting, non-reporting, tax fraud, or abuse should be sent. Lastly, personal information should only be retained for as long as required for that purpose.** To allow the effective pursuit of this objective, it is necessary to restrict certain rights of individuals provided by the aforementioned Regulation, **insofar as the exercise of such rights may jeopardise investigations,** especially the

right to be notified on the processing of their data and the scope thereof as well as the right to consent on certain types of data processing. ***As soon as the circumstances that justified the restriction no longer apply, the rights of the data subjects should be reinstated.***

³¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

³¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

Amendment 11

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) This Directive should be reviewed regularly with the aim of further facilitating withholding tax relief for retail investors.

Amendment 12

Proposal for a directive Article 3 - paragraph 1 - point 19

Text proposed by the Commission

Amendment

(19) ‘double tax treaty’ means an agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force

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between two (or more)
countries.

between two (or more)
jurisdictions.

Amendment 13

Proposal for a directive

Article 4 - paragraph 2 - introductory part

Text proposed by the Commission

2. Member States shall issue the eTRC within **one** working **day** from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:

Amendment

2. Member States shall issue the eTRC **based on the available information** within **three** working **days** from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:

Amendment 14

Proposal for a directive

Article 4 - paragraph 2 - point a

Text proposed by the Commission

(a) the first and last name of the taxpayer and the date and place of birth, if the taxpayer is an individual, or its name and its European Unique Identifier number (EUID), if the taxpayer is an entity

Amendment

(a) the first and last name of the taxpayer and the date and place of birth, if the taxpayer is an individual, or its name and its European Unique Identifier number (EUID), if the taxpayer is an entity, **where available;**

Amendment 15

Proposal for a directive

Article 4 - paragraph 2 - point f a (new)

Text proposed by the Commission

Amendment

(fa) the double tax treaty;

Amendment 16

Proposal for a directive Article 4 - paragraph 2 - point g

Text proposed by the Commission

(g) any additional information that may be relevant where the certificate is issued to serve purposes other than relief of withholding tax under this Directive or information required to be included in a tax residence certificate under EU law.

Amendment

deleted

Amendment 17

Proposal for a directive Article 4 - paragraph 4

Text proposed by the Commission

4. If more than **one** working **day is** required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay.

Amendment

4. If more than **five** working **days are** required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay **that, in any case, shall be no longer than five working days.**

Amendment 18

Proposal for a directive Article 4 - paragraph 5

Text proposed by the Commission

5. Member States shall recognise an eTRC issued by another Member State as adequate proof of residence of a taxpayer in that other Member

Amendment

5. Member States shall recognise an eTRC issued by another Member State as adequate proof of residence of a taxpayer in that other Member

State in accordance with paragraph 3.

State in accordance with paragraph 3. ***In any case, Member States may prove the residence for tax purposes in their jurisdictions.***

Amendment 19

Proposal for a directive Article 4 - paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall take the appropriate measures to require an individual or entity deemed resident in their jurisdiction for tax purposes to inform tax authorities issuing the eTRC about any change that could affect the validity or the content of the eTRC.

Amendment 20

Proposal for a directive Article 4 - paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and technical protocols, including security standards, for the issuance of an eTRC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18.

6. The Commission shall adopt implementing acts laying down standard computerised forms ***in machine-readable format***, including the linguistic arrangements, and technical protocols, including security standards, for the issuance of an eTRC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18.

Amendment 21

Proposal for a directive Article 5 - paragraph 4 - point d a (new)

Text proposed by the Commission

Amendment

(da) information on the fees charged for the provision of services under this Directive.

Amendment 22

Proposal for a directive

Article 7 - paragraph 1 - introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that a financial intermediary is registered in their national register of certified financial intermediaries within **three** months from submission of a request of the financial intermediary that provides evidence of all of the following requirements:

1. Member States shall ensure that a financial intermediary is registered in their national register of certified financial intermediaries within **two** months from submission of a request of the financial intermediary that provides evidence of all of the following requirements:

Amendment 23

Proposal for a directive

Article 7 - paragraph 1 - point b

Text proposed by the Commission

Amendment

(b) if the requesting financial intermediary is a credit institution, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under points (12) or (14) of Annex I of Directive 2013/36/EU or comparable legislation of a third country; if the requesting financial intermediary is an investment firm, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under Section B(1) of Annex I of Directive 2014/65/EU

(b) if the requesting financial intermediary is a credit institution, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under points (12) or (14) of Annex I of Directive 2013/36/EU or comparable legislation of a third country; if the requesting financial intermediary is an investment firm, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under Section B(1) of Annex I of Directive 2014/65/EU

or comparable legislation of a third country or; if the requesting financial intermediary is a central securities depository, an authorisation in the jurisdiction of residence for tax purposes under Regulation (EU) No 909/2014 or comparable legislation of a third country of residence;

or comparable legislation of a third country or; if the requesting financial intermediary is a central securities depository, an authorisation in the jurisdiction of residence for tax purposes under Regulation (EU) No 909/2014 or comparable legislation of a third country of residence; ***the Commission shall issue guidance on minimum standards for comparable legislation;***

Amendment 24

Proposal for a directive Article 7 - paragraph 2

Text proposed by the Commission

2. Financial intermediaries shall notify without delay the competent authority of the Member State of any change in the information provided under points (a) to (c).

Amendment

2. Financial intermediaries shall notify without ***undue*** delay the competent authority of the Member State of any change in the information provided under points (a) to (c), ***providing the relevant documents where necessary.***

Amendment 25

Proposal for a directive Article 7 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall inform all other Member States about rejections of registration as soon as possible, according to Article 9 of Council Directive 2011/16/EU^{1a}.

***^{1a} Council Directive
2011/16/EU of 15 February***

2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/16/oj>).

Amendment 26

Proposal for a directive Article 8 - paragraph 3

Text proposed by the Commission

3. The Member State that removes a certified financial intermediary from its national register shall inform without delay all other Member States that maintain a national register according to Article 5.

Amendment

3. The Member State that removes a certified financial intermediary from its national register shall inform, **according to Directive 2011/16/EU**, without **undue** delay all other Member States that maintain a national register according to Article 5, **specifying the grounds of the removal according to paragraphs 1 and 2**.

Amendment 27

Proposal for a directive Article 8 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall update their national registers to reflect the status of financial intermediaries no longer holding certification. In cases where the removal as a certified financial intermediary results from a decision by a Member State, the specific reasons for such action shall be clearly indicated in the register.

Amendment 28

Proposal for a directive Article 9 - paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to require certified financial intermediaries in their national register to report to the competent authority the information referred to in Annex II as soon as possible after the record date, unless a settlement instruction in respect of any part of a transaction is pending on the record date, in which case the reporting for that transaction shall take place as soon as possible after the settlement. If **20** days after the record date, settlement is still pending for any part of the transaction, certified financial intermediaries shall report within the next 5 calendar days indicating the part for which settlement is pending.

Amendment

1. Member States shall take the necessary measures to require certified financial intermediaries in their national register to report to the competent authority the information referred to in Annex II as soon as possible **within a maximum of 20 calendar days** after the record date, unless a settlement instruction in respect of any part of a transaction is pending on the record date, in which case the reporting for that transaction shall take place as soon as possible after the settlement. If **15** days after the record date, settlement is still pending for any part of the transaction, certified financial intermediaries shall report within the next 5 calendar days indicating the part for which settlement is pending.

Amendment 29

Proposal for a directive Article 9 - paragraph 2

Text proposed by the Commission

2. Member States shall provide that certified financial intermediaries do not need to report information referred to in Annex II, heading E, if the total dividend paid to the registered owner on the owner's shareholding in a company does

Amendment

2. Member States shall provide that certified financial intermediaries do not need to report information referred to in Annex II, heading E, if the total dividend paid to the registered owner on the owner's shareholding in a company does

not exceed EUR **1000**.

not exceed EUR **1500**.

Amendment 30

Proposal for a directive Article 9 - paragraph 5

Text proposed by the Commission

5. Member States shall require certified financial intermediaries in their national register to keep the documentation supporting the information reported for **five** years and to provide access to any other information, as well as access to their premises for the purpose of audit and shall require certified financial intermediaries to delete or anonymise any personal data included in such documentation as soon as the audit has been completed and at the latest **five** years after reporting.

Amendment

5. Member States shall require certified financial intermediaries in their national register to keep the documentation supporting the information reported for **six** years and to provide access to any other information, as well as access to their premises for the purpose of audit and shall require certified financial intermediaries to delete or anonymise any personal data included in such documentation as soon as the audit has been completed and at the latest **six** years after reporting.

Amendment 31

Proposal for a directive Article 10 - paragraph 2 - point a

Text proposed by the Commission

(a) the dividend has been paid on a publicly traded share that the registered owner acquired within a period of **two** days before the ex-dividend date;

Amendment

(a) the dividend has been paid on a publicly traded share that the registered owner acquired within a period of **five** days before the ex-dividend date;

Amendment 32

Proposal for a directive Article 10 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The control powers of Member States, pursuant to their national legislation, on the taxable income to which the relief was applied, shall not be limited.

Amendment 33

Proposal for a directive

Article 11 - paragraph 1 - introductory part

Text proposed by the Commission

1. Member States shall ensure that the certified financial intermediary requesting relief under Article 12 and/or 13 on behalf of a registered owner obtains from such registered owner a declaration that the registered owner:

Amendment

1. Member States shall **take the necessary measures to** ensure that the certified financial intermediary requesting relief under Article 12 and/or 13 on behalf of a registered owner obtains from such registered owner a declaration that the registered owner:

Amendment 34

Proposal for a directive

Article 11 - paragraph 1 - point a

Text proposed by the Commission

(a) is the beneficial owner of the dividend or interest as defined under the national legislation of the source Member State; and

Amendment

(a) is the beneficial owner of the dividend or interest as defined under the national legislation of the source Member State **or a double tax treaty;** and

Amendment 35

Proposal for a directive

Article 11 - paragraph 2 - introductory part

Text proposed by the Commission

2. Member States shall ensure certified financial intermediaries

Amendment

2. Member States shall **take the necessary measures to**

requesting relief under Article 12 and/or 13 on behalf of a registered owner to verify:

ensure certified financial intermediaries requesting relief under Article 12 and/or 13 on behalf of a registered owner to verify:

Amendment 36

Proposal for a directive

Article 11 - paragraph 2 - point a a (new)

Text proposed by the Commission

Amendment

(aa) the risks of residence and citizenship by investment schemes that present a potentially high risk, as identified by the Organisation for Economic Co-operation and Development (OECD), associated with the possible misuse by the registered owners of an eTRC issued by Member States or third countries which offer such schemes;

Amendment 37

Proposal for a directive

Article 11 - paragraph 2 - point d

Text proposed by the Commission

Amendment

(d) in case of a dividend payment and based on the information available to the certified financial intermediary, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated at the ex-dividend date, unless the dividend paid to the registered owner for each group of identical shares held does not exceed EUR **1000**.

(d) in case of a dividend payment and based on the information available to the certified financial intermediary, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated at the ex-dividend date, unless the dividend paid to the registered owner for each group of identical shares held does not exceed EUR **1500**.

Amendment 38

Proposal for a directive Article 11 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may allow to obtain the declaration according to paragraph 1 and to carry out the verifications according to paragraph 2 on an annual basis and, on an ad hoc basis, when there are reasons to assume a change of circumstances or incorrect or unreliable information.

Amendment 39

Proposal for a directive Article 11 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission is empowered to adopt guidelines for the fulfilment of the requirements laid down in paragraph 2.

Amendment 40

Proposal for a directive Article 13 - paragraph 1

Text proposed by the Commission

Amendment

1. Member States may allow certified financial intermediaries maintaining a registered owner's investment account to request a quick refund of the excess withholding tax, on behalf of such registered owner in accordance with Article 10 if the information referred to in paragraph 3 of this Article is provided ***as soon as***

1. Member States may allow certified financial intermediaries maintaining a registered owner's investment account to request a quick refund of the excess withholding tax, on behalf of such registered owner in accordance with Article 10 if the information referred to in paragraph 3 of this Article is provided within 25

possible after the payment date and at the latest within 25 calendar days from the date of payment of the dividend or interest.

calendar days from the date of payment of the dividend or interest.

Amendment 41

Proposal for a directive Article 13 - paragraph 2

Text proposed by the Commission

2. Member States shall process a refund request made in accordance with paragraph 1 within 25 calendar days from the date of such request or from the date reporting obligations under this Directive have been met by all relevant certified financial intermediaries, whichever is the latest. Member States shall apply interest in accordance with Article 14 on the amount of such refund for each day of delay after the 25th day.

Amendment

2. Member States shall process a refund request made in accordance with paragraph 1 within 25 calendar days from the date of such request or from the date reporting obligations under this Directive have been met by all relevant certified financial intermediaries, whichever is the latest. Member States shall apply interest in accordance with Article 14 on the amount of such refund for each day of delay after the 25th day, ***unless the Member State has reasonable doubts on the legitimacy of the refund request.***

Amendment 42

Proposal for a directive Article 13 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may reject a refund request if any verification procedure or tax audit, based on risk assessment criteria and according to the national legislation, is initiated.

Amendment 43

Proposal for a directive Article 15 - paragraph 1

Text proposed by the Commission

Member States shall adopt appropriate measures to ensure that where Article 12 and Article 13 do not apply to dividends, because the conditions of this Directive are not met, a registered owner or its authorised representative requesting for refund of the excess withholding tax on such dividends provides at least the information required under Annex II, heading E, unless the total dividend paid to the registered owner on the owner's shareholding in a company does not exceed EUR **1000**, and unless this information has already been provided in accordance with the obligations of Article 9.

Amendment

Member States shall adopt appropriate measures to ensure that where Article 12 and Article 13 do not apply to dividends, because the conditions of this Directive are not met, a registered owner or its authorised representative requesting for refund of the excess withholding tax on such dividends provides at least the information required under Annex II, heading E, unless the total dividend paid to the registered owner on the owner's shareholding in a company does not exceed EUR **1500**, and unless this information has already been provided in accordance with the obligations of Article 9.

Amendment 44

Proposal for a directive Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Monitoring and exchange of information

- 1. To ensure the integrity of the internal market the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) shall regularly monitor the risk for cum-cum and cum-ex in the Union.***
- 2. Member States shall introduce coordinated***

cooperation and mutual assistance between national competent authorities, tax authorities and other law enforcement bodies, such as the European Public Prosecutor's Office (EPPO) to detect and prosecute illegal withholding tax reclaim schemes.

Amendment 45

Proposal for a directive Article 19 - title

Text proposed by the Commission

Evaluation

Amendment

General evaluation, review and revision

Amendment 46

Proposal for a directive Article 19 - paragraph 1

Text proposed by the Commission

1. The Commission shall examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every **5** years. A report on the evaluation of the Directive, including on a potential need to amend specific provisions **thereof**, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.

Amendment

1. The Commission shall examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every **five** years. A report on the evaluation of the Directive **and on the applicable rules to withholding taxes in the Member States**, including on a potential need to amend specific provisions **of this Directive**, will be submitted to the European Parliament and the Council by December 2031 and every 5 years. ***In the evaluation report, the Commission shall:***

Amendment 47

Proposal for a directive

Article 19 - paragraph 1 - point a (new)

Text proposed by the Commission

Amendment

(a) examine further possible measures to facilitate self-processed withholding tax claims for small investors who engage directly with tax authorities without the intermediation of certified financial intermediaries;

Amendment 48

Proposal for a directive

Article 19 - paragraph 1 - point b (new)

Text proposed by the Commission

Amendment

(b) assess how the procedures for withholding tax relief can be further simplified for retail investors;

Amendment 49

Proposal for a directive

Article 19 - paragraph 1 - point c (new)

Text proposed by the Commission

Amendment

(c) conduct a comprehensive analysis of the development of the service fees financial intermediaries charge registered owners for the implementation of the quick refund procedure and the relief at source procedure;

Amendment 50

Proposal for a directive

Article 19 - paragraph 1 - point d (new)

Text proposed by the Commission

Amendment

(d) examine whether a relief at source system could be envisaged as a procedure for all Member States; and introduce further measures to facilitate such a system for small and medium-sized enterprises;

Amendment 51

Proposal for a directive

Article 19 - paragraph 1 - point e (new)

Text proposed by the Commission

Amendment

(e) examine whether Member States are still impacted by or prone to dividend arbitrage and dividend stripping schemes such as the cum-ex and cum-cum schemes and whether existing measures within the field of withholding taxes are sufficient to combat tax fraud, tax evasion and tax avoidance or whether additional ones would be necessary, such as subjecting capital gains upon disposal of shares and security lending fees to taxation equivalent to dividends, as a way to deter and mitigate dividend arbitrage; the Commission shall in that regard collect evidence from Member States receiving support from EBA, ESMA, EPPO, and relevant national competent authorities;

Amendment 52

Proposal for a directive

Article 19 - paragraph 1 - point f (new)

Text proposed by the Commission

Amendment

(f) consider further measures, if necessary, to ensure that all dividends, interest, capital gains, royalty payments, professional service payments and relevant contract payments generated in the Union are taxed at least once at an effective rate;

Amendment 53

Proposal for a directive

Article 19 - paragraph 1 - point g (new)

Text proposed by the Commission

Amendment

(g) examine the potential of distribution ledger systems or other technological tools to render the system more efficient and fraud proof through better identification of the beneficial owner;

Amendment 54

Proposal for a directive

Article 19 - paragraph 1 - point h (new)

Text proposed by the Commission

Amendment

(h) examine possible measures to digitalise relief and refund processes, and claims;

Amendment 55

Proposal for a directive

Article 19 - paragraph 1 - point i (new)

Text proposed by the Commission

Amendment

(i) assess the acceptance of electronic or digital signatures and use of e-ID to facilitate the verification process for individual investors.

Amendment 56

Proposal for a directive

Article 19 - paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where appropriate, the evaluation report shall be accompanied by a legislative proposal.

Amendment 57

Proposal for a directive

Article 19 - paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall communicate to the Commission relevant information for the evaluation **of the Directive in improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse**, in accordance with paragraph 3.

2. Member States shall communicate to **the European Parliament and** the Commission relevant **statistical** information for the evaluation **referred to in paragraph 1**, in accordance with paragraph 3.

Amendment 58

Proposal for a directive

Article 19 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The European Commission shall in cooperation with Member States actively assess whether this Directive has an impact on risks for tax fraud and abuse, and the impact on tax revenues.

Amendment 59

Proposal for a directive Article 19 - paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States for the purposes of evaluation and the format and the conditions of communication of that information.

3. The Commission shall, by means of implementing acts, specify the **statistical** information to be provided by Member States for the purposes of evaluation and the format and the conditions of communication of that information.

Amendment 60

Proposal for a directive Article 19 - paragraph 5

Text proposed by the Commission

Amendment

5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State

5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to **the European Parliament and** other Member States. The transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State

which received it.

which received it.

Amendment 61

Proposal for a directive Article 20 - paragraph 1

Text proposed by the Commission

1. Member States shall restrict data subject's rights under Articles 15 to 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁵ only to the extent and only as long as it is strictly necessary for their competent authorities to mitigate the risk of tax fraud, evasion or avoidance in Member States, in particular by verifying that the correct withholding tax rate is applied for the registered owner, or by verifying that the registered owner obtains the relief if so entitled in a timely manner.

⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

Amendment

1. Member States shall restrict data subject's rights under Articles 15 to 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁵, ***insofar as the exercise of such rights may jeopardise investigations and*** only to the extent and only as long as it is strictly necessary for their competent authorities to mitigate the risk of tax fraud, evasion or avoidance in Member States, in particular by verifying that the correct withholding tax rate is applied for the registered owner, or by verifying that the registered owner obtains the relief if so entitled in a timely manner. ***The rights of the data subjects shall be restored as soon as the conditions that supported the restriction cease to exist.***

⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

Amendment 62

Proposal for a directive Article 20 - paragraph 3

Text proposed by the Commission

3. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's domestic rules on statute of limitations, but in any case no longer than **10** years.

Amendment

3. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's domestic rules on statute of limitations, but in any case no longer than **5** years.