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In Focus: **FASTER**



This In Focus article provides a comprehensive analysis of the FASTER Directive and discusses possible implications to investors and intermediaries in the payment chain.

What is FASTER?

Faster and Safer Relief of Excess Withholding Taxes (FASTER) is the European Commission's (EC's) initiative to harmonize withholding tax regimes among the EU Member States by January 1, 2030.

Agreement on the EU's Directive on FASTER was reached on May 14, 2024 at an Economic Financial Affairs Council (ECOFIN) meeting among European Union (EU) Member States.

Member states will need to transpose the FASTER Directive into their national legislation by December 31, 2028, with implementation on January 1, 2030.

The aim of FASTER is to 1) ensure fair taxation and prevent tax fraud, evasion, and avoidance, such as that seen in the Cum/Ex and Cum/Cum scandals, and 2) make the process of obtaining non-resident withholding tax relief more efficient.

Background

The FASTER concept was first solidified in the 2020 publication of the EC's CMU Action Plan.

BBH actively monitors FASTER developments and has provided written and in person input and feedback as part of several industry associations, including the Association of Global Custodians, Association of Financial Markets in Europe (AFME), and the Investment Company Institute (ICI).

FASTER sets forth the following standards:

- (1) eTRC - A common EU Member State electronic Tax Residence Certificate (eTRC) to be issued by Member States within 14 days of request
- (2) Relief at Source/ Quick refund process – A relief at source and/or a quick refund regime applicable to dividend income from publicly traded shares and optionally to interest from publicly traded bonds
- (3) Intermediary certification – Obligation for certain intermediaries to become Certified Financial Intermediaries (CFIs) via a European Certified Financial Intermediary Portal
- (4) Standard reporting – A standardized reporting regime for CFIs seeking tax relief on behalf of investors

Electronic Tax Residence Certificates (eTRC)

Member States will provide an automated process to issue a standard language eTRC to investors that are deemed residents for tax purposes in their jurisdiction.

- The eTRC will be issued within 14 days of request and will be valid for a period not exceeding one calendar year or the fiscal year for which it is issued.
- The eTRC is to be deemed sufficient proof of tax residence when presented to another EU Member State.

- Tax residence certificates produced by investors domiciled in non-EU Member States should be acceptable as long as they contain equivalent content to that provided on the eTRC.
- If the investor is an entity that cannot obtain proof of tax residence in a non-EU Member State because the entity is disregarded for tax purposes in its country of domicile and its income is taxed at the level of its underlying investors, but the entity is nevertheless entitled to relief from withholding tax in the source Member State, then the Member State will determine documents deemed appropriate as proof of tax residence.

The EC intends to issue implementing acts around standardization of forms and procedures for the issuance of eTRCs.

Relief at Source/ Quick Refunds

FASTER requires that all EU Member States implement a relief at source and/or quick refund system for tax withheld on dividends from publicly traded shares, with an option to apply the same to interest from publicly traded bonds.

- CFIs will be able to request relief at source on behalf of the registered owner by providing the information of the registered owner, including the applicable withholding tax rate, to the local withholding agent.
- Quick refunds, if reduction at source is not achieved, would need to be processed by the Member State within 60 calendar days. In order to request a quick refund, reporting must be completed to allow the source country's tax authority to reconstruct the payment chain.

EU Member States with a Market Capitalization Ratio of Less than 1.5 percent


Member States that have “comprehensive relief at source systems” and a market capitalization ratio that does not exceed 1.5 percent for four consecutive years can be exempted from implementing FASTER.

- Once a Member State exceeds the 1.5 percent capitalization ratio threshold for four consecutive years, the Member State will have five years to transpose FASTER into its national laws.
- Exclusions from relief at source, requests for additional information, and obligations are to be limited to scenarios provided for in the FASTER Directive.

Exceptions to Relief at Source due to Elevated Risk of Fraud or Abuse

Member States will be able to choose to restrict relief at source and/or quick refunds where they have determined there is elevated risk of fraud and abuse by choosing to implement any of the following exceptions:

- (1) The dividend has been paid on a publicly traded share that the registered owner acquired in a transaction carried out within a period of five days before the ex-dividend date
- (2) The dividend payment on the underlying security for which relief is requested is linked to a financial arrangement that has not been settled, expired, or otherwise terminated before the ex-dividend date
- (3) At least one of the financial intermediaries in the securities payment chain is not a CFI and no CFI has assumed the position of that financial intermediary

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- (4) An exemption of the withholding tax is claimed
 - (5) A reduced withholding tax rate not deriving from double tax treaties is claimed
 - (6) The dividend payment exceeds a gross amount of at least EUR 100,000, per registered owner and per payment date. Certain exceptions may apply under this condition

Provisions for Collective Investment Undertakings

Special provisions apply to certain CIUs or their underlying investors where the securities are held by fiscally transparent CIUs.

- Member States are to allow CFIs to request relief at source or quick refunds on behalf of (i) CIUs which hold securities for the account of underlying investors which are entitled for tax relief under a tax treaty or national legislation; or (ii) where the CIU itself is entitled to tax relief under a tax treaty or national legislation. The CFI would need to collect documentation from each CIU entitled to relief or from each investor in the CIU entitled to relief and to report accordingly to the withholding agent.

Certified Financial Intermediaries (CFIs)


Member States will require all large institutions that handle payments of dividends and, where relevant, interest on securities issued by a resident in their jurisdiction, and Central Securities Depositories (CSDs) that are the withholding tax agents for the payments, to register with their national register as CFIs.

- Non-EU member state institutions and small institutions will also have the option of becoming CFIs.
- The EC will develop and operate the European Certified Financial Intermediary Portal either by its own means or through a third party.
- Each Member State will determine the rules under which CFIs can be held liable for full or part of withholding tax revenue loss, by establishing strict or joint and several liability, as well as penalties.

Standardization of Investor Documentation and Due Diligence

CFIs will collect an eTRC and a Self-Declaration confirming that the investor is entitled to tax relief according to the legislation of the source Member State or a tax treaty and, when required by the source Member State, that the investor is the “beneficial owner” of the dividend and interest payments in accordance with the national legislation of the source Member State or a tax treaty. Member States will have the option to request a declaration on beneficial ownership.

- Note that the final Directive does not provide a uniform definition of “beneficial ownership.” Instead, the Directive provides that the registered owner declares that they are the beneficial owner in accordance with national legislation of the source Member State or a double tax treaty, where applicable.
- CFIs will be required to verify the following: (i) the investor’s eTRC or its equivalent; (ii) the investor self-declaration confirming its entitlement to a specific reduced withholding tax rate in accordance with a tax treaty between the source Member State and the jurisdiction where the registered owner is resident for tax purposes or specific national legislation of the source Member State; (iii) beneficial ownership if required by the member state; (iv) whether the CFI is aware of any “financial arrangement” involving the



underlying securities that has not been settled, expired or otherwise terminated before the ex-dividend date; (v) that the shares were acquired by the registered owner in a transaction carried out five days before the ex-date.

- Financial arrangements are defined as “any arrangements or series thereof, or contractual obligations whereby; (i) any part of the ownership of the publicly traded shares, on which a dividend is paid, is or could be, either permanently or temporarily transferred to a related or independent party; or (ii) the dividend is fully or partly compensated, between related or independent parties, in cash or in any other form.
- The CFI closest to the investor should take reasonable measures to verify whether the information in the eTRC or its equivalent, or the information in the investor’s declaration does not contradict the information collected by the CFI on its clients in the normal course of business as a result of complying with applicable Know Your Customer (KYC) rules.
- The European Commission will adopt implementing acts laying down standard templates of computerized forms for the declaration and enable Member States to request specific additional information.

Standardized Reporting

CFIs will report in-scope income payments to the source country tax administration within the second month following the month of the payment date. If a settlement instruction with respect to any part of the transaction is pending, the CFI will indicate the part for which the settlement is pending.

- Member States can implement one of two reporting options, direct or indirect reporting. Where the reporting is direct, a CFI should report directly to the competent authority of the source Member State. Where the reporting is indirect, the information should be provided by each CFI along the securities payment chain in a sequential order until information reaches the withholding tax agent or the CFI that reports to the competent authority of the source Member State.
- The reported data should include information on the eligibility of the investor. FASTER provides a comprehensive list of reportable data elements (Annex II of the Directive), including confirmation of whether the income payments relate to “certain financial arrangements” as noted above and whether the Member States’ requisite security holding period has been met.
- The Commission will adopt implementing acts laying out standard computerized forms, including XML reporting schemas for information referred to in Annex II of the FASTER Directive.

Next Steps

- Next steps require consultation with the European Parliament, although the consultation is not binding.
- EU Member States will then formally adopt the FASTER Directive with the final version being published in the Official Journal of the EU.
- Member States will then need to transpose the Directive into their national legislation by December 31, 2028, with implementation on January 1, 2030.



Implications to the Investor

1. Exceptions may limit scope of eligible investors/transactions -- Although FASTER requires each participating Member State to implement a relief at source and/or quick refund system, the “elevated risk of fraud” exceptions that Member States can subscribe to may significantly limit the scope of eligible investors and transactions.
2. Relief may have limited application -- Investors can expect that Member States with “comprehensive” relief at source regimes will continue to support relief at source, although modifications may be necessary to ensure that the regime is sufficiently “comprehensive.” Member States that currently only offer standard reclaims, will need to introduce a relief at source and/or quick refund systems, but these may have limited application as discussed above.
3. eTRC self-declaration content requirements may vary -- The EC is expected to prescribe a standardized template for the Self-Declaration, however Member State Self Declarations are likely to vary to some degree depending on whether the source country requires investors to confirm beneficial ownership and which exceptions to relief at source/quick refunds the Member State subscribes to.
4. Investors and CFIs may need additional information in order to comply with reporting obligations -- Although investors are not directly involved in the CFI’s reporting obligations, CFIs and non-CFI custodians in the chain of payment, may need to request additional information from investors in order to comply with comprehensive reporting obligations

Implications to the Intermediary

1. EU member state intermediaries will need to register to become CFIs


FASTER will significantly impact certain EU Member State intermediaries that will need to register to become CFIs, as well as non-EU Member State intermediaries in the chain of payment that will facilitate passing information along the payment chain to the withholding agent that reports and remits to the source country tax authorities. In cases where EU Member States elect a direct reporting regime, each CFI in the chain will need to report directly to the source country tax authorities and non-EU Member State intermediaries in the chain may still need to facilitate the provision of information to the reporting CFI.

2. CFIs will need to utilize information collected under KYC rules

CFIs will be responsible for collecting and verifying investor documentation against currently established KYC rules to establish eligibility for tax benefits and will need to understand the standard of due diligence and associated liability.

Looking ahead: BBH will continue its advocacy on behalf of clients

Industry groups will continue to advocate to the EC, where appropriate, in an effort to influence easing the burdens on investors and CFIs relating to the new requirements.



Efforts will also focus on influencing each Member State that wishes to adopt “beneficial ownership” or “financial arrangement” rules to adequately define both terms or consider leaving them off the Self-Declaration and relying on the mandatory statement of treaty or local law reduction eligibility and the reporting data points.

We continue to participate in industry initiatives, advocating on behalf of our clients and intermediaries in an effort to influence further harmonization among the individual EU Member States. Clients can stay up to date on developments through BBH’s Global Updates and In Focus publications.



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