KPMG responds to European Commission public consultation on FASTER

European Commission – Fair taxation – Business in Europe – Faster and Safer Relief of Excess Withholding Taxes – FASTER – Withholding Taxes

On September 17, 2023, KPMG[1] member firms in the EU submitted a response to the European Commission's (EC) public consultation on the "Faster and Safer Relief of Excess Withholding Taxes (FASTER)" initiative.

KPMG supports the EC's initiative to address current inefficiencies in withholding tax relief procedures across the Union, which hinder the functioning of the EU's capital markets. The submission intends to build from the key issues KPMG has observed in practice and to set out certain high-level recommendations on how to mitigate a number of issues that might arise in practice.

Background

On June 19, 2023, the EC published a call for public feedback regarding the proposed FASTER Directive. The policy effort to design a more efficient WHT system has been high on the agenda of the OECD and EC as well as local tax authorities for more than a decade. The primary objectives of EC are to (i) shorten the time for relieving and refunding excess WHT, (ii) ensure that financial intermediaries adhere to customer due diligence and related reporting requirements, (iii) prevent abusive WHT practices, and (iv) equip tax authorities with the tools to deal with refund and relief at source procedures in a secure and timely manner. The FASTER initiative has been proposed by the EC to achieve these objectives. The key features of the proposal include:

- A common EU digital tax residence certificate which will comprise of common content, regardless of the issuing Member State. It should be noted that, provided all information has been presented, the digital tax residence certificate should be issued by Member States within one working day after the submission

[1] The comment paper was produced on behalf of KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout the submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

of a request by a taxpayer.

- Two fast-track procedures complementing the existing standard refund procedure, including: (i) a relief at source system, and (ii) a quick refund system. Member States will be required to implement one of the two systems (or a combination of both).
- The introduction of National Registers for financial intermediaries that will be able to facilitate the fast-track procedures. It should be noted that such financial intermediaries will be subject to additional common reporting requirements.

For more information on the initiative, please refer to Euro Tax Flash Issue 517.

KPMG's contribution

KPMG member firms in the EU were pleased to provide comments on the EC's FASTER initiative and welcomed the EC's proposal, with a series of comments on points for further consideration. Specifically, KPMG's contribution addresses the systems of relief, the requirements of cross-border investors, and the requirements of Certified Financial Intermediaries (CFI). There are several general points that apply across these sections, including:

- We welcome the EC's efforts to move towards a standardized and digitalized withholding tax relief system across the EU.
- We support the proposed introduction of a Relief at Source (RAS) system and welcome the proposed option to introduce a common quick refund system to complement the RAS process, and act as a backstop for cases where WHT RAS is not achieved.
- We find that lessons and best practices can be drawn from existing systems of relief that are effective in some Member States. In this regard, we have provided several examples throughout our contribution of the experience of systems in different Member States.
- We also highlight the need to ensure that the obligations of both EU and non-EU (i) cross-border investors and (ii) CFIs are not overly burdensome, to ensure that the procedural objectives of the FASTER proposal are realized.

It is our view that issues regarding withholding tax procedures in the EU are often triggered by the inconsistencies in domestic rules, administrative procedures and forms used across the 27 EU Member States. We welcome the proposed introduction of the Directive, in light of its aim of improving the EU internal market and mitigating the significant administrative burden, high degree of uncertainty and difficulties faced by non-resident investors seeking to benefit from reduced withholding tax rates available under a relevant double tax treaty or domestic legislation.

However, we do also believe that the implementation of the FASTER proposal, in its current form, could lead to some potential procedural issues which may mitigate its benefits. We would therefore encourage the EC to consider the potential pitfalls which have been highlighted in our submission and consider existing best practices across the EU when addressing these procedural challenges.

We also encourage the EC to work with the Member States towards finding solutions to existing issues that go beyond procedural aspects, particularly with respect to issues related to the concept of beneficial ownership and mismatches in the categorization of certain types of funds, which can lead to entities not being able to access double tax treaty benefits.

ETC Comment

Following the conclusion of the public consultation period, the EC is expected to review the comments received from the public consultation with a view to informing discussions among the Member States in the appropriate Council working groups. It should be noted that the legal basis for the proposal is Article 115 of the Treaty on the Functioning of the EU (TFEU), meaning that the Directive requires unanimous approval in the Council. As part of the legislative process, the Council is required to consult with the European Parliament. However, the Council has a sole legislative role and therefore the European Parliament's recommendations are not binding, which means that the final text of the Directive, may not reflect the amendments recommended by the European Parliament. Effectively, it remains up to the 27 EU Member States to unanimously agree on the final text of the Directive.

As a final point regarding the implementation deadline of the initiative, we note that at the beginning of Spain's Presidency of the Council of the EU, FASTER was indicated as a priority item. It may therefore be the intention of the Presidency to progress work on the file so as to allow for implementation from January 1, 2027, as proposed by the EC. To date, there has been no suggestion that this timeline would be postponed or delayed, but this will be something to monitor over the coming months. As work on this file continues in the Council, items that may be subject to further discussion could include the proposed deadlines, such as the one-day turnaround time for the electronic tax residency certificate and the 25-day refund period for the quick refund system. It remains to be seen how quickly Member States and the European Commission are able to settle any outstanding items.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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