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Have your say – Withholding taxes – new EU system for the avoidance of double taxation and prevention of tax abuse: Faster and Safer Relief of Excess Withholding Taxes (FASTER Initiative)

Summary

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Introduction

Deutsche Börse Group (“DBG”) would like to express appreciation for the opportunity to respond to the proposed "Faster and Safer Relief of Excess Withholding Taxes" Initiative (FASTER). As a company advocating for a stronger European capital market, we firmly believe that this initiative is a crucial step, aiming to address tax barriers to cross-border investment, simplify taxation, and introduce a common EU-wide system for withholding tax on dividend or interest payments. We welcome the new EU system for the avoidance of double taxation and the prevention of tax abuse, as it aligns with our vision of a more efficient and harmonized European financial landscape. We believe this initiative is also in line with the objectives of the removal of the Giovannini barriers – an old topic, but still with high relevance. With this in mind, we would like to take this opportunity to highlight a few points that require further clarification and consideration, particularly on definitions, transposition and implementation.

Chairman of the
Supervisory Board
Martin Jetter

Executive Board
Theodor Weimer
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Christoph Böhm
Thomas Book
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Stephan Leithner
Gregor Pottmeyer

Aktiengesellschaft
mit Sitz in
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HRB Nr. 32232
VAT Reg Nr. DE114151950
Amtsgericht
Frankfurt/Main

Definitions and Transposition

To avoid confusion or misinterpretation and to ensure smooth implementation and transposition, we recommend clarifying certain definitions. For instance, the definition of the beneficial/legal owner should be unambiguous, and proper documentation will be essential for its effective application. Also, regarding the concept of "Relief at source", it is crucial to establish a streamlined process for tax authorities to identify the final/beneficial owner.

1. Situation of Foreign Investors and Access to electronic CoR:

The objective of the FASTER initiative is *to level the playing field for national, foreign investors, domestic and non-resident intermediaries alike*. It is therefore essential to address the concerns of foreign investors regarding the FASTER initiative, particularly in terms of their access to electronic Certificates of Residence (CoR). A clear and efficient process must be established to ensure that foreign investors can easily obtain these certificates to facilitate their participation in the initiative. Interoperability and efficient communication channels among Member States and towards Certified Financial Institutions (CFIs) must also be ensured.

2. Reconciliation Mechanism:

As it stands, the proposed text does not require the creation of a reconciliation process. Reconciliation is the process of comparing transactions and activity to supporting documentation and resolving any discrepancies that may have been discovered. Therefore, we consider that including a reference to the creation of a reconciliation process at transposition level would be essential to ensure consistency of information reported by each entity in the custody chain.

3. Reporting with Non-EU Intermediaries:

We understand that the proposal is structured in two sections, there included a chapter dealing with the Withholding Tax (WHT) relief procedures, including the obligation for Member States to set up a relief at source system or a quick refund system or a combination of both to ensure swift and secure relief from WHT, based on Double Taxation Treaties (DTTs) or domestic rules, for EU and non-EU investors, when certain transparency conditions are met.

We would like to underline in this context that the process of reporting and compliance should be clarified, particularly in the case of non-EU intermediaries or intermediaries that do not support reporting requirements, as well as non-cooperative jurisdictions.

4. Responsibility and Verification:

We understand that CFIs should “be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of these obligations” and that this is a strict liability. It is primordial for CFIs to have clarity on the concrete limits of their liability and the steps to discharge it must be clearly outlined, particularly in events where multiple intermediaries (CFIs or not) are involved.

5. Adoption of the New Tax Regime:

An overview of how the new regime will interact with existing tax agents’ regime at the financial institution level should be provided.

6. Relief at Source and Quick Refund Procedure:

An explanation is needed regarding the decision to allow Member States the flexibility to choose between the "relief at source" and "quick refund" procedures, or a combination of both. The rationale behind this decision, potential modifications, and their implications should be made public by each Member State upon transposition.

Clearing and Central Counterparties (CCP):

CCPs, by definition, stand as intermediaries between two clearing members (principal); therefore, CCPs cannot have visibility over who the final beneficiary of a transaction will be. Furthermore, WHT is relating to income, which is not applicable to the normal activities of a CCP. The only exception thereto relates to the default of a clearing member, which is a very exceptional and unlikely situation (last event in 2015), already duly covered by the applicable legislation.

Hence, we consider that any inclusion of CCPs in the scope of the FASTER initiative should take into consideration the elements outlined above.

Conclusion

While we highly appreciate the FASTER Initiative and its potential to foster a more robust European capital market, addressing the aforementioned points would contribute to a more transparent and effective implementation of the proposal. We remain committed to working closely with the European Commission to ensure the success of this initiative and foster a thriving financial ecosystem in Europe.