POSITION PAPER

ESBG response to the European Commission's consultation on withholding tax procedures

ESBG (European Savings and Retail Banking Group)

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ESBG

Dear Sir/Madam,

Thank you for allowing us to voice our opinion on the European Commission's consultation on **its proposal for withholding tax procedures**. The European Savings and Retail Banking Group (ESBG) would like to provide you with the comments below, which we hope will be considered by the Commission.

ESBG would like to state that we support the objective of the Capital Markets Union in principle. The dismantling of hurdles that hinder cross-border investment activity is particularly important. The desire for simplification, acceleration and harmonisation of withholding tax relief and refund procedures in the EU is shared by many market participants. Against this background, Action Item 10 "Alleviating the tax associated burden in cross-border investment", was also included in the Action Plan for the Capital Markets Union (2020).

Yet, a comprehensive review of the proposed directive submitted by the EU Commission has not been completed.

After an initial review, the measures proposed by the EU Commission only appear to be suitable to a limited extent for meeting the fundamental objective of Action Item 10, especially with regard to the simplification of procedures.

The EU Commission does **not opt for one method**, i.e. either relief at source or a quick refund procedure, but leaves the Member States even more options for choosing other procedures. **This will further de-harmonise the internal market**.

For credit institutions as so-called certified financial intermediaries, **extensive new obligations** are also planned. For example, the verification of the right to reimbursement, the collection of additional declarations from the customer, the ongoing reporting of dividend or interest payments and the rules on civil liability will have a considerable impact on the internal processes of credit institutions and will require extensive technical adjustments, especially in the already extremely complex securities settlement systems.

Art. 3 No. 14 only defines the term "registered owner". However, the Directive also uses the term "beneficial owner". In particular, according to Art. 11 (a), certified financial intermediaries should require the certification of the tax residency of the relevant investor as well as a declaration that this investor is the "beneficial owner" of the payment in accordance with the legislation of the source Member State. However, relying on the national concept of beneficial ownership could lead to inconsistent interpretations of the concept in the Member States. This contradicts the objective of standardizing withholding tax procedures in the EU and entails the risk of unjustified tax refunds. It is therefore strongly suggested to **define the term beneficial ownership** in Art. 3. In the case of legal entities it should be made clear, if the legal form (partnership vs. corporation) of the source state or of the state of residence is relevant for the withholding tax procedures to avoid conflicts.

In addition to the concept of the beneficial owner, the **"record date"** of the depository account prior to a dividend payment **should be regulated** as clearly as possible. There are numerous deviations in the Member States.

According to Art. 9, banks must report certain information about clients and payments. In our opinion, **it must be regulated that banks are not obliged to provide information according to Art. 9** (and Annex II) if, for example, the client does not provide it to the bank. Otherwise, high costs would arise for the banks, which would have to chase their customers for the required information. Furthermore, it must be ensured that it is regulated that the data in Annex II can be made **easily accessible**. This concerns in particular regulations on chain of custody.

Under **Option 3** that provides for withholding tax relief at source, the banks are obliged (and also liable, Art. 16) to transmit the correct data for withholding tax relief to the state authorities. This is a task that only concerns the investors and the withholding tax state. If the states commission private third parties (e.g. banks) to carry out the withholding tax refund, it should also be regulated that **the banks may charge a special fee for this service.**

Art. 11 should be viewed critically, since it imposes a number of obligations on institutions for which they should be liable under Art. 16. In particular, the data that financial intermediaries are required to verify under Art. 11 (2) as part of the application process are extensive. In the future, the role of the financial administration will be imposed on the institutions, but they will still have to be liable (even for negligence). **The entire conception of Art. 11 (especially in conjunction with Art. 16) should be rejected**. If this is not an option for this Directive, the "two-tier" model in Finland of a registered Authorized Intermediary with stricter liability rules and a downstream Contractual Intermediary could serve as a blueprint and reduce the liability issues.

According to Art. 22, the Directive is to be implemented by 1. January 2027. It should be borne in mind here that the directive still requires a national law for implementation. If the directive is not negotiated and finalized until 2024, the domestic law would presumably enter into force in the course of 2025 at the earliest. This could mean that less than two years are available for implementation. **Therefore, either**

- ✓ **domestic implementation should be made dependent on publication in the Official Journal of the EU; or**
- ✓ **the deadline in Art. 22 should be changed from 2027 to 2029.**

A "soft landing" period starting in 2027 could be a scenario as well, e.g. for two years, during which no sanctions would be imposed except for intentional violations. In the context of the reporting obligations to the Finnish Vero Skatt, this has proven to be purposeful for both sides.

Furthermore, the wording in Art. 22 (1), first sentence, according to which "Member States shall adopt and publish, by 31 December 2026 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive" is also impracticable. **It cannot be sufficient for the implementing units in the Member States that the national law could be published one day before.**

On the other hand, ESBG welcomes the European Commission's implementation of a standardised Common digital tax residence certificate (eTRC) to streamline the current WHT procedures. **It should be made clear, that such a eTRC can be applied free of an additional charge.**

Once a comprehensive analysis has been completed, we will be happy to discuss the content of the proposed directive and possible improvements.

About ESBG (European Savings and Retail Banking Group)

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 17 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org.

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