

Can FASTER come any faster (pun intended)?

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Not so long ago – in fact on [19 June 2023](#) – the European Commission launched a proposal for a Council Directive that is meant to simplify and streamline withholding tax (WHT) relief processes across EU Member States. The formal name of the proposal is Faster and Safer Relief of Excess Withholding Taxes ([FASTER](#)), and its acronym seems to be a fair representation of how smooth and fast the relevant legislative procedure has been so far.

Breaking down FASTER

The proposal has a threefold purpose:

- (1) to promote the smooth functioning of the Capital Markets Union and, as a result, enhance its attractiveness for foreign investment;
- (2) to achieve a certain level of administrative simplification by establishing user-friendly procedures; and
- (3) to put abusive and fraudulent practices related to WHT claims, such as cum/ex and cum/cum schemes, under the microscope and eventually eliminate them.

To achieve these goals, FASTER proposes the establishment of the following “tools”:

- Uniform due diligence procedures that broadly comprise a common EU digital tax residence certificate (eTRC) to be generated from the investor’s residence state, a beneficial owner declaration to be completed by the investor and obligations imposed on financial intermediaries to verify the tax residence of the investor.
- Reporting standards that impose uniform obligations on all financial intermediaries that are registered in a National Register (to be set up by Member States) of Certified Financial Intermediaries.
- Common procedures that offer Member States a choice to set up two reclaim procedures – relief at source and/or a quick refund system.

Milestones achieved

FASTER falls under the consultation procedure, which technically requires that the Council consider the opinion of the European Parliament and that of the European Economic and Social Committee (EESC). Both institutions have delivered their opinions, which in general greenlight FASTER but propose amendments/clarifications.

The EESC opinion

The [EESC suggested](#) – among other things – to establish a monitoring framework by, for example, performing periodical checks as to whether the cost savings objectives are actually reached and encouraged Member States to share with the European Commission annual statistics in order to ensure that WHT reclaims are gradually refunded/relieved within the ambitious timeframe set through the proposal.

The European Parliament opinion

In its [opinion](#) (adopted on [28 February 2024](#)), the European Parliament opened a window for a modified version of the proposal. The list below does not form an exhaustive representation of the Parliament's suggestions, nor does it enter into granular observations, but it gives an idea of what the Parliament wants to achieve, which is (in the author's opinion) to ensure that there are no conceptual mismatches or gaps between ongoing EU initiatives and to provide realistic/practical feedback.

- equipping tax administrations with digital tools and training them to ensure the adequate performance and supervision of said tools;
- enhancing the information contained in the eTRC by adding a reference to the applicable double taxation agreements;
- clarifying the interaction between the [Unshell Directive](#) and FASTER (e.g. issuance of the eTRC could not apply for a shell entity as the latter is defined in the current version of the [Unshell Directive](#));
- updating the due diligence requirements relevant for the national register on a yearly basis;
- ensuring that processing and retaining [data](#) required for the application of FASTER is in line with [GDPR](#) provisions;
- ensuring that eTRC is generated in a machine-readable format and is issued based on the available information within 3 working days starting from the date of the request submission, while this procedure should not last longer than 5 working days (as opposed to the 1-day deadline originally tabled);
- suggesting that Member States have 2 months to confirm the eligibility of a financial intermediary candidate requesting to be included in the national list. For third-country candidates wishing to certify as financial intermediaries, the Commission shall issue guidance on minimum standards for comparable (third country) legislation;
- suggesting that the *de minimis* materiality threshold for the purposes of declaring a dividend is proposed to be set at EUR 1,500;
- suggesting that the beneficial owner of the dividend/interest shall be defined under the applicable domestic legislation or by application of the relevant double tax treaty;
- proposing that Member States process a refund request within a specific time frame unless they maintain reasonable doubts regarding the legitimacy of such a request;
- proposing that Member States take the necessary measures to ensure that certified financial intermediaries requesting relief on behalf of a registered owner verify the risks of residence and citizenship by investment schemes that present a potentially high risk;
- proposing that the European Securities and Markets Authority and the European Banking Authority regularly monitor the risk for cum-cum and cum-ex schemes in the Union. Member States shall introduce coordinated cooperation and mutual assistance between national competent authorities, tax authorities and other law enforcement bodies to detect and prosecute illegal withholding tax reclaim schemes; and
- suggesting that the Commission examine and evaluate the actual functioning of FASTER (starting from the point it becomes effective domestically) every 5 years. Such a report would cover ideas to further enhance FASTER and basically build upon the mantra that dividends/interest/capital gains/royalty payments (and so on) generated in the Union are taxed at least once at an effective rate.

Looking ahead

The adoption of FASTER requires unanimity in the Council of the European Union. Even if there are no "hard plans" to have FASTER approved before the European Parliament elections, the author is of the opinion that the momentum created by the elections and the overall goal of simplifying EU tax rules will lead to a quick adoption. If adopted, FASTER should be transposed into domestic laws by 31 December 2026 and apply as from 1 January 2027.

IBFD references

- For an overview of legislative initiatives at the EU level on direct tax matters from the moment they are planned by the European Commission until their adoption by the Council of the European Union, see the [EU Direct Tax Law Initiatives Tax Dossier](#)
- J.J.A.M. Korving, "[BEFIT and HOT: FASTER and SAFE!](#)" *EU Law or Slogan for Slimming Pills?*, 63 Eur. Taxn. 12 (2023), Journal Articles & Opinion Pieces IBFD.
- P. Radcliffe & R. Devisscher, "[FASTER: The European Commission Publishes a Proposed Council Directive Aimed at Improving the Withholding Tax Process within the European Union](#)", 63 Eur. Taxn. 8 (2023), Journal Articles & Opinion Pieces IBFD.
- EU tax law developments are reported in the daily IBFD [Tax News Service](#).