



# Høring over forslag til Rådets direktiv om hurtigere og mere sikker lempelse af for meget indeholdte kildeskatter

---

## Høringsvar

### Generelle bemærkninger

Finans Danmark takker for muligheden for at afgive bemærkninger til udkast til direktiv om hurtigere og mere sikker lempelse af for meget indeholdte kildeskatter

Finans Danmark bakker op om en fælles europæisk løsning, om end det synes vanskeligt at kunne opnå enighed herom.

Finans Danmark bemærker indledningsvis, at vi via investeringsforeningernes europæiske brancheorganisation EFAMA har fået den opfattelse, at en udestående fælles international definition af Beneficial Owner skal afhandles i et andet regi. Det er således en helt afgørende forudsætning, at der rettidigt fastlægges en elektronisk velfungerende og ensartet definition af Beneficial owner i EU-medlemslandene til brug for håndteringen af de foreslåede regler.

Finans Danmark er generelt bekymret for, at forslaget i et uforholdsmæssigt omfang medfører, at administrative omkostninger og ansvar for refusion overvæltes på finansielle virksomheder (CFI – certified financial Intermediaries).

Det fremgår blandt andet, jf. forslaget side 6, at  
*“Introducing reporting obligations for financial intermediaries would imply some costs and administrative burden. However, these costs are outweighed by the positive impact that the information received would have for tax administrations in improving WHT procedures in terms of security and effectiveness.*

*Moreover, this burden should be assessed against the initiatives recently adopted or announced in some Member States in response to recent scandals of tax*

17. august 2023

Dok: FIDA-483742746-688964-v1

Kontakt Peter Schultz-Møller

*fraud and abuse of WHT procedures – these initiatives introduce new and extensive reporting requirements for intermediaries.*"Hertil kan det til første afsnit bemærkes, at det er uklart, hvordan det kan konkluderes, at de administrative omkostninger, som "CFI's " pålægges, kan opvejes af den positive effekt, som skattemyndighederne vil opnå?

Til det andet afsnit kan det bemærkes, at gældende regler i Danmark indeholder, at den primære administrative byrde ligger hos afsenderen af tilbagesøgningen, hvor CFI's alene agerer mellemlid mellem skattemyndighederne og kunden. Med den foreslåede ordning pålægges depotbanken en øget rapportering, der påfører denne højere omkostninger

Finans Danmark vil også henlede opmærksomheden på, at den i forslaget forudsatte ikrafttræden 1. januar 2027 er meget ambitiøs i forhold til at opnå en politisk aftale på EU-niveau og efterfølgende implementering i EU-landes inklusive systemtilpasninger i medlemslande – hos skattemyndigheder og i finansielle virksomheder.

Finans Danmark har en række specifikke bemærkninger, som det er valgt at indarbejde i en engelsksproget version med sigte på den videre proces.

### **Specifikke bemærkninger**

Finance Danmark can point to the following specific comments to the proposal for a council directive on Faster and Safer Relief of Excess Withholding Taxes.

### **SCOPE**

The model introduces new standards for relief procedures in source countries which are member states. The aim is to enhance access to relief for investors, and to prevent fraud via CUM-CUM and CUM-EX scenarios.

### **KEY ELEMENTS AND COMMENTS**

#### **1. eTRC certificates**

A requirement for residence countries to issue standardised electronic tax certificates eTRCs (minimum validity is one year) to document tax residency of shareholders across member-states.

- It is positive with an electronic solution and a certificate which is source country independent.
- A highly automated approach is needed to meet the very ambitious deadline for issuance (one day after request).

## **Hørings svar**

17. august 2023

Dok. nr.:

FIDA-483742746-688964-v1



- As an alternative to the eTRC, at least within the EU, it could be considered to replace certificates, which will always be a snapshot, with a on-line database of each member state' list of tax residents, so source countries can check investors residency at a given record date in real-time (batch search).

## 2. Relief at Source and/or Quick Refund

A requirement for source countries, to establish either a Relief at Source and/or a Quick Refund solution (refund at the latest 25 days after raised claim or applicable reporting) and a standard reclaim process for situations, where the conditions are not met (Article 10, point 2 and 3).

- It is positive but ambitious with a 25 days refund procedure (potentially 25 + 25 after record date), and require a highly automated approach.
- It is doubtful if the authorities will be able to establish a clear understanding of BO entitlement based on information according to Annex II (bullet 6 and 7 below) within 25 days. It is one big jigsaw puzzle, as each CFI reports their own part of the picture.
- The authorities will depend on effective systems and tools to do the reconciliations and process the quick refunds. The requirement for IT development may cause friction.
- Can standard reclaims only be used when the conditions, according to the directive, are not met or is it available in other scenarios too?

## 3. CFI certification

A requirement for national certification by the source countries of financial intermediaries and withholding agents involved in the relief process as Certified Financial Intermediaries (CFIs).

- Why are the certification done by the source countries and not by the countries of incorporation for member states? It is the home countries of the intermediaries, which know and control the intermediaries. The process appears to be redundant as each source country must approve the member intermediary, but from substantially the same criteria. Could a domestic certification supplemented with a sign up for relief in specific source countries be an alternative?
- Certification of non-member intermediaries, cannot follow a home country approval (as suggested above), but is this a reason not to follow this approach within Europe?

## Høringsvar

17. august 2023

Dok. nr.:

FIDA-483742746-688964-v1



- How can the certification be mandatory (Article 6, point 1) for certain institutions? As the certification comes with substantial obligations and responsibilities, a voluntary business driven approach appears to be a fairer alternative. Can an institution opt out by accepting full withholding on all transactions?

#### 4. CFI registers

A requirement for the source countries to establish national registers of CFIs.

- Why are these registers established in each source country and not as a common EU register? It appears redundant with multiple registrations for each CFIs. In a common EU register, it would also be possible to register the CFI as active in in different member countries.

#### 5. Standardized due diligence

A requirement for CFIs to document shareholders with eTRC and Beneficial Owner (BO) statement and validate these.

- It appears to be a sound approach, but the validation rules must be clarified, to reduce liability of the CFIs.
- eTRAC and BO-statement from investors are given in according to source country rules according to (9), page 19. It would be beneficial to harmonize BO rules as non-professional investors are not likely to know and understand the source country rules.

#### 6. Event based CFI reporting

A requirement for CFIs to report dividend transactions to the source country within 25 days after record date.

- It is positive that the reporting is required by XML reporting via standardised reporting tools/portals.
- It is a comprehensive reporting regime, which is being established, and it will be expensive for the CFIs to support. There seems to be a risk, that the frequency can be high, as the reporting applies at event basis, and it appears to apply for all investors, irrespective of their relief entitlement.
- CFI's can be required by authorities to secure information from non-CFIs according to (7) page 19. As long as this is related to a Relief at Source or Quick refund request from the CFI (Article 10, point 3.(a)) , this appears reasonable, but a more general extension of the reporting obligation from a CFI's own activity to underlying non-CFIs' activity appears unreasonable, and may be very difficult to execute.

## Hørings svar

17. august 2023

Dok. nr.:

FIDA-483742746-688964-v1



## 7. **Event based CFI reporting – expansion**

a requirement for CFIs to identify late transactions (two days before ex date) and Financial Arrangements, which transfers the economic ownership across ex-date, for dividends of EUR 1000 or more and report such transactions to the source country within 25 days after record date.

- The relevant Financial Arrangement must be defined and continuously updated. It is a grey zone area, and the CFIs should not be responsible for identifying such arrangements based on a deliberately broad definition (page 14, section 2, last sentence).

## 8. **Mandatory CFI involvement in relief process**

A requirement for CFIs to support Relief at Source or Quick refund, as applicable, for their custody customers (Article 10).

- Currently it is not mandatory for custody banks to support the relief process. It is a choice the custody bank can make based on market potential and strategic scope. If the authorities can require CFIs to support relief procedures, it is changing the market dynamics.

## 9. **CFI Liability**

A liability for CFIs for revenue losses according to (9) on page 19

- If the definitions and controls are not clearly defined, this obligation will come with a significant risk.

## Hørings svar

17. august 2023

Dok. nr.:

FIDA-483742746-688964-v1

Med venlig hilsen

### **Peter Schultz-Møller**

Skattechef

Direkte: 3016 1028

Mail: [psm@fida.dk](mailto:psm@fida.dk)

