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POSITION PAPER

DATE: 15 September 2023
SUBJECT: FASTER RELIEF OF WITHHOLDING TAXES

DUTCH PENSION FUNDS SUPPORT FASTER RELIEF OF WITHHOLDING TAXES IF TRANSPARENT INVESTMENT FUNDS GET ACCESS TO FASTER PROCEDURES

The Dutch Federation of Pension Funds would like to give its support to the legislative proposal FASTER for faster and safer relief of excess withholding taxes. In this position paper we highlight the benefits of the proposed directive for a uniform and quick withholding tax relief system. We call on EU policy makers to make quick progress on FASTER, so it enters into application as soon as possible.

Considering that the majority of Dutch pension funds are invested through transparent collective investment funds, it would be a huge blow if such funds have no access FASTER procedures.

We also have several further considerations. The civil liability of the Certified Financial Intermediaries (CFIs) should be more balanced, to make FASTER work in practice. Furthermore, possibilities for Member States to deviate from FASTER should be limited and more specified. It would ultimately be good if tax-exempt collective investment undertakings – including pension funds – were ensured access to FASTER procedures. Lastly, the proposal's ambitions could be increased on bond interest payments.

THE BENEFITS OF EFFICIENT WITHHOLDING TAX PROCEDURES

Efficient withholding tax relief procedures help Member States attract foreign investment. A long waiting period to obtain withholding tax relief and costly procedures in this respect make it less attractive for investors to invest in a country. The FASTER proposal promotes more efficient capital markets and the completion of the Capital Markets Union. It promises to increase the availability of capital and credit to domestic businesses; and thereby to decrease financing costs. Dutch pension fund investors consider burdensome and costly withholding tax procedures in some EU Member States as a negative investment factor. Other

Member States - Spain for example - have implemented more efficient procedures, which facilitates incoming investments.

Public administrations currently spend a lot of man-hours on cumbersome checks of low-risk and legitimate tax reclaims. In various Member States, for example, documents need to be 'legalized', which requires a long chain of administrative actions in which a document passes by various ministries and an embassy before being filed for assessment by a tax authority. FASTER will free up capacity in public administrations to focus on addressing high-risk cases of tax abuse and tax fraud.

Dutch pension funds invest occupational pension savings on behalf of their members and beneficiaries. They are social institutions, organized as non-profit foundations, meaning investment returns are dedicated to retirement income. Dutch pension funds collectively manage 1,500 billion euros of pension savings, a huge capital, much of which is invested in the European economy. The Dutch pension sector thereby contributes significantly to European strategic autonomy and the European capital market.

Pension funds are generally either exempt from paying taxes on foreign investment income in EU Member States, or they can reclaim a substantial part of the withholding taxes. This encourages citizens to save for their old age.

Withholding tax processes and requirements vary wildly among EU Member States, which is highly inefficient for end-investors. Due to complex legislation and procedures, pension funds experience cumbersome operational activities and delays in withholding tax refunds. Smaller pension funds currently often do not reclaim withholding taxes because legal and administrative costs outweigh the tax benefit. This negatively affects the retirement income of millions of members and beneficiaries.

On average, Dutch pension funds' tax reclaims in EU countries are outstanding for 550 days (!). It takes a long time for reclaims to be paid out and thus for this money to be reinvested. Therefore, pension savers lose out on investment opportunities.

The largest five Dutch pension funds (ABP, PFZW, PMT, Bouw and PME) collectively had €357 million in tax reclaims outstanding in the EU as of December 31, 2022. With FASTER, pension funds will be able to reinvest withholding taxes after a maximum of 25 days. Considering they make a 7% average annual return on investments; **FASTER gives the largest five Dutch pension funds a direct benefit of 36 million euros per year of avoiding opportunity costs alone** [= 357 million euros * (550-25)/365 days * 7% return]. Additionally, we anticipate significantly lower legal and administrative costs.

The proposed FASTER directive provides advantages for Dutch pension funds in its <u>uniformity</u> of the process, required data and forms. That lowers administrative and legal burdens. It will also provide <u>speed</u> in application and payment handling, meaning pension savings can be reinvested faster.

In the proposed EU-wide digital tax residence certificate, we recognize ideas advocated by PensionsEurope. Standardized reporting will simplify the process. The digital design provides transparency, speed and complete file creation. The structure of documentation delivery by CFIs will provide comfort for tax authorities to mitigate tax fraud risks. Most of all, setting a time frame of maximum 25 days for Member States to give back excess taxes will dramatically speed up the process. We appreciate the discretion for Member States to allow relief at source for taxpayers with a low risk profile, while applying a quick refund scheme for others. We expect that pension funds, as low risk taxpayers, should be able to use relief at source in such instances.

FASTER SHOULD BE ACCESSIBLE TO TRANSPARENT INVESTMENT FUNDS

We draw attention to fact that it is unclear whether collective investment vehicles have access to the FASTER procedures. The majority of Dutch pension funds are invested through collective investment funds that are tax transparent. This makes it possible for multiple pension funds to pool resources which are then invested collectively.[1] This investment structure is used to diversify investment risk and create economies of scale by sharing costs. Pension funds also cooperate in transparent investment funds to have a bigger ESG-impact in corporate shareholder engagement.[2]

A transparent investment fund has a purely operational function, is often regulated and in most cases no other tax payers participate but Dutch pension funds. Fiscal transparency means the participants are the beneficial owners and subject to taxation. The transparent investment fund is the registered owner/ Title Holder. It

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[1] In the Netherlands, such pooled funds are called *Besloten Fondsen voor Gemene Rekening.*

[2] As an example, the Dutch pension funds for general practitioners and pharmacy employees joined forces to engage with pharma companies to produce fewer waste.

holds the assets solely for the risk and benefit of participants in the funds and is not a legal person. This is current practice for withholding tax procedures within the EU. The investment structure is transparent and low risks and therefore merits access to fast-track withholding tax procedures.

To give pension funds participating in tax transparent investment funds access to FASTER procedures, information of beneficial owners should be connected to the register owners. That covers the digital tax residence certificates of the beneficial owners and possibly other data on these parties from Annex 2. That can be addressed by adding information to Annex 2, or in an additional common EU reporting format. Consequently, the tax status of the beneficial owners should be applied for withholding tax purposes.

CFI'S CIVIL LIABILITY SHOULD BE MORE BALANCED

To make FASTER work in practice, we propose an amendment to protect the CFI from liability in some cases. The proposal makes it possible for CFIs to be held liable for loss of withholding tax revenue. **Financial intermediaries partly rely on information provided by the investor. An amendment is necessary to ensure that CFIs are not liable for actions that are outside of their control**. If they would be, they could refrain from offering withholding tax services using FASTER procedures altogether.

The Directive could make clear that the CFI can in principle rely on the statements of the registered owner. The CFI would then have no liability over failure to withhold emanating from the statements provided by the registered owner. In such case, tax should be recovered from the tax payer.[3]

Furthermore, it could be considered to create an EU-wide standardized form for the declarations by the registered owner under article 11, 1(a), 1(b) and 2(c). [4] This could facilitate making the registered owner rather than the CFI responsible for correctly representing declarations of beneficial ownership; no engagement in cum/cum and cum/ex fraud; and its entitlement to a reduced withholding tax rate.

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[3] Please note the tax relief system in the USA which provides sufficient documentation and information for all parties involved including Tax Authorities.

[4] Based on current market practices, we believe that it is the responsibility of the registered owner to indicate to the CFI what withholding tax (treaty) rate should apply.

POSSIBILITIES TO DEVIATE FROM FASTER SHOULD BE LIMITED

In order to work effectively, the FASTER initiative should have a wide application. Working towards a level playing field, there should be limited possibilities for deviating from FASTER procedures.

In this light, we do not understand why Member States get the possibility to not apply the relief at source or quick refund systems for tax payers that claim an exemption from withholding taxes. Member States could use the exclusion in Article 10, paragraph 3b to not apply FASTER procedures to institutional investors, such as pension funds.

Not applying FASTER procedures to tax-exempt investors could carve out a major volume of withholding taxes and therefore significantly decrease FASTER's impact. Vigilance is required to monitor that domestic pension funds do not get preferential access to FASTER procedures over for instance foreign pension funds. In the future, it would be good to expand harmonization, by scrapping the abovementioned Member State option, at least for collective investment undertakings, including pension funds.

MORE AMBITION ON BOND INTEREST PAYMENTS

The FASTER proposal makes has a mandatory character for withholding tax on dividends from publicly traded shares, while it has a voluntary character for withholding tax on interest from publicly traded bonds. Policy makers could explore whether the ambitions in Article 5, paragraph 2 for interest from publicly traded bonds could be increased.