

## ECSDA Response to Faster and Safer Relief of Excess Withholding Taxes Consultation

### ECSDA welcomes the initiative

The European Central Securities Depositories Association (ECSDA) welcomes the European Commission's Proposal for a new EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding tax. We salute the intention of the proposal to simplify the procedures for claiming cross-border withholding tax relief and eliminate tax barriers.

We reiterate our support for the Directive and would like to express our commitment to continue engaging in further enhancements of the proposal. In the below brief response, our intention is to contribute to the concerns that require thoughtful consideration to foster a more streamlined, efficient, and inclusive financial market. Further refinement is indispensable in our view to ensure that the proposal reaches its objective.

The tax barriers have been highlighted in a variety of post-trade industry reports as a major impediment to the proper functioning of the Capital Markets Union (CMU), the free movement of capital and the prevention of tax abuse faced by financial investors and intermediaries.

We particularly acknowledge the directive's objective to build standardised digital tax residence certificates (eTRC), common reporting obligations, and standardised processes and timeframes for "at source" and "quick refund" procedures that are all aligned with ECSDA's vision for a more efficient, transparent, and user-friendly market.

For decades, the disparities in withholding tax procedures among the EU Member States have created significant barriers to cross-border capital flows, hindering, together with other inefficiencies, the creation of a truly integrated Capital Markets Union. By proposing a common framework to streamline and digitalise withholding tax procedures on cross-border investments, the FASTER directive attempts to address these barriers. In the digital age, transitioning from paper-based procedures to a more efficient and unified system is imperative. ECSDA is keen to support this transformative journey towards harmonisation leveraging on the expertise of its members in this field.

For this purpose, ECSDA has identified some aspects of the EC proposal requiring careful consideration to ensure that the FASTER directive effectively meets its objectives. In particular, we identified the following areas:

- 1) Role of CSDs as CFI;
- 2) Financial instruments in scope;
- 3) Technical aspects related to relief at source and quick refund;

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### 1) Role of CSDs as CFI

We welcome the EU Commission approach reflected in Article 6 stating that CSDs are to be registered as CFI only and to the extent that they offer withholding tax services, and not just because they process corporate action payments on behalf of issuers. Indeed, most CSDs are, in

essence, generating and sending credit/debit instructions between the issuer cash account held by the paying agent and the cash account of the registered owner held by the intermediary. When acting as an issuer CSD, the actual payment is not received from the issuer, nor would the CSD, in all cases, hold the dividend/proceeds on a bank account in its name. Only in some cases, the dividend amount distributed is credited to a cash account belonging to a CSD prior to being credited to a client account. Hence, generally, the CSD does not act as the actual payor in the sense of an intermediary.

With reference to requirements laid down in Article 10, it seems imposing an obligation on CFIs to offer both “relief at source” or “quick refund” services to their clients’ proprietary assets. In the current practice, each provider of withholding tax services is able to define its own service level by choosing among standard, “relief at source” and “quick refund” procedures and we consider that certified intermediaries should retain the discretion to define service levels based on their business case, capacity, or strategy.

In line with the evolving regulatory landscape and recent directives such as SRDII (Shareholders Rights Directive II), we advocate for the explicit introduction of a concept that has proven instrumental in enhancing operational flexibility and efficiency – the “nomination” of a third party. This concept, as embedded in SRDII, offers market players the opportunity to delegate specific responsibilities to a nominated third party. We see the potential of a similar application of the concept to FASTER where CFIs could delegate their responsibilities to a third party, while ensuring that the ultimate liability remains with the party initiating such delegation.

ECSDA recalls the objective of the Commission in proposing a regime to harmonise withholding tax procedures. To fulfil this objective, Member States must have the tools to implement the proposal identically. For this reason, ECSDA suggests to amend the wording found under Article 16 in respect to the CFIs’ civil liability. The current wording offers the possibility for Member States to pursue diverging application of the proposal. To avoid this, Member States require additional clarity with respect to taking the “appropriate measures”. If not, the proposal may lead to (i) an un-level playing field and (ii) an un-harmonised regime.

We would recommend that the Directive and its local implementation recognises explicitly that CFIs are allowed to delegate specific task to third parties.

Furthermore, CSDs have a specific liability profile which may need to be acknowledged by the policy-makers.

## 2) Financial Instruments in scope of the Directive

Withholding tax (WHT) procedures are managed regardless of whether or not a security is publicly traded. Considering the aim of the European Commission is to harmonise the procedures across Member States, ECSDA seeks clarity as to the reasoning for limiting the scope solely to publicly traded securities. Doing so, in our view, risks creating an unharmonised WHT regime comprising parallel processes.

ECSDA suggests including non-listed securities so that a singular procedure is created in the context of WHT. This will pursue the Commission’s aims of simplifying and harmonising a complex procedure.

### 3) Technical aspects to be further clarified

To prevent the proposed directive from inadvertently making the withholding tax procedures even more complicated, further clarity is required on the following:

- Self-certification: self-certification should be allowed and encouraged as a forward-looking commitment for subsequent taxable events and any sort of per-payment declaration should be avoided as being too burdensome (particularly for relief at source);
- Reporting obligation and Due Diligence requirements for Certified Financial Intermediaries (CFIs) and related exceptions for small payments;
- Timing of submission of the reporting obligations as well as its periodicity; and
- Implementation timeline.

### Conclusion

We wish to congratulate the European Commission for its visionary and noble approach to transforming financial regulation related to withholding taxes procedures – a 20-year-old Giovannini barrier. We support the commitment to simplification and harmonisation, particularly the introduction of the eTRC and the targeted implementation of both “at source” and “quick refund” systems.

The FASTER directive aligns with our vision for an integrated European financial landscape and champions the very essence of innovation that drives the future of finance and Europe.

While our support for this initiative is solid, our analysis does shed light on certain areas that could benefit refinement. By addressing the considerations we’ve highlighted, we believe it can set an unparalleled standard for modernising withholding tax procedures across Europe, while efficiently fighting tax fraud.

#### About ECSDA

*ECSDA represents 39 national and international central securities depositories (CSDs) across 35 European countries. The association provides a forum for European CSDs to exchange views and take forward projects of mutual interest. It aims to promote a constructive dialogue between the CSD community, European public authorities, and other stakeholders aiming at contributing to an efficient and risk-averse infrastructure for European financial markets*