Svensk Värdepappersmarknad
Swedish Securities Markets Association

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The Swedish Securities Markets Associations´ (SSMA) response to the EU Commissions consultation on Faster and safer relief of excess withholding taxes

1. General comments

SSMA welcome the EU Commission's initiative to introduce a new and common relief at source and quick refund system for the handling of withholding tax within the EU. In Sweden, retail participation in the securities market is among the highest within the EU. However, the current state of procedure for withholding tax where the different EU Member States have different systems and requirements, and where set ups are complex and time consuming, have a negative impact on retail investors and the financial institutions. Making the procedures for withholding tax within the EU more efficient, faster and less complex could increase Swedish retail investors investments in other EU countries and increase other EU citizens investments in Swedish securities. An improvement in this regard would be positive not only for investments and capital flows within the EU, but also for the financing of e.g. corporates who are detrimental for economic growth and development. Against this background it is crucial for Europe that cross-border capital flows are strengthened. The SSMA has therefore worked for a common system and common rules within the EU for quite some time and is positive to the foundation upon which the proposal rests. Having said that we do see some issues and flaws in the proposal as included below under Specific issues.

2. Comments on the specific provisions of the proposal

i) General

<u>Article 2, Scope</u>

According to the proposal, it shall apply to publicly traded shares and bonds. SSMA finds that it would be problematic to be required to handle the same securities differently from a tax perspective based on whether the securities are admitted to trading or not. Instead, we suggest that the proposal should apply to all shares and bonds that are issued by a central securities depository (CSD) in the EU. In order to promote a European CMU, it is important not to add complexity to tax management.

ii) Common digital tax residence certificate

The SSMA is positive to a common digital tax residence certificate (eTRC) within the EU. Such a certificate will make the withholding tax process less resource-intensive for the intermediaries, and it will also make it easier for residents who have made or want to make investments within the EU. In addition to having a common format and content for the certificate, the association would also like to see a common portal used by member states where a request for eTRC can be made and where the certificate can be retrieved, rather than national systems and solutions. If member states adopt separate systems and processes this can instead increase the complexity and slow down procedures.

Article 4, Digital tax residence certificate (eTRC)

According to article 4.1 eTRC shall be issued for persons *deemed* to be a resident. We find it difficult to understand the meaning of this concept and would like to see a clarification of the term.

SSMA questions the purpose of article 4.2 giving tax authorities one working day to issue an eTRC. The ambition should be to have a fully digitized and immediate system introduced, where further delay is notified immediately upon application (i.e. if the tax authority needs further investigation).

We find it problematic that the proposal under article 4.3 allows for Member States to have different periods of validity for the eTRC. In the case of national solutions, we see a risk that the period of validity may differ between countries which would add to the complexity of the proposal and handling of withholding tax. Should a common portal be put in place which the SSMA is a strong advocate for, this problem can be avoided.

Given the amount of requests for eTRC that we foresee, it is important that the rules allow for applications that include a large number of customers through bulk request, rather than having to make separate requests for each customer. This would of course require a technical solution.

iii) Member States' National Registers

In SSMAs view it would be desirable if the registration process to become a CFI was the same within the EU, both in terms of information required, format and system. The SSMA would prefer if a common EU-wide portal was set up for this and that only one registration is required and valid for all EU member states. We think that a requirement to make a separate registration in each of the EU member states will prevent smaller institutions and non-EU institutions from registration. However, when registering as CFI it should be possible for financial intermediaries to specify countries where they do not want to be registered as a CFI.

SSMA would like to have further clarification as regards the treatment of branches. Do branches of a registered CFI also need to register as a CFI, and if so in which jurisdictions? For large institutions it is problematic that it will be compulsory to be a CFI given the substantial responsibilities, requirements and risks that comes with the role of being a CFI.

iv) Common reporting

SSMA welcomes a common reporting as it will make the process less resource-intensive for the intermediaries, and it will also make it easier for investors that have made or want to make investments within the EU. Having said that, it is very important that also the formatting is exactly the same within the EU so that there are no national standards that are different from the common one.

In addition to having a common format and content the association would also like to see a common system and handling, preferably through a common portal that all Member States can access. We believe a common portal would reduce the cost for both CFI:s and the tax authorities and reduce the risk for mistakes and consequently incorrect reporting. Should a common portal or system within the EU not be achievable, the association believes that it would be more efficient if the institutes would be able to do all their reporting in one single country e.g. the country where the CFI is incorporated, rather than having to report in the respective Member States in which its customer invest, i.e. in line with how CRS reporting is done. For institutes with clients that invest in many different countries, separate reporting and systems in the various individual Member States would be very burdensome and work in the opposite direction of the intention behind the proposal, which is to promote investment between countries.

A reporting requirement within 25 days from record date does not seem to be practical from an operational and technical point since some transactions can take longer time to process. A reporting based on an event instead of e.g. a specific date also means that the amount of separate reporting will be very high. We therefore propose to have set dates for the reporting throughout the year.

According to the details in the table in Annex II, financial intermediaries shall provide information about both LEI and EUID when it comes to the recipient and the payor. We do not understand why both LEI and EUID shall be reported. SSMA therefore suggest rewriting the wording to *"Name, TIN, address, **and either LEI or EUID**".*

v) Systems of relief

Article 10, Request for relief at source or quick refund

As regards the proposal to enforce a restriction in relation to the ex-dividend date in order to be entitled to relief at source or quick refund (i.e. paragraph 2), SSMA understands that there are several Member States that find the restriction necessary due to past abuses of the tax system. However, it should be worth noting that the previously frequent breaches of the rules under CumEx/CumCum, as far as we understand, largely arose because of ambiguities in the legislation, incorrect advice regarding tax rights to investors and deficiencies in review by the local tax authorities. We believe that the restrictions in paragraph 2 is a significant deterioration of the conditions for cross-border investments within the EU and not justified, at least for countries that currently offer a direct relief at source if the customer is documented (for example Finland and Sweden). The risks for circumvention of the legislation should be significantly more difficult with the proposed rules that require CFIs to report the end investor/beneficial owner.

In addition, a system that excludes relief at source or quick refund depending on e.g. when the shares are bought creates significant challenges regarding checks and system development to synchronize the rules with the national tax legislation and event processing through the chain of intermediaries. Generally, in the market, event entitlement rules are based on one record date, event taxation then relies on documentation. But with the proposal and introduction of CFIs, there are in practice four different event treatments within one event type. One treatment for previous ownership, another for shares bought ex-1 and ex-2, a third in case the share is not traded, (and a fourth if a sub-custody is not a CFI).

We understand that some individual Member States might consider it necessary to have restrictions as describes in paragraph 2, but we believe that it should be possible for Member States not to apply this restriction, i.e. point 2. can be reworded to, for example:

"10.2. Notwithstanding paragraph 1, Member States **may decide not to** provide relief under the systems as provided for under Articles 12 and 13"

As far as SSMA understand, if someone in the chain of financial intermediaries is not a CFI, someone else in the chain can take on that responsibility for the investor to be able to receive relief-at-source or quick reclaim (paragraph 3 (a)). If this is to work in practice it is important to clarify how this reporting should be done as well as the responsibilities and liabilities that comes with it.

Article 12, Relief at source system

Further information and clarification is needed as regards how the relief at source-process is intended to work. We see issues e.g. when it comes to information at the investor level. If, e.g. a Member State implements relief at source for low-risk taxpayers, i.e. taxpayers who receive dividend that do not exceed EUR 1,000, then the withholding agent will need more information than what is stated in Article 12. It is common that financial institutions hold many shareholders shares in custody at a global custodian or a local custodian, in total it will seem to be a high-risk taxpayer even though each of the shareholders with shares in custody at a global or local custodian can be a low-risk taxpayer individually. The withholding agent therefore also needs information about the amount of shares for each shareholder in custody, to know which shares belong to low-risk taxpayers and which shares belong to high-risk taxpayer.
The article also needs clarification as regards; whether the concept “request relief at source” requires a request to be made each time a dividend is paid out, how late in time a request for relief at source can be made, whether the withholding tax agent is required to respond (yes/no), and whether the CFI needs to send a report to the competent authority (in accordance with article 9) as soon as they are made aware of whether relief at source is allowed.

Article 13, quick refund system

The quick refund system in Article 13 proposes that a request shall contain the registered owner´s declaration. In our opinion it must be sufficient that the CFI obtains this declaration from the registered owner and verifies it and that this may be checked in an audit. If a quick refund can be filed without this declaration it can instead be filed in xml, connected to the original xml-reporting in Article 9 with some additional data, and no proposed standard computerised forms is needed for quick refund request.

vi) Due diligence and verification

The fact that different member states have a different concepts of who is the beneficial owner makes it difficult for both investors and the financial institutions. We would recommend that the EU Commission introduces a common definition of the term beneficial owner.

There is too much room for individual Member States to define the Due Diligence process and what it should contain as the *proposal* is currently formulated. The requirements must be the same in all countries. In order for the CFI to perform a due diligence as described in article 11 it is necessary that clear guidance of what the CFI is required to do is provided.

An example as regards the need for clarification:

- In 2a) How shall the CFI verify the eTRC, and in case the shareholder is residentn a non-EU country what can be considered as ”appropriate proof of tax residence” in third countries?

It is important to understand that a financial intermediary will only have information about its own direct clients and might not know the reason why a client has entered into a specific transaction and will not have information on e.g. hedging transactions. It is the investor that has the full knowledge and information about the transactions and not the CFI in e.g. its role as safekeeper, broker or settler. Financial institutions usually have many different business units in the same legal entity and are bound by regulatory restrictions preventing them to share information between the different departments.

vii) Entry into force

According to the proposal, the provisions shall be applied from 1 January 2027. We propose that the provisions apply 24 months following the date as of when the Member States shall adopt and publish the laws regulations and administrative provisions necessary. The reason for this is partly that there must be sufficient time for IT and System-development, partly that the rules should apply from a date at the start of a new year, and not during the year, for practical reasons.

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