



**BRUSSELS | JUNE 2023**

## **European Commission Publishes 'FASTER' Proposal - New Rules for Withholding Taxes in the EU**

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The European Commission has published a [proposal](#) for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER), setting out proposed new rules for withholding taxes in the EU. The proposed legislation aims to simplify cross-border investment and taxation in the EU by introducing an EU-wide common system for withholding tax on dividend and interest payments and for tax authorities to exchange information and cooperate. The rules, once adopted by Member States, would come into force on 1 January 2027.

The key features of the proposed system are as follows:

- *A **common EU digital tax residence certificate** will make withholding tax relief procedures faster and more efficient. For example, investors with a diversified portfolio in the EU will need only one digital tax residence certificate to reclaim several refunds during the same calendar year. The digital tax residence certificate should be issued within one working day after the submission of a request. At present, most Member States still rely on paper-based procedures.*
- ***Two fast-track procedures complementing the existing standard refund procedure:** a “relief at source” procedure and a “quick refund” system, which will make the relief process faster and more harmonised across the EU. Member States will be able to choose which one to use – including a combination of both.*

- *Under the “relief at source” procedure, the tax rate applied at the time of payment of dividends or interest is directly based on the applicable rules of the double taxation treaty provisions.*
- *Under the “quick refund” procedure, the initial payment is made taking into account the withholding tax rate of the Member State where the dividends or interest is paid, but the refund for any overpaid taxes is granted within 50 days from the date of payment.*
- *A **standardised reporting obligation** will provide national tax administrations with the necessary tools to check eligibility for the reduced rate and to detect potential abuse. Certified financial intermediaries will have to report the payment of dividends or interest to the relevant tax administration so that the latter can trace the transaction. In particular, large EU financial intermediaries will be required to join a national register of certified financial intermediaries. This register will also be open to non-EU and smaller EU financial intermediaries on a voluntary basis. Taxpayers investing in the EU through certified financial intermediaries will benefit from fast-track withholding tax procedures and avoid double taxation on dividend payments. The more financial intermediaries register, the easier it will be for tax authorities to process refund requests, regardless of the procedure used.*

In 2022, CFE responded to a public consultation questionnaire concerning the planned proposal, expressing its support in an [Opinion Statement](#) for introducing an EU-wide system on withholding taxes. The CFE Tax Advisers Europe is supportive of the initiative to introduce an EU-wide system for relief at source of withholding tax on dividend, interest, royalty payments and service fees, and for exchange of information and cooperation between tax authorities under the system.

CFE in the Statement expressed it has a strong preference for a harmonized relief at source system and that there should be a harmonized means to obtain via e-request a tax residence certificate, with swift online provision of the tax residence certificate, and a digitalised verification system. Refund procedures are costly,

time-consuming and often result in taxpayers having their refund claims refused for various administrative-related reasons.

A [public consultation](#) has now simultaneously been launched inviting public input on the legislative proposal, which will run until 14 August 2023. Submissions can be made via the [Have Your Say](#) website.

## **EC: Future of State Aid Rules Depend on Apple Case**

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The European Commission legal representative at the Apple case hearing said the future of fiscal state aid depends on the European Court of Justice position in the Apple case. Paul-John Loewenthal said it depends on the ECJ whether certain EU Member states will still be allowed to grant MNEs preferential tax deals in return for jobs and investment.

Under the tax arrangement with Apple, Ireland's Revenue allowed Apple's Irish branches and subsidiaries to pay an effective tax rate on its European profits of 1% in 2003 and 0,005% of tax in 2014, according to the European Commission assessment.

Lawyers for Apple argued that the Irish Apple structure did not aim to avoid tax entirely, merely deferring U.S. taxes on foreign earnings. Ireland and Apple, supported by Luxembourg, are challenging the European Commission's assessment in Case [C-465/20 P Commission vs. Ireland and Others](#).

Recently, Advocate General Kokott issued an Opinion in Case C-454/21 *P | Engie Global LNG Holding and Others v Commission* and C-451/21 *P | Luxembourg v Commission*, in which she largely disagrees with the General Court judgment which confirmed the European Commission's approach in this fiscal State aid case, suggesting that the EU institutions should not use State aid law to shape an EU Member state (ideal) tax system.

The Opinion argues that the Commission can only look at the 'outliers' to assess tax rulings under State aid law: the discretion enjoyed by the Member States in

tax assessment would exceed its limits if they abused their tax law in order to grant advantages to individual undertakings in circumvention of the rules on State aid, only when there is manifest error or inconsistency as happened in the case of Gibraltar. Compliance with State aid law should be a concern only with manifestly discriminatory issues, to avoid the EU courts becoming supreme tax courts.

## **Global Forum Develops Model Administrative Compliance Strategy for Automatic Exchange of Information**

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As part of its [Strategy to unleash the potential of AEOI for developing countries](#), the Global Forum Secretariat is developing toolkits and e-learning courses to facilitate the implementation of the AEOI standard. As such, it has [developed](#) a Model Administrative Compliance Strategy in order to *"assist jurisdictions in developing, improving and implementing their own administrative compliance strategy to ensure the effectiveness of the [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#) (AEOI)."*

The Model Strategy, the CRS Notification Tracking tool, and the Methodology for implementation of the risk-based approach have all been launched this year, and complement the [Toolkit for the Implementation of the Standard for Automatic Exchange of Financial Account Information](#), which was released in 2021.

The assessment tool and its user guide are available on demand to all interested jurisdictions in English. French and Spanish versions will be made available in due course.

## **ECOFIN Progresses Debate on ViDA Proposals**

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Finance Ministers from the Council of the European Union met on 16 June at the Economic and Financial Affairs Council, where a number of files were progressed. Key outcomes included the following:

### Taxation: VAT in the digital age

Ministers held a policy debate on this legislative package and **gave political guidance** on a number of key issues which had so far been the subject of discussions at the level of experts of the member states.

### Business Taxation: Code of Conduct Group

The Council approved [conclusions](#) on the **progress** achieved by the Code of Conduct Group during the Swedish presidency (January to June 2023).

### Report to the European Council on Tax Issues

The Council approved the biannual Ecofin [report](#) to the European Council on tax issues. This report provides an **overview of the progress achieved** in the Council during the term of the Swedish Presidency, as well as an overview of the **state of play** of the most important dossiers under negotiation in the area of taxation.

### European Semester

The Council approved its [country-specific recommendations](#) on the 2023 national reform programmes and it delivered its opinions on the updated stability or convergence programmes. Ministers approved the Council recommendations with a view to forwarding them for endorsement to the European Council.

Further information on the outcomes of the meeting is available [here](#).

**[Register Now: A Gender Equal Tax System in Europe: Reflections for a New Agenda - 4 July 2023, EU Parliament](#)**

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Registration is now available via the [European Parliament InfoHub website](#) for the 4 July 2023 event (panel discussion) on the topic of "*European Values: A Gender Equal Tax System in Europe: Reflections for a New Agenda*". The event is organised by CFE Tax Advisers Europe, the ICAEW Women in EU Finance

Network and PwC, kindly supported by the European Parliament.

A number of panelists from the OECD and the EU have been confirmed, with keynote speeches from OECD's newly appointed Deputy Secretary-General Fabrizia Lapecorella and Member of Parliament Kira Marie Peter Hansen MEP; Michelle Harding from the OECD CTP; Ana Xavier and Helena Malikova from the European Commission, a representative of the European Parliament regarding the EU 2024 elections campaign, as well as colleagues from practice and the organising bodies.

Gender equality in fiscal affairs is a matter of fairness, well-being and growth. While the EU has taken steps to include a gender perspective in all stages of policy design significant challenges remain – including when it comes to tax. The structure and administration of tax systems often still have different impacts on gender. As the EU starts to look ahead towards a new legislative term, what would it take to establish a truly inclusive tax system by 2030? What needs to be done to ensure that future changes to tax systems help drive gender equality as well as responding to Europe's green, digital and growth ambitions? Speakers will offer views and reflections on a pathway towards a more gender equal tax system by 2030, and address questions such as: what are the key features of tax system designed to help reduce gender inequality and what is lacking today; what do policymakers and tax administrations need to do to in the next EU legislative period to build a tax system that is gender equal, green, digital and competitive; and, what lessons can be learnt from international best practice.

Register now [here](#).

## **[EU Parliament Adopts Report on Lessons Learned from the Pandora Papers](#)**

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On 15 June, MEPs of the European Parliament sitting in Plenary [adopted](#) the Report on Lessons Learned from the Pandora Papers and Other Revelations, with 465 votes in favour, 5 votes against and 36 abstentions.

The report makes recommendations on regulation for intermediaries, reporting and information sharing, beneficial ownership, reducing conflicts of interest, addressing practices and regimes which reduce tax collection and whistle-blowers. The report also recommends changes to the EU's tax haven blacklist and the mandate of the Code of Conduct Group.

The CFE last week issued an [Opinion Statement](#) on the Report ahead of the EU Parliament plenary debate and vote. CFE Tax Advisers Europe values the continued efforts and contribution of the European Parliament, in particular the Subcommittee on Tax Matters (FISC) and the Committee of Economic and Monetary Affairs (ECON) in promoting better transparency, accountability and integrity of our tax systems.

CFE has contributed to the public debate and the expert hearings organised by the European Parliament in exploring ways in which tax professionals can contribute to these objectives as well as to strengthen the integrity and robustness of the fiscal systems for the benefit of the European economy, society, its citizens and taxpayers. We will continue to support the EU institutions in these important endeavours. In this spirit, we wish to provide remarks on the findings of the report, hoping these may be of assistance.

We invite you to read the [statement](#) and remain available for any queries you may have.

## **EU Customs Reform Proposals Published**

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The European Commission has published proposals setting out plans for the most comprehensive overhaul of the EU Customs Union system since its being established in 1968. The reform aims to respond to modern pressures on the Union, including hugely increased trade volumes, e-commerce and the number of EU standards that must be checked at the EU Customs border.

According to the Commission, *"The measures proposed present a world-leading,*

*data-driven vision for EU Customs, which will massively simplify customs processes for business, especially for the most trustworthy traders. A new EU Customs Authority will oversee an EU Customs Data Hub which will act as the engine of the new system. Over time, the Data Hub will replace the existing customs IT infrastructure in EU Member States, saving them up to €2 billion a year in operating costs. The new Authority will also help deliver on an improved EU approach to risk management and customs checks."*

The **three pillars of EU Customs Reform** are comprised of:

**A new partnership with business** - businesses that want to bring goods into the EU will be able to log all the information on their products and supply chains into a single online environment: the new **EU Customs Data Hub**. This cutting-edge technology will compile the data provided by business and – via machine learning, artificial intelligence and human intervention – provide authorities with a 360-degree overview of supply chains and the movement of goods. At the same time, businesses will only need to interact with one single portal when submitting their customs information and will only have to submit data once for multiple consignments. In some cases where business processes and supply chains are completely transparent, the most trusted traders ('Trust and Check' traders) will be able to release their goods into circulation into the EU without any active customs intervention at all. The Trust & Check category strengthens the already existing Authorised Economic Operators (AEO) programme for trusted traders.

**A smarter approach to customs checks** - Member States will have access to real-time data and will be able to pool information to respond more quickly, consistently and effectively to risks. Artificial intelligence will be used to analyse and monitor the data and to predict problems before the goods have even started their journey to the EU. This will allow EU customs authorities to focus their efforts and resources where they are needed most: to stop unsafe or illegal goods from entering the Union and to uphold the growing number of EU laws that ban certain goods that go against common EU values – for example in the field of climate change, deforestation, forced labour, to give just a few examples. It will also help



to ensure proper collection of duties and taxes, to the benefit of national and EU budgets. To help Member States prioritise the right risks and coordinate their checks and inspections – especially during times of crisis – information and expertise will be pooled and assessed at EU level via the new **EU Customs Authority** acting on the data provided through the EU Customs Data Hub.

**A more modern approach to e-commerce** - Platforms will be responsible for ensuring that customs duties and VAT are paid at purchase, so consumers will no longer be hit with hidden charges or unexpected paperwork when the parcel arrives. With online platforms as the official importers, EU consumers can be reassured that all duties have been paid and that their purchases are safe and in line with EU environmental, safety and ethical standards. At the same time, the reform abolishes the current threshold whereby goods valued at less than €150 are exempt from customs duty, which is heavily exploited by fraudsters. Up to 65% of such parcels entering the EU are currently undervalued, to avoid customs duties on import. The reform also simplifies customs duty calculation for the most common low-value goods bought from outside the EU, reducing the thousands of possible customs duty categories down to only four.

More information and the legislative proposals can be accessed [here](#).

## **EU Parliament Position on EU AI Act**

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The European Parliament relevant committees have agreed a negotiating position on the EU AI Act, which if voted, will become the first comprehensive global standard setting out a regulatory framework on Artificial Intelligence (AI). This press release from the European Parliament comes amid [journalistic reports](#) that many issues remain to be agreed.

The original Commission proposal for an EU AI Act lays down rules for a proposed legal framework for the development, supply and use of AI products and services in the EU. The proposal proposes to introduce a technology-neutral definition of

AI systems in EU law and to lay down a classification for AI systems with different requirements and obligations tailored on a 'risk-based approach'.

Key changes provisionally agreed by Parliament are the following:

- **Definition:** Parliament amended the definition of AI systems to align it with the [definition agreed](#) by the Organisation for Economic Co-operation and Development (OECD).
- **Prohibited practices:** Parliament substantially amended the list of AI systems prohibited in the EU. Parliament wants to ban the use of biometric identification systems in the EU for both real-time and ex-post use (except in cases of severe crime and pre-judicial authorisation for ex-post use) and not only for real-time use, as proposed by the Commission. Furthermore, Parliament wants to ban all biometric categorisation systems using sensitive characteristics (e.g. gender, race, ethnicity, citizenship status, religion, political orientation); predictive policing systems (based on profiling, location or past criminal behaviour); emotion recognition systems (used in law enforcement, border management, workplace, and educational institutions); and AI systems using indiscriminate scraping of biometric data from social media or CCTV footage to create facial recognition databases.
- **High-risk AI systems:** While the Commission proposed to automatically categorise as high-risk all systems falling in certain areas or use cases, Parliament adds the additional requirement that the systems must pose a 'significant risk' to qualify as high-risk. AI systems that risk harming people's health, safety, fundamental rights or the environment would be considered as falling in high-risk areas. In addition, AI systems used to influence voters in political campaigns and AI systems used in recommender systems displayed by social media platforms designated as very large online platforms under the Digital Services Act would be considered high-risk systems. Furthermore, Parliament imposes on those deploying a high-risk system in the EU an obligation to carry out a

fundamental rights impact assessment, including a consultation with the competent authority and relevant stakeholders.

- **General-purpose AI:** Parliament wants to enshrine a layered approach in the AI act to regulate general-purpose AI systems. Parliament wants to impose an obligation on providers of foundation models to ensure robust protection of fundamental rights, health, safety, the environment, democracy and the rule of law. They would be required to assess and mitigate the risks their models entail, comply with some design, information and environmental requirements and register such models in an EU database. Furthermore, generative foundation AI models (such as ChatGPT) that use large language models to generate art, music and other content would be subject to stringent transparency obligations. Providers of such models and of generative content would have to disclose that the content was generated by AI not by humans, train and design their models to prevent generation of illegal content and publish information on the use of training data protected under copyright law. Finally, all foundation models should provide all necessary information for downstream providers to be able to comply with their obligations under the AI act.
- **Governance and enforcement:** National authorities' competences would be strengthened, as Parliament gives them the power to request access to both the trained and training models of the AI systems, including foundation models. Parliament also proposes to establish an AI Office, a new EU body to support the harmonised application of the AI act, provide guidance and coordinate joint cross-border investigations. In addition, Members seek to strengthen citizens' rights to file complaints about AI systems and receive explanations of decisions based on high-risk AI systems that significantly impact their rights.
- **Research and innovation:** To support innovation, Parliament agrees that research activities and the development of free and open-source AI components would be largely exempted from compliance with the AI act rules.

## **CFE Opinion Statement on Official Ruling 57:2023 of the Italian Central Tax Office on Intervening Fixed Establishments in a VAT Context**

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The CFE has issued an [Opinion Statement](#) on Official Ruling 57/2023 given by the Italian Central Tax Office.

This Opinion Statement explains the views of CFE Tax Advisers Europe concerning the Official Ruling 57/2023 given by the Italian Central Tax Office (Agenzia delle Entrate – Divisione Contribuenti – Direzione Centrale Grandi Contribuenti e Internazionale) on 17 January 2023 on intervening fixed establishments in a VAT context. CFE is issuing this Statement because we consider that it is material to the correct treatment of intra-Community supplies.

We invite you to read the [statement](#) for further analysis and remain available for any queries you may have.

## **European Parliament Subcommittee on Tax Matters - Hearing on the Role of Tax Incentives on EU Policy Goals - 27 June**

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The European Parliament's Permanent Subcommittee on Tax Matters ("FISC") held a [public hearing](#) on 27 June 2023 from 15:00 to 16:30, on "the role of tax incentives on achieving EU policy goals". The hearing examined tax incentives for businesses and how they are used or abused to lower the corporate tax payments of enterprises significantly, thereby possibly causing a gap in overall tax revenue. Experts discussed reforms such as patent boxes, minimum tax rate of 15% in the framework of the OECD Pillar 2 reform designed in order to counter tax incentives' abuse and the US Inflation Reduction Act and the future role of tax credits in stimulating the economy.

The hearing was thereafter followed by a presentation of and discussion on the draft own-initiative report on "Further reform of corporate taxation rules" from 16:30 to 17:00. The hearing can be replayed [here](#).

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