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MITIGATING CROSS-BORDER DOUBLE TAXATION: THE IMPACT OF THE EU «FASTER DIRECTIVE» ON DIVIDEND AND INTEREST WITHHOLDING IN PORTUGAL-SPAIN OPERATIONS

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Abstract

This paper analyses the Directive (EU) 2025/50 on faster and safer relief of excess withholding taxes (the «FASTER Directive») and its implications for cross-border investment taxation within the European Union. It focuses on the inefficiencies arising from fragmented national withholding tax systems, including differences in administrative procedures, documentation requirements and linguistic barriers, which may create additional costs and liquidity constraints for non-resident investors.

The study examines the Directive within the framework of the fundamental freedoms of the European Union, with particular emphasis on the free movement of capital. It argues that disparities in withholding tax procedures may operate as practical barriers to cross-border investment and to European competitiveness.

This paper examines the main innovations introduced by the FASTER Directive, including the digital tax residence certificate, the new role for certified financial intermediaries, and the harmonised procedures for obtaining withholding tax relief. A comparative analysis between Portugal and Spain illustrates how existing national withholding tax and refund procedures interact with cross-border investment.

It concludes that the Directive represents a step towards reducing administrative barriers and improving the efficiency and predictability of cross-border withholding tax relief. However, its effectiveness depends on achieving an appropriate balance between facilitating cross-border investment and preventing tax fraud and abuse.

Finally, the paper considers the FASTER Directive in light of the European Commission's broader reform initiatives in EU direct taxation. In particular, it considers the Tax Simplification Package presented by the Commission on 24 June 2026, including the proposed Taxation Omnibus Directive that reforms, among others, FASTER Directive and introduce additional tools to enhance the free movement of capital.

1. Introduction

Investing across borders may create significant tax inefficiencies for non-resident investors. According to a common distribution of the taxing rights, dividends and interest are often subject to withholding in the source State and taxable in the investor's State of residence[1].

In the European Union, two important instruments, address certain aspects of this problem. The Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (hereinafter, the PSD) aims to eliminate the economic double taxation of profits distributed between companies belonging to the same group. The Directive applies, however, only where its substantive conditions are met, protecting at least holdings of 10%. in the capital of the subsidiary. Member States may, however, establish a lower minimum holding threshold and also require a minimum holding period[2].

Similarly, the Council Directive 2003/49/EC of 3 June 2003 establishes a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (hereinafter, the IRD) This IRD generally provides for exemption from source-State taxation where the relevant conditions are satisfied, including the requirement that the companies concerned qualify as associated, which

[1] MALHERBE, J.& GRAU RUIZ, A. (2016), Los dividendos en la jurisprudencia fiscal del Tribunal de Justicia Europeo: una síntesis, en MARTÍN JIMÉNEZ, A. (dir.). y CARRASCO GONZÁLEZ (dirs.), *Impuestos Directos y Libertades Fundamentales del Tratado de Funcionamiento de la Unión Europea. Cuestiones fundamentales en la jurisprudencia del Tribunal de Justicia de la Unión Europea* (capítulo IV). Aranzadi Thomson Reuters.

This work was carried out during a research stay at the Faculty of Law of the University of Porto. It is partof the research project entitled entitled «La retención en origen sobre ciertos dividendos e intereses transfronterizos en la Directiva FASTER» funded by the Instituto de Estudios Fiscales.

[2] According to article 3 of the PSD, the provision applies to a company of a Member State that holds at least 10% of the capital of a company of another Member State or, under the same conditions, at least 10% of the capital of a company of the same Member State, where such holding is held wholly or partly through a permanent establishment of the former company situated in another Member State. Member States may, under certain conditions, require that such holding be maintained for a continuous period of at least two years.

generally requires a minimum holding of a 25%[3]. Additionally, it establishes a refund procedure for taxes withheld at source, with minimum guarantees, such as requiring the source Member State to allow taxpayers to lodge a refund claim within two years of the payment requiring the procedure to be resolved within one year of receiving the claim and the supporting information[4].

Nevertheless, these Directives do not protect all forms of cross-border investment, particularly those made by individuals, minority shareholdings or portfolio investments. Furthermore, they neither harmonize withholding tax rates applicable to other forms of cross-border investment nor establish general procedures for obtaining refunds of taxes withheld at source.

Bilateral tax treaties provide an additional layer of protection. Based on the OECD Model Tax Convention, treaties generally limit the source State's taxing rights over dividends and interest, although the precise limits and conditions depend on the applicable treaty. The practical exercise of treaty rights may instead depend on the procedures and documentation required by the source State[5].

As a result, some States withhold taxes at the standard rate first, and subsequently refund any excess amount, while others apply benefits directly at payment using the *«relief at source»* at the time of payment. Although the relief at source model is preferable for investors, it also requires effective safeguards to ensure that relief is granted only where the relevant conditions are satisfied. Refunds may be fast or standard, depending on administrative complexity and the length of the procedure.

Moreover, requirements for proving tax residence also vary between Member States and differences in the forms, language, digitalisation and difficulties in recognising of tax residence certificates may create important additional procedural obstacles for non-

[3] According to article 1.7 in conjunction with article 3 b) of the RID, a company is considered an associated company of another if either company directly holds at least 25% of the capital of the other, or a third company directly holds at least 25% of the capital of both companies.

DOURADO, P. & REIGADA, R. (2006). Portugal. *The EC Interest Savings Directive*, EATLP International Tax Series, p. 183

[4] Articles 1.15 and 1.16 of the IRD Directive establish minimum safeguards for Member States return procedures. Where tax has been withheld at source on interest or royalties that are exempt, the recipient may claim a refund within at least two years of payment. The source State must refund the tax within one year of receiving the claim and the required supporting information; otherwise, interest is payable on the amount due.

[5] OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en. See articles 10 and 11 of the OECD Model Tax Convention on Income and on Capital, concerning respectively dividends and interest.

resident investors. In particular, the absence of harmonized procedures increases the administrative costs associated with obtaining withholding tax relief[6].

It should be noted that cross-border investments have sometimes facilitated fraudulent or tax avoidance practices, including cum-ex and cum- cum schemes, which have resulted in significant losses of tax revenue for Member States[7].

To make things simpler and safer, the EU introduced Directive (EU) 2025/50 commonly known as the FASTER Directive. creates a harmonised digital certificate of tax residence valid across all Member States and streamlines the process for correcting excessive withholding on listed dividends and bond interest[8].

The FASTER Directive requires Member States to adopt the necessary provisions for its transposition by 31 December 2028, and the resulting rules set to take effect from 2030[9].

The FASTER Directive should, moreover, be understood in the context of the European Commission's broader reform of the direct taxation framework. On 24 June 2026, the Commission presented Proposal COM (2026) 560 final, the so-called «Taxation Omnibus», as part of its broader agenda to simplify Union legislation, reduce unnecessary administrative burdens and strengthen the competitiveness of the internal market. The proposal would amend, among others, the IRD, the PSD and the FASTER Directive, together with other instruments of EU direct tax.

This paper analyses how these measures FASTER Directive and the Taxation Omnibus proposal affect to cross-border transactions. It argues that harmonised digital documentation and faster refunds not only reduce administrative burdens and minimize

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[6] HECKEMEYER J. H. (2022), Removal of taxation-based obstacles and distortions in the Single Market in order to encourage cross border investment, *Publication for the Subcommittee on Tax Matters, Policy Department for Economic, Scientific and Quality of Life Policies*, European Parliament, p.25 et seq.

[7] Under a cum-ex scheme, shares are immediately sold before the right to receive dividend income subject to withholding tax arises, while the delivery of the shares would take place immediately afterward. These transactions, carried out within a matter of days, can create confusion regarding the identity of the recipient, which has been exploited by the parties involved to obtain duplicated refunds, even though they relate to the same dividends and withholding taxes. Additionally, these operations, which are generally considered abusive or fraudulent, also involve a high risk of money laundering. For further details see CORRECTIV (2018), *The CumEx Files: How Europe's taxpayers have been swindled of €55 billion*. https://correctiv.org/en/latest-stories/2018/10/21/cumex-file

According to a cum-cum scheme, shares would be sold or lent before the dividend payment by a taxpayer subject to withholding tax to another party who is either exempt from withholding or entitled to a reduced tax rate. This second party would subsequently return the shares to the original investor, possibly paying financial compensation in return. This may constitute an avoidance practice, even though there is no duplication of withholding tax refunds. For further details see CORRECTIV (2021), *CumEx Files 2.0 - The outrageous tax fraud goes on.* https://correctiv.org/en/latest-stories/2021/10/21/cumex-files-2/

[8] Council Directive (EU) 2025/50 of 10 December 2024 on faster and safer relief of excess withholding taxes.

[9] Article 25 of the FASTER Directive.

withholding disputes but also enhance legal certainty and predictability for investors when navigating cross-border taxation.

For these purposes, Portugal and Spain will be examined as an illustrative case study, with particular attention paid to the tax procedural barriers affecting cross-border investment between the two countries. The following section will therefore focus on the procedural obstacles that may arise in this context and their implications for cross-border investment.

2. Tax procedural barriers to cross-border investment between Portugal and Spain as an illustrative case study

Nowadays, withholding tax systems and refund procedures are far from being harmonised across Member States. This lack of harmonization generates compliance costs, procedural burdens and liquidity constraints for cross-border investors and intermediaries. Additionally, these circumstances may make cross-border investment less attractive and affect the effective exercise of the free movement of capital guaranteed by European Union Law[10].

Portugal and Spain provide a useful illustration of these difficulties. The shareholder base of companies typically includes a wide range of investors, including non-resident taxpayers receiving relatively small amounts of dividend income. For these investors, the administrative costs associated with recovering excess withholding tax may be disproportionate to the amount ultimately recoverable.

Under the 1993 Convention between Portugal and Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter, the «Portugal-Spain DTC»), dividends and interest paid across the border may be subject to limited taxation in the State of source. In the case of dividends, the tax imposed at source may not exceed 10% of the gross amount where the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends. In other cases, the maximum rate is 15%[11].

Interest may likewise be taxed in the State of source, but the tax may not exceed 15% of the gross amount where the recipient is the beneficial owner of the interest[12].

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[10] Treaty on the Functioning of the European Union, articles 63 to 66 TFUE.

[11] Convention between the Kingdom of Spain and the Portuguese Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Madrid on 26 October 1993, article 10.2. The maximum source-State withholding rate is 10% where the beneficial owner is a company directly holding at least 25% of the capital of the company paying the dividends, and 15% in other cases.

[12] According to article 11.2 of the DTC interest may be taxed in the State of source, but the tax may not exceed 15% of the gross amount where the recipient is the beneficial owner of the interest.

These treaty limitations are intended to restrict the source State's taxing rights and prevent taxation at rates exceeding those agreed between the two Contracting States.

Against this background, reducing the procedural barriers associated with obtaining treaty relief is particularly relevant in Portugal and Spain, given the significant volume of reciprocal investment between the two jurisdictions. The comparison between their respective systems also illustrates how differences in procedures may affect the practical value of substantive tax rights.

2.1 Some notes about Portuguese system

The Portuguese system provides mechanisms through which treaty relief can be granted directly at source subject to the applicable conditions[13]. But when this relief is not obtained, non-resident taxpayers may use a procedure to obtain the refund of excess withholding. In practice, however, the effectiveness of these mechanisms depends on the timely provision of tax residence certificates and other supporting documentation.

Under Portuguese domestic tax law, Portuguese-source dividends (*dividendos*) and interest (*juros*) paid to non-resident entities are generally subject to withholding tax, with a standard rate of 25%, without prejudice to exemptions, reduced rates and other rules applicable under domestic law and tax treaties[14]. Specific circumstances may trigger a higher 35% rate including, among others, when the income is paid or made available through an account held on behalf of unidentified third parties, unless the beneficial owner is identified[15]. For individuals, investment income such as dividends and interest is generally subject to a 28% withholding tax rate, again subject to the applicable exemptions, reduced rates and treaty provisions[16].

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[13] According to the *Código do Imposto sobre o Rendimento das Pessoas Coletivas* (hereinafter, the CIRC), approved by Decree-Law No. 442-B/88 of 30 November 1988 d by Law No. 2/2014 of 16 January 2014. See article 98 CIRC.

[14] Articles 87 and 94 of the CIRC concerning the taxation and withholding of Portuguese-source income paid to non-resident entities, subject to the specific rules applicable to the relevant category of income and to exemptions or reduced rates under domestic law and applicable tax treaties.

[15] Article 87.4 h) of the CIRC provides for a 35% rate where capital income is paid or made available through accounts held in the name of one or more account holders but for the account of unidentified third parties, unless the beneficial owner is identified, in which case the general rules apply. Article 87. 4 i) also provides for a 35% rate on capital income, derived by non-resident entities domiciled country, territory or jurisdiction subject to a clearly more favourable tax regime and included in the list approved by the Portuguese Minister of Finance. The list is set out in Portaria 150/2004 of 13 February.

[16] See Portuguese Personal Income Tax Code (Código do Imposto sobre o Rendimento das Pessoas Singulares, hereinafter the CIRS), approved by Decree-Law No. 442-A/88 of 30 November 1988 and republished by Law No. 82-E/2014 of 31 December 2014. Article 71.1 a) of the CIRS applies to investment income, including dividends and interest, and provides for the applicable withholding tax rate of 28%. Article 71.17 of the CIRS, which establishes an increased withholding tax rate of 35% in certain cases.

The procedural requirements to obtain a refund includes the use of appropriate forms. This also include the provision of a tax residence certificate issued by the tax authorities of the State of residence which must establish the taxpayer liability to income tax in that State. The Portuguese tax authorities expressly indicate that the relevant refund forms must be sent by post to the *Direção de Serviços de Relações Internacionais*, together with the residence documentation[17].

The Portuguese administration has also made some of these forms available electronically and, in certain cases, in more than one language. For example, in Portuguese/English and Portuguese/Spanish. However, the online completion of certain refund forms does not, by itself, produce legal effect as the applicable procedure still requires the relevant documentation to be sent to the tax administration.

Another relevant aspect is the requirement to demonstrate beneficial ownership where this is a condition for obtaining tax relief[18].

Under Portuguese law, refund claims submitted by non-resident taxpayers must be processed within one year from the date on which the request is duly submitted together with the required supporting documentation. After that point, late payment interests may become due[19].

Additionally, the documentation must be provided within the prescribed timeframe, and the recipient may claim a full or partial refund of the withholding tax within two years from the end of the year in which the taxable event occurred[20].

To sum up, although these requirements provide important safeguards for the tax administration, they may create administrative complexity that is particularly relevant in cross-border investment chains involving multiple intermediaries, where the timely transmission and verification of residence and beneficial ownership documentation may become more difficult.

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[17] Form 22-RFI is used to request a refund of excess withholding tax on dividends from shares and interest on debt securities, within the framework of double taxation treaties. Form 23-RFI form for dividends of participations other than shares. Form 02-DJR is used to request for the excess of withholding of interest and royalties. These forms are available in www.portaldasfinancas.gov.pt [consulted: 1 September 2026]

[18] For this purpose, the Portuguese tax authorities require the use of Form 21-RFI, which expressly identifies the recipient as the beneficial owner and must be completed by that beneficial owner and accompanied by a certificate of tax residence.

[19] Article 98.9 CIRC and article 101.C.9 CIRS.

[20] Article 98.7 CIRC.

2.2 Some notes about Spanish system

The Spanish legal framework is primarily governed by the Non-Resident Income Tax Law (*Texto Refundido del Impuesto sobre la Renta de no Residentes*, or «TRIRNR») and its implementing regulations[21]. These rules allow tax benefits to be applicated at source, according to exemptions and reduced rates arising from domestic law, EU law and applicable double taxation conventions[22].

In practice, however, the effective application of reduced rates may depend on the availability of the necessary documentation. Where the appropriate relief is not granted at source, excess withholding may subsequently be recovered through a refund procedure[23].

The general withholding tax rate applicable to income from movable capital is 19%, regardless of whether the recipient is an individual or a corporate entity and whether the recipient is resident in the European Union, the European Economic Area, or a non-EU jurisdiction. Nevertheless, reduced rates and exemptions may apply under applicable tax treaties, particularly as a result of the transposition of the PSD and the IRD, as will be examined in the final section of this work[24].

Refund procedures are managed by the *Agencia Estatal de Administración Tributaria* (AEAT) electronically from 1 February of the year following the year in which the income accrued and within a four-year period calculated from the end of the relevant withholding and payment period[25].

Digital identification may further facilitate access to Spanish tax administration services for non-resident taxpayers. The AEAT has recently implemented the eIDAS authentication system, allowing citizens of EU Member States to use identification mechanisms provided by their home Member State. In our view, the level of digitalisation is particularly relevant for cross-border taxpayers and intermediaries, as it reduces some of the practical difficulties associated with accessing administrative tax services.

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[21] The Spanish non-resident taxation framework is primarily governed by Royal Legislative Decree 5/2004 of 5 March, approving the consolidated text of the Non-Resident Income Tax Law (Texto Refundido de la Impuesto sobre la Renta de no Residentes, TRIRNR), together with its implementing regulations under Royal Decree 1776/2004 of 30 July, approving the Regulations of the Non-Resident Income Tax Law (Reglamento del Impuesto sobre la Renta de no Residentes, RIRNR). In addition, Ministerial Order of 13 April 2000 introduced a coordinated mechanism between issuers and custodians to facilitate the prompt reimbursement of excess withholding tax.

[22] Article 16.4 RIRN.

[23] Form 210. Self-assessment, Non-Resident Income Tax. Non-residents without a permanent establishment. available in https://sede.agenciatributaria.gob.es.

[24] In Spain, interest paid to non-residents is generally subject to a 19% tax rate, pursuant to article 25.1 TRIRNR.

[25] See, in general, article 66.d) Ley 58/2003, de 17 de diciembre, General Tributaria.

The general procedural framework also provides that, if the Tax Administration does not order the payment of a refund within the applicable period of six months, late-payment interest may become payable where the delay is attributable to the tax administration[26].

Overall, the Spanish system presents a relatively high degree of administrative digitalisation and provides long period for submitting refund claims. To a considerable extent, controls are deferred to *ex post* verification procedures which represents a certain risk of tax fraud.

2.3 Main findings and typical controversies

As we can see, Portuguese and Spanish withholding tax systems share a common underlying structure. Both jurisdictions subject income obtained by non-residents to withholding tax but provide mechanisms through which exemptions, reduced rates or treaty limitations can be applied at source.

Nevertheless, differences in implementation are particularly relevant in the context of cross-border investment, where the effectiveness of tax relief depends not only on the substantive rules governing the allocation of taxing rights and tax rates, but also on the procedures through which taxpayers can obtain relief.

These distinctions become particularly important if treaty benefits are not applied directly at source. In such circumstances, the amount initially withheld may substantially exceed the amount ultimately payable. The greater the gap between the domestic withholding rate and the treaty rate, the greater the potential cash-flow impact[27].

The Portuguese system offers different forms depending on the type of income concerned and requires a tax residence certificate issued by the authorities of the State of residence. Although the forms are available online, the practical procedure may still involve the physical submission of original documentation to the Portuguese tax authorities. This may increase the compliance costs associated with relatively small refund claims.

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[26] According to article 28 of TRLIRN taxpayers who derive income in Spanish territory without operating through a permanent establishment shall be required to file a tax return.

Ministerial Order EHA/3316/2010 of 17 December approves the self-assessment forms for Non-Resident Income Tax, including Form 210, which must be used to declare income obtained without of a permanent establishment. According to article 5 c 3º of the Ministerial Order in the case of refund self-assessments, these may be submitted from 1 February of the year following that in which the income is accrued, and within a four-year period calculated from the end of the filing and withholding payment period.

Article 31 of the General Tax Law establishes that the maximum period for administrative procedure is six months, and that, if payment is not ordered within this period due to reasons attributable to the Tax Administration, late-payment interest shall accrue.

[27] BANU, E., EVRARD, J & WEDOW, M. Euro area household savings allocation and the role of taxation, *Financial integration and structure in the euro area,* European Central Bank.

Within the Spanish system, tax refund procedures are characterized by a high degree of digitalisation. Refund claims can be submitted electronically, and the AEAT provides for electronic identification mechanisms, including eIDAS authentication for EU citizens. This may reduce some of the practical obstacles faced by non-resident investors and intermediaries managing many claims.

An additional difference concerns the linguistic accessibility of the administrative forms. In Portugal, certain forms relevant to the refund of withholding tax are available in several languages, including Spanish. By contrast, the Spanish procedure does not appear to provide comparable multilingual accessibility for the relevant forms, as the documentation is primarily available in Spanish. Although this difference does not affect the substantive tax rights of investors, it may have practical implications for the accessibility and administrative cost of cross-border refund procedures. In our view, one of the key factors in facilitating the procedures for non-resident taxpayers, particularly in the context of cross-border investment, is reducing the linguistic difficulties involved in completing the relevant documentation.

Portuguese refund procedures may take up to one year once the claim and the required documentation have been duly submitted. Spain provides for a shorter general period of six months for administrative action, after which late-payment interest may arise where the delay is attributable to the tax administration[28].

The comparison therefore illustrates that the existence of a substantive right to reduced taxation does not necessarily guarantee that the right can be exercised efficiently. Administrative requirements may impose costs that are particularly significant where the amount of tax recoverable is relatively small.

These difficulties are not exclusive to Portugal or Spain. Nevertheless, the comparison between the two jurisdictions demonstrates how differences in procedural design can affect the practical effectiveness of cross-border tax rights within the internal market[29].

This illustrative case highlights the importance of distinguishing between *relief at source* and *relief by refund*. A system based predominantly on refund procedures places the initial financing cost of excess withholding on the investor, who must wait for the tax

[28] For 2026, the late-payment interest rate applicable to tax debts owed to the Portuguese State and other public entities is 7,221%, pursuant to Aviso n. º 18/2026/2, applicable from 1 January 2026. In Spain, the statutory late-payment interest rate is 4,06% for 2026. The Spanish rate is based on the statutory rule under which late-payment interest is generally set at the legal interest rate increased by 25%, unless otherwise provided by the State Budget Law.

[29] EUROPEAN COMISSION (2023), *Commission Staff Working Document Impact Assessment Report New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes accompanying the document Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes* (SWD/2023/216 fin).

administration to return the amount withheld in excess. By contrast, effective relief at source prevents excess withholding.

However, immediate relief must be accompanied by appropriate safeguards. The experience of dividend-arbitrage arrangements such as *cum-ex* and *cum-cum* demonstrates that efficient withholding tax relief cannot be considered in isolation from the need to verify the taxpayer's entitlement and prevent abusive or fraudulent claims.

This tension between administrative efficiency and effective tax control lies at the heart of the FASTER Directive and provides an important basis for assessing its potential impact.

3. Key Changes Introduced by the FASTER Directive

In line with the European Commission's Action Plan for Fair and Simple Taxation, the FASTER Directive promotes mechanisms that enable that tax benefits are granted as close as possible to the time of payment[30].

The Directive seeks to introduce a degree of harmonisation of withholding tax relief in cross-border situations within the European Union. However, its material scope remains limited, as it applies only to dividends from listed entities and, optionally, to interest from listed bonds[31].

For this reason, the Directive should be understood as an instrument of administrative harmonization rather than substantive tax integration. Its principal contribution lies in the standardization of documentation, withholding tax relief procedures and new reporting obligations for financial intermediaries The following section will outline some of the main measures introduced by the FASTER Directive.

3.1 Digital tax residence certificate

One of the main practical obstacles to the effective application of double taxation treaties lies in the difficulty of proving tax residence reliably and efficiently. This issue has traditionally generated administrative delays, legal uncertainty, and inconsistent outcomes in the application of withholding tax relief and refund procedures.

In response to these challenges, the Directive introduces a digital tax residence certificate, designed to establish a uniform standard of content and format across all Member States. It constitutes one of the key measures and must therefore be transposed by all Member States, including Portugal and Spain[32].

[30] Communication from the Commission to the European Parliament and the Council an Action Plan for fair and simple taxation supporting the recovery strategy COM/2020/312 final, especially action 8, suggested that Commission will propose a legislative initiative for introducing a common, standardised, EU-wide system for withholding tax relief at source, accompanied by an exchange of information and cooperation mechanism among tax administration.

[31] Article 2.5 of the FASTER Directive.

[32] Article 2.1 of the FASTER Directive.

The aim is to overcome the fragmentation of national systems and to ensure consistent recognition of tax residence for withholding tax purposes within the European Union. The certificate is to be issued digitally, thereby reducing inefficiencies associated with paper-based procedures and enabling a higher degree of automation in tax administration.

Competent authorities, designated by each Member State, are required to issue the certificate based on the information available at the time of issuance, confirming the tax residence of individuals and legal entities in their jurisdiction. The Directive establishes a common set of mandatory data but allows Member States to include additional information necessary to substantiate tax residence[33].

The Directive also requires Member States to ensure that the certificate is presented where necessary for the application of withholding tax relief or fast-track refund systems. It is expressly recognised as valid proof of tax residence across Member States, creating an *iuris tantum* presumption while preserving the competence of national tax authorities to verify residence independently[34].

The certificate may also include, where appropriate, a reference to applicable double taxation conventions. Nevertheless, the Directive does not require any explicit confirmation that the taxpayer is liable to tax on worldwide income, rather than merely in respect of income sourced in that State.

In our opinion, this omission is significant. Under a stricter interpretation aligned with the OECD Model Tax Convention and its Commentary, treaty residence presupposes a sufficient degree of comprehensive tax liability[35].

The certificate must indicate its date of issuance and period of validity. The Directive provides that the validity shall not exceed one year, but it does not specify whether this refers to a calendar year or a fiscal year, leaving this determination to Member States. This lack of uniformity may generate divergences in practice. The Directive also permits the annulment of certificates where relevant circumstances change and requires taxpayers to notify authorities of such changes[36].

For individuals, tax residence is typically assessed by reference to their presence within a calendar year, whereas for legal entities it is generally determined at the end of the financial year. A uniform validity rule may therefore not accurately reflect residence

[33] Article 4.2 of the FASTER Directive.

[34] Article 4.5 of the FASTER Directive.

[35] Article 4.1 of the Model Convention OECD.

[36] Article 4.3 of the FASTER Directive.

in all cases. In practice, some systems have even accepted indefinite validity in specific contexts, particularly where the recipient of income is a foreign State or sub-central governmental entity.

As regards timing, the Directive establishes a general deadline of fourteen calendar days for issuance, subject to extension where justified. Earlier drafts had proposed significantly shorter deadlines, ranging from one to three working days, reflecting a more ambitious vision of administrative automation. The final version reflects a more cautious compromise[37].

While the introduction of a standard issuance period improves procedural certainty, the fourteen-day period may appear excessive in cases where residence is not in dispute and could undermine the objective of real-time digitalisation. A more refined approach could include shorter standard deadlines, combined with clearer rules on administrative silence.

From a technical perspective, the Impact Assessment considered several implementation models, including cryptographically verifiable credentials stored in digital wallets, electronically sealed documents, centralised databases similar to the VAT One-Stop Shop, and verification portals comparable to VIES[38].

Ultimately, the Directive adopts the less technologically complex option: a digitally sealed document, typically in PDF format, designed to be machine-readable and printable. While this ensures immediate feasibility, it does not represent the most advanced or efficient solution[39]. Annex I sets out the technical specifications, including an electronic seal and machine readability, and anticipates future integration with the European Digital Identity framework.

Overall, the digital tax residence certificate represents a meaningful step towards improving the functioning of cross-border tax administration. In fact, it facilitates faster verification of tax residence, enhances certainty and strengthens administrative control of withholding tax reliefs and refunds. Nevertheless, it does not eliminate the substantive issues like liability to tax, dual residence, beneficial ownership, or other treaty specific requirements.

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[37] Article 4 of the Commission Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes, established a one-business-day deadline. Amendment 13 of the European Parliament's legislative resolution of February 2024 already proposed extending this deadline to three business days. Finally, article 4.4 of the FASTER Directive establishes a fourteen-day term.

[38] See Anex 12 of the Commission Staff Working Document Impact Assessment Report New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes (WHT).

[39] FRESCURATO, D.& BORTOLAMEAZZI. F. (2023), FASTER: The Proposal to Streamline Withholding Tax Procedures, *Tax Notes International* v. 111, n. 7, august 14, p.787.

3.2 Adjustment mechanisms under the FASTER Directive: relief at source, quick refunds and anti-abuse safeguards

As noted above, one of the central objectives of the FASTER Directive is to simplify and accelerate the application of withholding tax reliefs on cross-border payments of dividends from listed companies and listed bonds.

Withholding tax relief procedures are defined as mechanisms whereby a registered holder receiving dividends or interest subject to excess withholding tax at source obtains an adjustment or refund of such excess withholding[40].

Section 3 of Chapter III, comprising articles 11 to 18, sets out specific withholding tax relief systems. Nevertheless, these systems are not mandatory for Member States with a relatively low stock market capitalisation ratio[41]. This stock market capitalisation ratio reflects the proportion of a Member State's market capitalisation relative to the total market capitalisation of the European Union as of 31 December of each year[42].

Accordingly, when a Member State's capitalization ratio reaches or exceeds 1,5% for four consecutive years, it becomes subject to the mandatory application of the relief systems established under the FASTER Directive, although it is granted a five-year transitional period for implementation[43].

Conversely, if the capitalization ratio remains below 1,5%, according to the four most recent publications issued by the European Securities and Markets Authority available as of 31 December 2028, the application of this system will remain optional[44].

The Directive provides limited guidance regarding the methodology for calculating the capitalisation ratio, instead entrusting the Commission with the adoption of technical

[40] Definition established in article 3.1.11 of the FASTER Directive.

[41] Article 2.2 of the FASTER Directive.

[42] Article 3.1 definition 33 of FASTER Directive.

[43] See article 2.3 of the FASTER Directive about its scope.

[44] See article 2.4 of the FASTER Directive.

standards based on a methodology proposed by the European Securities and Markets Authority[45].

To our view the use of market capitalisation as a criterion for determining the mandatory application of Chapter III may result in an asymmetric level of procedural harmonisation among Member States.

Nevertheless, the systems set out in Section 3 of Chapter III are not mandatory for Member States with a «comprehensive relief at source system». To be considered as such, must fulfill certain requirements. For example, the system must allow broad access for all natural persons, legal entities, or other bodies entitled to it, whether under national law, EU law, or a double taxation treaty. Furthermore, such relief should be granted at the time of payment and not require additional documents or data beyond those specified in the Directive. Additionally, the Member State should have adequate penalty provisions and a strong liability regime in the event of a total or partial loss of revenue arising from withholding taxes[46].

However, the Directive provides no further clarification and does not envisage, at this stage, the adoption of delegated or implementing acts to further develop this matter. At the present, there is no proper assessment of which Member States are considered to have a comprehensive relief at source system.

It should also be noted that once Chapter III of the Directive adopts a dual model, combining a relief at source system, with an alternative fast refund procedure or even a combination of both.

The relief at source system allows reduced withholding tax rates or exemptions to be applied directly when dividends or interest are paid. The Directive defines this mechanism as one enabling the application of the appropriate withholding tax rate in accordance with domestic legislation or applicable double taxation treaties at the point of payment. In

[45] In June 2025, the European Securities and Markets Authority published an interim report outlining the basic principles of that methodology, followed by a final report concerning the methodology for calculating market capitalization and the capitalization ratio resulting from that process. In January 2026, a draft delegated Regulation establishing the method for calculating stock market capitalization was published. From 2026 onwards, the Authority will publish, within the first 120 days of each year, the stock market capitalization of each Member State together with its relative capitalization ratio in comparison with that of the European Union.

According to BUSTOS, L. (2025), Directiva «FASTER» (Directiva del Consejo relativa a un ajuste de las retenciones en origen practicadas en exceso más rápido y seguro), *Carta Tributaria. Revista de Opinión*, No. 118, 2025, this threshold is expected to be met by several Member States, including Germany, Austria, Belgium, Denmark, Spain, Finland, France, Ireland, Italy, the Netherlands and Sweden.

[46] Article 3. 31 and recital 32 of the FASTER Directive.

practice, the operation of this mechanism depends fundamentally on Certified Financial Intermediaries maintaining the investment account of the registered owner[47].

Alongside relief at source, the Directive also establishes a fast refund mechanism. In this case, Certified Financial Intermediaries may request the reimbursement of excess taxes on behalf of investors within sixty days following the payment of the relevant dividends or interest. To obtain the refund, intermediaries must provide evidence of the investor's tax residence, generally through the digital tax residence certificate, as well as additional information enabling tax authorities to reconstruct the payment chain and verify entitlement to benefits. The intermediary must also identify the applicable withholding tax rate to calculate the amount of tax unduly withheld[48]. In the event of delay, investors are entitled to receive late payment interests in accordance with domestic legislation[49].

Although the Directive characterizes this procedure as «fast», the effectiveness of the mechanism remains open to debate. The final text grants Member States a period of sixty calendar days to resolve refund applications, counted from the expiration of the deadline itself. Accordingly, the actual reimbursement process may still extend over several months. In any event, in the case of Portugal and Spain, these time limits are shorter than those set out in the previous section, thereby representing a relative improvement in terms of procedural efficiency.

The Directive also contains specific provisions concerning indirect investments made through collective investment vehicles. In such cases, the investment fund or another designated legal entity may be treated as the formal holder of the securities for the purposes of obtaining withholding tax relief, provided that adequate traceability and internal record-keeping mechanisms are guaranteed. Certified Financial Intermediaries requesting relief must obtain declarations confirming the investor's entitlement to the adjustment, the legal basis for the applicable withholding tax rate, and the investor's commitment not to request the refund independently[50].

At the same time, the FASTER Directive introduces a broad range of anti-abuse safeguards intended to address the risks revealed by the *cum-ex* and *cum-cum* scandals. The Directive authorizes Member States to deny access to relief at source or fast refund procedures in transactions considered to pose a particularly high risk from an abuse perspective.

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[47] Article 13 of the FASTER Directive.

[48] Article 14 of the FASTER Directive.

[49] Article 16 of the FASTER Directive.

[50] Article 15 of the FASTER Directive.

Finally, where neither relief at source nor fast refund procedures are available, the Directive requires Member States to maintain ordinary refund mechanisms. Although these ordinary procedures remain largely unharmonised, the Directive obliges taxpayers and intermediaries to provide detailed information concerning holding periods and financial arrangements connected to the relevant securities[51].

In our view the FASTER Directive does not eliminate national procedural fragmentation entirely and seeks to balance the facilitation of cross-border investment with the reinforcement of anti-fraud controls.

3.3 The role of Certified Financial Intermediaries

In 2013, the OECD published a package of recommendations and documents for the application of treaty benefits and the enhancement of compliance through authorised intermediaries, known as the TRACE package (Treaty Relief and Compliance Enhancement)[52].

TRACE included a set of agreements and forms to be entered into between the source State and the intermediary, as well as between the intermediary and the registered owner. These standardized documents were intended to provide a stable framework that encouraged regulatory compliance. However, this system did not achieve widespread application with some exceptions[53].

The FASTER Directive also assigns a central role to financial intermediaries, including credit institutions, central securities depositories, investment firms, and the branches of such entities[54]. This concept of financial intermediary is not limited to entities established within the European Union. It also includes intermediaries that are tax resident in third countries, if they are authorized to provide equivalent financial services under regulatory frameworks considered comparable to those applicable within the Union[55].

These intermediaries form part of the payment chain and may occupy different positions between the issuer of the securities and the formal holder ultimately receiving the dividends or interest payments. Under traditional systems, reporting obligations generally rested only upon those intermediaries maintaining a direct relationship with

[51] Annex II to the FASTER Directive.

[52] OCDE (2013), *Treaty Relief and Compliance Enhancement*, OECD Publishing, Paris.

[53] VEIKKOLA, E. (2023) Finnish implementation of the OECD's Treaty Relief and Compliance Enhancement Package, *Tax Notes International* v. 112, n. º 7, november, 13, 2023, p. 927.

[54] See article 3.4 of the FASTER Directive.

[55] TEIXEIRA, G.& SANTOS, T. (2025). Towards the EU Capital Market: The Impact of the 'FASTER' Directive. *Journal of Finance and Financial Law*, 3(47), p.63.

the registered owner, while other actors in the chain are not usually required to provide information[56].

FASTER introduces a significant change in the control of cross-border investment structures. Information relating to dividend and interest payments inside scope is no longer supplied exclusively by the withholding agent. Instead, intermediaries participating in the payment chain must provide relevant information concerning the portion of the transaction visible to them, thereby enabling tax authorities to reconstruct the entire chain of payments[57].

To facilitate the functioning of this framework, the Directive creates the category of *«Certified Financial Intermediaries»*, defined as intermediaries registered in one of the National Registers established under the Directive[58]. While registration is generally voluntary, it becomes mandatory for «large institutions» and for central securities depositories[59]. In this regard, FASTER departs from the approach previously envisaged under the TRACE initiative, where registration mechanisms were conceived exclusively on a voluntary basis.

Although registration is mandatory only for certain categories of intermediaries, entities not subject to this obligation may apply voluntarily. This feature may contribute to extending the practical use of the withholding tax relief mechanisms introduced by the Directive, as certified status could provide financial intermediaries with a competitive advantage in the market by enhancing investor confidence and operational efficiency.

The acquisition of certified status depends both on compliance with the substantive requirements established by the Directive and on effective registration in the corresponding National Register depending on source Member State. Once registered, Certified Financial Intermediaries become subject to reporting obligations, due diligence requirements, are eligible to participate in the withholding tax relief systems established by FASTER.

While this multiplicity of registrations may initially appear administratively burdensome, the Directive seeks to simplify the establishment of a European Portal for Certified Financial Intermediaries[60]. This Portal functions as a central electronic access point through which intermediaries may initiate registration procedures before multiple

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[56] VAN SEGGERN, R & ELSENBURG, O. (2024), Unlocking Efficiency: Navigating the FASTER Directive for Streamlined Withholding Tax Relief, *International Tax Journal*, vol. 50, n. º 5, p. 36.

[57] Annex II to the FASTER Directive.

[58] See article 3.1 number 5 of the FASTER Directive for the definition of certified financial intermediary.

[59] The legal definition of a large institution is set out in article 142, 1 4 of Regulation (EU) No 575/2013.

[60] Article 6 of the FASTER Directive.

National Registers. Nevertheless, the substantive decision regarding registration remains within the competence of the relevant national authorities.

National Registers must communicate to the Portal all relevant decisions concerning registration, refusal, suspension, or deregistration. To ensure effective information exchange, the Directive requires interoperability between National Registers and the European Portal, with technical specifications to be developed through future implementing acts.

The Directive also establishes a publicly accessible website enabling investors and other interested parties to verify whether intermediaries are certified, suspended, or deregistered in the relevant Member State.

Consequently, the system is expected not only to improve administrative cooperation and transparency, but also to create reputational and commercial incentives encouraging intermediaries to obtain and maintain certified status.

Nevertheless, the creation of Certified Financial Intermediaries shifts a substantial part of compliance and reporting obligations onto market actors, reinforcing the role of financial institutions in tax enforcement. In our view, in this way FASTER may reduce administrative costs for tax administration and simultaneously increase compliance costs for financial intermediaries.

To sum up, FASTER Directive does not eliminate national procedural fragmentation entirely. Nor does it harmonise withholding tax rates, which continue to be determined under national legislation and applicable double taxation treaties. Similarly, the Directive does not fully harmonise the concept or requirements of beneficial ownership, leaving important aspects of entitlement to tax relief subject to existing EU and national rules.

FASTER should, however, be understood as part of a broader set of EU initiatives aimed at reducing barriers to cross-border investment and strengthening the integration of European capital markets. These initiatives include the Taxation Omnibus proposal designed to simplify tax procedures, reduce compliance costs and enhance the efficiency of the Single Market.

4. Beyond FASTER: other incoming measures to improve EU capital markets

In 2024, the Draghi report pointed out that regulatory fragmentation within the European Union which is particularly costly for small and medium enterprises and represents one of the obstacles to the Single Market[61].

In March 2025, the Council called on the Commission to reduce compliance burdens for administrations and taxpayers, to eliminate outdated tax rules, increase their clarity and improve their application. In particular, the Council called on the Commission to establish a roadmap for work on direct tax simplification[62].

In June 2026, the Commission published the Taxation Omnibus proposal, which seeks to simplify, reduce unnecessary administrative burdens and strengthen the competitiveness of the Single Market. This proposal for a Directive would amend the PSD, the IRD and also the FASTER Directive, that is the subject of this paper[63]. Given its relevance, this section briefly discusses the key changes introduced in relation with the withholding tax relief at source.

As is well known, the PSD operates primarily in the source Member State and eliminates withholding tax on profits distributed by a subsidiary to its parent company[64]. According to the Directive, Member States must grant this exemption where the parent company holds at least 10% of the capital of a subsidiary situated in another Member State. Member States may, under certain conditions, require such holding to be maintained for a period of at least two years[65].

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[61] DRAGHI M. (2024). The future of European competitiveness: A competitiveness strategy for Europe. European Commission, p.8 et subsq.

[62] Council Conclusions on a tax decluttering and simplification agenda which contributes to the EU's competitiveness- ST 6748/2025 INIT in special conclusions 8 and 14.

[63] Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU COM/2026/560 final.

[64] Article 5 of the PSD.

[65] Article 3 of the PSD.

Under current Portuguese law, dividends distributed by a Portuguese subsidiary to a parent company resident in another EU Member State may benefit from a withholding tax exemption, provided that the relevant conditions are met. Currently, a minimum participation of 10% in the share capital or voting rights of the entity distributing the profits or reserves is required, and the recipient company must have held such participation continuously for the one-year period preceding the date on which the profits or reserves are made available[66]. If these conditions are satisfied, Portuguese law does not require withholding tax to be levied at source[67].

Under Spanish domestic law, a parent company is currently defined as an entity holding at least 5% of the subsidiary. Such participation must be held uninterruptedly during the year preceding the date on which the distributed profit becomes payable; failing this, it must be held for the time necessary to complete a one-year period[68]. Under these conditions, the Spanish legal framework does not require any withholding tax to be levied[69] .

The Tax Omnibus proposal would remove the existing requirements relating to minimum shareholding and minimum holding periods, by amending the PSD with effect from 2037[70]. As illustrated by the Spanish and Portuguese regimes, this would potentially broaden access to the EU withholding-tax exemption to distributions involving smaller shareholdings. However, the removal of these requirements would not eliminate the other substantive conditions and anti-abuse safeguards governing entitlement to the exemption.

Additionally, in cases falling within the scope of the FASTER Directive, where the relevant tax relief is not correctly applied at the time of payment, taxpayers would have access to the relief or refund mechanisms in accordance with the procedures laid down in that Directive[71].

In other cases, supported by the PSD, but outside the scope of the FASTER Directive, where the exemption is not duly applied at the time of payment, the Omnibus proposal would provide the possibility to ask a refund for a minimum period of two years from the date of the distribution of profits to apply for a refund. The refund would have to

[66] For further details and additional conditions see articles 14.3 and 14.4 of the CIRC.

[67] Article 98.1 of the CIRC.

[68] For further details see article 14.1 h) of the TRLIRN.

[69] Article 31.4 a) of the TRLIRN.

[70] Article 7 of Taxation Omnibus Directive, regarding transposition.

[71] Amendment of article 5c of the PSD pursuant to the Taxation Omnibus proposal.

be granted by the competent tax Administration within one year of the duly completed submission of the application and the required supporting documentation[72].

Additionally, the Taxation Omnibus Proposal would amend the IRD. Among the main changes, with effect from 2037, it would eliminate the minimum holding requirement and the minimum holding period that Member States may adopt, provided that the recipient is the beneficial owner and meets one of the legal forms listed in the Annex. Payments falling within the scope of the IRD may benefit from an exemption from withholding tax where the relevant conditions are satisfied[73].

In Portugal, the exemption applicable to interest and royalty payments requires the relevant companies to qualify as associated companies, which generally requires a direct participation of at least 25% in the capital of the other company[74]. The exemption does not apply unless the minimum participation has been held continuously for the two years preceding the date on which the withholding-tax obligation arises[75]. The law expressly provides the beneficial owner must be resident in another Member State, or a permanent establishment located in another Member State of a company resident in a Member State[76].

In Spain, by contrast, the exemption to interest may apply to individuals and legal entities resident in another Member State of the European Union or in another State belonging to the European Economic Area, as well as to their permanent establishments located in another Member State of the European Union or in another State belonging to the European Economic Area. In respect of interest payments, Spanish law does not expressly require the identification of the beneficial owner[77].

The procedural aspects of the withholding exemptions for interest are also relevant. Currently, under the IRD, Member States may require an attestation confirming compliance with the relevant requirements. The Taxation Omnibus Proposal would amend the IRD in this respect, providing that Member States may no longer require any prior authorisation

[72] Articles 5 b) of the PSD pursuant to the Taxation Omnibus proposal.

[73] See article 1 of the Taxation Omnibus Directive, regarding amendments to Directive 2003/49/EC.

[74] Article 14.13 b) of the CIRC. See SERRANO ANTÓN, F. (2026). La Comisión Europea presenta la propuesta de Directiva «Tax Omnibus», *Unión Europea Aranzadi*, n.º 6.

[75] Article 96.3 of CIRC.

[76] Article 14.12 of the CIRC.

[77] Article 14.1 c) of TRLIRN.

or administrative procedure to verify compliance with the requirements for applying the exemption at the time of payment[78].

In Portugal, the application of the withholding tax exemption for interest must be supported by documentary evidence demonstrating that the relevant conditions for the exemption are satisfied. Such evidence includes confirmation about the beneficiary's tax residence and status of the beneficial owner, compliance with the applicable requirements, the relevant participation percentage and holding period, and the nature of the interest payments[79].Where the required documentation is not provided within the applicable deadline, withholding tax may become due, subject to the possibility of subsequently obtaining a refund if the substantive conditions for the exemption are ultimately satisfied[80].

In Spain, by contrast, the exemption is applied directly where the relevant substantive conditions are satisfied, without the need for prior administrative authorisation, but subject to the requirement to hold the appropriate documentation, in particular a tax residence certificate[81].

Tax Omnibus proposal represents a shift away from prior verification. Rather, the proposed reform would remove certain *ex ante* substantive and procedural requirements for accessing the EU withholding-tax exemption while preserving the substantive conditions and anti-abuse safeguards applicable to that entitlement.

Nevertheless, procedural simplification should not necessarily be equated with a reduction in the overall complexity of the regime. Removing minimum participation and holding-period requirements may simplify compliance at the payment stage, but it may also place greater practical emphasis on questions concerning beneficial ownership, the application of anti-abuse rules, the recipient's substantive entitlement to the exemption, and the possibility of *ex post* verification.

[78] Current article 1.11 of the IRD vs. proposed wording under the Taxation Omnibus Proposal.

[79] Article 98.2 of CIRC.

[80] Form 01-DJR to apply for the exemption and Form 02-DJR to request the refund of the excess of withholding.

[81] Article 10.2 of RIRNR.

5. Conclusions

The comparative analysis of Portugal and Spain shows that the main obstacles to the effective exercise of cross-border withholding tax rights do not necessarily arise from differences in the substantive allocation of taxing rights, but rather from the fragmentation and complexity of the procedures through which those rights are implemented. Although both jurisdictions provide mechanisms for applying reduced treaty rates or exemptions at source and for recovering excess withholding tax, differences in digitalisation, documentation, language requirements and administrative procedures may significantly affect the practical cost and timing of obtaining tax relief.

To our view comparison shows that procedural harmonisation can be as relevant as substantive tax harmonisation in facilitating cross-border investment.

The transition from fragmented *ex post* refund procedures to harmonised real-time adjustment mechanisms reduces the compliance cost of cross-border investment with implications for the functioning of capital markets.

As has been noted, significant barriers persist in practice to the recovery of excess withholding tax, including complex and time-consuming refund procedures. As a result, taxpayers frequently require specialised advisory services to pursue refunds that are often only obtained after considerable delays.

In this context, it is unsurprising that many nominal claimants- typically small investors- choose not to exercise their rights to a refund where the amounts involved are modest.

Ultimately, the FASTER Directive reflects a pragmatic approach to tax integration. Rather than pursuing harmonisation of withholding tax rates or the concept of beneficial ownership, it focuses on procedural simplification. The result is a framework that addresses some of the most significant practical obstacles faced by cross-border investors, while leaving the substantive architecture of withholding taxation largely untouched.

The FASTER Directive is expected to increase the number of refund claims by reducing procedural friction and lowering transaction costs for taxpayers. The Directive is likely

to generate two opposing effects. On the one hand, it may entail a reduction in net tax revenue, as it facilitates the recovery of withholding taxes that would otherwise remain unclaimed. On the other hand, it should significantly reduce the risk of undue or even duplicate refunds.

At the same time, Member States that implement efficient systems for withholding tax relief at source and fast refund are expected to become more attractive for cross-border investment. Administrative efficiency in tax refund procedures may thus operate as a competitive factor between jurisdictions.

In parallel, the Directive is also likely to affect competition among financial intermediaries acting as withholding agents. Certified intermediaries are expected to gain a competitive advantage, as investors may increasingly prefer to use intermediaries that are certified under the Directive. This could, in turn, encourage other intermediaries to seek registration in order to remain competitive in the market.

Additionally, the recent Taxation Omnibus Proposal could further contribute to enhancing the competitiveness of the European Union by removing the minimum holding required for the application of the exemptions under the IRD and the PSD.

Overall, these initiatives are expected to enhance the functioning of capital flows within the Union by reducing administrative frictions and increasing legal certainty, especially for small investors, thereby strengthening the effective exercise of the free movement of capital and the freedom of establishment.

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