PensionsEurope input on FASTER guidelines

May 2025

www.pensionseurope.eu

PensionsEurope warmly welcomed the May 2024 Council agreement for a Faster and Safer Relief of Excess Withholding Taxes (FASTER)[1]. **As cross-border investors**, with 3,6 trillion euros of assets for euro area pension funds at the end of 2024, **pension funds are subject to tax barriers within the single market.**

As mentioned in our position paper[2], we support the initiative, as pension funds are a major institutional investor that bears witness to investment barriers and costs within the single market, which ultimately negatively impact pension fund members and beneficiaries. Refund requests or exemption requests are often an extensive and burdensome process, with different procedures and requirements among Member States.

FASTER marks an important step toward reducing cross-border investment barriers by simplifying withholding tax relief procedures. It will allow pension funds to reinvest excess withholding taxes more efficiently. The ongoing EC work on FASTER-related levels 2 and 3 texts should also contribute to the smooth implementation of the new framework. Member States through the national transposition process should also adopt those rules swiftly and ensure a fair treatment of pension funds.

The March 2025 EC communication on the Savings and Investment Union acknowledges the importance of FASTER to improve the efficiency of withholding tax procedures. PensionsEurope believes that it must be translated with proper guidelines on due diligence to achieve a restrictive interpretation of the legal exclusions from the FASTER procedures.

The FASTER directive should capture the diversity of European pension funds

The directive allows Member States to exclude, completely or partially, requests for relief at source and quick refund systems (Article 11(2)) under different circumstances, including when "*the dividend payment exceeds a gross amount of at least 100 000 EUR, per registered owner and per payment date*" '(f).

This possibility of exclusion depending on this dividend payment threshold does not apply to statutory pension, IORPs, as well as UCITS and AIF entitled to relief of excess withholding tax (Article 11(3)). Given that some personal pension funds are not IORPs or constituted as UCITS/AIFs, they are not covered by this paragraph.

This is the case for Spanish personal pension funds that are considered part of the third pillar and are neither UCITS nor AIF licenses. Spanish pension fund management companies are subject to a specific license in order to manage Pension Funds, which is different from the license needed for the management of UCITS or AIFs. Those Pension Funds are supervised and regulated at the national level.

[1] See PensionsEurope press release – May 2024

[2] PensionsEurope position paper on the EC's proposal for a withholding tax directive - 2023

A clarification is needed to avoid the unintended exclusion of personal pension funds

We fully support the rationale giving Member States the possibility to exclude requests for relief at source and quick refund systems, to combat abusive schemes (recital 24). This recital also explains that the dividend payment threshold does not apply to statutory pension, IORPs, as well as UCITS and AIFs. This is because, according to the same Recital, "*those undertakings, schemes and institutions are highly regulated and subject to supervision by the national competent authorities and to robust internal controls. Such regulation and supervision enforce compliance with the relevant regulations and minimise the risk of tax fraud and tax abuse*".

Personal pension funds regulated and supervised at the national level present the same characteristics as the entities exempted from the dividend payment threshold. Therefore, we believe that such exemption should be extended to personal pension funds regulated and supervised at the national national, such as the Spanish personal pension funds. This should be incorporated in the due diligence guidelines related to access to FASTER procedures.

Furthermore, other EU legislations already provide for common definitions for pillar three pension schemes when trying to extend exemptions to them. As an example, the former exemption for pension scheme arrangements from the obligation to centrally clear over-the-counter derivatives in EMIR. The following definition for pension scheme arrangements in the EMIR regulation at Article 2(10) was included as follows: "*d) any other authorised and supervised entities, or arrangements, operating on a national basis, provided that:(i) they are recognised under national law; and (ii) their primary purpose is to provide retirement benefits".* This definition could be used as a benchmark for FASTER guidelines.

Clarify FASTER's application in case of a local withholding tax exemption for pension providers

FASTER introduces the obligation for Member States with at least 1,5% of total EU stock market capitalization to implement Relief at Source and/or Quick Refund of withholding taxes. The Directive allows EU Member States not to follow the Relief at Source or Quick Refund procedures in cases that present an elevated risk of tax fraud and abuse. According to FASTER Article 11(2), Member States may use slower reclaim procedures where an exemption of the withholding tax is claimed; and/or where a reduced withholding tax rate not deriving from double tax treaties is claimed. These 'back doors' could prevent fast recovery of withholding tax for pension providers. We signal potential problems with FASTER 'back doors' in the following countries.

In Austria, Belgium, Czechia, the Netherlands, Slovenia and Spain, the tax can be fully reclaimed. However, current relief process are long and administratively burdensome. In these countries, pension providers are exempt from paying withholding tax. This exemption is based on a local exemption for pension providers rather than on a tax treaty. Foreign pension providers that are comparable to local pension providers can claim this exemption as well. It is currently unclear whether these tax reclaims will benefit from the FASTER fast-track. If not, this would jeopardize the promise of faster withholding tax procedures for pension providers.

In Portugal, the eligibility of Dutch pension funds for tax reclaims based on a local exemption (a reduction of 10% to 0%) is still being challenged, while the Portuguese tax court has ruled in favor of the Dutch pension funds in many cases. Court procedures take 8 years and are administratively

burdensome. We prefer a solution where both the tax treaty reduction and the local exemption will be covered by FASTER procedures.

To prevent tax authorities from excluding foreign pension providers from the Relief at Source and Quick Refund procedures based on FASTER Article 11(2), the national transposition of FASTER should confirm that a withholding tax reclaim based on a local exemption for pension providers will use the Relief at Source and/or Quick Refund procedure. More specifically, a claim of exemption of withholding tax and/or a reduced withholding tax rate not deriving from double tax treaties should not lead to an exception to the Relief at Source and Quick Refund procedure for IORPs. Furthermore, the national transposition of FASTER should also specify that foreign IORPs are comparable to local IORPs.

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 19 EU Member States and 3 other European countries[3].

PensionsEurope member organisations cover different types of workplace pensions for approximately over **100 million people.** Through its Member Associations PensionsEurope represents over **€ 6 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **14 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership.
- Ensure that more and more Europeans can benefit from an adequate income in retirement.
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management.
- Risk pooling and often intergenerational risk-sharing.
- Often "not-for-profit" and some/all of the costs are borne by the employer.
- Members of workplace pension schemes often benefit from a contribution paid by the employer.
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment.
- Good governance and alignment of interest due to participation of the main stakeholders.

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[3] EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy,Lithuania Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland.