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LEA GLOBAL EUROPEAN REGIONAL CONFERENCE





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FASTER and Safer Relief of Excess Withholding Taxes

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Latest developments

- The European Commission tabled the FASTER proposal on June 19, 2023.
- The Proposal is subject to a special legislative procedure (requiring unanimous support in Council, following consultation of the European Parliament and the European Economic and Social Committee).
- European Parliament's decision/approval of the commission's proposal in an amended version during the February plenary on February 28, 2024

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What's next?

- Following the approval of the directive by the European Parliament, it is now forwarded to the Council for further discussion.
- Implementation of the directive by January 1, 2027 by Member States (by replacing or adjusting their existing regulations)
- Tax administrative need to be equipped with tools to deal with refund / relief at source in a secure and timely manner by the Member States providing digitalized, automated and better- coordinated key features.
- Training of the relevant staff supervising the digital tools
- To ensure that all EU taxpayers have access to a common, appropriate and effective proof of their residence for tax purposes.
- The Commission will examine and evaluate the functioning of this directive every 5 years after it enters into force. A report on the evaluation of the Directive will be submitted to the European Parliament and to the Council.

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Concerning

- Relief on excess WHT withheld by Member States on
 - dividends from publicly traded shares and/or
 - interest from publicly traded bonds
 - paid to registered owners who are resident for tax purposes outside that Member State.

FASTER enables financial intermediaries to apply a simplified relief at source and/or a quick refund procedure.

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Currently

- 23 Member States levy a WHT on dividends, around 15 Member states levy a WHT on interest
- 13 EU countries generally levy WHT a higher tax rate than the reduced tax rate (p.ex. acc. to the relevant DTT or domestic legislation) on dividends.
- To avoid double taxation, a non-resident investor who would have been subject to a WHT that is higher than the DTT WHT rate, would need to apply for the reduced tax rate or exemption directly at the moment the dividend/interest is paid or submit ex-post a refund claim of the excess tax withheld in the investment country.
- Current WHT refund procedures for dividends and interest payments to non-resident investors are:
 - Inefficient (leading to costly, lengthy, cumbersome, unharmonized, often paper-based refund procedures),
 - complicated and vary considerably among Member States,
 - at high risk of tax abuse (leading to revenue losses to Member States) (current system also leaves room for fraudster to claim refunds on taxes they never paid in the first place).

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Problems / Causes

- Major differences between the processes among Member States: more than 450 different forms to be filled in
- No transparency across EU Member States on dividend and interest payments
- Lack of accurate information by tax administrations
- Especially retail investors impacted: 70 % of the retail investors do not claim for a reduced WHT rate, 31 % of the retail investors decided to sell their foreign stocks
- Overall costs of WHT procedures: EUR 6.62 billion (per year)
- Discouraging (market-)situation for cross-border investment within the EU, barriers to a well-functioning EU capital/market: high costs, late refunds (in 56 % more than 2 years) → often waiver of the right to refund → permanent double taxation
- Long chain of financial intermediaries in a cross-border context compared to domestic scenarios

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Overview WHT rates

Member State	intra-EU sample			worldwide sample of investor- origin countries		
	DTT (total)	DTT with internal wht rate > dtt wht rate (dividends)	% DTT with internal wht rate > dtt wht rate (dividends)	DTT Total	DTT with internal wht rate > dtt wht rate (dividends)	% DTT with internal wht rate > dtt wht rate (dividends)
AUT	26	26	100%	90	89	99%
BEL	26	26	100%	95	95	100%
BGR	26	1	4%	70	2	3%
CYP	24	0	0%	65	0	0%
CZE	26	11	42%	89	47	53%
DEU	26	26	100%	96	96	100%
DNK	24	2	8%	76	10	13%
ESP	25	25	100%	93	93	100%
EST	26	0	0%	60	0	0%
FIN	25	24	96%	77	73	95%
FRA	25	3	12%	124	26	21%
GRC	26	1	4%	57	1	2%
HRV	25	12	48%	65	44	68%
HUN	26	9	35%	81	39	48%
IRL	26	26	100%	73	72	99%
ITA	26	26	100%	101	99	98%
LTU	26	5	19%	55	19	35%
LUX	26	6	23%	83	27	33%
LVA	26	0	0%	62	0	0%
MLT	26	0	0%	77	0	0%
NLD	25	3	12%	94	19	20%
POL	26	25	96%	83	80	96%
PRT	25	25	100%	78	78	100%
ROU	26	1	4%	88	5	6%
SVK	26	2	8%	70	11	16%
SVN	26	26	100%	59	59	100%
SWE	26	26	100%	85	83	98%

Source: Commission staff working document impact assessment report (June 19, 2023), accompanying the document: Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes, p.117

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General objectives

- General objectives are:
 - Facilitating of cross-boarder investment
 - Preventing tax abuse
- Specific objectives are:
 - Make WHT procedures more efficient
 - Provide Member States with appropriate tools to fight tax abuse

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Further objectives

- Ensuring a good functioning of the Capital Market Union (CMU) (as a political priority), positive effect on economic indicators like GDP (gross domestic product), wages and employment
- Ensuring a fair and effective taxation in the (international) market
- Optimizing the withholding tax deductions, shorten time for relieving or refund excess WHT
- Harmonization of the various relief procedures in the EU
- Ensuring transparency and certainty on investors' identity for security issuers, withholding tax agents, financial intermediaries and Member States (as the case may be)
- Minimizing administrative burden for all parties involved

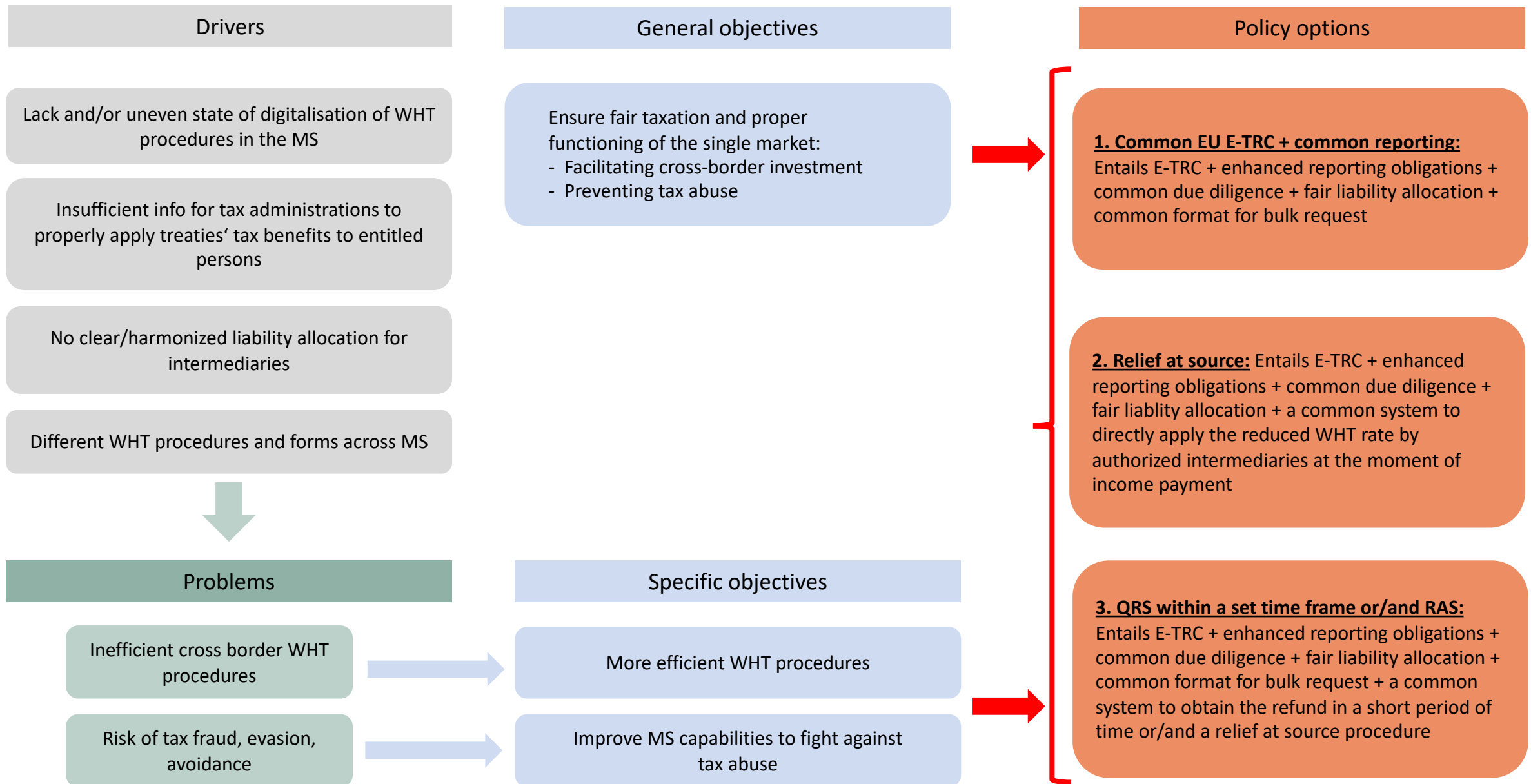
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Solutions / Proposals

- **Option 1:** Common digital tax residence certificate (eTRC) + standardized reporting + common due diligence
- **Option 2:** Relief at source system
- **Option 3:** Quick refund system

FASTER gives Member States a choice between applying either a relief at source procedure or a quick refund procedure.

Member States would have to ensure that at least one of them is operational.



Source: Commission staff working document impact assessment report (June 19, 2023), accompanying the document: Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes, p.26

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Certified financial intermediaries – Art. 5-7

- Certain financial intermediaries shall register first in the “national register of certified financial intermediaries” to become “certified financial intermediaries” (= CFIs) (within two months)
- Requirement to set up a “national register of certified financial intermediaries” only applies to Member States providing relief on dividend income to residents in another Member State, other Member States can opt to establish a national register
- Obligation to register, especially to large institutions, as defined in Regulation (EU) No 575/2013 and central securities depositories acc. to Regulation (EU) 909/2014
- Registration in the country in which the CFIs’ clients have invested
- Information for registration: name, date of registration, contact details, existing website, EUID
- After being registered, a CFI can start applying for WHT relief on behalf of their clients
- When a CFI does not comply with the obligations under FASTER, it can be held liable for all or part of the loss of WHT revenue (Art. 16)

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Digital tax residence certificate (eTRC) – Art. 4

- **Common digital tax residence certificate for taxpayers** (eTRC) to identify a taxpayer and to confirm their residence in a certain Member State
- eTRC will be harmonized and in a common EU template (using an electronic seal)
- Information (such as: first, last name of the taxpayer, tax identification number, address of the taxpayer, date of issuance, the period covered, identification of the authority issuing the certificate, etc.)
- The Member States shall issue the eTRC within 3 working days from submission of a request (if more than 5 working days required, the Member States shall inform the requesting person of the additional time needed and the reasons for the delay).
- The eTRC shall cover at least the whole calendar year.
- Member States shall recognize an eTRC issued by another Member State.
- The introduction of the eTRC would be mandatory for all Member States.

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Relief at source system – Art. 12

- CFIs (maintaining a registered owner's investment account) may request relief at source on behalf of a registered owner directly based on the applicable rules of the bilateral taxation treaty at the time of payment of the dividends or interests.
- CFIs need to provide the required information / forms to the Member States (such as tax residence of the registered owner, the applicable WHT rate, the DTT etc.)

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Quick refund system – Art. 13

- Quick refund of excess WHT by CFIs (maintaining a registered owner's investment account) on behalf on the registered owner
- Request of the WHT rate based on the applicable rules of the bilateral DTT at the time of payment of the dividends or interest, at the latest within 25 calendar days (providing required information)
- Refund at the latest within 25 calendar days by Member States, (including interest on top of each day of delay after the 25th day) from the date of such a request
- Requirements:
 - CFIs shall provide the necessary information to the relevant Member State (as defined in Art. 13 No. 3, such as tax residence of the registered owner, identification of the dividend / interest payment, legal basis of the applicable WHT rate, total amount of the excess WHT, the registered owner's declaration acc. Art.11, etc.)

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Standard refund system – Art. 15

- Appropriate measures shall be adopted by Member States to ensure a registered owner, or its authorized representative, shall be able to request for refund of the excess WHT when Art. 12 (relief at source) and Art. 13 (quick refund system) do not apply (because conditions of the FASTER directive are not met).
- Requirements: At minimum certain information (as defined under annex II, under heading E) shall be submitted

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Reporting – Art. 9

- Reporting of information within the maximum of 20 calendar days after the record date to provide greater transparency
- On the basis of the reported information, the source country would have a full overview of the payment chain between the issuer and the final beneficial owner of the dividend or interest income and their entitlement to WHT relief

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Due Diligence – Art. 11

- Member States shall ensure / take the necessary measures that the CFI requesting relief on behalf of a registered owner
 - obtains the required declaration of such a registered owner (such as: the registered owner is the beneficial owner of the dividend / interest in accordance with the national legislation of the source Member State or the DTT, the beneficial owner has not engaged in a financial arrangement linked to underlying publicly traded shares that had not been settled, expired or otherwise terminated at ex-dividend date, etc.)
- Verification by CFIs of diverse information (such as: eTRC, registered owner's declaration and tax residence against information from the internal control mechanism used by certified financial intermediary to comply with obligation relating to money laundering and terrorist financing under Directive (EU) 2015/849, registered owner's entitlement to a specific reduced WHT rate, DTT with the source Member State, jurisdiction where the registered owner is resident for tax purposes etc.)

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(Expected) Impacts:

Investors	<ul style="list-style-type: none"> ▪ Fewer WHT refunds, fewer administrative costs, reduced opportunity costs ▪ Savings: EUR 5.17 billion annual
Tax administrations	<ul style="list-style-type: none"> ▪ Long-term: Fewer resources requirements, more resources could be relocated to deal with higher tax risk cases ▪ Main benefit: Availability of appropriate information for efficient WHT procedures and to fight tax abuse ▪ Costs: Main costs related to the process (development / implementing eTRC) EUR 4.94-54 million in (development) and EUR 0.97-10.8 million (recurring); for reporting system: EUR 18.2 million (implementing) and EUR 3.5 million (recurring)
Financial Intermediaries	<ul style="list-style-type: none"> ▪ Savings through digitalization / standardization at EU level approx. at EUR 13.5 million per year ▪ Increase in investment and opportunities to improve turnover ▪ Main costs: Set up costs to meet the requirements: EUR 75.9 million (implementing) / EUR 13 million (recurring)

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(Expected) Impacts:

Macro-economic effects	<ul style="list-style-type: none">▪ Expected 0.025 % increase in GDP▪ Expected positive impact on macro-economic indicators like capital, wages, employment
SMEs	<ul style="list-style-type: none">▪ Limited impact▪ Nonetheless: SMEs (as portfolio investors or as investment vehicles) would benefit in terms of better access to the reduced WHT rates → greater liquidity, swifter refunds
Other	<ul style="list-style-type: none">▪ Limited positive social impact → fairer taxation▪ Limited environmental impact → reduction in paper-based refund processes

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Preferred options:

- **By politics:**

- Option 3: Highly efficient, in terms of speed, process, more digital
- Safer, giving EU countries advance control (over the refund system)
- Politically feasible in all EU countries

- **By investors:**

- Preference of option 2: relief at source system

- **By Member States:**

- Member States domestic WHT rate < DTT WHT rate: not directly impacted
- Member States domestic WHT rate > DTT WHT rate: agreed on enhancing transparency and standardizing WHT procedures

Thank you for your attention



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ANNEX II – Reporting as referred in Art. 9 and 15

Certified financial intermediaries shall provide the following information in the corresponding xml format:

Type of information	Specification
A. Information regarding the person that is providing the information	
Name of the financial intermediary	
EUID, Legal Entity Identifier (LEI) or alternative	
Official address	
Other relevant data	Tax identification number and email address
B. Information regarding the recipient of the dividend or interest payment	
Identification of the financial intermediary or final taxpayer receiving the dividend or interest payment	
i. Individual	Name, TIN, date of birth, address
ii. Legal person	Name, LEI, TIN, address, EUID
Investment account number	Number of the safekeeping account where the securities are held by the financial intermediary/taxpayer receiving the payment
C. Information regarding the payor of the dividend or interest payment	
Identification of the financial intermediary from whom the reporter receives the dividend or interest payment	
i. Individual	Name, TIN, date of birth, address
ii. Legal person	Name, LEI, TIN, address, EUID
Investment account number	Number of the safekeeping account where the securities were held by the financial intermediary sending the payment
D. Information regarding the dividend or interest payment	

Issuer	Name, LEI or TIN or EUID, official address
ISIN number	Identification of the issuer and the security
Security type	Cash dividends, dividends-in-kind, mixed in-kind and cash dividends and interest
COAF (Official Corporate Action Event Identifier)	Identification of the event (dividend/interest distribution)
Relevant dates	Ex-dividend date, record date, settlement date (if done or a mark in case not yet produced), payment date, coupon date
Amount of dividend or interest received/to be received and currency	Gross amount, net amount, Withholding Tax rate applied or to be applied, amount withheld
Cash account number	Account number to which the payment has been transferred
E. Information regarding application of anti-abuse measures	
Information about holding period of underlying publicly traded shares	Two boxes: 1) for underlying shares acquired 2 days or more before the ex-dividend date – number of shares 2) for underlying shares acquired within a period of 2 days before the ex-dividend date – number of shares (First In First Out 'FIFO' to be used in case of regular trading positions)
Information about financial arrangement	Indicate evidence of any financial arrangement involving underlying publicly traded shares that has not been settled, expired or otherwise terminated at the ex-dividend date