Draft 20 May 2020

Authorised Intermediary's responsibilities and liabilities

Record number
VH/1136/00.01.00/2020

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Date of issue dd.mm.yyyy
Record number VH/1136/00.01.00/2020
Period of validity Until further notice
Authorising provision Act on the Tax Administration (503/2010), section 2(2)
Replaces guidance (no., date)

This guidance discusses the liabilities and responsibilities of intermediaries registering into the Register of Authorised Intermediaries as per Section 10d of the Tax at Source Act, with respect to dividends paid to nominee-registered shares.

Contents

1 Foreword

Provisions of the Act on the Taxation of Nonresidents' Income (627/1978, Tax at Source Act), the Act on Assessment Procedure (1558/1995) and the Act on the Public Disclosure and Confidentiality of Tax Information (1346/1999) were amended on 12 April 2019 (Government proposal HE 282/2018 vp). The provisions will come into force on 1 January 2021. This guidance is applied to intermediaries applying for registration into the Register of Authorised Intermediaries on the 1st of July 2020 or therafter.

The guidance discusses the intermediaries' application for entry into the Tax Administration's Register of Authorised Intermediaries along with the responsibilities, liabilities and other legal effects resulting from the registration. This guidance goes through the provisions of Section 10b-e of the Tax at Source Act. The provisions of Section 15e of the Act on Assessment Procedure and Section 9 of the Act on the Public Disclosure and Confidentiality of Tax Information has also been taken into account in this guidance.

An Authorised Intermediary (later 'AI') means an intermediary entered into the Register of Authorised Intermediaries maintained by the Finnish Tax Administration, referred to in Section 10d of the Tax at Source Act. Registration is voluntary and possible from the 1st of July onwards. In this guidance, an issuer (later also payor) means a Finnish publicly listed company referred to in Section 33a of the Income Tax Act that has issued a security. In Finland, the issuer is responsible for withholding and paying the tax at source on dividends. The liabilities and responsibilities of an AI apply to a dividend paid by such a company for a nominee-registered share, the beneficiary of which is a non-resident taxpayer in Finland.

The Tax Administration's Register of Authorised Intermediaries comes into force on 1 January 2021, when the Custodian Register and its legal effects are discontinued. All intermediaries registered in the Custodian Register must separately register into the Tax Administration's Register of Authorised Intermediaries if they wish to operate as Authorised Intermediaries. Finnish intermediaries can also apply for registration into the Register of Authorised Intermediaries.

2 The Register of Authorised Intermediaries

2.1 Requirements for registration

Registration into the Register of Authorised Intermediaries is voluntary for intermediaries, and intermediaries must register on their own initiative. Only those intermediaries who meet the following criteria for registration laid down in Section 10d, subsections 1 and 2 of the Tax at Source Act may be entered into the Tax Administration's Register of Authorised Intermediaries:

1) the right to perform custodial activities under the Act on Investment Services (747/2012), the Act on the Book-Entry System and Settlement Activities (348/2017), the Act on Book-Entry Accounts (827/1991) or the Act on Securities Accounts (750/2012), or under comparable legislation of another country;

2) a permit issued by the competent authority of its country of residence to perform custodial activities, and is under its supervision; and

3) a domicile within the European Union or in a country with which Finland has a treaty for the avoidance of double taxation. A branch acting as an intermediary located in such a country and covered by the regulations in question may also register into the Register of Authorised Intermediaries.

4) a common information exchange standard or Anti-Money Laundering (AML) and Know Your Customer (KYC) regulations are applied to the intermediary along with other legislation based on which the intermediary is obligated to identify its customers and their country of residence for tax purposes.

Custodial activities refers to the holding of securities in custody on behalf of a customer based on an agreement. Intermediaries can be credit institutions, investment service companies and central securities depositories, for example.

In practice, the applicant may prove it meets the requirements of custodial acitvities by presenting a copy of a licence or permit to conduct custodial activities issued by an authority of their country of residence . If the applicant is licensed in Finland and an intermediary registered in the public register maintained by the Financial Supervisory Authority, a copy of the licence does not need to be attached to the application.

The intermediary must be obligated under the legislation of its country of residence to comply with the common information exchange standards, which are the OECD's Common Reporting Standard (CRS) and the EU's so-called DAC2 Directive (Council Directive 2014/107/EU). Alternatively, the intermediary must be obligated to comply with the AML and KYC regulations, as well as other such legislation of its country of residence that impose an obligation to identify the customers and their country of residence for tax purposes. As an example, the FATCA legislation of the United States can be deemed to fulfil this requirement.

In practice, being accepted into the Register of Authorised Intermediaries therefore requires that the applicant's home country must be an EU country, a country committed to CRS, or the United States of America. If the domicile of an intermediary is elsewhere, but it has a branch that is located in one of the aforementioned countries and is bound by investigation and identification obligations, that branch can register into the Register of Authorised Intermediaries. A branch applying to the register must also have a licence and the right to conduct custodial activities. Every intermediary such as a main company and a branch must apply for registration individually, and group registration is not possible.

According to Section 10d(3) of the Tax at Source Act, an intermediary applying for registration must, when applying for entry into the register, provide the information required in the keeping of the register, a statement that it fulfils the statutory requirements for registration, and its contact information. The required attachments are described in the filling instructions Application for entry into the Register of Authorised Intermediaries.

2.2 Registration

Application into the Register is done by filling the Application for entry into the Register of Authorised Intermediaries and providing the required attachments requested in the application. For more information on filling the application and sending it to the Tax Administration, see the Application for entry into the Register of Authorised Intermediaries detailed instructions for filling in the forms. The registration form is sent to the Tax Administration by post or secure email. A decision of the registration, subject to appeal, will be sent to the intermediary by post. The applicant will be entered into the Register of Authorised Intermediaries no earlier than the date of issue of the registration decision; the applicant may also state the desired entry date on the registration form. The registration begins on the 1st of January at the earliest.

When entered into the register, each AI will be assigned an individual Business Identity Code (Business ID), if the AI does not already have one. Thus for example the main company and branch are assigned their own individual Business IDs if both apply for entry into the register. The ID and the AI's other public information are published in the public Register of Authorised Intermediaries on the vero.fi website. Being assigned a Business ID alone does not form a permanent establishment in Finland or extend the AI's tax liability in Finland.

2.3 Refusal of entry into the register

An intermediary may be refused entry into the Register of Authorised Intermediaries if the registration requirements laid down in Section 10d are not fulfilled or, based on its prior negligence, the intermediary can be assumed to neglect the responsibilities of the intermediary referred to in Sections 10b and 10c or fail to pay the taxes imposed to it (Section 10e(2) of the Tax at Source Act).

The Tax Administration refuses entering the applicant into the register, if the applicant doesn't fulfil the requirements for registration required by law. For example, a missing licence to conduct custodial activities prevents registration into the Register of Authorised Intermediaries. The applicant also cannot be entered into the register if the intermediary is unable to provide the proof that it fulfils the registration requirements as required by law.

If, based on its prior neglect, the intermediary can be assumed to neglect its responsibilities as an AI, or fail to pay the taxes imposed to it, the intermediary can be refused entry into the Register of Authorised Intermediaries. This kind of prior negligence could be, for example, tax debts, prior neglect to report, or discovered fraudulent activities.

When the negligence is assessed, it is taken into consideration that the branches and the main company are one legal person. Substantial errors by branches can therefore prevent the main company's registration, as can substantial errors by the main company prevent the registration of its branches.

Example 1

The main company is located in Denmark and the branch in Germany. The main company is registered into the Tax Administration's Register of Authorised Intermediaries and left the taxes imposed on it due to under-withholding unpaid. The branch cannot be registered with the Register of Authorised Intermediaries due to the outstanding unpaid tax debts of the main company, and its registration application is rejected.

If the Tax Administration considers that an applicant cannot be registered, the applicant is always reserved an opportunity to give an explanation. The applicant is given the reasons preventing registration.–The applicant will not be entered into the register unless the negligent actions are rectified within the deadline or an explanation is presented based on which the applicant can be registered.

An intermediary that is not registered into the Register of Authorised Intermediaries will receive a written decision on the registration, with enclosed appeal instructions.

The intermediary itself has the possibility to withdraw its registration application, in which case the Tax Administration will not enter the intermediary into the register and will not give a separate decision on this. The intermediary may nevertheless apply for registration again later if they wish.

2.4 Changes in registration information

At the time of registration, the intermediary must have given the required information for registration and their contact information. The AI must always report any changes in this information with the notification of changes and termination form.

When an intermediary is registered, it must ensure that the information it provided to the Tax Administration during registration or after it is always up to date. The up-to-date character of the public information in the Register of Authorised Intermediaries, such as the name and address of the AI, is the responsibility of the AI. Furthermore, an AI must notify without delay any changes in its business that affect the fulfilment of its registration requirements. These include any essential changes in the company structure or the termination of the licence.

2.5 De-registration and its effects

2.5.1 Reasons for de-registration

According to Section 10e of the Tax at Source Act, the Tax Administration must remove an intermediary from the Register of Authorised Intermediaries if

1) the intermediary requests so;

2) the registration requirements laid down in Section 10d are no longer fulfilled;

3) the intermediary's administrative errors or other minor errors have repeatedly led to taxes being withheld incorrectly of have led to information being reported incorrectly; or

4) the intermediary neglects its responsibilities under Section 10c of the Tax at Source Act or Section 23b of the Act on Assessment Procedure in a manner other than that described in subsection 3, or fails to pay the taxes imposed on it.

An intermediary entered into the Register of Authorised Intermediaries can request to be removed from the register with a notification of changes and termination form-, after which the Tax Administration will remove the intermediary from the register no earlier than the date of the decision or a later date requested by the customer.

The AI has the responsibility to inform, if such changes in their operations or circumstances take place, that may have effect on fulfilment of the registration requirements. The Tax Administration will remove the intermediary from the register, if the registration requirements are no longer fulfilled in the manner referred to in item two. An AI must be removed from the register in accordance with item three if the AI's administrative errors or other minor errors have repeatedly resulted in incorrect withholding of taxes or reporting of information, and the AI does not correct the errors even after being notified. Such errors include submitting deficient reports. According to the groundwork of the Government proposal, the requirements for removal are fulfilled when the extent and frequency of such errors impair the reliability of reporting or cause an abnormally large amount of costs to the Tax Administration (HE 282/2018 vp, p. 40).The Tax Administration may also find that the information received from the AI is otherwise unreliable. This kind of a situation could occur when an AI's repeated violation of the responsibility to take reasonable measures has resulted in the repeated incorrect or unfounded withholding of taxes, and the errors have not been properly rectified. These kind of actions usually lead to removal from the Register of Authorised Intermediaries.

Taxation reporting negligence in accordance with the previously referred item four occurs when, for example, an AI fails to submit or submits an incorrect annual information return. It is also considered to be negligence if the AI gives misleading or incorrect information to the Tax Administration's request for an explanation or as an agent for a tax refund application. An AI can also be removed from the register if it has been an active party in tax evasion arrangements.

As per Section 23b of the Act on Assessment Procedure, an AI must provide and present for review the information it possesses on, for example, the payment of dividends and the investigation and identification of the customer. For more details on the materials that must be presented for review, see Chapter 3.3. If an AI refuses to present the materials or otherwise neglects these responsibilities, it can be removed from the register. For example, the inadequate storage of materials related to the responsibility to take reasonable measures for review may constitute such negligence.

Neglect of tax liability in accordance with item four occurs when taxes are imposed on an AI due to under-withholding, and the AI does not pay the taxes imposed on it even after being notified. An AI's taxation-related negligence is assessed as a whole in such a manner that leaving also other taxes unpaid may result in removal from the register.

In case of serious negligence, where the AI does not correct its actions despite being notified to do so, the Tax Administration may remove from the register both the AI that neglected its obligations and its branch or main company.

2.5.2 Hearing and removal decision

If an AI is removed from the register for a reason other than its own request, the AI is reserved an opportunity to give an explanation before the removal from register (Section 10e (3) of the Tax at Source Act). The AI is sent a request for explanation, in which the AI is always given opportunity to correct the errors and give their explanation in the matter by the deadline stated in the letter. The request for explanation includes the time from which the intermediary will be removed from the register and itemised occurrences of neglect causing the removal.

The AI will not be removed from the register if it rectifies the errors related to reporting or payment of taxes or, when it is found, based on the response of the AI, that there are no grounds for removal from the register.

If the intermediary does not provide a reliable explanation or rectify its errors, the intermediary is removed from the register. An intermediary that is removed from the register will be sent a decision on the registration issue, with appeal instructions enclosed. An intermediary will not be retroactively removed from the register due to negligence.

2.5.3 Effect of de-registration

An intermediary removed from the register loses its right to operate as an AI and cannot assume tax liability for any dividend payment information it transmits as of its removal from the register. However, the intermediary's tax liability remains for the dividend payment information for which it has been responsible for while it was still in the register. This being the case, the intermediary must submit an annual information return of these dividends, even if it is no longer registered.

Example 2

An AI has been registered with the Register of Authorised Intermediaries from 1 January to 30 September 2021. The intermediary is responsible for any dividend payment information it has assumed responsibility for during that time period, and it must submit an annual information return in January 2022 of the beneficiary information of said dividends.

2.6 Re-registration

An intermediary removed from the register can be re-registered upon application. If the removal from the register was due to negligence, the intermediary may apply to be entered into the Register of Authorised Intermediaries after the negligence that constituted the grounds for removal has been rectified and the intermediary shows no new occurrences of negligence. In practice, the intermediary must prove that changes have taken place in its operations and prove reliably that such negligence of responsibilities will not be repeated. Re-registration is done with the registration form, and the intermediary may be entered into the register no earlier than on the date of the issues of the registration decision.

If an intermediary has been removed from the register because the registration requirements under Section 10d of the Tax at Source were no longer fulfilled, the intermediary may re-apply for registration once the requirements are fulfilled. The intermediary must then fill the registration form and prove the fulfilment of the registration requirements in the manner described in Chapter 2.2. If, according to the application and its up-to-date attachments, the requirements are fulfilled, the Tax Administration will enter the intermediary back into the register no earlier than on the date of the issue of the registration decision or on the date separately requested by the applicant.

2.7 Public information in the Register of Authorised Intermediaries

The public information in the Register of Authorised Intermediaries is defined in Section 9 of the Act on the Public Disclosure and Confidentiality of Tax Information, according to which the following information in the Tax Administration's Register of Authorised Intermediaries is public: the organisation's name, its Business ID and corresponding foreign identifier, country of residence, address and the validity period of the register entry.

The validity period of the register entry includes the start and end dates of the registration, i.e. the public information also includes the ended registrations in addition to the currently valid ones. In the registration form the public address information is separately requested.

The publicity of the information in the Register of Authorised Intermediaries is specifically defined in the law, and the publicity is limited to the aforementioned information. All other information concerning the registration of an intermediary is confidential under the Act on the Public Disclosure and Confidentiality of Tax Information.

The public Register of Authorised Intermediaries can be found at the address www.vero.fi/en as of 1 January 2021. The public information in the Register of Authorised Intermediaries allows dividend payors and intermediaries to check whether a certain intermediary, to whom the dividend has been given to be transferred, is registered in the Tax Administration's Register of Authorised Intermediaries on the dividend payment date.

3 Responsibilities arising from registration

3.1 Responsibility to investigate and verify

3.1.1 General information on the taxation at source procedure

The Tax at Source Act is applied in tax withholding to situations where the beneficiary is a non-resident taxpayer (Section 1(1) of the Tax at Source Act). The Prepayment Act is applied in tax withholding to resident taxpayers in Finland. If a customer of an AI is a resident taxpayer in Finland and receives dividends from a Finnish company, the information of the dividend beneficiary must be reported to the dividend payor. In situations where the AI has identified the dividend beneficiary as a resident taxpayer in Finland but cannot deliver the beneficiary's identifying information to the dividend payor, 50 per cent preliminary withholding tax must be withheld. See the Tax Administration's guidance How to withhold tax on dividends paid to a Finnish tax resident shareholder when the underlying shares are nominee-registered.

The Tax at Source Act is applied only if the provisions concerning the taxation of income or assets laid down in a tax treaty made with the country or another international treaty in which Finland is a party do not provide otherwise (Tax at Source Act, Section 1(3)). In the application of a tax treaty, the beneficial owner means the beneficiary entitled to the dividend in accordance with the tax treaty between Finland and the beneficiary's country of residence.

When a non-resident taxpayer receives dividend income from Finland, the final tax at source is withheld from the income in connection with the payment; as a rule, the tax rate is (Tax at Source Act, Section 7):

- 20% if the income recipient is a **corporation**
- 30% if the income recipient is a **natural person** or other than a corporation
- 35% if, at the time of payment, there is no identifying information on the beneficial owner (will be applied as of 1 January 2021).

According to Section 10b of the Tax at Source Act, the dividend provisions of an international treaty may be applied if the dividend payor or the intermediary closest to the dividend beneficiary who at the time of the dividend distribution is registered in the Finnish Tax Administration's Register of Authorised Intermediaries, has taken reasonable measures to determine the beneficiary's country of residence and to verify that the dividend provisions can be applied to the beneficiary (Section 10b(2) of the Tax at Source Act). The AI reports the amount of tax at source to the dividend payor for withholding.

This means that the preferential tax at source rate under a tax treaty can be applied at the time of payment in situations where the beneficiary has been carefully identified and it has been verified that the beneficiary is eligible for the tax treaty benefits. If the beneficiary cannot be identified with certainty or it cannot be verified that the beneficiary is actually eligible for the tax treaty benefits, the tax treaty benefits cannot be granted at the time of the payment.

The requirements for reasonable measures as per Section 10b of the Tax at Source Act are applied when a publicly listed company pays dividend to a nominee-registered share.

On dividend paid to a non-resident, a tax lower than 35 per cent can be withheld only if the beneficial owner information can be submitted to the Tax Administration.

If the payor or the AI does not have access to the information on the beneficiary referred to in Section 15e of the Act on Assessment Procedure, the payor must withhold 35% tax at source from the dividend paid to a nominee-registered share under Section 7(2) of the Tax at Source Act. This kind of a situation would occur when, at the time of the dividend payment, the AI does not have access to the beneficiary's tax residence information, including information on the beneficiary being a resident taxpayer in Finland. 35% tax at source must also be withheld in a situation where the beneficiary has not agreed to the disclosure of their information. If the beneficial owner information is delivered to the AI during the year of the dividend payment, the dividend withholding can be corrected until the end of the year of the dividend payment as described in the Chapter 3.5.

In ambiguous and unclear situations tax treaty benefits must not be granted, instead full tax at source in accordance with the Section 7(1) of the Tax at Source Act must be withheld. The AI can assess and determine either on a per beneficiary or per payment basis, whether it has sufficient certainty so that the tax treaty benefits can be granted to the dividend beneficiary.

If the beneficiary presents after the time of payment and before the end of the taxation year a tax-at-source card, an advance ruling regarding the matter or other sufficient information on the fulfilment of the criteria for applying the tax treaty, the payor can correct the self-assessed tax return and the over withholding may be returned to the beneficiary. Alternatively, the beneficiary can apply for a tax refund after the payment year through the refund procedure.

3.1.2 Investigation and identification of the dividend beneficiary

Tax treaty benefits can be granted to a customer of an intermediary registered in the Register of Authorised Intermediaries if the AI, in accordance with Section 10b of the Tax at Source Act, investigates and identifies the beneficiary, reliably determines the beneficiary's country of residence for tax purposes, and verifies that the dividend regulations of the international treaty can be applied to the beneficiary (Section 10c(1) of the Tax at Source Act).

A tax at source card issued by the Finnish Tax Administration, a certificate issued by the tax authority of the beneficiary's country of residence, or an Investor Self-Declaration that indicates the beneficiary's information necessary for the levying of tax at source, can be deemed to be a reasonable measure to determine the beneficiary's country of residence. The Investor Self-Declaration must be sufficiently reliably documented and consistent with the other information on the dividend beneficiary possessed by the AI. (Tax at Source Act, Section 10b(4))

The Finnish Tax Administration has issued a guidance Investor Self-Declaration and verifying its reliability.

An AI may use a service provider for the investigation and identification of a beneficiary. However, the use of a service provider does not affect the AI's responsibility; the responsibility for taking reasonable measures remains with the intermediary.

3.1.3 Collection and retention of dividend payment information

One requirement for granting tax treaty benefits is that the non-resident taxpayer agrees to the disclosure of their information to the Tax Administration.

The AI must then ensure that it can collect, process, store and disclose to the Tax Administration the information on the beneficiary, and that it can provide the additional information necessary for the verification of the correctness of the information, any other relevant legislation, regulations or agreements notwithstanding. The AI must ensure that the necessary information can be provided, data protection legislation or bank secrecy notwithstanding. An AI must retain the information listed in the Section 23b of the Act on Assessment Procedure (see the Chapter 3.3) for six calendar years from the beginning of the next year following the dividend payment year (Act on Assessment Procedure for Self-assessed Taxes (768/2016), Section 28).

The information can be stored in an electronic format in such a manner that it can be delivered to the Tax Administration when necessary. The stored materials can also be in the possession of a service provider. However, the AI must ensure that the information can be provided when necessary. The responsibility for retaining the materials from the time of registration remains also after a removal from the register.

3.2 The general requirement to report information

3.2.1 General

Section 10c(1) of the Tax at Source Act obligates the AI to submit annual information returns on dividends referred to in Section 15e of the Act on Assessment Procedure. The general information reporting requirement applies to the beneficial owner information on the dividend beneficiares for which the AI has assumed responsibility and to the information on transferred dividend at the time of the payment.

The beneficial owner information that the AI is responsible for consists both information on the beneficiaries in direct customer relationship with it, and customers of a Contractual Intermediary (CI) for whose beneficial owner information it has assumed responsibility. The AI who is closest to the investor and has assumed the responsibility for the beneficial owner information reports the amount of tax at source to be withheld ahead in the chain, and submits the beneficial owner information to the Tax Administration on an annual information return. That AI is also responsible for the correctness of said information. By reporting tax at the preferential tax treaty tax rate, the AI commits to submitting the beneficial owner information to the Tax Administration.

According to Section 15e(1) of the Act on Assessment Procedure, the beneficial owner information on the dividend beneficiaries for which the AI is responsible comprise the amounts of dividends paid and tax at source withheld, identifying information such as the name, date of birth, address in the country of residence, Tax ID in the country of residence – if they are issued in the country in question – and the legal form of legal persons. Additionally, the beneficiary's country of residence for tax purposes, home address and other information in accordance with the annual information return must be reported.

According to the same provision, the information on transferred dividend at the time of the payment must include the identifying information of the AIs whose dividend payment information the AI has forwarded in the share custody chain to be reported to the payor, as well as the identifying information of the AI to whom the information was forwarded. This information must also include an itemisation of the forwarded information on the number of shares and the taxes withheld.

According to Section 15(3) of the Act on Assessment Procedure, the Tax Administration will issue more detailed instructions on what information, at what time and in what manner is to be provided, and the right to not provide the information referred to in this section in situations with minor significance financially or with respect to tax control.

3.2.2 Reporting

An AI must submit an annual information return electronically in the manner described in the Technical guidance on Authorised Intermediary's annual information return. As per the Government proposal, the annual information return is submitted using an electronic data transfer method with the OECD's TRACE schema (HE 282/2018 vp, p.22).

Upon registration into the Register of Authorised Intermediaries, an AI will be issued a Business ID unless it already has one; due to, for example, already being a resident taxpayer in Finland or having a permanent establishment in Finland. The ID must be used in all business with the Tax Administration, as the AI is identified in the Tax Administration's register based on the ID.

An AI's annual information return is only used to report dividends paid by a Finnish publicly listed company to a nominee-registered share, the beneficiary of which is a non-resident taxpayer in Finland. The AI reports the beneficial owner information and the information on transferred dividends directly to the Tax Administration. The annual information return must

include information on both dividends for which tax treaty benefits were granted at source and on dividends of which tax at source was withheld in full (30% and 35%). For dividends that were transferred to another AI and for which the other AI assumed responsibility, only the information on transferred dividends is reported.

If an AI does not assume responsibility for beneficial owner information, or does not forward dividend payment information , the AI must still submit an annual information return as a nil return to the Finnish Tax Administration in order to fulfil its information reporting requirement. For more detailed information on the information submitted in a zero return, see the Technical guidance on Authorised Intermediary's annual information return.

In accordance with the Tax Administration's decision on the general requirement to report information, an Authorised Intermediary's annual information return is submitted annually by the end of January for the previous calendar year. The Tax Administration must receive the annual information return by the deadline. The legislation will be applied for the first time from the beginning of year 2021. In individual cases and for a special reason, the Tax Administration may, upon application, grant an extension to the deadline for submitting the annual information return.

3.3 Special requirement to report information and right of inspection

According to Section 10c of the Tax at Source Act, an AI must, at the request of the Tax Administration, provide or present for review the information referred to in Sections 19 and 23b of the Act on Assessment Procedure. An AI's requirement to report only applies to the dividend payment information the AI has assumed responsibility for. The registration does not add or eliminate any other tax-related requirements to inform than the requirement to inform related to the AI's liabilities and responsibilities described in this guidance.

According to Section 23b of the Act on Assessment Procedure, an AI must, at the request of the Tax Administration, provide and present for review based on the identifying information of a dividend transaction, dividend beneficiary or payor the information it possesses of the mechanisms, procedures, documents and other information based on which it fulfilled the beneficiary investigation, identification, determination, verification and reporting obligations referred to in Sections 10b and 15e of the Act on Assessment Procedure and in Section 4a of the Prepayment Act with respect to the dividend payment information and dividend beneficiaries for which it has assumed responsibility.

Section 19 of the Act on Assessment Procedure lays down provisions on the Special requirement of third parties to report information, based on which everyone must disclose information necessary for the taxation of another taxpayer if the Tax Administration requests. The Tax Administration specifies the requested information in such a manner that the party under the obligation to inform can provide it.

The Finnish Tax Administration may request an AI to provide such information for example in connection to a refund application, with which can be verified that dividends have been paid to the beneficiary and tax at source withheld according to the application, in a situation where the AI has assumed responsibility for the dividend payment information in question or forwarded the dividend payment information.

3.4 Responsibility to provide information to the payor

According to Section 10c(1) of the Tax at Source Act, an AI must, upon request, provide the dividend payor with the information necessary for the dividend payor to fulfil its tax-related obligations.

The dividend payor has secondary responsibility for the withholding of the tax at source in the correct amount and is under obligation to inform the dividends it has paid. For this reason, the AI is obligated under the provision to provide, upon request, the payor with the necessary information with respect to the payor's secondary tax liability for the tax at source. The Tax at Source Act does not require that the AI disclose any other information related to share ownership to the payor, nor does the act define at which stage or in what manner the information necessary for withholding tax at source must be delivered to the payor.

Dividend payors are also entitled to receive information on dividend-related information submitted to the Tax Administration under the provisions on parties' right of access in Section 11(1) of the Act on the Openness of Government Activities (621/1999) insofar as they can affect or can have affected the assessment of the dividend payor's taxation. In practice, a dividend payor is entitled to receive information on the dividend beneficiary from the Tax Administration to the extent that is necessary for its own taxation, even if the dividend beneficiary information were submitted by an AI. The payor may only use the information obtained on these grounds for fulfilling its own tax obligations.

3.5 Correcting tax withholding and errors

3.5.1 General

If the AI notices an error in the information it has forwarded or submitted in the annual information return, it must correct the error on its own initiative without delay. The means for correction are determined depending on whether the correction has been noticed during the payment year or after.

If the error is noticed during the payment year, the AI can not correct the error directly to the Tax Administration, because the dividend payor is responsible for withholding tax at source and paying it to the Tax Administration. Under-withholding must be corrected during the payment year through the payor with the procedure described in the Chapter 3.5.2 of this guidance. The payor must submit the self-assessed tax return for the month of the payment and correct the error in the tax return.

If during the payment year the AI receives an explanation according to which the beneficiary has right for tax treaty benefits and tax may be withheld according to a tax rate lower than was originally applied, tax withholding can be corrected during the payment year through the payor with the procedure described in the Chapter 3.5.3 of this guidance

If the error concerning the tax at source is noticed after the payment year has ended, the AI must correct the error directly to the Tax Administration with the procedure described in the Chapter 3.5.2 of this guidance. The tax reported in the annual information return must nevertheless always match the amount of tax withheld from the dividends. More information on correcting the annual information return in the Technical guidance on Authorised Intermediary's annual information return. Over-withholding can not be corrected after the payment year, instead the beneficiary can apply for refund of the excess tax from the Tax Administration.

3.5.2 Under-withholding during the payment year

If the payor or the AI notices that tax at source has been under-withheld from dividends during the tax year, the error must be corrected in the manner required by Section 25, subsections 1 and 2 of the Act on Assessment Procedure for Self-assessed Taxes. In practice, the AI has reported an incorrect tax rate to the payor at the time of the payment, and therefore the payor has withheld a too small amount of tax at source from the dividend. In the correction situation, the payor has to correct the tax return it has submitted and pay the missing amount of tax at source to the Tax Administration. The AI provides the payor with the necessary information through the chain and submits the details on the correction in its own annual information return after the end of the payment year. The corrected amount of tax and the amount of correction are reported in the annual information return of the AI that made the correction. The tax reported in the annual information return must be equal to the amount of tax withheld from the dividend.

3.5.3 Over-withholding during the payment year (Quick Refund)

After the payment of the dividend–the withholding can be corrected in accordance with Section 25 of the Act on Assessment Procedure for Self-assessed Taxes until the end of the year of the dividend payment if the amount of tax at source withheld proves to be too large. The correction can be performed only by the Finnish dividend payor. Therefore, the AI cannot apply for a refund during the payment year directly from the Tax Administration.

When the AI notices an error during the payment year, the payor must be notified of the error and the payor has to correct the error. If the AI during the payment year and after the time of the payment receives reliable information according to which the preferential tax rate can be withheld from the beneficiary, the AI can notify and request the payor of correcting the tax. The correction of tax at source is carried out as a self-correction for the payment year i.e. "quick refund" -procedure, with the dividend payor correcting the self-assessed tax return and the payment returned to the payor from the Tax Administration.

The AI has to provide the payor with all the information the payor deems necessary for completing the return. The corrected tax amount for the month of the correction in euros are reported to the Tax Administration with respect to a correction made during the payment year. The details of the correction made are submitted after the payment year on an AI's annual information return, itemising recipient-specifically both the corrected amounts of the dividend and tax, and the amount of the correction.

Example 3

At the time of the dividend payment, the beneficiary was unknown, and 35% tax at source was withheld from the dividends paid to the beneficiary. Later in the payment year, the AI receives identifying information from the dividend beneficiary, corrects the withholding to 15% tax at source and forwards the information to the payor before the end of the payment year. The payor corrects its self-assessed tax return so that the payment is returned from the Tax Administration for the benefit of the payor, and the payor pays the difference to the dividend beneficiary.

3.5.4 Corrections after the payment year

An AI must correct any incorrect information in an annual information return it has submitted on its own initiative, and as soon as possible. If tax at source has been over-withheld, the dividend beneficiary may apply for return of the over-withheld tax at source through the refund procedure. The Tax Administration will not process the application until after the payment year.

If it is noticed only after the payment year that tax at source was under-withheld from the beneficiary, the AI has to correct its annual information return. Furthermore, the tax at source left unpaid must be paid to the Tax Administration. In this kind of a situation, the AI should contact the Tax Administration in order to get more detailed information on the procedure. The corrections must be made without undue delay.

4 Supervision of responsibilities

4.1 Supervision of registration

The Tax Administration supervises that the information in the Register of Authorised Intermediaries is valid and that the intermediaries registered in the Register of Authorised Intermediaries fulfil the registration requirements. An intermediary will be removed from the register if the requirements are no longer fulfilled. At the same time, the Tax Administration monitors that the AI fulfils its responsibility to report any changes in its circumstances to the Finnish Tax Administration.

The supervision of registration includes the monitoring of the AI's errors and negligence also with respect to the iAI's other possible tax liabilities. Serious and essential negligence or repeated administrative errors may lead to removal from the register.

4.2 Monitoring of the correctness of annual information returns

The Tax Administration monitors the correctness of annual information returns through various comparisons. Technical validation of the annual information return takes place during the submitting of the annual information return, and its purpose is to reduce the number of requests for additional information. Various technical validations and

comparisons have been implemented in the submitting process of the annual information return in order to ensure that the required information is submitted in the correct format and that the information is logical. Additionally, a check is made that the AI responsible for the information return is registered in the Tax Administration's Register of Authorised Intermediaries. The information return must pass the validation checks before it can be submitted.

After the submitting deadline of the information return, the Finnish Tax Administration checks that all AIs have submitted an annual information return and that the information returns contain all the information required as a minimum.

The contents of the submitted annual information returns are monitored by means of various comparisons to verify the comprehensiveness and correctness of the submitted information returns. In the monitoring, the information returns submitted by an AI are, for instance, compared with the information returns submitted by the payor and other AIs, the taxes at source paid to the Tax Administration, and comparison data received from third parties. Furthermore, the Tax Adminsitration monitors otherwise whether the information contents of the information return is correct, whether the information is logical, and whether the amount of tax at source collected is correct. The monitoring uses various logicality comparisons, such as whether the reported address is in the country of residence or whether the reported tax rate deviates from the rates of the tax treaty country. These comparisons help in the verification of the correctness of the information. The Tax Administration also uses risk-based comparisons of the information reported by the AI with other reference information obtained.

The monitoring of the annual information returns is usually carried out during the year the annual information return was submitted, or during the two following years. For special reasons, additional explanations and information may be requested four to six years after the year of the dividend distribution. A request for explanation is sent to those with a reporting obligation concerning any issues detected during monitoring that require additional information for the verification of its correctness.

4.3 Audit

4.3.1 General information on audit

Provisions on an AI's review and tax audit process are laid down in Sections 14 and 23b of the Act on Assessment Procedure, Section 24 of the Act on Assessment Procedure for Self-assessed Taxes, and Sections 2-4 of the Tax Procedure Decree (763/1998). The selection of subjects for tax audits is based on a risk analysis.Tax audits also have the purpose of monitoring the effect and functionality of the tax laws and to make possible suggestions on corrections to the legislation. For more detailed information on the tax audit procedure, see the Tax Administration guidance Good tax auditing practice.

The purpose of the tax audit of an AI is to verify the correctness of the information reported on the annual information return, the correct withholding of tax at source, including the beneficiary's right to the granted tax at source benefits, and the reasonable measures taken by those responsible for the tax in investigating and identifying the customer. The tax audit determines whether the AI has submitted the correct and sufficient information to the Tax Administration and verifies the correctness of the amount of tax at source in situations, where the AI has granted tax treaty benefits on dividends the dividend payment information of which it has assumed responsibility for. The AI is given guidance and advice during the tax audit. If the taxation was based on incomplete or incorrect information, the taxation is corrected by the tax authority's initiative. If the error is minor, the taxpayer may be prompted to correct the error themselves.

4.3.2 Scope of the audit

The tax audit is carried out with a purposeful scope. The audit may either check the right of dividend beneficiaries to the granted tax treaty benefits with respect to individual dividend beneficiaries identified during a risk analysis, or be a more comprehensive audit using sufficient sampling size to verify the correctness and reliability of the AI's procedures. A tax

audit of an individual dividend beneficiary will be expanded, if errors and deficiencies in the AI's procedures are found to be common.

With respect to foreign AIs operating in Finland only in the role of an AI, the Tax Administration will only audit the information and procedures related to the handling of the responsibilities of an AI.

With respect to AIs that are resident taxpayers in Finland or have a permanent establishment in Finland, the audit of the handling of the responsibilities of an AI can be carried out either as part of other tax auditing or as a partial audit that focuses only on compliance with the responsibilities and liabilities of an AI.

The audit always focuses on a purposeful period of time. The audit generally focuses on the one to three previous tax years, whilst special circumstances may see an audit going back six years.

An intermediary may be audited although it has been removed from the register. The tax liability of an AI applies to the dividends it has transferred while in the register, and of which it has assumed responsibility for forwarding the dividend payment information. With respect to such dividends, the AI is obligated to provide both the Tax Administration and the payor with the necessary information even after it has been removed from the register.

4.3.3 Progress of the audit

Agreeing on the audit and the audit location

Taxpayers are usually notified of a tax audit in advance. Before the audit, the Tax Administration contacts the AI and agrees on the time of the audit and the materials to be provided. When the starting time of the audit is agreed, the taxpayer's wishes are taken into account when possible. Due to the nature of the operations and the audit, an audit of an AI does not usually take place on site; instead, the audit is carried out on the Tax Administration's premises based on the requested materials. In exceptional situations, an audit of an AI may be carried out on customer premises; due to, for example, the wish of the taxpayer, or for some other special reason. International co-operation between authorities may also be involved in a tax audit.

Initial discussion

As a rule, the initial discussion is always arranged before the audit or in the beginning of the audit according to the AI's wishes either face to face or, in international situations, by telephone. During the initial discussion, the objectives and progress of the tax audit are explained, and the audited time periods, scope of the audit and estimated timetable are reviewed.

The presented materials and its auditing

An AI must, at the request of the Tax Administration, provide and present for review based on the identifying information of a dividend transaction, beneficiary or payor the information it possesses of the mechanisms, procedures, documents and other information based on which it fulfilled the beneficiary investigation, identification, determination, verification and reporting responsibilities with respect to the dividend payment and beneficiaries for which it has assumed responsibility (the Act on Assessment Procedure, Section 23b). To the extent possible, the AI must participate in the investigation of all audit-related issues.

Before beginning the audit, the Tax Administration will send a request for information to the AI, identifying the materials requested for the audit, and giving a sufficient amount of time to collect the materials. The information is possible to be submitted to the Tax Administration electronically taking information security into account. The Tax Administration's established information security guidelines and confidentiality regulations are followed in the processing and storage of the materials. For more information on this, see the customer guidance Data security and the processing of personal data at the Finnish Tax Administration.

The tax audit examines the information on which the dividend payments and the granting of tax treaty benefits are based, as well as the related procedures. AIs must ensure that they are able to present the materials specified in Chapter 3.3. upon request.

The AI is typically requested to describe the tax at source procedures for the Finnish dividends for which it has assumed responsibility, such as the dividend beneficiary investigation and identification procedures, and to present the documents describing the procedure. Examples are requested for audit on a risk basis and/or through sampling in order to ensure that the information has been correctly reported, the amount of tax is correct, and the AI's procedures are otherwise in compliance with the requirements. For this purpose, the information and documents collected and used for the Investor Self-Declaration procedure of named dividend beneficiaries to the required extent are requested.

If the AI has assumed liability for the dividend payment information of a CI, the audit typically requests the AI to submit a procedure description by the CI of how it has investigated and identified the beneficiaries and their eligibility for tax treaty benefits.

If the AI has used a service provider when managing its responsibilities, including situations where the Investor Self-Declaration was collected and its reliability verified by a CI, the AI must ensure that it is able to present the same information for review upon request, as in a situation where it itself would possess the information.

An AI may prove the reliability of its reasonable measures and reporting procedures with reports drawn up by an independent reviewer as described in the TRACE Implementation Package (TRACE IP). These are taken into consideration in the assessment of the reliability of the AI's procedures. As part of proving the reliability of its procedures, an AI may also present any other internal and external review reports that describe the reliability of the AI's procedures.

The purpose is to resolve any issues coming up during the tax audit in as much detail as possible, already during the audit. An open dialogue between the parties facilitates this. If necessary, the Tax Administration may send requests for additional explanation after the tax audit, or requests written explanations.

Final discussion

After the materials have been audited, a final discussion will be arranged with the taxpayer or their representatives always when it is purposeful and possible. The final discussion concentrates on the observations made during the audit, and decides on the resolving of unfinished issues and its schedule. The further audit actions and their estimated schedule are also explained during the final discussion. If necessary, the taxpayer is informed of the imposition of tax, tax adjustment, payment arrangement and relief procedures, and the possibility of appeal.

Tax audit report

A tax audit report is prepared of the completed tax audit, describing the issues affecting taxation detected during the audit and stating the actions that will be taken due to them. The tax audit report is prepared after the taxpayer has given its explanations and required additional explanations. The report gives justifications for the decisions on tax adjustment, imposition of tax or returned tax, and also gives guidance, if necessary. Penalties are also imposed on tax for late payment, as well as a possible tax increase.

Actions after the tax audit

After the tax audit report has been completed, the taxpayer is reserved an opportunity to be heard before the taxation decisions are made. The taxpayer is always heard if actions will be taken as based on the tax audit report. The hearing period is two weeks at a minimum, and for justified reasons, an extension can be given for the submitting of a response. Once the tax audit has ended, the audited materials will be returned, or an agreement on the destruction of the materials is made.

5 Rights related to the responsibilities of an Authorised Intermediary

5.1 Authorised Intermediary's customers' right to tax treaty benefits at source

An AI may apply the procedure described in Section 10b of the Tax at Source Act and beneficiaries who are its customers can be granted tax treaty benefits at source. The granting of tax treaty benefits requires that the AI has investigated and identified its customer and reports the beneficial owner information to the Tax Administration. An AI may also assume responsibility for the dividend payment information of the customers of a CI, if it verifies that the CI has properly investigated and identified the dividend beneficiaries.

An AI can determine beneficiary and payment specifically whether the dividend provisions of an international treaty apply and whether treaty benefits are granted to its customer at source. An AI therefore has the right to not assume responsibility of dividend payment information. Tax treaty benefits do not need to be granted if the AI considers for example that it has not received sufficient information on the applicability of the tax treaty. An AI also has the possibility of correcting tax withholding during the dividend payment year, if necessary.

5.2 Reporting beneficiary information directly to the Tax Administration

An AI can submit an annual information return on dividends directly to the Tax Administration, without having to deliver the information to the payor or the custody chain for forwarding. The information can be submitted after the dividend payment year in an annual information return based on the TRACE schema, reporting the information on the beneficial owners and the transferred dividends. For more information on submitting the annual information return, see the Technical guidance on Authorised Intermediary's annual information return.

5.3 Advice and guidance

An AI is entitled to advice and guidance from the Tax Administration. An AI or an intermediary considering registration may contact the Tax Administration with questions on registration, reporting or taxation at source by sending an email message to the address financialsector@vero.fi. The email will be answered as soon as possible.

Tax payer or the party liable to levy the tax may apply for a written advance ruling from the Tax Administration (Section 12a of the Tax at Source Act), if there is ambiguity in taxation at source. An advance ruling given by the Tax Administration states how the Finnish Tax Administration would act in assessment with respect to the tax matter in accordance with the advance ruling. An advance ruling binds the Tax Administration and brings legal certainty to the tax payor or the party liable to levy the tax in the matter in question.

An AI may apply for an advance ruling on tax at source, subject to a fee, as an agent on behalf of the taxpayer or the party liable to levy the tax. An advance ruling may be applied for the application of an international agreement in the withholding of tax at source, whether the tax at source needs to be withheld, or what provisions and regulations must otherwise be followed in the withholding of tax at source. The application for an advance ruling must be submitted before the tax at source should have been withheld. An advance ruling cannot be applied for matters related to registration into the Register of Authorised Intermediaries.

For guidance on how to apply for an advance ruling, see the Tax Administration's guidance Applying for an advance ruling and the decision issued (Ennakkoratkaisuhakemuksen tekeminen ja siihen annettava päätös, only available in Finnish and Swedish).

6 Tax liability

6.1 Tax liability of an Authorised Intermediary

The tax liability of an AI concerns situations in which it has submitted or forwarded the annual information return information on the dividend in question (Section 10c(3) of the Tax at Source Act).

An AI may choose whether it assumes tax liability of the tax at source for the dividends at the time of dividend payment or later during the payment year by notifying the payor or another AI of assuming tax liability as referred to in the Tax at Source Act for the dividends in question. According to Section 10c(2) of the Tax at Source Act, if an AI has, for the payment of dividend, reported tax to be withheld from the dividend at a rate lower than the tax at source referred to in Section 7(2), the AI shall be liable for the tax not collected from the taxpayer as if it were its own tax. Therefore in practice, the tax liability of an AI is related to situations, where the tax levied on the dividends it has assumed responsibity for is under 30 per cent based on a tax treaty, or tax has not been withheld in accordance with the Section 3 of the Tax at Source Act. In these situations, the AI is liable for the tax at source that was not withheld due to its negligence.

An AI does not have tax liability, if the tax levied from a dividend paid to a non-resident is 35 per cent. Also in situation, where the tax levied is 30 per cent and the AI reports the identity information of the beneficiary to the Tax Administration, the AI does not have tax liability.

The regulations related to AIs are found only in the Tax at Source Act, due to which an AI may not assume responsibility for the withholding of tax from the dividends of resident taxpayers in Finland. For them, the dividend payor has the sole tax liability under the tax legislation.

6.2 Tax liability when forwarding dividend payment information of another Authorised Intermediary

An AI is released from tax liability when another AI notifies it or the Tax Administration (in its annual information return) that it has assumed responsibility for this dividend payment information in the manner described in Chapter 6.3. In practice, the tax liability is with the AI closest to the investor.

If an AI has forwarded information sent by another AI at the time of dividend payment, it will only be responsible for forwarding the information with unchanged content, and the AI closest to the dividend beneficiary is responsible for the contents of the information it has submitted to be forwarded.

An AI must also always verify that an intermediary that is submitting information through it is registered in the Register of Authorised Intermediaries at the time of the dividend payment. If the intermediary is not registered, the AI is deemed to have assumed responsibility for the dividend payment information in question, unless an AI closer to the beneficiary has not showed assuming responsibility.

6.3 Release from liability

According to Section 10c(2) of the Tax at Source Act, an AI may be released from liability by:

1) proving that the liability has been transferred to another AI, or

2) proving that it has fulfilled its responsibilities to take reasonable measures and did not know or should not have known that the dividend beneficiary provided incorrect and/or incomplete information.

In order to be released from liability, the AI must prove that the error was not due to its negligence.

An AI is not liable for tax at source not withheld if it proves that it has forwarded the information received from another AI for the payment of the dividend and withholding of tax at source with unchanged content to the next AI in the custody chain or the payor. An AI will not be released from tax liability by being removed from the Register of Authorised Intermediaries; it will be liable for the tax even after its removal from the register for the period it was registered.

According to the Government proposal, the AI must, if necessary, be able to present proof to the Tax Administration of having forwarded the information received from another AI with unchanged content. The Tax Administration will then continue determining which AI is responsible for the error along the chain. In addition to showing proof of forwarding the information, an AI may overturn the presumption of liability with some other proof of the failure to withhold tax at source not being caused by its negligence. In situations where the AI closest to the investor has not submitted an annual information return, thus declaring it assumes liability, the payor or another AI may indicate that the liability was transferred by a notification received at the time of the dividend payment from the AI closest to the investor. (HE 282/2018 vp, p. 39)

An AI may also have to prove to the Tax Administration that the liability was transferred to another AI, if the annual information returns of the AIs are in conflict with each other. The AI may then prove, by presenting a commitment made by another AI at the time of payment or later, that it has assumed responsibility for the dividend payment information in question, and is thus released from liability.

In situations, where 30 per cent tax has been withheld from a dividend and the beneficial owner information has been reported in the annual information return, or 35 per cent tax has been withheld, the AI does not in practice have tax liability.

6.4 Tax liability and procedure in situations where the dividend beneficiary has given false information

The dividend beneficiary has tax liability if the tax at source was not collected due to a reason other than the negligence of the party responsible for withholding the tax (Section 16 of the Tax at Source Act). The tax liability is thus transferred from the AI to the dividend beneficiary if the AI proves that it has taken reasonable measures and the error is caused by the negligence of the beneficiary alone.

In its part, the AI must facilitate the investigation of the matter so that the Tax Administration can take the actions required by law. It must provide the Tax Administration with access to all information and documents related to the dividend payment, the beneficiary or otherwise to the transaction in its possession or in the possession of a service provider.

In a situation where the AI notices that the dividend beneficiary has given, or the dividend beneficiary self notices having given incorrect information to the AI, the AI may correct the error on behalf of the dividend beneficiary.If the AI is unable to correct the error on behalf of the dividend beneficiary, the AI must notify the Tax Administration without delay of error and the dividend beneficiary who made the error.

In situations where the AI notices that the dividend beneficiary intentionally gave false information or otherwise acted fraudulently, the AI must notify the Tax Administration without undue delay and take other appropriate measures.

6.5 Payor's secondary tax liability

According to Section 10c(4) of the Tax at Source Act, tax at source that was not withheld will, in under-withholding situations, be ordered to be paid by the dividend payor and the AI responsible for the tax, in accordance to what is laid down in the Act on Assessment Procedure of Self-assessed Taxes concerning the imposition of tax on a taxpayer.

An AI that has assumed responsibility for dividends always has primary tax liability for taxes that were not withheld with respect to the dividend payor's liability. However, the payor does have secondary tax liability for the dividends. In practice, this means that if the AI fails to pay tax imposed on it, the tax is also imposed on the payor as a separate liability as a precautionary measure.

Regardless of the tax being imposed on the payor as a precautionary measure, the collection of tax from the AI will continue. Once the AI has paid the tax imposed on it, the Tax Administration will return on its own initiative any taxes the dividend beneficiary has paid. The same procedure is used when the grounds for the imposition of tax are otherwise eliminated; due to, for example, later information revealing that the tax was not under-withheld.

7 Contractual Intermediary and other service providers

In Finland, taxpayers can use service providers (subcontractors) to fulfil their responsibilities under tax legislation. An AI may thus also use other service providers for the fulfilment of its statutory responsibilities.

According to Section 10b(3) of the Tax at Source Act, tax treaty benefits may be granted even if the intermediary closest to the dividend beneficiary is not registered in the Register of Authorised Intermediaries, if an AI has taken the dividend beneficiary's information to be forwarded and verified that the dividend provisions of an international agreement can be applied to the dividend beneficiary. If an AI forwards dividend payment information provided by a Contractual Intermediary (CI), it is deemed to have assumed responsibility for the correctness of said information.

When an AI forwards dividend beneficiary information of a CI, it commits to being responsible for these dividends as if they were its own and to submit an annual information return on them. The AI must then ensure that it has the required information, that the amount of tax withheld is correct, and that it receives all information required by the Tax Administration to determine the correctness of taxation. The AI in question will then also be liable for any tax at source not withheld.

The Tax at Source Act only lays down provisions on the responsibilities and rights of an AI. CIs do not have any responsibilities under the Finnish Tax at Source Act; instead, their responsibilities and liabilities are based on a contract made with an AI or the payor.

The tax legislation does not lay down provisions on what kind of agreements an AI should make with a CI for the fulfilment of its responsibilities under the tax legislation. An AI may thus decide itself how to ensure that its responsibilities are fulfilled in situations where, for example, the identification of the dividend beneficiary is done by a CI on its behalf. An AI may utilise the agreements in TRACE IP in these respects.

CIs may operate in the custody chain in the role of a service provider either between two AIs or between an AI and the dividend beneficiary. The AI must ensure that the dividend beneficiaries have been properly investigated and identified, the ISDs have been correctly collected, and that the CI has taken reasonable measures to determine the beneficiary's eligibility for the tax treaty benefits. For this reason, it is recommended that the AI has made appropriate agreements with service providers.

In an under-withholding situation caused by a CI, the AI is liable for the tax as if it were its own. Essential errors of a CI may result in removal from the register, if because of this an AI cannot fulfill its responsibilities. If the AI can prove that it has been a question of error of a CI alone and it has taken proper measures as soon as it has noticed the error, removal from the register can be left undone.

8 Sanctions

8.1 Presentation of evidence and hearing

Section 8 of the Act on Assessment Procedure for Self-assessed Taxes lays down provisions on the obligation to present evidence. According to subsection 1 of the provision, once a taxpayer has supplied the requested information, they must co-operate to the extent possible with the Tax Administration in order to resolve the issue. As a rule, evidence is

expected from whichever party is in a better position to supply it. In this connection, the tax payer refers to an AI and therefore the AI is usually responsible for presenting evidence.

Section 8 of the Act on Assessment Procedure for Self-assessed Taxes lays down provisions on the hearing of the taxpayer. Before imposing tax to the detriment of a taxpayer, the Tax Administration must reserve an opportunity for the taxpayer to present an explanation if the assessment of the tax materially differs from the information provided by the taxpayer. If the Tax Administration adjusts a prior decision to the detriment of the taxpayer, the taxpayer is always reserved an opportunity to present evidence in the matter. In practice, the taxpayer is also always heard before the imposition of a tax increase or a penalty fee.

8.2 Neglect and penalty fees for tax liabilities, impositions

8.2.1 Imposition of the tax

According to Section 10c(4) of the Tax at Source Act, tax at source that was not withheld will, in a situation where the AI under-withheld taxes, be ordered to be paid by the dividend payor and the AI responsible for the tax, in accordance to what is laid down in the the Act on Assessment Procedure of Self-assessed Taxes concerning the imposition of tax on a taxpayer. An AI is also subject to the provisions on penalty fees, the payment of tax assessed by the Tax Administration and appeals laid down in the the Act on Assessment Procedure of Self-assessed Taxes.

Taxes at source that were not withheld are imposed under Section 40 of the the Act on Assessment Procedure of Self-assessed Taxes if the amount of tax was under-reported or the payable amount was too small for another reason. According to the provision, a decision already made can be adjusted to the detriment of the taxpayer.

Under Section 31(1) of the the Act on Assessment Procedure of Self-assessed Taxes, the Tax Administration can adjust a prior decision to the benefit of a taxpayer in situations where it has noticed that the taxes assessed were incorrectly too high.

The tax must be imposed or the decision adjusted within three years of the beginning of the tax year following the dividend distribution (Sections 4 and 44 of the the Act on Assessment Procedure of Self-assessed Taxes). According to Section 45 of the the Act on Assessment Procedure of Self-assessed Taxes, the Tax Administration may extend the decreed deadline for the imposition or adjustment of the tax to the detriment of the taxpayer by one year if:

1) the control measure began exceptionally late based on information provided by another authority or obtained from elsewhere, or requires co-operation with other authorities;

2) the taxpayer submitted a report or other explanation on the matter exceptionally late or the taxpayer subject to the control measure causes material difficulty to the performance of the control measure.

Insofar as the imposition or adjustment of tax was based on information affecting the taxpayer's taxation that was received through non-automatic international information exchange, tax may be assessed or the decision adjusted within six years of the beginning of the tax year following the dividend payment under Section 46 of the Act on Assessment Procedure of Self-assessed Taxes.

The general rules of procedure on imposition of tax are applied to AIs. According to Section 48(1) of the the Act on Assessment Procedure of Self-assessed Taxes, if tax is imposed to the detriment of the taxpayer, a tax increase may be imposed to the taxpayer. Additionally, penalty interest is calculated for the tax in accordance with the Tax Collection Act (11/2018) and the Act on Surtax and Penalty Interest (1556/1995).

In connection with the imposition of tax, penalty interest is imposed in accordance with Section 5a of the Act on Surtax and Penalty Interest. The penalty interest is the reference rate, as referred to in Section 12 of the Interest Rate Act, for the biannual period preceding each calendar year, plus seven percentage points. The tax, tax increase, penalty fee and

late fee must be paid no later than on the common due date specified in the decision (Section 34 of the Act on Assessment Procedure of Self-assessed Taxes).

8.2.2 Tax increase

The Tax Administration will impose a tax increase on the taxpayer according to Section 37(1) of the Act on Assessment Procedure of Self-assessed Taxesif:

1) the tax return or some other report or other statutory information or clarification has been submitted with deficiencies or errors, or not submitted at all;

2) tax has not been withheld or tax at source collected within the statutory time.

Deficiency means that information affecting taxation is missing from the tax return or from another report submitted by the taxpayer, or that tax has not been reported at all in some respects.

In practice, a tax increase can therefore be imposed on an AI in situations where tax at source uncollected due to its negligence is imposed on it by a decision of the Tax Administration.

Section 38 of the Act on Assessment Procedure for Self-assessed Taxes lays down provisions on the amount of the tax increase. According to subsection 1, the tax increase is generally 10 per cent of the tax imposed to the detriment of the taxpayer. The tax increase is calculated according to the main rule laid down in subsection 1, except in the case of an exceptional situation as referred to in subsection 2.

According to subsection 2 of the provision, the tax increase is, however, no less than 15 per cent and no more than 50 per cent of the tax imposed to the detriment of the taxpayer, if:

1) the negligence referred to in Section 37 is repeated; or

2) the taxpayer's actions show clear disregard of taxation obligations.

The Tax Administration will determine the amount of the tax increase based on case-specific circumstances. In the case of an ambiguous or unclear issue in the manner referred to in Section 6, or a tax increase in accordance with subsection 1 would be unreasonable for some other special reason, the tax increase is 3 per cent of the tax imposed to the detriment of the taxpayer, in accordance with subsection 4.

Additionally, penalty interest is calculated for the tax in accordance with the Tax Collection Act and the Act on Surtax and Penalty Interest.

According to Section 37(2) of the Act on Assessment Procedure of Self-assessed Taxes, the tax increase may be waived if the negligence is minor or there is a valid reason for the negligence. The assessment of whether a specific case of negligence is minor or not is based on a euro amount.

8.2.3 Penalty fee for neglecting the requirement to report information

Neglecting the obligation to submit an annual information return may result in a penalty fee under Section 22a of the Act on Assessment Procedure, which applies to the neglect of an AI's general (Section 15e) and special requirement to report information (Section 23b).

In practice, a penalty fee is imposed on an AI in a situation where the annual information return is submitted late or not submitted at all, or the information return contains deficiencies or minor errors, and the errors are not correct even after being requested to do so. Minor errors include typographical errors, incorrect country information, or errors in the beneficiary information.

The amount of the penalty fee is determined according to the severity of the negligence. The penalty fee is imposed in even hundreds of euros, i.e. the smallest imposed fee is EUR 100. The penalty fee is imposed on the initiative of the authority, and the AI is always heard first before the fee is imposed.

According to the Section, a penalty fee of no more than EUR 2 000 may be imposed on a party with the the requirement to report information, if

1. the report, other information or document submitted in order to fulfil the requirement to report information has a minor deficiency or error, and the party with the requirement to report information has not complied with a provably sent request to correct it;
2. the party with requirement to report information has, with no valid reason, submitted a report, information or document late; or
3. the party with requirement to report information has submitted the information in a manner different than decreed by law or ordered by the Tax Administration.

If the party with requirement to report information has submitted an annual information return, other information or document with material deficiencies or errors, or submitted them only after a provably sent request, a penalty fee of no more than EUR 5 000 may be imposed on the party with the requirement to report information.

If the party with requirement to report information has intentionally or due to gross negligence submitted a essentially false annual information return, other information or document, or has not submitted an information return at all, a penalty fee of no more than EUR 10 000 may be imposed on the party with the requirement to report information.

When the penalty fee is imposed, the amount of information the party with requirement to report information must submit is also taken into consideration. The Tax Administration publishes annually a guidance on the penalty fee of a third party information provider.

Penalty interest is collected from an imposed and overdue penalty fee in accordance with Section 5a of the Act on Surtax and Penalty Interest. The penalty interest is calculated from the day following the set due date until the payment date of the penalty fee.

9 Appeal procedure

9.1.1 Claim for adjustment

An AI may claim for an adjustment of a decision subject to appeal issued by the Tax Administration. In practice, an AI may claim for an adjustment of decisions by the Tax Administration concerning

- penalty fee (the Act on Assessment Procedure,, Section 22)
- requirement to report information (the Act on Assessment Procedure, Sections 15e, 23 b and 19)
- registration or removal from the register (Tax at Source Act, Section 10d)
- tax imposition (the Act on Assessment Procedureof Self-assessed Taxes, Section 40), and
- tax increase (the Act on Assessment Procedureof Self-assessed Taxes, Section 37).

An AI and the Tax Recipients' Legal Service Unit may claim for adjustment of a decision concerning entry into or removal from the Register of Authorised Intermediaries referred to in Section 10d of the Act on the Taxation of Nonresidents' Income (Section 65a(6)(3) of the the Act on Assessment Procedure).Under Section 65a(7) of the the Act on Assessment Procedure, an AI may claim for an adjustment of a decision by the Tax Administration concerning the requirement to report information laid down in Sections 15e, 23b and 19 of the the Act on Assessment Procedure, or the penalty fee decreed for its neglect. The Tax Recipients' Legal Service Unit may also claim for an adjustment of a decision by the Tax Administration concerning a penalty fee referred to in Section 22a.

Based on the Section 59 of the Act on Assessment Procedure of Self-assessed Taxes, as a party liable for the tax, an AI may claim for an adjustment of a tax assessment decision made under Section 40 of the Act on Assessment Procedure of Self-assessed Taxes. The Tax Recipients' Legal Service Unit has the right to claim for adjustment on behalf of a tax recipient.

The claim for adjustment must be lodged with the Adjustment Board. However, the Tax Administration may make a decision in the matter insofar as the claim made is approved, if the applicant is a party other than the Tax Recipients' Legal Service Unit. The claim for adjustment can be submitted, for example, in the MyTax service. The claim for adjustment can be a free-form written account.

The AI must comply with the Tax Administration's decision regardless of the claim for adjustment until the AI has been informed of the decision issued concerning the claim for adjustment. The tax, tax increase and late-filing penalty has to be paid an appeal notwithstanding. An appellant may however request for prohibition or interruption of enforced recovery in pursuance of the claim for adjustment. The adjustment authority, for example the Adjustment Board, that considers the claim for adjustment concerning taxation, must prohibit the distraint of receivable, unless it is obvious that the claim for adjustment has no grounds (the Act on the Enforcement of Taxes and Public Payments 706/2007, Section 12).

A claim for adjustment of a decision on the imposition of tax must be made within three years from the beginning of the calendar year following the tax year. Claim for adjustment can nevertheless always be made within 60 days of the appellant receiving notice of the decision of the Tax Administration. The claim for adjustment must be delivered to the Tax Administration within the deadline. Claims for adjustment are not allowed if the matter has been resolved with a decision issued on an appeal. The claim for adjustment must be processed by the Tax Administration or the Adjustment Board without undue delay.

9.1.2 Appeals in courts

An AI and the Tax Recipients' Legal Service Unit may appeal a decision made by the Tax Administration due to a claim for adjustment by lodging an appeal with the Administrative Court. The appeal is lodged with the Administrative Court with jurisdiction over the domicile of the AI at the time the decision was made. If none of the Administrative Courts are competent to process the appeal, the appeal may be lodged with the Helsinki Administrative Court. (Act on Assessment Procedure, Section 66, and Act on Assessment Procedure of Self-assessed Taxesof Self-assessed Taxes, Section 64)

The appeal must be lodged within 60 days of being notified of the decision given on a claim for adjustment.

The decision of the Administrative Court may be appealed only if the Supreme Administrative Court grants leave to appeal. The appeal must be lodged within 60 days of being notified of the decision of the Administrative Court as per Section 71 of the Act on Assessment Procedure. Appeals to the Administrative and Supreme Administrative Courts may be subject to a charge.

Regardless of an appeal, the taxpayer and other party liable for tax are obligated to pay the imposed tax, any related penalty sanctions, and other sanctions.

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