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Growing Asia's Markets

By Air Mail

21 May 2020

Mr. Kim Hyun-Jun
Commissioner of National Tax Service (NTS)
Sejong Government Complex
8-14, Guksecheong-ro
Sejong Special Self-Governing City
Republic of Korea

ASIFMA COVID-19 Operational Tax Challenges and Suggestions for Access to Withholding Tax Relief

Dear Mr. Kim,

In light of the recent development of the COVID-19 situation, ASIFMA[1] would like to take the opportunity to highlight the operational tax challenges that are faced by the industry and make some suggestions below.

COVID-19 continues to impact all aspects of society, respecting no borders. Operational tax processes are no exception to this and COVID-19 is impacting the ability of portfolio investors to access withholding tax relief either under domestic law or relevant double tax treaties. Many Governments in Asia Pacific mandate that operational tax processes require paper-based documentation, including wet signatures, tax authority certification and in some cases notarization and consularisation / apostille.

Given the uncertainty in a number of jurisdictions, a number of challenges have arisen in respect of the afore-mentioned processes including, but not limited to:

- printing documentation from home, noting information security concerns;
- sending documentation across borders, given a number of couriers cannot fulfil certain routes;
- obtaining signatories, particularly where more than one is required;
- certification, as some tax authorities are now not issuing certification e.g. US IRS and turn-around-times have increased;
- bank processing of documentation, as some locations cannot move documentation around;

[1] ASIFMA is an independent, regional trade association with over 135 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

ASIA SECURITIES INDUSTRY & FINANCIAL MARKETS ASSOCIATION | Unit 3603, Tower 2 Lippo Centre | 89 Queensway Admiralty, Hong Kong | Tel: +852 2531 6500 www.asifma.org

- notarisation, due to non-availability of notary publics; and
- consularisation, due to closure of non-essential services.

The above-mentioned challenges have led to strains on well-established processes for foreign investors, service providers and tax authorities alike (both in home and investment jurisdictions), removing much of the certainty behind processes.

We note with approval the attached joint trade association letter to the European Commission and OECD dated 20 April regarding recommended tax administration responses to the COVID-19 crisis.

Building on these suggestions, with specific application to Asia Pacific, this letter requests for a number of steps to be taken to encourage the relaxation of certain requirements in the region on a temporary or even permanent basis:

- authorise acceptance by all parties in the withholding tax chain of electronic documentation including electronic signatures as well as the ability to send documentation electronically. This should be applied to both applications for certification of residence and in investment markets;
- address any outstanding certification requests as soon as possible via electronic means;
- delay the implementation of new tax measures which do not assist in the simplification of existing processes;
- introduce an extension of validity for existing 2019 documentation through at least the third quarter of 2020 to support existing relief e.g. rely on existing documentation on hand. It should be noted that some tax authorities in Europe have already done this e.g. France and Italy;
- eliminate the requirement for notarisation, apostille or any other form of confirmation and mandating that withholding agents follow this requirement strictly;
- remove the requirement for non-standard documentation or specific wording or dates on certification and simplify documentation requirements to rely on tax authority certificate;
- extend statutes of limitation by 6 months to allow for additional time to submit withholding tax claims; and
- issue clear guidance to support the above.

ASIFMA would welcome an opportunity to discuss this further, or to receive any comments on the matters set out above. If you require further clarification on any of the matters discussed in this letter, please do not hesitate to contact Patrick Pang (ppang@asifma.org).

Yours sincerely,

Patrick Pang
Head of Compliance and Tax, ASIFMA

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VIA ELECTRONIC MAIL

Mr. Pascal Saint-Amans
Director, Centre for Tax Policy & Administration
Organisation for Economic Co-operation and Development
2 rue André Pascal
75016 Paris
France
pascal.saint-amans@oecd.org

Mr. Paolo Gentiloni
Commissioner for Economic and Financial Affairs
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium
cab-gentiloni-contact@ec.europa.eu

Subject: Challenges and practical solutions for global withholding tax relief procedures in light of COVID-19

Dear Mr Saint-Amans / Dear Commissioner Gentiloni,

The undersigned associations[1] are writing to you to draw the attention of the Commission and the OECD to the negative impact of COVID-19 across the globe that is significantly affecting the ability of cross-border portfolio investors to access withholding tax relief they are entitled to. We would very much appreciate if a copy of this letter could be shared with the 27 EU Member States and the 53 members of the Forum on Tax Administration.

[1] More information about each association is in the Annex.

The problem primarily arises from the challenges of moving the paper documentation needed to obtain relief at source or to process reclaim submissions, including physical documents with wet ink signatures. A related problem involves the slow-down or cessation of production of needed documents (e.g. certificates of residence) and information due to changed working arrangements in government offices and other organisations.

There is an increasing state of uncertainty regarding tax relief in a number of countries. Investors are reviewing arrangements as part of their contingency plans in respect of the movement of physical paper. The impact on international and regional banks and their clients cannot be overestimated. The strains on tax administrations are also significantly growing, as reclaims requiring processing will mount substantially due to missed relief at source.

To help the global economy weather the impact of these uncharted and challenging times arising from COVID-19 we, the undersigned industry groups, see a need to urgently adapt the relationship between banks, tax authorities and their regulators in light of the current circumstances.

The collection of withholding tax relief pursuant to a relevant double taxation treaty (DTT) or under a country's domestic law is typically reliant on the submission of physical documentation. In practice this requires the moving of original physical documents from, for example, the end investor and/or the investor's tax authority through any intermediaries to the global custodian and on to the local sub-custodians, paying agents, or tax authorities in the source country of income.

We note with approval the suggestions posted on the OECD website on 20 March 2020 regarding responses to the COVID-19 crisis tax administrations could take to ease burdens on taxpayers.[2] Building on those suggestions with specific reference to the application of withholding tax relief, this letter asks for steps to be taken to encourage a relaxation of certain existing requirements in Member States and beyond. The aim is to eliminate or minimise challenges in the current situation, taking into account the need for international co-operation.

The approach requires flexibility in the need for reliance on physical documents, including consideration of the suspension of the majority of existing time limiting restrictions (e.g. filing and statute of limitations periods).

We outline below a number of challenges with the existing requirements and propose practical solutions which will also help avoid an increase of fraud.

Our observations and suggestions relate to:

- Authorising acceptance, by all parties in the chain, of electronic (scanned copy) tax documents and forms, with the further option for documents to be electronically affirmed (e.g. through use of digital signatures).
- Introducing a grace period through at least the third quarter of 2020 to allow withholding tax relief to continue (e.g. allowing withholding agents/paying agents and banks to rely on previously issued certificates of tax residency for investors).
- Having source country tax authorities agree to accept government-issued certificates of tax residency in electronic format.

[2] All the immediate action taken recently by the OECD Secretariat when encouraging countries to adopt emergency tax policy responses and tax administrations to consider several measures to support their taxpayers during this crisis, not to mention the guidance addressing COVID-19 crisis tax issues, deserves our plaudits.

- Eliminating the requirement for withholding tax reclaim forms to be certified by the tax authority of the investor's country of residence.
- Eliminating the requirement for the apostillisation, notarisation, or legalisation of documentation required for the application of withholding tax relief.
- Removing the requirement for non-standard certificates of tax residency (for example, e.g. some jurisdictions require certificates to refer to specific sections of a double taxation treaty, or to be issued using the investment country's template document).
- Extending the period for the filing of withholding tax and information reporting returns by issuers, paying agents, and withholding agents.
- Extending statute of limitation periods by six months, thereby allowing additional time for the submission of withholding tax reclaims.
- Extending deadlines for responding to information and documentation requests issued by tax authorities, whether in the context of audits of withholding tax relief claims or as further substantiation of withholding tax refund claims.
- Issuing clear guidance to clarify the ability of participants in the documentation chain to rely on the parameters recommended above.

We firmly believe that by taking the very concrete and practical steps recommended above, governments could prevent a functional disturbance in the process of obtaining prescribed withholding tax relief on cross-border investment flows. It could also help to avert a crushing backlog of refund claim submissions to be processed once tax authority operations return to pre-crisis levels.

We appreciate your consideration of our suggestions and any efforts you can make to promote the adoption of these recommendations by as many tax administrations around the world as possible. Please do not hesitate to contact Roger Kaiser at the European Banking Federation (r.kaiser@ebf.eu) if you would like further discussion or clarification of these recommendations.

Please accept our best wishes for the good health and safety of you and your colleagues in this challenging period.

Yours faithfully,

Rob Nichols President and CEO, ABA	Hervé Guider General Manager, EACB	Chris De Noose Managing Director, ESBG
Adam Farkas Chief Executive, AFME	Wim Mijs Chief Executive Officer, EBF	Hedwige Nuyens, CEO, IBFed
Mary C. Bennett Counsel, AGC	Tanguy van de Werve Secretary General, EFAMA	Keith Lawson, Deputy General Counsel, Tax Law, ICI Global
Mark Austen CEO, ASIFMA	Gianluigi Gugliotta Secretary General of ASSOSIM, on behalf of EFSA	Anshita Joshi Head of Tax, The IA

Annex – Information about signatory organisations

ABA (American Bankers Association) is the voice of the nation's $18.6 trillion banking industry, which is composed of small, regional, and large banks. Together, America's banks employ more than 2 million men and women, safeguard $14.5 trillion in deposits, and extend more than $10.5 trillion in loans.

AFME (the Association for Financial Markets in Europe) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. It represents the leading global and European banks and other significant capital market players. AFME advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society.

AGC (Association of Global Custodians) is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

ASIFMA (Asia Securities Industry & Financial Markets Association) is an independent, regional trade association with over 120 member firms comprising a diverse range of leading financial institutions from both the buy and sell side. Our mission is to promote the development of liquid, deep and broad capital markets in Asia, which is fundamental to the region's economic growth.

EACB (The European Association of Co-operative Banks) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation.

EBF (the European Banking Federation) is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

EFAMA is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 22 associate members. At end Q3 2019, total net assets of European investment funds reached EUR 17.2 trillion. These assets were managed by more than 62,500 investment funds, of which almost 34,000 were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining funds composed of AIFs (Alternative Investment Funds).

EFSA (the European Forum of Securities Associations) was created in 2007 and gathers AFME (The Association for financial markets in Europe), AMAFI (The French Financial Markets Association), AMF (Asociacion de Mercados financieros), ASSOSIM (The Italian financial markets association), BWF (Bundesverband der Wertpapierfirmen), DSDA (The Danish Securities Dealers Association), Febelfin (The Association representing Belgian financial institutions), IDM (The Polish Securities Dealers Association) and SSDA (The Swedish Securities Dealers Association).

ESBG (European Savings and Retail Banking Group) represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to innovate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services.

IBFed (International Banking Federation) was formed in 2004 to represent the combined views of its national banking associations. The IBFed collectively represents more than 18,000 banks, including more than two thirds of the largest 1,000 banks in the world. IBFed member banks play a crucial role in supporting and promoting economic growth by managing worldwide assets of over 75 trillion Euros, by extending consumer and business credit of over 40 trillion Euros across the globe, and by collectively employing over 6 million people. The IBFed represents every major financial centre and its members' activities take place globally. With its worldwide reach the IBFed is a key representative of the global banking industry, actively exchanging with international standard setters and global supervisory bodies on subjects with an international onal dimension or with an important impact on its members.

ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$31.8 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

The IA (Investment Association) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage over £7.7 trillion for savers and institutions in the UK and beyond, such as pension schemes and insurance companies.