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September 4, 2020

VIA ELECTRONIC DELIVERY

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Re: Issues of concern to potential Authorised Intermediaries under final guidance on "Authorised Intermediary's responsibilities and liabilities" and revised draft guidance on "Intermediary Self-Declarations"

Dear Ms. Madetoja and Mr. Hirvonen,

As indicated to you in our prior letters of May 22, 2020 and June 12, 2020, the Tax Committee of the Association of Global Custodians ("AGC" or "Association")[1] very much welcomes Finland's commitment to introduce a streamlined withholding tax relief regime based on the OECD's TRACE Implementation Package ("TRACE IP"). We have appreciated the opportunity to have representatives of our Committee participate, along with other industry stakeholders, in informal discussions with you on the final guidance on "Authorised Intermediary's responsibilities and liabilities" released on July 1, 2020 ("AI Guidance") and the revised draft guidance package on the Investor Self-Declaration

[1] The Association 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.

released on July 15, 2020.[2] The AGC is submitting this letter as a follow-up to those informal discussions in order to outline some concerns our members still have with the guidance and to make some suggestions for changes we think are necessary to make it possible for our members to consider making a favorable decision on whether to become an AI.

As we indicated during our discussions, global custodians will be prepared to follow the procedures required of an AI to make available withholding tax relief at source ("RAS") to their customers under Finland's proposed version of TRACE only if their obligations under those procedures are very clear and if they can automate the required steps to the greatest extent possible. Global custodians will not be able to undertake obligations that could require manual intervention in the processing of dividend payments and the need to reach legal conclusions about complex facts, particularly where those facts do not come into the global custodians' possession in the normal course of their operations. These constraints are a product of the sheer volume of the business handled by global custodians. An informal survey of AGC members reveals that the member banks:

- Hold over $70 trillion (€60 trillion) worth of assets in safekeeping
- Hold over $64 billion (€55 billion) worth of Finnish stock in safekeeping
- Have tens of thousands of global custody clients worldwide
- Have over 5,000 clients holding Finnish stock
- Process millions of separate dividend payments annually
- Process over 25,000 separate Finnish dividend payments annually

With this context in mind, we outline below issues of fundamental concern (i.e., ones that go to the heart of whether global custodians believe they could comfortably take on the role of an AI) and more technical issues on which clearer guidance would be welcome.

Issues of Fundamental Concern for Potential Authorised Intermediaries

1. Information "available to" the AI

The ISD Package in numerous places refers to the obligation of the AI to verify statements in the ISD based on information "available to" the AI. This language is vague and appears to create an overly broad affirmative obligation on the part of the AI to investigate proactively a variety of sources of potentially "available" information (e.g.,

[2] The latter package ("ISD Package") included the draft "Tax Administration's decision on the contents and period of validity of the Investor Self-Declaration, and the procedure with which its reliability is verified" ("ISD Decision"), the draft "Guidance on the contents, period of validity and verifying the reliability of the Investor Self-Declaration" ("ISD Guidance"), and the draft Explanatory Memorandum for the Decision ("ISD Memo").

information on the internet, in public registries, in commercial databases, etc.). Such an obligation would go beyond the capacity of a global custodian.

Suggestion: The AGC recommends changing these references to "information in the possession of the AI in the ordinary course of its operations as an intermediary". This phrase could be used in multiple locations throughout the ISD Package, provided the ISD Package contains explanatory language along the following lines: "The term 'information in the possession of the AI in the ordinary course of its operations as an intermediary' means information obtained by the AI in carrying out its obligations under AML/KYC, CRS, DAC2, and FATCA regimes, as well as information about the investor provided to the AI by a competent authority, a payor, or another intermediary."

2. Information in the hands of related entities

Section 5.5 of the ISD Guidance says that an AI is deemed to know or have reason to know that an ISD is unreliable if the AI or its related entity is planning, marketing, organising, making available, giving support or advice, or is a party in an arrangement that affects the reliability of the ISD. This standard assumes a level of knowledge on the part of an AI that is highly unlikely to exist in practice (due to the variety of legal and other constraints that prevent the sharing of customer data across business units of a multinational financial group) and would be impossible to achieve operationally (given the unknown range of factual indicia that would have to be tracked).

Suggestion: We understood from our discussion that this standard was drawn from DAC6. Given that DAC6 would require reporting by a related intermediary engaging in any of the above-referenced activities in connection with an improper claim of treaty relief from Finland, we suggest there is no need for an AI to be deemed to have such extensive knowledge. We therefore recommend the following addition to section 5.5: "If the AI is a member of a multinational group that has in place a written policy for the application of DAC6, the AI shall not be deemed to know any information beyond that which is in the possession of the AI in the ordinary course of its operations as an intermediary [as defined above]."

3. Lack of clarity around anti-avoidance standards

Section 5.5 of the ISD Guidance says that an AI must consider whether the national tax evasion provision (the Act on Assessment Procedure 1558/1995, Section 28) or the Principal Purpose Test Regulation apply to a dividend in the context of verifying the reliability of an ISD. We note that the ISD includes a statement by the investor that the investor "is not acting as an agent, nominee or conduit with respect to the income that is to be paid or credited to the account(s) to which this Declaration relates, and is the beneficial owner of such income, and that the Investor meets any additional criteria necessary to claim the standard benefits of such treaties with respect to the income to be received through such account(s)."

Suggestion: In order to remove uncertainty around the extent of the inquiry required to be conducted by the AI, we suggest that the following clarification be included in the ISD Guidance: "An AI will not be treated as knowing or having reason to know that the national tax evasion provision (the Act on Assessment Procedure 1558/1995, Section 28 or the Principal Purpose Test Regulation would apply to deny benefits unless the AI knows or has reason to know that this ISD certification is unreliable, based on information in the AI's possession in the ordinary course of its operations as an intermediary [as defined above]."

4. Ambiguous language of Section 3.1.1 of the AI Guidance

Section 3.1.1 of the AI Guidance provides that a reduced treaty rate may be applied at source by an AI only if "it has been verified that the beneficiary is eligible for tax treaty benefits". This language does not include any cross-reference to the ISD Guidance, and it therefore creates a question as to whether it operates to create any obligations of verification beyond those in the ISD Guidance.

Suggestion: In order to remove any ambiguity on this point, we recommend that the relevant language of the AI Guidance be amended to read as follows (additions shown in bold italic): "This means that the lower 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 ***according to the procedures described in §5 of the ISD Guidance***."

5. Heightened verification obligations -- potential relaxation for lower risk cases

We discussed the fact that ISD Guidance §5.4 currently requires a heightened, per-payment verification obligation in the case of dividends exceeding €10,000 for which relief at a rate below 15% is claimed. The heightened verification obligation includes an obligation to verify that stock in question has been held for at least 30 days and that there are no arrangements (e.g., concerning stock lending or derivatives) that could call into question the investor's entitlement to treaty relief with respect to the dividend. As we discussed, a global custodian acting in its capacity as such would typically not have in its possession information of the type needed to determine whether such arrangements are in place, nor would it be possible to identify a workable set of indicia to search for elsewhere in its organisation if it was required to try to look for such arrangements.

Given a global custodian's likely inability to carry out this verification obligation, we discussed the fact that our members would likely decide they could not pursue RAS on behalf of their customers in such cases and would instead have to claim relief at the 15% rate, thereby requiring those investors to seek the balance of the relief to which they are entitled through reclaims filed with the Finnish Tax Administration ("FTA"). This

would be potentially burdensome on both the investor and the FTA and could also reduce interest in investing in Finnish equities for such investors.

Suggestion: In order to try to reduce the number of cases where such refund claims will become necessary, we suggest trying to identify a subcategory of cases where rates below 15% could be given through RAS without significantly increasing risks for the FTA. Therefore, we recommend allowing RAS at rates below 15% where the following conditions are met (in addition to those that apply for purposes of obtaining the standard rate):

a. the shares have been acquired at least 30 days before the dividend payment date;
b. the AI has no knowledge or reason to know, based on information in its possession in the ordinary course of its operations as an intermediary [as defined above], that any arrangements are in place regarding the stock or the dividend payment (e.g., stock lending, derivatives, repo's, total return swaps) that could adversely affect the investor's eligibility for tax treaty benefits; and
c. the investor has provided the AI with a declaration at least annually that it has not engaged during the current calendar year, and has no intention to engage before the end of the next calendar year, in any transactions or arrangements with respect to the stock held in the account that would adversely affect its eligibility for tax treaty benefits with respect to dividends on that stock, including stock lending transactions, derivatives, repo's, total return swaps, or any similar arrangements, and that it would promptly notify the AI of any change in these circumstances.

For purposes of the holding period requirement, we further recommend that ISD Guidance be amended to clarify how such a requirement would apply to investors whose accounts may include shares acquired on different dates (e.g., whether the 30-day period should be measured on a FIFO or LIFO basis).

6. Heightened verification obligations -- additional documentation requirements

Section 5.2 of the ISD Guidance imposes the obligation to obtain an unspecified "documented additional explanation" to "prove [a] beneficiary's entitlement" to a benefit that differs from the general tax rate of the tax treaty. We understand this relates to investors such as governments, pension funds, charities, and international organizations, who may be eligible for preferential rates under a treaty. Without some greater guidance as to what additional documentation will satisfy this heightened requirement for these types of entities, global custodians would likely find it impossible to request RAS at the appropriate rate for the relevant investors, regardless of the size of the dividends involved, thereby triggering either a loss of benefits for those investors or a significant increase in the number of refund claims that will have to be processed.

Suggestion: In order to clarify the type of documentation that would satisfy this requirement, we recommend that the ISD Guidance include a statement indicating that "This requirement for documented additional explanation should be deemed satisfied if the AI obtains constitutive documents or public registry extracts that confirm the entity's status as one that falls within the relevant category, although such documents are not necessarily the exclusive way to satisfy this requirement."

Technical Issues to be Resolved

Form of the ISD

7. Details required for "other than a natural person"

The ISD Guidance prescribes the details required to be included in an ISD for a natural person and for "other than a natural person", but it is not clear whether the latter term includes only a "body corporate" (as suggested in ISD Guidance §3.2.1) or whether it might also include other entities (e.g., trusts, estates, partnerships).

Suggestion: Since a body corporate is generally understood to include only entities that are treated as corporations for tax purposes in their country of residence, we suggest that the ISD Guidance should include a clarification that the ISD Decision's reference in §1 to "other than a natural person" is broader than a "body corporate" and is meant to refer to all types of entities, as indicated by the list in the TRACE IP's ID-AI (i.e., Body Corporate; Government (including central bank of issue, agency or instrumentality); International Organisation; Pension Fund; Charity; Collective Investment Vehicle; Partnership (other than a collective investment vehicle); Trust (other than a collective investment vehicle, charity or pension fund); Estate; Other (please describe)). This would correspond to the reference to "company *and any other body of persons*" in Article 3(1)(a) of the OECD Model Tax Convention, and the commonly used English word for this concept would be "entity".

8. Whether beneficiaries of the entity need to be identified

Section 3.2.1 of the ISD Guidance says: "The ISD does not need to specify the beneficiaries of the entity if the entity itself is the beneficial owner as referred to in the tax treaty." This raises the question of whether the AI is required to make its own affirmative determination as to the investor's beneficial ownership in order to know whether to require the ISD to identify the beneficiaries of the investor entity.

Suggestion: In order to remove this ambiguity, we recommend that the language in §3.2.1 be revised to read as follows (additions shown in bold italic): "The ISD does not need to specify the beneficiaries of the entity if the entity ***identifies*** itself ***as*** the beneficial owner as referred to in the tax treaty***, and the AI does not know or have reason to know that this certification is unreliable, based on information in the***

AI's possession and used to verify the reliability of the ISD (as described in Section 5)."

9. Claims for rates lower than the "general" rate in the treaty

The ISD Package at various places refers to the need for the ISD to include a specific statement when the investor is claiming a preferential treaty rate on dividends that is below the general rate under the treaty, but it is inconsistent in the language it uses to describe this rate. For example, the ISD Decision §1(3) and ISD Guidance §3.2.2 indicate a specific statement needed for claims of "a tax rate lower than the general tax at source rate in the tax treaty to be applied", but the ISD Memo (page 2) distinguishes between the "general (i.e., statutory) tax rate in accordance with the applicable tax treaty" and "a lower (i.e., preferential) tax at source rate to be applied in accordance with a special article of the tax treaty".

Suggestion: In order to remove any ambiguity, we recommend revising the language at page 2 of the ISD Memo to distinguish between the "***general tax at source rate in the tax treaty to be applied***" and "a lower (i.e., preferential) tax at source rate to be applied in accordance with a special article of the tax treaty". Also, for the avoidance of doubt, it would be useful to include a statement to the effect that: "For purposes of those Finnish treaties that provide for a zero rate of withholding in all cases, the zero rate is the general tax at source rate to be applied."[3]

Period of validity of the ISD

10. Description of "governments"

Section 4 of the ISD Guidance and §2 of the ISD Decision provide that an ISD from an investor that is a "government or other public entity" will be valid until further notice.

Suggestion: We recommend replacing this language with the following: "a government ***(including a central government or a political subdivision or local authority thereof) or an agency, instrumentality, or statutory body of any such government, a central bank***". This language conforms more closely to that used in tax treaties themselves, and helpful interpretive guidance on the meaning of these terms can be found in the Commentary on the OECD Model Tax Convention.[4]

[3] This would relate to Finnish treaties such as those with Ireland and the United Kingdom.

[4] Similar language can be found in the OECD Commentary (e.g., paragraphs 50-53 of the Commentary on Article 1, paragraph 8.5 of the Commentary on Article 4, paragraph 13.2 of the Commentary on Article 10, paragraphs 7.4 and 7.5 of the Commentary on Article 11, and paragraph 14 of the Commentary on Article 29.

11. Interaction between validity period of ISD and supporting documentation

If a foreign fund claims eligibility for relief under Finnish domestic law on the basis of comparability with a Finnish investment fund and documents this with an ISD and a tax at source card (which is issued annually), the question arises under §7 of the ISD Guidance whether it must generate a new ISD each year as well.

Suggestion: We suggest a clarification be added to §7 of the ISD Guidance to say: ***"An otherwise valid ISD need not be renewed simply because the additional documented evidence, such as a tax at source card or advance ruling, is renewed during the period of validity of the ISD."***

Issues relating to AI Guidance

12. Verification that another AI is registered at the time of the dividend payment

Section 6.2 of the AI Guidance says an AI must "check that an intermediary that is submitting information through it is registered in the Registry of Authorised Intermediaries at the time of the dividend payment". For a global custodian AI who is receiving information from another intermediary that has been confirmed as having been registered as an AI when the information was provided, this nevertheless means that the first AI would have to recheck the register at the time of every single dividend payment to ensure that the second AI has not been de-registered.

Suggestion: We discussed with you the possibility of some more efficient approach (e.g., having the Finnish Tax Authority notify all AI's whenever a previously registered AI is no longer registered and allowing some brief grace period for the necessary system adjustment to be made), and we understand you are giving some thought to that. We would simply like to encourage you to adopt something along those lines.

13. Proof that a second AI has assumed responsibility for the dividends

Section 6.3 of the AI Guidance says there is no specific format for the notification one AI must receive from a second AI to show that the second AI has "assumed responsibility for the dividends", thereby releasing the first AI from liability. While we understand that you do not wish to be too prescriptive and to provide an exclusive format for such a notification, it is also important to the first AI to know there is at least one format that would be considered sufficient for this purpose.

Suggestion: We recommend an FAQ to confirm that "One manner for an AI to prove, under §6.3 of the AI Guidance, that another AI has assumed responsibility for the dividends in question is for the first AI to show that it received an appropriate intermediary declaration from the second AI (such as an ID-AI based on the TRACE IP)

along with pooled Tax Rate information and that it forwarded the information received from the second AI to the next AI in the custody chain or the payor."

14. Steps to be taken upon discovery of incorrect information from the investor

Section 6.4 of the AI Guidance suggests the AI can, if possible, correct an "error" on behalf of the dividend beneficiary without informing the Tax Administration, but must inform the Tax Administration and take other "appropriate measures" if it notices that the dividend beneficiary "intentionally gave false information or otherwise acted fraudulently" This raises the question of whether the AI must inform the Tax Administration if it is uncertain whether the incorrect information was an error or deliberate misleading by the dividend beneficiary.

Suggestion: We recommend an FAQ clarifying that: "For purposes of §6.4 of the AI Guidance, an AI shall be deemed to notice that a dividend beneficiary intentionally gave false information or otherwise acted fraudulently only if the AI knows or has reason to know that the incorrect information was the result of the dividend beneficiary's intentionally giving false information or otherwise acting fraudulently."

15. Essential errors of a Contractual Intermediary (CI)

Section 7 of the AI Guidance says an AI may be struck off the AI Register due to "essential errors" of a CI, but it provides no information as to what would be considered "essential errors".

Suggestion: Since this is an issue that would likely have to be addressed in the contractual relationship between the AI and the CI, it would be important for both parties to have some idea of what constitutes "essential errors" on the part of a CI. Accordingly, we strongly recommend that some additional guidance be issued to address this point.

16. "Tax increases" upon improper reporting or under-withholding

Section 8.2.2 of the AI Guidance indicates that a "tax increase" may be imposed in the case of improper reporting or under-withholding, but it provides no further information about this possibility.

Suggestion: The characterization of any such additional payment could be relevant to the AI's ability to recover the payment from an investor. We therefore recommend that further guidance be provided to explain more clearly the nature of this payment (e.g., as a tax increase, a penalty, or other).

* * * * *

Thank you very much for the opportunity to provide our comments on the current versions of the guidance and for your regular outreach to the intermediary community concerning developments regarding these proposals. As indicated above, we greatly appreciate your efforts to introduce a regime based on the TRACE model, and we stand ready to pursue a dialogue with you to try to resolve the ambiguities and concerns outlined above.

Please do not hesitate to contact the undersigned if you have any questions concerning the Association's comments.

Sincerely yours on behalf of the Association,

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cc: Mr. Harri Joiniemi, Ministry of Finance