

THE ASSOCIATION OF GLOBAL CUSTODIANS

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July 15, 2022

VIA E-MAIL

Lauri Havia
Finnish Tax Administration

Kalle Hirvonen
Finnish Tax Administration

Re: Feedback on Guidance Relating to Investor Self Declarations

Dear Messrs. Havia and Hirvonen,

The Association of Global Custodians (“AGC”)¹ serves as a non-partisan advocacy organization representing our members’ common interests on regulatory and market structure through interaction with legislative and regulatory authorities and financial industry organizations. We would like to thank you for this opportunity to provide comments on the updates that have been made to the ISD guidance. We very much appreciate that our discussions during the earlier part of this year have been taken into consideration as part of the revised drafting. In reviewing the document, we do have some comments we would like to share.

Section 2.2

We note that the guidance states “When verifying the reliability of the ISD, the Authorised Intermediary may evaluate the reliability of the dividend beneficiary’s certifications based on the beneficial owner concept in accordance with the most recent OECD Commentary on the Model Tax Convention”. Authorised intermediaries are in a position to check the information

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.

supplied by the dividend beneficiary in the ISD, as referred to in Section 3 of the ISD Decision. As it relates to verifying the reliability of the certification of beneficial owner, we would like to clarify that this is only possible to the extent we would be aware of any contractual or legal obligation to pass on a payment, which is not the case for third party arrangements. As such we may not necessarily have all relevant information pertaining to the investor's facts and circumstances. This is why in our comments from February 2022, we noted that the standard procedure should allow for custodians to rely on the dividend recipient's certification of beneficial owner status for any arrangement that may affect the interpretation of the tax treaty that the AI would not be a party to or aware of.

It should be noted that under Section 5. Tax Liability under the published guidance "Withholding tax at source on dividends, interest and royalties, and the payor's obligations", there is a reference under Example 15 that outlines a situation wherein neglect would be expressly attributable to the dividend beneficiary in a situation where a tax treaty did not apply due to an artificial arrangement. It provides clarity towards tax liability attributed to the dividend payor in a situation it did not participate in the planning or implementation of an arrangement or receive any information on an arrangement that resulted in the non-applicability of the tax treaty. We would request that the standard procedure for the ISD validation should refer to a similar example for the validation of the beneficial owner certifications in instances the AI is not in the possession of all relevant information pertaining to the investor's facts and circumstances that may affect the applicability of the tax treaty and/or national legislation.

Section 5.1

We welcome the adjustment to the language at the beginning of this section which now states "an ISD must be sufficiently reliably documented and consistent with the other information on the dividend beneficiary **in the possession of the AI**" with respect to requirements to verify information based on information available. This however, is not consistent throughout and will often revert back to the previous requirement "information available to the AI" which remains too broad. In addition, we would appreciate an inclusion to state "in the possession of the AI, **in their ordinary course of business**" which would capture everything we are obligated to retain under various regulations.

Section 5.2

We welcome the inclusion of the following in the guidance "The tax rate in accordance with the tax treaty can be applied only based on a valid ISD. An ISD is valid if the AI has taken reasonable measures to verify the reliability of the ISD in the manner referred to above, and

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thus **does not know or have reason to know** that the ISD is unreliable". However, this is not consistent throughout and further on in the guidance, it reverts to using the affirmative of an AI knowing or having reason to know. As such, we would respectfully ask this is adjusted in the guidance also.

The AGC Tax Committee greatly appreciates the opportunity to provide feedback on the guidance, and would be happy to meet with you to discuss our feedback or to provide any additional information that you may need.

Sincerely yours on behalf of the Association,



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