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VIA ELECTRONIC DELIVERY

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Re: Follow-up to 11 February 2022 discussion of Finland's TRACE regime

Dear Harri, Kalle, and Katja,

Further to our meeting on 11 February 2022 and your responses to our challenges and proposed solutions, our members felt it important to clarify the broad nature of the challenges being raised.

We very broadly see three core groups within the global banking community that we have categorized. This includes global banks:

1. signed up and operating a Finnish Authorised Intermediary (AI) licence in full or part;
2. that may be impacted indirectly through a Contractual Intermediary (CI) relationship;

3. irrespective of AI/CI status are not choosing to provide customers with any tax service until further clarity exists.

Our members felt it was important to highlight this important point, so that the challenges being discussed are then appropriately contextualised as member banks are considering this from different perspectives. For example, some of the questions may fall more naturally into category 1 than say category 2 or 3.

With respect to the requirements for the application of withholding tax rates lower than 15% and above the value of 10,000 EUR, we understand the challenges that you highlighted to us. Namely that in recent years there have been discoveries of inappropriate application of exempt rates for certain investors and therefore heightened verification obligations are necessary to limit the possibility of this happening in future.

The view of members is this is likely to be one of the main items that falls into category 1 above and that relief at source in such cases may remain very limited for the moment, but we would like to revisit the possibility of considering adjustments to the guidance with you at a later date.

Verification of the Investor Self Declaration

- (1) The requirement to verify information provided on the Investor Self Declaration (ISD) based on “information available to the AI” is too broad.

The AGC suggested that verification be based on information in the possession of the AI with an explanation that this means information obtained by the AI in carrying out its obligations under AML/KYC CRS, DAC2 and FATCA.

The AGC encourages the Finnish Tax Authorities (FTA) to consider clarifications to the guidance specifying that “information available to the AI” refers to “information that the AI has in its possession,” meaning information that affects the reliability of the ISD that the AI has obtained on its customers in carrying out its obligations, including FATCA, CRA/DAC2, and AML/KYC information. We also welcome specification of the information requirement where the AI enters into a CI agreement with another party, where the beneficiary is the customer of the CI.

- (2) The AI is treated as knowing or having reason to know that an ISD is unreliable if the AI or its related entity is planning, marketing, organizing, making available, or giving support or advice on, or is a party in, an arrangement that affects the reliability of the ISD. This assumes a level of knowledge on the part of an AI that is highly unlikely to exist in practice and would be impossible to achieve operationally.

The AGC suggested the FTA accept a beneficial owner's representation confirming that the income is not subject to any arrangement that may have an impact on the availability of treaty or domestic relief on a dividend payment in order to be able to process relief.

The AGC welcomes the FTA's commentary that this provision targets situations where the AI or its related entity has organized a tax evasion arrangement that abuses treaty provisions as it relates to specific dividends at issue, however, the AI is not required to check the information of its related entities. We would request that this clarification be noted in the guidance.

- (3) Custodians are unable to verify 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.

The AGC proposed that an AI should not be treated as knowing or having reason to know that the national tax evasion provision or the Principal Purpose Test Regulation would apply to deny benefits unless the AI knows or has reason to know that the ISD certification is unreliable, based on information in the AI's possession in the ordinary course of its operations as an intermediary.

The AGC welcomes the FTA's clarification that it is sufficient that the AI verify the reliability of the ISD based on information the AI has obtained on its customer and that the ISD can be deemed reliable if the AI does not know or have reason to know that the ISD is unreliable based on the information in the AI's possession. We would appreciate the amendment of the relevant sections of the guidance to include the aforementioned wording. .

- (4) The AGC requested that the FTA provide more detailed guidance on how beneficial ownership should be interpreted and allow the standard procedure for custodians to be such that they can trust the dividend recipient's certifications on the beneficial owner status without a need to perform additional confirmations.

The AGC welcomes the FTA's clarification that the term "beneficial owner" can be defined by referencing the definition in the OECD's Model Tax Treaty Commentary. We look forward to the publication of additional guidance in the spring and the inclusion of the clarification.

Annual Reporting

One practical point not previously discussed with you concerns the reporting deadlines where AIs are reporting under category 1 above. Our members appreciated the two extensions of two weeks that were offered up late in 2021.

However, for those AI member banks reporting, there is a view that the end of January as a reporting deadline is too short.

For the first reporting cycle this has led to some AIs reporting ahead of reconciliations where an upstream agent's data was not fully matched, thus requiring a post-filing reconciliation and potential amended filing, making the process less efficient than it needs to be. This is expected to become more complex as more of the banking community sign up to become AIs.

We appreciate this was the first compliance cycle but we humbly request you to reconsider reporting deadlines and extensions so this is more practical to operate by the global banking community.

Sincerely yours on behalf of the Association,

A handwritten signature in blue ink that reads "Mary C. Bennett". The signature is written in a cursive style with a large, stylized 'M' and 'B'.

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