Withholding tax in the medium term: Preparing for EU FASTER and beyond

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Len A. Lipton*
Managing Director, GlobeTax, USA

David Bolner**
Executive Director, Global Market Intelligence Tax Solutions, S&P Global, USA

Len A. Lipton

David Bolner

***Len A. Lipton**, GlobeTax Managing Director, oversees the company's global sales activities. Managing the Sales and Partnerships teams globally, Len supports the expansion of new business development channels and leads negotiations with asset managers, hedge funds and financial institution clients. He also participates in the company's product development efforts to support evolving client needs in the rapidly changing marketplace. A frequent speaker at industry seminars and withholding tax educational forums, Len has additionally served as a Director to the XBRL-US board (2008–20), as a member of the MFA Tax Committee and as GlobeTax's member representative to International Securities Association for Institutional Trade Communication (ISITC), Manager Funds Association (MFA), Securities Industry and Financial Markets Association (SIFMA) and Alternative Investment Management Association (AIMA).*

***David Bolner** is an Executive Director with S&P Global Market Intelligence Tax Solutions group. David has over 25 years' experience in tax and tax technology, as well as an extensive background in information reporting, documentation, withholding and reporting. Before joining S&P Global, David was responsible for providing clients and internal teams with information regarding regulatory changes and issues that affect tax reporting at another large tax technology solution provider. Prior to that, David spent 16 years in public accounting where he advised clients in the areas of tax information reporting and tax operations and was also involved in developing and launching tax information reporting technology solutions. Additionally, he has served as an Executive Director in the corporate tax department of a large financial institution and led tax and regulatory technology offerings at another solution provider. David received his JD from the University of Pittsburgh and earned his Bachelor's from the University of Maryland.*

Abstract

This paper examines the current state of withholding tax recovery, reviews historical efforts to streamline inefficiencies, and evaluates the opportunities and challenges presented by the upcoming implementation of European Union Faster and Safer Tax Relief of Excess Withholding Taxes (EU FASTER) in 2030. The paper explores how thoughtfully crafted technology architecture will enable custodians and asset servicers to thrive within the digitised, relief-focused and reporting-intensive framework that EU FASTER envisions. By embracing collaborative digital ecosystems and strategic partnerships, providers may better meet emerging demands for transparency, automation and regulatory alignment as these policy changes unfold. This article is also included in ***The Business & Management Collection*** *which can be accessed at https://hstalks.com/business/.*

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**GlobeTax,*
One New York Plaza – 34th Floor,
New York, NY 10004-1936,
USA
Tel: +1 212 747 9100;
E-mail: len_lipton@globetax.com

***S&P Global,*
55 Water Street,
New York, NY 10042,
USA
E-mail: david.bolner@spglobal.com

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INTRODUCTION

Withholding tax has long been an important consideration for global investors, as the high rates (approaching 50 per cent) can significantly affect portfolio performance. While double taxation treaties can reduce or eliminate the tax burden for investors, securing treaty benefits is a complex and challenging service to deliver to customers. The complexity arises from treaties, rates, reporting requirements and recovery processes that differ across markets and entity types. These divergences, physical documentation requirements and manual claim submission processes present many hurdles for investors and service providers to overcome.

Over the past several decades, multilateral initiatives such as the Organization for Economic Cooperation and Development's (OECD) Tax Relief and Compliance Enhancement (TRACE) initiative, Common Reporting Standard (CRS) and Automatic Exchange of Information (AEOI), along with the EU Code of Conduct and US Foreign Account Tax Compliance Act (FATCA), have aimed to streamline, harmonise and minimise abuses in the tax landscape. The most recent and promising regulatory effort — the European Commission's (EC) European Union Faster and Safer Relief of Excess Withholding Taxes (EU FASTER) initiative — likewise seeks to simplify, expedite and digitise withholding tax relief and recovery across the EU.

While FASTER holds promise, it also imposes substantial new reporting and compliance requirements for financial intermediaries. In the process, it transforms withholding tax recovery from a nice-to-have differentiator to a required offering. For custodians and asset servicers, this new reality underscores the importance of critically rethinking their operational and technology infrastructure.

This paper proposes a vision for financial institutions and intermediaries in a 'FASTER' world moving toward digitisation, relief at source and increased reporting responsibilities. The discussion begins with an overview of withholding tax recovery and its inherent challenges, before reviewing efforts to remediate these issues. On that foundation, the authors highlight that custodians and asset servicers should equip themselves with subject matter expertise and flexible, collaborative, comprehensive technology platforms as they seek to design tax recovery offerings that will position them for future success.

TAX RECOVERY AND ITS BENEFITS

In recent years, global foreign investment has consistently trended upward. According to the Janus Henderson Global Dividend Index, which tracks investment income from the world's largest corporations, dividend payouts surged by 45 per cent (or US$195bn) between 2020 and 2023.[1]

Despite the attractive returns from global investments, double taxation often diminishes these gains. Cross-border investors frequently experience high withholding rates on dividend and interest income from foreign shares and depositary receipts in the issuing jurisdiction. This income is typically taxed again in their home jurisdiction, further reducing returns.

To encourage cross-border investment, many countries have established double taxation treaties that allow investors to reclaim some or all the withheld tax. While statutory withholding rates can be as high as 50 per cent of dividend or interest income, treaty benefits can reduce taxable rates to 15 per cent or below for eligible entities. Tax-exempt investors such as pension funds are often entitled to full exemption or a 0 per cent withholding rate.

Securing these preferential rates is not automatic, however. Investors are required to demonstrate their eligibility by providing documentation to foreign tax authorities that verifies their residency, tax status and

investment holdings. There are three primary methods for obtaining reduced withholding rates:

- *Relief at source (RAS)*: In relief-at-source regimes, investors submit substantiating information ahead of the pay date and receive the entitled favourable tax rate at the time of income distribution. In these regimes, local sub-custodians function as the withholding agents and are responsible for applying the correct withholding tax rates. Requirements vary by jurisdiction, with some markets requiring pre-approval from tax authorities before granting relief at source. When achieved, this is often the most desirable outcome for investors and asset servicers. It provides investors with the fastest route to receiving their full entitlement and involves the lowest level of manual intervention from the custodian(s) and intermediaries.
- *Quick refund (QR)*: If an investor initially receives the statutory rate, they can submit the necessary documentation to the local sub-custodian or withholding agent to reclaim overpaid taxes within several weeks of the payment date. As with RAS, QR is driven by local withholding agents, who are responsible for evaluating claim quality before granting favourable tax rates. If satisfied, they can issue a QR prior to remitting the withholding to their tax authority.
- *Post-payable (long-form) reclaim (LF)*: Investors who receive the statutory rate may file a 'long form' claim to recover the excess withheld tax. The time to do so varies by market but is typically between 2–7 years. The opportunity is lost if not filed within the applicable statute of limitations. Although this method is the slowest, with recovery times generally ranging from 9–18 months, it offers an opportunity to reclaim multiple years of excess withheld taxes. Post-payable reclaims also provide a backstop to investors who miss RAS or QR windows, which can happen for many reasons.

As an example, Table 1 compiled by GlobeTax compares tax rates and statutes of

Table 1: Rates and SOL for US resident investors in common investment jurisdictions[2]

Country examples	*Available processes*	*Statutory withholding rate*	*Treaty rate:* taxable investors	*Treaty rate:* pensions	*Statute of limitations*
Belgium	RAS QR LF	30%	15%	0%	4 years
Canada	RAS LF	25%	15%	0%	2 years*
France	RAS LF	25%	15%	15%	2 years
Ireland	RAS QR LF	25%	0%	0%	4 years
Japan	RAS	15.315%	10%	0%	5 years
Switzerland	LF	35%	15%	0%	3 years

*Standard Canadian SOL is two years. US residents can appeal to qualify for a SOL of up to six years

limitations (SOL) for US-based taxable and tax-exempt entities within several common investment jurisdictions.

GlobeTax internal analyses suggest that comprehensive tax recovery can add nearly 30 basis points to investor portfolio performance annually.[3] Due to their tax-exempt status, qualified pensions can achieve closer to 70 basis points each year. Recovered entitlements are often reinvested, enhancing investment returns and providing fund managers with a competitive edge in performance. Moreover, tax recovery is not merely an added benefit but, in many cases, a critical requirement. For tax-exempt entities such as pension funds and trusts, fully optimising returns through every available channel is commonly considered a fiduciary responsibility.

THE HURDLES OF TAX RECOVERY

Despite the benefits, withholding tax recovery poses challenges for stakeholders throughout the custody chain. These difficulties stem in part from the 3,000+ double taxation treaties in effect, each of which stipulates a different set of rates, rules and administrative procedures, in many languages. These requirements are also subject to change, often without warning. By requiring evidence such as physical certificates of residency and transaction details, tax authorities seek to ensure that only entitled investors are granted benefits and investments are made for valid economic reasons.

While nearly every country requires a tax residency certificate to substantiate claims, securing those forms from the claimant's domestic taxing authority can be arduous. Only a small handful of tax authorities accept e-signatures or digital forms, so procurement and submission of physical copies add significant inefficiency to the claim process. In the US, for instance, obtaining an official Certificate of Tax Residency (Form 6166) from the IRS takes about 3–4 months. Providing another layer of challenge, the taxpayer's name on the certificate of residency must match precisely the claimant's name on the reclaim application. Moreover, remediating errors can add further time and expense to the process.

Compounding matters, evidentiary requirements have increased in response to coordinated fraud and multi-billion-dollar dividend arbitrage scandals in several European states. Such schemes include fraudulent claim activities in Denmark and the so-called cum-ex and cum-cum transactions in Germany.[4] To protect their treasuries, some tax authorities are seeking greater transparency into the trading strategies of investors, including requiring information about the date of purchase, the date the position was sold, a minimum economic interest in the dividend income, and disclosure of any related derivative transactions such as stock lending or swaps on the positions.

The new requirements also add new challenges in the form of accounting, documentation and client attestations that custodians now need to demonstrate holding periods and transaction legitimacy. Whereas previously investors may only have needed to hold a long position on the record date to file a claim, asset servicers must now systematically account for accumulative buys and sells to represent what positions meet holding period requirements and are net of stock lending transactions. Monitoring and adapting to this landscape brings added costs in the form of research, staffing to support client applications and technology to manage the data and documentation.

Investors, custodians and asset servicers are not the only ones grappling with the intensive recovery processes; governments and national business environments are affected as well. Complex submission requirements force governments to maintain sizeable bureaucracies to process large backlogs of reclaims. Excess withholding taxes also impose barriers on economies looking to

attract foreign investment and limit domestic companies' ability to raise capital to support business growth. High withholding tax rates put companies at a disadvantage to comparable investment opportunities in their home market, particularly when tax relief is difficult to achieve. Reduced appetite from foreign buyers results in lower share prices and limits tax revenue from capital gains and financial transactions taxes (FTT).

Considering the level of difficulty for each of the stakeholders across the custody chain, there is broad agreement about the need to make the process more efficient for investors and financial intermediaries while protecting tax authorities from fraud.

HISTORICAL AND CURRENT ATTEMPTS AT REMEDIATION

Over the years, various initiatives have aimed to address inefficiencies and encourage investment by harmonising, digitising and streamlining the cross-border withholding tax recovery process. The movement toward standardisation began in 1963 when the OECD introduced a model template for nations drafting bilateral tax treaties. Although not legally binding, this template became the standard for countries entering double taxation agreements.

In the 1990s, the Giovannini Group, an advisory body to the EC, was tasked with identifying barriers to an integrated Capital Markets Union and recommending technical standards, market conventions and policy reforms to resolve the issues. Withholding tax was one of the 15 barriers identified that hindered the efficient functioning of the single European market. In response, the EC issued recommendations in 2009 urging member states to reduce the costs and compliance burdens associated with RAS mechanisms.

In the US, the FATCA was enacted in 2010 to combat tax evasion by US taxpayers holding assets outside the country. The law requires foreign financial institutions to report details about US account holders directly to the Inland Revenue Service (IRS) or a local tax authority. Failure to report obliges financial institutions to apply a 30 per cent withholding tax and other financial penalties to the account.

Globalising the framework, in 2014, the OECD developed the CRS to promote cross-border tax transparency, requiring participating countries to automatically report financial information on residents of other member nations under the AEOI framework. These models were developed in the same era as the EU's Tax Barriers Business Advisory Group (T-BAG) and the TRACE initiative. To minimise tax abuse while promoting market efficiency, these programmes advocated RAS regimes and authorised intermediary models, deputising financial institutions to serve as key agents of withholding and communication.

Despite the promise of these initiatives, progress toward harmonisation was frequently stalled by the non-participation of individual nations. Incidentally, however, the COVID-19 pandemic appears to have accelerated reform efforts. As businesses and government agencies worldwide closed in March 2020, several countries began digitising parts of the tax relief process and allowing e-signatures, driven by the necessity of remote operations that made handling physical documents impractical. While the movement toward accepting digital copies has largely held, it has been slowed in some instances by countries weighing the legality of accepting digital copies of official documents.

In parallel with these developments, the EC prepared a unified EU-wide framework to standardise and simplify withholding tax rules and procedures. As part of this initiative, referred to as FASTER, the EC launched a public consultation in 2022 to promote fair taxation, combat tax fraud and better facilitate cross-border investment. The FASTER

regime seeks to streamline and automate tax recovery processes by embracing digitisation and reducing the administrative burdens, delays and costs associated with tax relief. The framework is built on several key pillars:

(1) *Availability of RAS or QR*: Many European jurisdictions currently only offer LF processes. FASTER mandates that qualifying members of the 28 EU markets implement either a RAS or QR regime, which would, in turn, minimise the need for standard reclaim procedures. Notably, member states with a comprehensive RAS solution and a market capitalisation ratio below 1.5 per cent are permitted to retain their existing reclaim procedures, reflecting a pragmatic approach that aims to focus reform on the highest-volume markets.
(2) *Digital tax residency certificates (eCORs)*: FASTER will introduce a common EU digital tax residency certificate (eTRC) across EU member states and require automated processes to issue digital certificates. These digital certificates would replace traditional paper-based certificates of residency (CORs) and/or the requirement that the claimant's local tax authority certify individual claims before lodging them in the foreign jurisdiction. These changes aim to offer real-time verification of residency status across the EU, enhancing efficiency and reducing administrative burdens.
(3) *Certified financial intermediaries (CFIs)*: The FASTER regime depends on the cooperation of banks, custodians, financial institutions and investment platforms, requiring the largest of them to register as CFIs. These institutions are effectively deputised to provide accurate and timely information to tax authorities to ensure correct withholding tax rates are applied, especially for the RAS mechanism. While registration is mandatory for large European institutions, smaller and non-EU entities may participate voluntarily. It remains to be seen, however, how many financial institutions will become CFIs. In assuming the role, organisations will potentially need to accept higher levels of liability to file withholding tax applications. To avoid that risk, many organisations may initially decline to become a CFI and instead accept the statutory withholding rate. Alternatively, they may become a CFI in some markets and not others, depending on where their clients invest.
(4) *Standardised reporting obligations*: Under FASTER, CFIs must adhere to standardised and harmonised reporting formats across the EU. Reporting will occur via secure digital platforms, enhancing cooperation between financial institutions and tax authorities. Member states will be granted the discretion to request more extensive reporting to detect tax abuse or fraud. Such flexibility is designed to ensure consistency while also accommodating national needs.

Despite the potential improvements, the path to FASTER's adoption has not been straightforward. Elements of the plan were originally part of the EC's 'Communication on Business Taxation for the 21st Century'[5] and the EC's '2020 Action Plan on the Capital Markets Union'.[6] Following a 2021 roadmap and public consultations, the formal FASTER proposal was introduced in mid-2023. Political agreement among the Council of the EU was reached in May 2024, and the compromise text, revised by the European Parliament, was formally adopted by the Council on 10th December, 2024. The text was published in the EU's official journal on 10th January, 2025.[7] Now, member states are granted until 31st December, 2028 to incorporate the directive into national law. Implementation is set to begin on 1st January, 2030.

Although FASTER has the potential to revolutionise tax processes in the longer term, its implementation presents challenges in the medium term. Building and maintaining the necessary technological infrastructure for residency certification and reporting will demand substantial investment from CFIs and governments. This paper thus offers recommendations for providers transitioning to the directive's digital, relief-driven and reporting-intensive requirements.

HOW SHOULD CUSTODIANS AND ASSET SERVICERS PREPARE FOR THE FUTURE?

The upcoming implementation of EU FASTER signals a paradigm shift in withholding tax processes, compelling custodians and asset servicers to reassess their operational and technology frameworks. These changes, however, are not the only demands facing providers. As Ankush Zutshi, Managing Director at S&P Global Market Intelligence, highlighted in his February 2024 *JSOC* paper 'Winning with customers: Achieving differentiation in custody and asset servicing',[8] the custody and asset servicing landscape is already facing immense pressure. In addition to navigating increasing competition, market consolidation and the commoditisation of core services, providers must also navigate new client demands. Zutshi observes that customers increasingly expect seamless, centralised platforms that provide instant access to data across multiple markets and asset classes, as well as customisable reporting capabilities.

Adapting to these client and regulatory demands requires custodians to shift away from isolated systems and toward collaborative, technology-driven ecosystems. This means replacing outdated infrastructure with open application programming interface (API)-enabled platforms that integrate seamlessly with third-party tools and service providers. The ultimate goal is to create standardised workflows that eliminate reliance on fragmented processes such as portals, spreadsheets and e-mails, which currently dominate many asset servicing operations.

The US experience with FATCA and CRS offers valuable lessons for this transition. Both regimes required institutions to streamline tax documentation, establish eligibility protocols and automate information exchange. These same principles can be leveraged and expanded upon to meet FASTER's requirements. Translatable lessons include:

- *Documentation*: Many regulations require initial documentation of the investor/client/payee, which involves collecting, reviewing and validating each tax form. Documentation solutions that have proven effective for FATCA and CRS compliance can be leveraged to improve reclaim and RAS efficiencies, including rules engines developed to comply with those regimes and support the procurement of W-8 or W-9 forms. These technologies can be expanded to digitally collect and validate forms for FASTER's RAS and reclaim procedures.
- *Eligibility and withholding*: After tax forms are digitally collected, this information can be merged with client transaction data to identify refund opportunities and apply appropriate rates. Existing tax payment solutions can be expanded to improve compliance and identify refund opportunities ahead of the implementation of FASTER.
- *Filing*: Once the reclaim opportunity is identified and the entitled tax rate is determined, a submission to the appropriate tax authority is needed. The current reporting and tracking solutions can be expanded to facilitate a more efficient process for FASTER and reclaims in general.

While these measures represent steps in the right direction, the complexity of FASTER requires custodians to enhance their capabilities further to standardise data and address complex transactions. Adopting data standardisation, particularly ISO 20022,[9] is recommended to streamline communication and processing. Industry players are wary, however, as organisations such as SWIFT have not traditionally played a significant role in taxation. To accommodate diverse delivery mechanisms, agnostic formats such as extensible markup language (XML) within International Standards Organization (ISO) frameworks will be essential.

Custodians will also need to address challenges related to transaction transparency. Determining the true record date position requires reconciling related transactions such as stock loans, repos and swaps. Particular challenges include:

- *Cross-custodian transactions*: A beneficial owner's long position with one custodian might be offset by a short position elsewhere, complicating accurate reporting. Custodians must engage beneficial owners to confirm they have no counter-positions.
- *Internal oversight*: Custodians will need systems to track and reconcile all buys, sells and related transactions to verify true long positions for tax reclaims. In Germany, for instance, positions are calculated using first-in, first-out (FIFO) accounting within a broker, but reconciling cross-broker transactions is not standard.

Custodians and asset servicers will face additional challenges in navigating jurisdictional nuances, as it is unclear how the markets will adapt to the new requirements. For instance, FASTER introduces a five-day required holding period for favourable claims, which is significantly shorter than Germany's current 45-day window for exempt claims. All EU countries will need to assess their own processes against the directive and incorporate any changes in their local laws to adapt.

If asset servicers and custodians find themselves overwhelmed by navigating and systematising the complexities and changes, engaging specialists to support withholding tax recovery remains an option. By leveraging third-party expertise with global tax knowledge and interoperable systems, financial institutions can reduce risk and operational burdens while maximising their withholding tax offering and, by extension, client portfolio performance. This approach potentially helps address current tax requirements while preparing for future regulatory changes, providing a more efficient and streamlined experience for both institutions and their clients.

CONCLUSION

The evolving landscape of cross-border withholding tax recovery presents custodians and asset servicers with both challenges and opportunities. While EU FASTER aims to streamline tax processes and enhance market efficiency, its implementation will test the adaptability of financial institutions.

Compliance with FASTER will require a shift in approach to one that prioritises partnerships and leverages specialised tools rather than relying solely on internal resources. By embracing collaborative ecosystems, standardised data protocols and advanced automation, custodians can not only navigate the complexities of FASTER but also position themselves for long-term success.

Ultimately, this moment is not just about meeting regulatory requirements but transforming operations to deliver greater value to clients. Companies that invest in scalable, interoperable solutions will be better equipped to manage regulatory demands, optimise reclaim opportunities and maintain their competitive edge in an increasingly commoditised market. The road ahead is

demanding, but with the right strategies, it offers the potential to redefine excellence in asset servicing.

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