



From the beginning of this year, Finland is the first in the world to adopt the so-called OECD TRACE -model concerning the **withholding taxation of dividends paid to nominee registered shares**. Primarily, this is a matter concerning **dividends paid from Finland to foreign shareholders**. The treaty benefit (treaty relief at source) still be granted at the time of payment of the dividend, but under much stricter conditions.

In practice, the reform seems to have the effect that **often a greater amount of tax is withheld from foreign shareholders' dividend income**. It can take years to get this refunded. **The tax treatment of the shareholders may also increasingly vary** in the future depending on the activity of the custodian bank and the issuers.

The Issuers

- With the TRACE -model, the primary liability for the correct amount of withholding tax is passed from Finnish issuers to foreign registered custodians (the so-called Authorized intermediaries, AI). From the issuers' point of view, this is justified as in practice listed companies do not have any possibilities to clarify the dividend beneficiaries. In practice, companies have already had to rely on the information received from the custody chain.
- **Issuers' concern** is that if foreign investors are more often forced to reclaim withholding taxes in a years-long refund process (currently 2–3 years). Question being, will this affect the willingness to invest in Finnish shares and/or affect the value of Finnish companies? Being a matter of the functioning and attractiveness of the Finnish capital markets.
- **The issuers can affect the shareholders' tax treatment with certain measures**, and thus, increase the return on shares. Tools available include e.g. alternative profit distribution methods / structures and/or assuming tax liability e.g. for a specific group of shareholders (large investor country etc).

The Custodians

- With TRACE, foreign custodians must consider 1) whether they want to register in Finland as so-called authorized intermediaries and 2) if they register, whether they are able to provide sufficient information as specified by the Tax Administration, and whether they are able to examine and identify whether the dividend recipient is the beneficial owner and thus entitled to a treaty benefit, being the lower withholding tax amount. The custodians face the risk of potential tax liability, if they do not ensure the above before confirming the treaty benefits.
- **Deloitte is currently assisting several foreign intermediaries. In particular, they are considering what changes TRACE would require in their existing systems and processes and whether they are willing to make these changes just for the sake of the Finnish market.** Atmosphere is that there would be more willingness to make changes if the model was more widely used.
- At least one operator has publicly announced that it will cease trading in Finnish shares altogether due to legislative changes: <https://www.arvopaperi.fi/uutiset/hollantilainen-halpavalittaja-lopettaa-suomi-osakkeiden-kaupankaynnin-suomalaisasiakkailta/9367ec62-60c4-45be-9e53-16270d7cae66>.
- **Given the requirement that granting the tax treaty benefits have, in particular, the level of detailed information required, many custodians seem to be taking the view that they are directing number of cases directly to the withholding tax refund process, even if they were registered in the Register of Authorized Intermediaries.** This means, as indicated, that the foreign shareholders yield / cash flow on the Finnish shares will be lower. The various parties (custodians, issuers and the Tax Administration) seem to share the view that the number of withholding tax refund applications will increase.

The Foreign Investors

- From the foreign investors point of view it naturally is particularly crucial **how quickly a treaty relief can be granted** (at the time of payment of the dividend or in the years-long refund process).
- If, for example, there is a French investor (0 % withholding tax on dividends according to the tax treaty) and the treaty benefit cannot be granted at the time of payment of the dividend, the dividend is subject to a 35 % withholding tax. Therefore, the question is how long that 35 % of the dividend is held by the Finnish tax authorities.
- At worst, even temporary “over-withholding” can lead to a decreased interest in a Finnish company's share from the perspective of foreign investors.
- **The business community still has the opportunity to influence the activities of the Tax Administration, at least in such a way as to make the withholding tax refund process as efficient as possible.**
- **Further, the issuers will likely face situations / questions whereby different foreign shareholders have increasingly different tax treatment, regarding how the custodians are approaching this topic.**

The Tax Administration

- The Tax Administration's objective is to safeguard Finland's tax base in such a way that treaty benefits are not granted incorrectly.
- The Register of Authorized Intermediaries was published on 1 January 2021. At the moment, there are still relatively few operators in the register. <https://www.vero.fi/en/businesses-and-corporations/about-corporate-taxes/financial-sector/register-of-authorized-intermediaries/public-register-of-authorized-intermediaries/>.
- The increase in the amount of withholding tax refund applications requires a functional and smooth withholding tax refund process from the Tax Administration. Currently, the refund process takes 2–3 years for a basic application. A swift process is also in the interest of the Finnish Tax Administration and the state, since interest must be paid on the refunded withholding tax.