

## THE ASSOCIATION OF GLOBAL CUSTODIANS

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### VIA E-MAIL

Harri Joiniemi  
Ministerial Advisor  
Ministry of Finance

**Re: Feedback on Consultation on the need to improve the TRACE model  
for dividend payments to nominee-registered shares**

Dear Mr. Joiniemi,

The Association of Global Custodians (“AGC”)<sup>1</sup> 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 respond to the consultation requesting stakeholders’ comments on their experiences and views on the TRACE model implemented in 2021. As directed by the consultation document, we have taken the FASTER Directive adopted by the EU in May 2024 into account. In addition, we appreciate the unofficial English translation of the consultation document that you provided to us.

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<sup>1</sup> 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.

The AGC very much appreciates the Ministry of Finance and the Finnish Tax Administration's ongoing willingness to engage with stakeholders, consider feedback on the TRACE model and related guidance, and provide clarification. Some AGC members act as Authorized Intermediaries ("AIs") under TRACE, while other members act as Contractual Intermediaries ("CIs"). Therefore, we provide comments that represent the interests of both AIs and CIs in this letter.

In this letter, we provide feedback on the following topics: (1) operational matters relating to TRACE and (2) technical tax matters relating to TRACE. In our comments, and to the extent relevant, we have included our feedback on considerations that should be taken into account in the coordination of TRACE and the FASTER Directive.

### **Operational Matters**

#### **Consider changes to the system for AI registration**

Financial institutions looking to register as an AI require an individual to act as a contact person for that entity. That person is required to demonstrate several layers of authority proving they are authorized to act in such a capacity, and this must be done via a government portal. In addition, this requires 2-factor authentication, which necessitates an app being added to the person's mobile phone. This will create login issues, etc, when changes in authorized personnel occur.

We recommend that alternative methodologies are considered to authorize personnel to act on behalf of an AI.

#### **Formatting and other errors result in delays; consider upgrading FTA systems**

We understand that the FTA's systems review data and compare it against those that are provided by AIs. However, the FTA's system is currently not sophisticated enough to remove formatting issues, such as spaces or dashes in tax identification numbers. Therefore, any discrepancy in formatting between data sets is being treated as an error requiring further investigation. This causes delays and uses resources that could otherwise be spent on more pertinent issues.

We recommend that the FTA upgrade its systems to be able to deal with this and similar issues so that fewer "false flags" are identified and investigated.

#### **Considering providing additional time for quick refunds on Q4 dividends**

There is a short remittance period following the end of a calendar year for issuers to pay taxes to the FTA. We understand that the remittance deadline falls between the middle and end of January in the year following the dividend payment. As such, there is little

time to process quick refunds for payments made close to the end of the calendar year, particularly where enhanced due diligence or transactional monitoring is required. This, therefore, makes it operationally impractical for custodians to support quick refunds on Finnish dividend payments made in Q4 of any given calendar year, increasing the volume of standard reclaim applications and the time taken for investors to receive relief.

We recommend that additional time is given for remittance of tax withheld by Finnish withholding agents to allow additional time for quick refunds on dividend payments made in Q4.

#### Consider modifying the reporting regime

We note that, currently, Finnish TRACE allows for a CI regime, where the CI provides the information necessary for the financial intermediary to report directly to the Finnish Tax Authorities. FASTER allows each member state to choose direct reporting where each intermediary reports directly to the source country authorities or chain reporting similar to that proposed under the German Modernization Act. In our view, the existing TRACE system works well where a CI provides the information necessary to its subcustodian, who acts as an AI and reports that information to the Finnish Tax Authorities and we do not believe that Finland should change that approach.

#### Changes may be needed to align documentation with FASTER

We note that the new reporting regime for FASTER is likely to differ from that of existing regimes, and that the European Commission has not guaranteed that reporting will occur on a single platform or in a single format.

Consistency in reporting is beneficial to governments, custodians, and investors alike. Therefore, we recommend that, when considering the coordination of TRACE with FASTER, Finland should take into account the documentation needed under FASTER (including declarations, reporting obligations for CFIs, and the standard forms for relief at source and quick refund processes). We recommend that all markets use the same template forms for such documentation. In addition, we believe that a common portal to receive and process requests for eTRCs would be beneficial.

### **Technical Tax Matters**

#### Consider defining "beneficial ownership"

Under Finnish TRACE, AIs and CIs must collect an ISD where the investor confirms that they are the beneficial owner of the Finnish assets. While the AI/CI must verify statements made on the ISD (for example, against information collected as part of the AML/KYC process), the FTA has provided guidance that information provided on the ISD with

respect to beneficial ownership can be relied on. Currently, Finland does not define beneficial ownership. When contemplating FASTER requirements, Finland can choose to continue including a beneficial ownership statement on the ISD. If Finland chooses to continue including a beneficial ownership statement on the ISD, then we request that the FTA provide a definition for the term "beneficial ownership." If beneficial ownership is defined, guidance should be issued instructing AIs and CIs how to verify beneficial ownership. Alternatively, Finland could exclude the beneficial ownership statement from the ISD, in which case, a definition of beneficial ownership would not be required. Either option is administrable, but we strongly urge the FTA not to retain the current approach, whereby investors are requested to make a statement of beneficial ownership without having a definition to rely on.

Additional specificity about the types of information that can be used to verify entitlement for withholding tax rates would be helpful

It would be helpful if the FTA's guidance provided AIs with more specificity about the types of information that they can use to verify an investor's entitlement to a particular withholding tax rate. This guidance should take into account the types of information that AIs already have on hand in the ordinary course of their business operations. This request takes on increased importance as Finland considers aligning TRACE with the FASTER Directive, as FASTER will lead to a significant increase in the volume of documents and data that AGC members will need to monitor and collect from their clients. These documents and data will come from multiple sources, including clients, external counterparties (such as brokers and intermediaries) and other internal departments within AGC members' own organizations. As a result, enhanced coordination across departments to streamline the flow and storage of information will become necessary.

Consider relaxing the heightened verification obligations (for Relief At Source and Quick Refund <15%) for low risk cases

There are heightened verification obligations that apply when filing Relief at Source and quick refund claims where the withholding rate is less than 15%. These requirements include determining whether there are arrangements related to share ownership or derivatives are linked to the dividend payment. Typically, a global custodian would 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 organization if it was required to try to look for such arrangements. Therefore most custodians do not pursue RAS on behalf of their customers in such cases and instead provide a standard reclaim service at the 15% rate.

We believe that there are low-risk cases where the government and investors would benefit from a RAS approach, and recommend that Finland identify a category of cases where a withholding rate less than 15% could be applied through RAS, without

significantly increasing risks for the FTA. We propose that the FTA publish a list of such cases where RAS could be used.

Representations regarding whether the income is subject to an arrangement that has an impact on the availability of treaty or domestic relief; consider defining "arrangement"

Under Finnish TRACE, an investor must represent on the ISD 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. Als/CIs may rely on such representations, unless the AI/CI is involved in such arrangement. FASTER defers to each Member State to determine whether to seek such representation from the investor. Regardless of whether Finland decides to continue implementing the requirement to provide such representation, we recommend that the Ministry of Finance and the FTA consider defining such arrangements.

Consider incorporating FASTER's approach to providing exceptions from the relief at source model

In the current environment, most custodians choose to only offer a 15% withholding tax rate at source in Finland. Where investors are eligible for a lower withholding tax rate, either via a tax treaty or local law exemption, a reclaim must be filed with the FTA. In order to facilitate a withholding tax rate that is lower than 15%, Als/CIs must perform a per payment verification of information provided by the investor to substantiate their eligibility for the lower rate. A holding period requirement also applies in such cases. In our experience, verifying eligibility on a per-payment basis is onerous.

Although the FTA may have intended to use this approach to identify high risk situations, we propose that the per-payment verification requirement should be eliminated. If desired, Finland may replace it with an annual or one-time verification requirement. We also note that FASTER provides for a more direct approach by allowing each member state to choose from a list of exceptions to relief at source. Although FASTER also prescribes a holding period requirement, it does not mandate a per payment verification for rates that are below 15%. To reduce the burdens imposed by the per-payment verification requirement, Finland may wish to consider introducing specific exceptions to relief at source, consistent with the exceptions prescribed by FASTER, to address situations that Finland deems to be high risk.

Additional guidance on the liabilities of Contractual Intermediaries is needed

At present, the liability arrangements between Contractual Intermediaries have been left undefined by the Ministry of Finance and the FTA. This uncertainty has led to the custodial market becoming wary of providing relief-at-source and quick refund services to other Contractual Intermediaries. This has increased the amount of standard reclaims being submitted to the FTA.

We recommend that the Ministry of Finance and the FTA provide additional guidance to the market on where, and to what extent, liabilities arise in relation to custody tax services provided between Contractual Intermediaries.

Finally, we note that the liability imposed under TRACE and on CFIs pursuant to FASTER are not consistent. We suggest that the liability imposed on custodians under both TRACE and FASTER should be harmonized, and the liability should be proportionate to the custodian's activity and information available to it. In no case should a custodian be liable for under-withholding or inaccurate withholding if the custodian did not know or have reason to know of the facts that gave rise to the incorrect withholding.

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

Sincerely yours on behalf of the Association,



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