

WHAT IS NEW IN TAX-AT-SOURCE ON DIVIDENDS, WEBINAR 18TH OF DECEMBER 2018

QUESTIONS & ANSWERS

Updated instructions for filling in application form 6163e

Q1: If the application contains dozens of dividend batches, is it sufficient to provide as a "voucher" one list of the batches signed by the custodian bank or do you require a separate receipt for each dividend batch?

A: Yes, it is sufficient to provide a voucher as a list of the dividend payments, signed and stamped by the custodian.

Q2: As representative of the ADR Depository Banks we would not be able to issue a tax voucher to the final beneficial owner as we are not the entity that paid them. May we string together tax vouchers to achieve the same end? For instance we provide a voucher for the DTC Participant and the DTC Participant provide one for the beneficiary?

A: If your application concerns dividend income paid on the basis a depository receipt, you should enclose a free format explanation of this to your application. The applicant in this case is the holder of the depository receipt, not the depository bank issuing the receipts.

The applicant needs to provide some sort of proof of dividend payment. If necessary, the applicant can also provide a string of tax vouchers. It is however important that you attach at least a voucher addressed to the applicant, and answer in detail points 5.1 and 5.16 on form 6163e.

Q3: Regarding the dividend vouchers as mandatory attachments to the 6163 form, how do the FTA treat the WHT reclaims submitted before 17 December (when the instructions were changed)?

A: The Tax Administration may ask you to present vouchers or/and a full audit trail from the payor to the final beneficiary. The instructions were first updated on the 14th of December 2018.

Q4: For expiring claims for which we currently do not have vouchers can we submit what we have now to stop the clock and follow up with vouchers upon request?

A: For expiring claims, the only mandatory thing to send in for the application to be considered is the application form 6163e. You should however specify which dividends (and payment year) the application concerns. You can then send in supplementing documentation such as vouchers or a certificate of residence (COR) later.

When sending supplementing documentation, it is best to send it directly to our office instead of our scanning services. Please send supplementing documentation to: Southern Finland Corporate Tax Office/International taxation, P.O. Box 30, 00052 VERO, FINLAND.

Also, when supplementing an application, please attach some sort of cover letter specifying to which application (i.e. applicant, TIN, when the application was sent) the documentation should be attached to.

Q5: The details mentioned in how to fill out the form - Forms 6163e and Enclosure 6167e "You may apply for a refund during the three calendar years that follow the year of payment and withholding." Could you please confirm the effective date of the same.

A: The new three year deadline is first applied on dividends paid in 2017. Please check [this](#) news story on the issue.

Q6: Would you mind specifying when the updated instructions for filling in application form 6163e and enclosure 6167e were published?

A: The updated instructions were published on tax.fi on Friday the 14th of December 2018, with some minor style issues updated on the 17th of December 2018. The changes to the instructions were gone through in the first part of the webinar, so make sure to go back to the material, [here](#).

New form 6211e for tax-at-source card applications

Q7: Could you please give us concrete examples of cases where a tax-at-source card was (and will be) granted?

A: Applications for both refunds and tax-at-source cards are processed on a case-by-case basis and therefore, we are unable to provide examples of the types of entities that have received such decisions. There are however, a few articles and guidance we have published that can give you an idea of some relevant issues:

[Taxation of dividends received by foreign entities offering statutory pension insurance](#)

[Payments of dividends, interest and royalties to nonresidents](#)

[Impact of EU Law on the taxes withheld at source when dividends are paid](#)

[Ruling of the Supreme Administrative Court on the taxes withheld at source on dividends paid to a foreign life insurance company](#)

Q8: Did (and will) it concern, for instance, foreign pension funds comparable to Finnish pension funds and willing to apply for a reduced tax rate on dividends under domestic tax legislation? If yes, do you have other examples?

A: Any type of applicant is entitled to apply for a tax-at-source card, e.g. in this case whether the applicant could be found comparable to a Finnish pension insurance institution. However, we would like to stress that Finnish pension institutions are not exempted from income taxation under law; Finnish pension institutions may however deduct the expenses, calculated by actuarial principles, necessary for the coverage of their liability to pay out pension benefits as agreed. Deduction rights have been extended to foreign pension insurance institutions in accordance with EU law.

The deduction calculation is based on the institution's financial statements. The foreign entity normally cannot collect all the details required by Finnish law by the date when dividends are paid,

or not even by the end of that year. This means that for such institutions a tax-at-source card could not be applied at source during the year of payment. Therefore, such institutions would essentially always apply for a refund instead of a tax-at-source card.

There are some exceptions, including Dutch, United States and Spanish pension funds or systems, which are under certain conditions tax exempt according to bilateral tax treaties. Furthermore, the above deduction principle does not apply to applicants seeking comparability with Keva (the municipal pension insurance institution), Kela (the social insurance institution of Finland) or VER (the state pension fund of Finland).

Please check the detailed instructions regarding foreign entities offering statutory pension insurance here:

[Taxation of dividends received by foreign entities offering statutory pension insurance](#)

Q9: Do you have notably examples of foreign investors which previously obtained a positive tax at source refund decision from your office and would now apply on this basis (there have been no changes to the circumstances described in earlier applications) for a tax-at-source card? Do you have any other examples to share?

A: Please see the response above (question 7).

Q10: Could you please confirm that this tax-at-source card is not MANDATORILY required by your office, only recommended in cases where the foreign investors have a doubt on whether they may or not benefit from reduced tax rates or exemption at source in Finland on their dividends/interest income? In other words, there have been no changes to the tax relief procedure, notably as to the documentation requirements AND Finnish tax payers must not MANDATORILY require such tax at source card from foreign investors when applying for a tax relief regardless of the grounds (DTT, EU Law or domestic legislation/rules)?

A: The same procedures for at-source benefits remain, the tax-at-source card as you say, is mainly for unclear cases e.g. if it is unclear if treaty benefits can be provided, whether the beneficiary is a corporate entity, etc. The largest group of clients taking advantage of the tax-at-source card are those corporate entities that could be found comparable to Finnish tax exempt entities and could therefore potentially receive a 0% tax-at-source card based on EU law. However, it is very common for applicants to have a previous positive refund decision and then apply for a tax-at-source card.

Q11: In the U.S. we could not get a COR until February the earliest, is there a consideration whereby we can use a 2018 at source card for events paid through say 03/31/2019?

A: Tax-at-source cards are valid only for the period for which the card has been issued (the period can be found from the tax card). For example, if you have a tax-at-source card for the calendar year 2018, this can only be applied to dividends paid between the 1st of January 2018 and the 31st of December 2018.

If the application is based on the tax treaty between Finland and your country of residence, then the certificate of residence needs to be for the year in question. For example, if applying for a tax-at-source card for 2019, the COR should be for the year 2019 (or at least issued in 2019). However, in cases where the application is based on EU law, a COR from the previous year would be accepted.

For example, if you wish to apply for a 2019 tax-at-source card based on EU law, a COR for 2018 would be accepted.

Update on potential legislative change: nominee registered shares

Note. As stated during the webinar, the Finnish Tax Administration is not a competent authority at the moment, as the law has not yet been passed and put into force. We have estimated that we might get the competent authority status around April or May. Then we will host a webinar in English where we will go through the new regime step by step.

You can keep yourself up-to-date by following our recently launched site for the Financial Sector: <https://www.vero.fi/en/businesses-and-corporations/about-corporate-taxes/financial-sector/> or by subscribing to our newsletter for the financial sector: <http://verohallinto-konserniverokeskus-ja-finanssiala.mailpv.net/>.

If at this point you have questions regarding the potential legislative change, please contact the Ministry of Finance. The contact details for the Ministry of Finance are available on the proposal's page on the ministry's website (only available in Finnish): <https://vm.fi/hanke?tunnus=VM083:00/2017>

Q12: Regarding the potential legislative change regarding nominee-registered shares:

1) What would be the effective date of the new regime?

A: If passed, the legislation would come into force around April/May 2019. However, the legislation would be implemented first on dividends paid in 2021. For annual information returns, this means that the regime would first be applied to reporting in 2022. As for the part of the legislation regarding the identification of Finnish beneficiaries, the legislation would be implemented already in 2020.

Registration for the authorised intermediary register would start on the 1st of July 2020, 6 months before the law is implemented.

2) Would the 20% domestic tax rate currently applicable to non-resident corporate investors who are disclosed and have provided the required documentation still be applicable under the new proposed regime?

A: There has been no suggestion to change the 20% domestic rate for corporate investors. So yes, the 20% rate would still apply under the new regime.

3) What would be the responsibility of the custodian registered on the new Depository Register under the proposed legislation?

A: The detailed regulations regarding the responsibilities of an authorised intermediary are outlined in the government proposal, [available here](#) (only available in Finnish and Swedish). More

specifically they are outlined in the proposed §10 b-e of the Act on the Taxation of Nonresidents' Income.

One purpose of the legislative change is the implementation of TRACE. You can familiarise yourself with TRACE [here](#). Generally speaking, the TRACE implementation package includes: the concept of an authorised intermediary, investor self declaration (ISD), and reporting. Please note that it is proposed that the issuer will remain as the tax agent in the future as well. The Finnish implementation of TRACE will include registration into an "authorised intermediary register" (official name to be decided). On the other hand, the Finnish implementation of TRACE will not include independent review.

The Finnish Tax Administration will provide further instructions and guidance as per the regulations in the proposed legislative change if the law is passed. Please note that guidance and instructions will be provided in all three languages: Finnish, Swedish and English. Keep yourself informed by following our new page for the financial sector on tax.fi, as well as by subscribing to our [newsletter for the financial sector](#).

Q13: Does the nominee legislation impact the ADRs?

A: There has been no suggestion for any separate regulation regarding American Depositary Receipts (ADRs). However, the proposed changes would also affect ADR holdings, as the underlying shares are typically nominee registered.

Q14: Will the Investor Self Declaration Expire?

A: We will provide you further instructions and guidance on the matter at a later date, provided the law is passed. The Finnish Tax Administration will give detailed instructions on this matter, taking into consideration any TRACE recommendations. Please note that guidance and instructions will be provided in all three languages: Finnish, Swedish and English.

Q15: Will the market accept industry input on the new proposed change?

A: When discussing the actual piece of legislation, we are not the competent authority to discuss any comments you may have. However, as for related guidance and instructions, we look forward to hearing your comments. We will inform you about how to get involved through our newsletter for the financial sector, so make sure to subscribe.