

## Legislative change regarding nominee-registered shares: what will change and when, webinar 28<sup>TH</sup> of May 2019

### QUESTIONS & ANSWERS

#### *Timeframe*

**Q1:** Will you publish a framework of what the detailed guidance will cover prior to 2020? This would be welcomed should there be other aspects for consideration.

**A1:** We hope to publish a preliminary publication schedule for upcoming guidance during the summer, covering the period of 2019-2022. Keep an eye on our *Financial sector and taxation* web page:  
<https://www.vero.fi/en/businesses-and-corporations/about-corporate-taxes/financial-sector/>

#### *Relief at source*

**Q2:** Could you please confirm that under the new regime applicable as of 2021, if there is no registered custodian in the custody chain, the application at source of treaty rates is still possible if the dividend and beneficial owner identification details are provided to the payer before the dividend payment? In such a case, can you confirm that the non-registered custodian is only liable for transmitting correctly the information through the custody chain to the payer?

**A2:** Yes, treaty rates can still be applied at source, even if there are no authorised intermediaries in the custody chain. In the situation where no intermediaries are registered, the beneficial owner information needs to be provided through the custody chain to the payor/issuer before the dividend payment in order to apply treaty rates. When there are no authorised intermediaries in the chain, the sole tax liability lies with the payor/issuer according to the tax legislation.

**Q3:** Regarding the 50% preliminary withholding tax applicable to beneficial owners resident in Finland as of 2020: if the payer or registered custodian has no information regarding the place of residence of the beneficial owner (i.e. in Finland or outside Finland) of dividends paid on nominee-registered shares: what is the withholding tax rate to apply: 35% or 50%?

**A3:** The withholding agent has to request the information on whether there are Finnish tax residents in omnibus accounts in order to levy the correct tax, i.e. preliminary withholding tax for tax residents, not withholding tax for non-residents. Based on that information, they have to withhold either 50%, or 35% in case they have no other information available (35% being the applicable rate under the new regime). If the payor/issuer or registered custodian has no knowledge of the residency country, withholding tax of 30 % (35 % from 2021 onwards) for unknown investors should be levied.

Further guidance on applying the 50% rate will be provided by the Finnish Tax Administration at a later date.

**Q4:** 50 % WHT how is that detected and assigned?

**A4:** See the previous answer (Question 3).

**Q5:** Confirmation that from 1 Jan 2020 where no beneficial ownership information is received by registered custodians, dividends will be subject to 50% WHT.

**A5:** See the previous answer (Question 3). The information has to be requested from the chain, and if confirmation is received that there are no Finnish tax residents, the withholding rate is 30% in 2020, provided no other information is available.

From 2021 onwards, the withholding rates will be:

- 30% if the beneficiary is known but it is unclear what rate should be applied (e.g. whether or not the beneficiary is a corporate entity, whether the beneficiary is entitled to tax treaty benefits, etc.)
- 35% if no information on the beneficiary is available
- 50 % withholding tax for nominee-registered Finnish residents whose information is unavailable (from 1st of January 2020)

**Q6:** As of 2021 can the taxes still be adjusted by providing the breakdowns?

**A6:** If there is an authorised intermediary in the chain, taxes can be adjusted through tax breakdowns during the year of payment. It is sufficient that the chain receives pooled information on the adjustment. However, the authorised intermediary closest to the investor must have the beneficiary information at the investor level, as they will need to report the beneficiary information to the Tax Administration.

If there are no authorised intermediaries in the chain, the beneficiary information has to be sent through the chain to the payor/issuer in order to adjust taxes.

These situations will be handled in more detail in the detailed guidance provided by the Finnish Tax Administration, to be published at a later date.

**Q7:** Will there be a requirement to provide beneficial ownership breakdown on segregated accounts?

**A7:** Tax legislation does not distinguish between the type of account for which the beneficiary information needs to be provided. Therefore, information on dividend beneficiaries needs to be provided regardless of the account type, including segregated accounts.

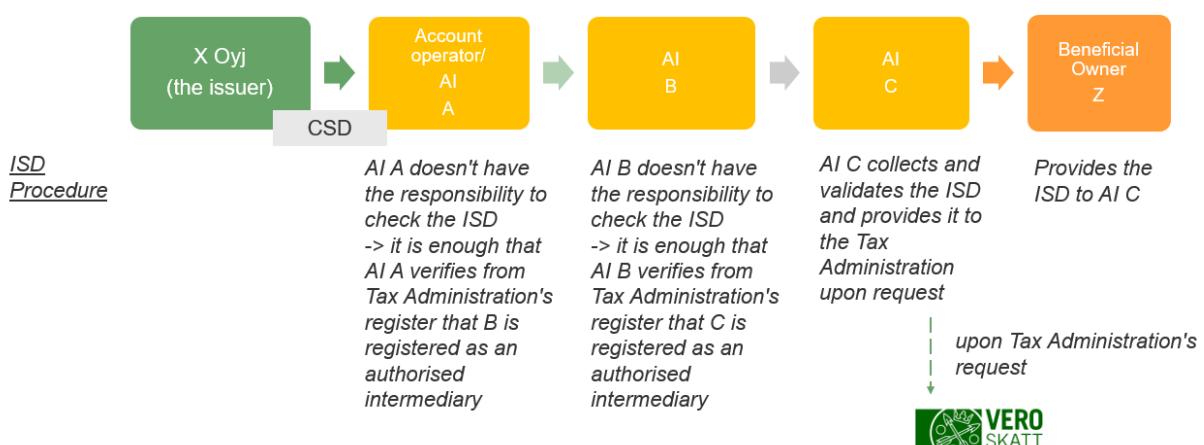
If there is an authorised intermediary in the chain, the AI closest to the dividend beneficiary will send the beneficiary information directly to the Finnish Tax Administration by the end of January of the year following the year of payment. The other authorised intermediaries can then rely on pooled information.

If there are no authorised intermediaries in the chain, the beneficiary information has to be sent through the chain to the payor/issuer.

**Q8:** How the investor self-declaration (ISD) is done? Is it sufficient that the custodian closest to the end-investor receives the ISD? How the other intermediaries in the custody chain have to be aware of the ISD? KYC responsibility is at the custodian closest to the end-investor?

**A8:** The TRACE implementation package has an ISD template that will also be utilised in the Finnish system. The Finnish Tax Administration will provide further guidance on the ISD procedure, including when the ISD is considered as sufficient documentation for providing treaty relief. The first draft of the guidance will be distributed for comments in autumn 2019, with the final version being published in early 2020.

It is sufficient that the custodian closest to the end investor receives the ISD, if this custodian is an authorised intermediary (AI). The other authorised intermediaries in the chain can then rely that the AI closest to the investor has checked the ISD, provided the other AIs have checked that the intermediary next in the chain is in the Register of Authorised Intermediaries.



KYC responsibilities apply to all authorised intermediaries, as it is a requirement for registration. However, the AI closest to the investor is the one with the responsibility to identify the beneficiary, and has the KYC/AML information to validate the ISD information.

**Q9:** Will there be changes to the relief at source documentation?

**A9:** According to the legislation (§10 Act on the Taxation of Nonresidents' Income), acceptable ways to ascertain the facts about the beneficiary's country of residence are:

- a tax-at-source card issued by the Finnish Tax Administration,
- a certificate issued by the tax authority of the beneficiary's country of residence,
- or an Investor Self Declaration, which contains the necessary information for imposing tax at source on dividend beneficiary.

More information will be provided in the detailed guidance to be published at a later date.

**Q10:** Could more detail be provided on the timelines for provided beneficial ownership information?

**A10:** The information on beneficial owners has to be provided to the Finnish Tax Administration by the end of January following the year of payment. For example, for dividends paid in 2021, the information has to be provided by January 31<sup>st</sup> 2022.

**Q11:** Will this change impact ADRs?

**A11:** Yes, the change impacts e.g. on reporting, in the future reporting will be done using TRACE Schema and beneficial owner information has to be reported. Tax legislation does not distinguish between ordinary shares and depositary receipts such as ADRs. Therefore, information on dividend beneficiaries needs to be provided regardless of whether the dividend has been paid based on ordinary shares or depositary receipts.

#### ***Responsibilities of Authorised and Contractual Intermediaries (AIs and CIs)***

**Q12:** Will a detailed description of the obligations and liabilities of an authorized intermediary towards the Finnish Tax Authorities be made available? If not, please can you confirm where this information is available. Will an authorized intermediary be required to sign an agreement prior to inclusion on the authorized intermediary register and will such an agreement be made available for review prior July 2020?

**A12:** Tax Administration's detailed guidance on the registration and responsibilities of AI will be published in the beginning of 2020. Intermediaries can register into the Register of Authorised Intermediaries by making an application with a form assigned by the Finnish Tax Administration. To be registered, the intermediary must fulfil the criteria outlined in the tax legislation. The first draft of the application form as well as the detailed guidance will be made available for comments in autumn 2019.

**Q13:** How is the primary tax liability handled in practice? Is the authorized intermediary forced to pay any non-withheld taxes without undue delay to the FTA? How is the issuer company involved with this process, after all the issue is the withholding agent in the Finnish market? Do they face any consequences for non-withheld taxes?

**A13:** The issuer is the withholding tax agent in Finland, and it handles all withholding tax payments and refunds during the year of payment. AI has primary tax liability in case of under withholding. If an AI self-identifies under withholding during the payment year, in principle the correction needs to be made as soon as possible through the withholding agent. If the Tax Administration identifies under withholding, a decision will be made that the AI has to pay it directly to the Tax Administration; the decision will include a due date for the payment. However, please note that before making the decision, the Tax Administration will provide an opportunity for the AI to give an account of the matter that the under withholding was not a result from AI's negligence. In case of under withholding tax, there is interest on delayed payment of tax and possible administrative sanctions.

In cases of significant non-compliance, the AI will be deregistered from the register.

**Q14:** Could further guidance be provided on becoming an authorised intermediary vs a registered custodian?

**A14:** Further guidance will be provided on how to apply to the Register of Authorised Intermediaries, as well as the responsibilities and liabilities of an authorised intermediary, to be published by early 2020. The Foreign Custodian Register will be abolished on 31<sup>st</sup> December 2020, and there will no longer be so called registered custodians. Therefore, to be registered as an authorised intermediary, you will have to apply separately into the Register of Authorised Intermediaries.

**Q15:** In regards to the Authorised Intermediary registration which will begin in Spring of 2020. We are currently using a direct Finnish sub custodian on behalf of our clients to safekeep Finnish securities. Do we need to be registered as AI under this new ruling? Or is it sufficient if our Finnish sub custodian is an AI or all parties in the chain must be registered as an AI? In terms of the annual reporting, does this obligation falls under our Finnish sub custodian's responsibilities or do we also need to submit the TRACE report?

**A15:** Applying into the register is optional. There is no requirement that all intermediaries in the chain have to be registered. However, only authorised intermediaries are entitled to the benefits of TRACE.

All authorised intermediaries are obliged to provide TRACE reports. The content of the TRACE report depends on the position in the chain, only the AI closest to the investor provides beneficial owner information, the other AIs provide pooled information.

Make sure to check the examples from the webinar:

- [Youtube](#) (starting at 36:30)
- [Presentation material](#) (slides 25-32)

**Q16:** Will AI or CI's be able to perform annual due diligence evaluation on this new system?

**A16:** The answer depends on what is meant by due diligence evaluation. There will be further guidance provided on due diligence at a later date. For a more detailed answer, please contact [financialsector@vero.fi](mailto:financialsector@vero.fi) and provide further clarification on what is referred to by due diligence evaluation.

### ***TRACE and reporting***

**Q17:** What differences are there between OECD TRACE and the Finnish model?

**A17:** Finland is implementing the OECD TRACE model by using the options it allows; therefore, the Finnish model is in line with OECD TRACE.

The webinar goes through in more details what the implementation of TRACE means in the Finnish context:

- [Youtube](#)
- [Presentation material](#) (see for example slide 14)

**Q18:** What happens if the whole chain of custodians does not register in the Finnish register, e.g. in a situation where the custodian closest to the dividend recipient has registered as AI but other custodians in the chain have not registered as AI's. In this situation, can the registered AI still utilize the Finnish TRACE for reporting to the Finnish Tax Authorities?

**A18:** Yes, even if the intermediary closest to the investor is the only one registered, this authorised intermediary can utilise TRACE reporting. In practice, this would mean directly reporting beneficiary information to the Finnish Tax Administration and providing pooled information further up the chain. See the examples on the situations where not all intermediaries are registered here:

- [Youtube](#) (starting at 43:40)
- [Presentation material](#) (slides 27-28)

**Q19:** What if B is not an AI? What would A be required to report in that case?

**A19:** The situation where A is registered as AI, but the next intermediary in the chain is not, is handled in option 2b of the webinar:

- [Youtube](#) (starting at 45:30)
- [Presentation material](#) (slide 28)

**Q20:** With reference to the independent review - will there be published agreed upon procedures for the independent reviewer to follow? When will this guidance be published?

**A20:** As the independent review is not mandatory in Finland, no detailed guidance will be published on agreed upon procedures. However, AIs can decide to use the independent review as it is agreed in the TRACE implementation package. Guidance will be provided on how the independent review will be taken into consideration.

**Q21:** Do the custodians/intermediaries have identical reporting requirements for the same dividend payment in question?

**A21:** All authorised intermediaries are obliged to provide TRACE reports to the Finnish Tax Administration. The content of the TRACE report depends on the position in the chain, only the AI closest to the investor provides beneficial owner information, the other AIs provide pooled information.

Situations where not all intermediaries are registered, or only some of them are registered, are handled in the webinar:

- [Youtube](#) (starting at 43:40)
- [Presentation material](#) (slides 27-32)

**Q22:** Will this have impact on the yearly reporting responsibilities that the account operators currently have?

**A22:** Currently the account operator reports on behalf of the issuer, and can continue to do so in the future. The reporting responsibility of the account operator under the new system will for example depend on whether they are an authorised intermediary themselves and whether it has taken responsibility for the reporting of any contractual intermediaries.

Make sure to check the examples from the webinar:

- [Youtube](#) (starting at 36:30)
- [Presentation material](#) (slides 25-32)

**Q23:** All investors, who enjoy reduced tax rates will have to be disclosed.

- Therefore the disclosure has to be placed before the payment date, correct?
- How can we submit all disclosure details, via email or portal?
- Which details are required for a disclosure?

**A23:** Beneficial owner information has to be reported to the Finnish Tax Administration by the end of January following the year of payment.

If none of the intermediaries in the chain are registered as authorised intermediaries, the beneficial owner information has to be provided before the dividend payment to the issuer in order to apply treaty rates.

Authorised intermediaries on the other hand can rely on pooled information at the time of payment, and beneficial owner information has to be disclosed to the Tax Administration by the end of January following the year of payment using the TRACE Schema.

TRACE reports based on the TRACE Schema can be submitted in xml format via the Finnish Tax Administration's portal. Identification into the portal will be made available to both Finnish and foreign customers, more details will be published at a later date.

The details required for disclosure are outlined in the tax legislation: identifying information on these clients such as their name, date of birth, address in the country of residence, tax identification number in the country of residence – given the beneficiary has one – and the legal entity type of beneficiaries that are legal persons. Additionally, the beneficiary's country of residence for tax purposes must be indicated, along with the beneficiary's home address, and other comparable details.

Furthermore, the TRACE Schema containing the required information will be published towards the end of the year 2019.

**Q24:** One small question to confirm the meaning of pooled information does it mean that instead of giving the name of the beneficial owner prior to payment that AI would only provide details of residency. Example if there were 10 investors, 5 French and 5 German this is all the information that would be needed until full declaration is given at end Jan of following year as part of the TRACE reporting?

**A24:** Beneficial owner information has to be reported to the Finnish Tax Administration by the end of January following the year of payment. At the time of payment, authorised intermediaries can rely on pooled information. However, the AI closest to the investor must identify the beneficiary to apply any treaty rates, while the other AIs in the chain could rely on pooled information. In the TRACE report, an AI that is not closest to the end investor, will give information on the OtherAI; meaning that the AI will report the total amount of dividends paid to another AI. You don't need to report anything to the Tax Administration before giving the TRACE report by the end of January next year. The details of the information what needs to be provided in the TRACE report are published at a later date.

Further guidance regarding the identification of beneficiaries will also be provided at a later date.

#### ***Entitlement to treaty benefits***

**Q25:** Is there going to be more detailed guidance published by the Tax Administration regarding the definition of beneficial ownership? Especially, is there going to be some guidance related to share lending arrangements and in which situations the lender can be regarded (or not regarded) as the beneficial owner of dividend payments?

**A25:** The definition of beneficial ownership is not only related to this legislative change; however, we will be publishing comprehensive guidance of the new system, which will include guidance on such situations (e.g. share lending). The definition of beneficial owner essentially derives from individual tax treaties.

If it is ever unclear, who is the beneficial owner under such arrangements, you can apply for a tax-at-source card, or an advance ruling (subject to a fee).

**Q26:** Will there be published generic guidance to set out the Finnish view of treaty entitlement for certain entity types? i.e. to set out the Tax Administration's view as to whether the entity type meets the conditions of the relevant treaty for the 'person' and 'beneficial owner' tests? This may be of most interest for collective investment vehicles.

**A26:** As stated in the answer to question 25, the definition of beneficial owner essentially derives from individual tax treaties. Tax treaties also take into consideration the national interpretation of e.g. the tax treatment of collective investment vehicles.

If it is ever unclear how a certain type of fund should be treated in taxation, e.g. are they considered a flow through entity, you can ask for general guidance from the Tax Administration. For a specific client, you can also choose to utilise the tax-at-source card, refund application or advance ruling procedures, whenever it is unclear if treaty benefits or a national exemption can be applied.

***Other topics***

**Q27:** Will it be possible to see this webinar on youtube also later on (for colleagues who are absent at the moment)?

**A27:** A YouTube video that covers today's webinar is available on the Finnish Tax Administration's YouTube channel: <https://www.youtube.com/watch?v=ZAE-qYpBYyo&t>

**Q28:** Would it be possible to have a today's presentation in a pdf please?

**A28:** The presentation and Q & A document will be sent to all webinar participants, and will be made available on tax.fi (see details below).

Presentation materials for webinars:

[https://www.vero.fi/tietoa-verohallinnosta/uutishuone/esitys\\_ja\\_opetusmateriaali/verkkoseminaari/](https://www.vero.fi/tietoa-verohallinnosta/uutishuone/esitys_ja_opetusmateriaali/verkkoseminaari/)