**WITHHOLDING TAX ON INCOME FROM DEMATERIALISED FINANCIAL INSTRUMENTS**

**Clarification of Chapter IIIa of Part Five of the Tax Procedure Act (ZDavP-2)**

**Detailed description**

April 2022

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1.0 INTRODUCTION

Briefly summarised below is a clarification of Chapter IIIa – Withholding tax on income from dematerialised financial instruments – of Part Five of the [Tax Procedure Act (ZDavP-2)](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703).

2.0 CLARIFICATION TO ARTICLE 383b (contents of this section)

This article stipulates the scope of provisions of Chapter IIIa; in accordance with paragraph one of this article, the chapter refers to the calculation, deduction and payment of withholding tax on income from dematerialised financial instruments received for a third-party account.

Paragraph two stipulates a derogation from paragraph one of this article, according to which Articles 383c and 383d shall also apply to income from materialised financial instruments.

3.0 CLARIFICATION TO ARTICLE 383c (Withholding tax on income from dematerialised financial instruments)

**Paragraphs one and two of Article 383c** define a particular rule referring to the calculation, deduction and payment of withholding tax on income from dematerialised financial instruments paid for a third-party account.

The payer of tax (i.e. the person considered the payer of tax in accordance with Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)) who pays income from dematerialised financial instruments to an intermediary (i.e. a person who receives it for a third-party account) shall be obliged to calculate and deduct withholding tax without considering the provisions that result in lower tax obligations in connection with withholding tax if they are not the same for all income beneficiaries according to all taxation acts and international treaties. Withholding tax shall be charged, deducted and paid according to the rate defined under the taxation act which defines a higher rate of withholding tax on income paid (e.g. the standard rate of withholding tax on dividends equals 15% according to the Corporate Income Tax Act – [ZDDPO-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687)  and ~~27.5%~~ 25% according to the Personal Income Tax Act – [ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697); as the rate under the [ZDoh-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4697) is higher, the ~~27.5%~~ 25% rate shall apply), which also applies when a type of income is not taxable under one act but is taxable under another.

This means that withholding tax from dematerialised financial instruments paid to a person for a third-party account (intermediary) who is not considered the payer of tax according to the provisions of Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) is always deducted at the highest applicable rate. In view of the transfer of obligations of the payer of tax down the chain of intermediaries in Slovenia according to paragraph two of Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703), the provisions of Article 383c shall apply primarily in the event of payments of income from dematerialised (and, in view of paragraph two of Article 383b, materialised) financial instruments abroad.

The rule is based on the fact that the particular recipient of income is unknown to the payer of tax in such transactions (i.e. the payer of tax does not know the actual beneficiary). In this case, the payer of tax can correctly fulfil his or her obligation of calculating, deducting and paying withholding tax only by calculating, deducting and paying the tax at the highest applicable rate. Under Article 383d, actual beneficiaries are able to claim a refund of overpaid tax. It should be noted that the provisions of Article 383c in general, if the requisite conditions are met, shall not apply to income from dematerialised financial instruments that the payer of tax (or his or her authorised person referred to in Article 383f) pays to a foreign intermediary with the status of an authorised foreign intermediary (to be detailed in the clarification of Articles 383e, 383f and 383g).

**Paragraph three of Article 383c** provides a rule for determining whether a person who receives income from dematerialised financial instruments from the payer of tax receives this income for a third-party account (i.e. whether the person is an intermediary), i.e. this is the case when either of the following two conditions are met:

* the person is considered an intermediary if he or she performs an activity which is or which includes receiving income for a third-party account or where it is known that this person acts, even if occasionally, as a person who receives income for a third-party account;
* the person is considered an intermediary if his or her address for payment of income differs from the registered address of the person who receives the income.

If a person who could be considered an intermediary under these conditions but who, prior to the payment, submits to the payer of tax a statement that he or she (i.e. the person who could be considered an intermediary) exercises the rights from dematerialised financial instruments on the basis of which the income is paid for his or her own account and not for a third-party account, the withholding tax on income (or on the part of the income for which the person is eligible if he or she separately provides in the statement the part of the amount of the instruments from which he or she exercises the rights for him- or herself and the part of the amount of the instruments from which he or she exercises the rights for a third-party account) shall be deducted and paid at the rate in accordance with the provisions of the taxation act that applies to the intermediary as the income beneficiary.

It should be noted that under the first condition, persons considered intermediaries may include a person for whom it is not publicly disclosed that he or she exercises the rights from dematerialised financial instruments for a third-party account if he or she performs an activity which is or which includes receiving income for a third-party account or where it is known that the person acts, even if occasionally, as a person who receives income for a third-party account. This condition therefore especially covers persons from the financial sector and other asset managers. These are always considered intermediaries if they do not submit a relevant statement to the payer of tax prior to the payment.

It should also be noted that a bank shall not be considered an intermediary under the first condition when it only acts as a provider of payment services in a transaction and not as, e.g., a trustee bank, brokerage company or asset manager.

Under the second condition, an intermediary may be a person who receives the income if the bank account to which the income is transferred is open at a bank in the country that is not the country of registered address of the recipient of income, unless the person – before making the payment – submits a statement to the payer of tax (i.e. a statement to the effect that he or she exercises rights from dematerialised financial instruments – or appropriate quantities of these – on the basis of which income is paid for this person’s own account and not for a third-party account).

Figure 1: **Obligation of the payer of tax according to paragraphs one and two of Article 383c of the ZDavP-2 in the event that the issuer of the DFI pays the income from the DFI via an escrow financial account of the Central Securities Clearing Corporation (CSCC) to a Slovenian trustee bank and the latter pays the income as the payer of tax to the person receiving it for a third-party account, which is a foreign bank that did not submit the statement referred to in paragraph three of Article 383c of the ZDavP-2**

**INTERMEDIARY**

**(BANK)**

**PAYMENT LESS WITHHOLDING TAX**

**BANK**

**FARS**

**NUI – CALCULATION AND PAYMENT OF WITHHOLDING TAX AT THE HIGHEST APPLICABLE RATE IF A FOREIGN BANK DOES NOT SUBMIT A STATEMENT ACCORDING TO PARAGRAPH THREE OF ARTICLE 383C (NOT EXERCISING THE RIGHTS UNDER THE DFI FOR ITSELF)**

**ISSUER OF DFI**

**INTERMEDIARY**

**(CSCC)**

Figure 2: **Obligation of the payer of tax in the event that the issuer of the DFI pays the income from the DFI via an escrow financial account of the CSCC to a Slovenian bank and the latter pays the income as the payer of tax to a foreign bank that submitted the statement referred to in paragraph three of Article 383c of the ZDavP-2, i.e. that it exercises the rights under the DFI, on the basis of which the income is paid, for itself and not for a third-party account**

**INTERMEDIARY**

**(BANK)**

**PAYMENT LESS WITHHOLDING TAX**

**BANK**

**FARS**

**ISSUER OF DFI**

**ODO – CALCULATION AND PAYMENT OF WITHHOLDING TAX AT THE RATE APPLICABLE TO A FOREIGN BANK IF THE BANK SUBMITS A STATEMENT ACCORDING TO PARAGRAPH THREE OF ARTICLE 383C (EXERCISING THE RIGHTS UNDER THE DFI FOR ITSELF)**

**STATEMENT ACCORDING TO PARAGRAPH THREE OF ARTICLE 383C**

**INTERMEDIARY**

**(CSCC)**

**Paragraph four of Article 383c** provides that the recipient shall keep statements from paragraph three of this Article for at least ten years after the end of the year in which the income to which the statement refers was paid.

4.0 CLARIFICATION TO ARTICLE 383d (Refund of withholding tax on income from dematerialised financial instruments)

**Paragraph one of Article 383d** determines the right of the beneficial holder of dematerialised financial instruments (who has received income from these instruments through an intermediary and from which income the payer of tax has calculated, deducted and paid the tax at a higher rate than would apply if the income were paid directly to the beneficial holder, in accordance with Article 383c of this Act) to claim a refund of the overpaid tax with a written claim which shall be submitted to the tax authority.

According to Article 383d, the tax shall be refunded, for example, when the beneficial holder of instruments who received the income from these instruments through an intermediary is eligible for benefits under the national legislation or other potential international treaty (i.e. a treaty that is not a treaty for the avoidance of double taxation of income) if the income was paid directly to him or her and the tax refund procedure is not separately prescribed, as provided for in paragraphs two and three of Article 383d.

►*Example: When making a payment of dividends abroad, for example to a financial institution from a third country (i.e. a country with which Slovenia has not concluded an international treaty for the avoidance of double taxation), the payer of tax who does not submit the statements referred to in paragraph three of Article 383c shall calculate, deduct and pay the tax at the higher withholding tax rate provided by taxation legislation, i.e. at the rate of* ~~27.5%~~ 25% *A beneficial holder of shares that is a legal person and has received dividends via the above institution may request a tax refund up to the rate according to the ZDDPO-2 (15%), i.e. the difference in the amount of ~~10 %~~12.5%.*

Taking into consideration the provision of paragraph four of Article 125 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) (Statute of limitations), the claim for the refund of overpaid tax shall be filed within five years from the date of the payment of tax.

Relevant evidence in relation to tax obligations according to the taxation act and the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703), especially pertaining to the identity of the beneficial holder of dematerialised financial instruments, to the receipt of income, to the base for the payment of withholding tax and to the withholding tax paid, is a constituent part of the [claim](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_davka_od_dohodkov_iz_nematerializiranih_financnih_instrumentov_po). Where there are several intermediaries in the chain between the payer of tax and the beneficial holder of dematerialised financial instruments, this has to be confirmed by evidence.

**Point 1 of paragraph two of Article 383d** provides that in the event that the beneficial holder of dematerialised financial instruments who receives income from these instruments with a source in Slovenia is eligible for benefits (i.e. a lower tax rate) according to the international treaty for the avoidance of double taxation valid between Slovenia and his or her country of residence, the tax refund shall be carried out under Article 262 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) and not on the basis of a [claim as referred to in paragraph one of Article 383d](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_davka_od_dohodkov_iz_nematerializiranih_financnih_instrumentov_po).[[1]](#footnote-1)

Point 1 of paragraph two of Article 383d, taking into consideration the provisions from paragraphs one and two of Article 383c, also provides the opposite: that in the event that income from dematerialised financial instruments has been received via an intermediary and the beneficial holder of instruments (i.e. the income beneficiary) is eligible for benefits under international treaties for the avoidance of double taxation, the beneficiary shall not claim these benefits before the payment of income (as provided in Article 260 (a reduction in or exemption from withholding tax payments) of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)), but only upon the refund of overpaid withholding tax under Article 262 (refund of withholding tax) of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703), namely on the basis of [KIDO 9](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_fo) and [KIDO 10](https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Opdynp/PageD.aspx?category=vracilo_fod).

Furthermore, in the event that the income from dematerialised financial instruments with a source in Slovenia received via an intermediary and the beneficial holder of instruments (i.e. the income beneficiary) is an entity or an agreement that is considered fully or partially fiscally transparent under the tax legislation of another State Party to a treaty that is binding on Slovenia, they may not exercise the benefits provided in the treaty according to Article 260 of the ZDavP-2, i.e. before the income is paid. The same applies in the event that income is paid into a foreign country to a person who has acquired the status of an authorised foreign intermediary under Article 383e of the ZDavP-2. This means that benefits from treaties on the avoidance of double taxation may be exercised only upon the refund of overpaid withholding tax according to Article 262 of the ZDavP-2.

In the event that the beneficiary of such income is eligible for benefits under other treaties, he or she may exercise these benefits only by means of a refund of overpaid tax according to paragraph one of Article 383d of the ZDavP-2.

Attention should be drawn to the special treatment of income from dematerialised financial instruments that the payer of tax (or his or her authorised person referred to in Article 383f) shall pay to a foreign intermediary with the status of an authorised foreign intermediary (to be detailed in the clarification of Articles 383e, 383f and 383g).

**Point 2 of paragraph two of Article 383d** provides that the refund of overpaid tax when the beneficial holder of dematerialised financial instruments is eligible for benefits based on EU regulations (as implemented in the national legislation and valid for parent companies and subsidiary companies from various EU Member States, and in relation to interest and royalty payments between connected companies from various EU Member States), shall be carried out according to Chapter III of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) and not according to this Article.

**Point 3 of paragraph two of Article 383d** provides that the refund of overpaid tax when the beneficial holder of dematerialised financial instruments is eligible for benefits referred to in paragraphs three through seven of Article 70 of the [ZDDPO-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687) shall be carried out according to Article 383a of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703).

**Paragraph three of Article 383d** provides that overpaid tax for recipients from paragraphs one and two of Article 75 of the [ZDDPO-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687) shall be refunded in accordance with paragraph three of Article 75 of the [ZDDPO-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4687).

5.0 CLARIFICATION TO ARTICLE 383e (Special procedure in relation to the withholding tax return on income from dematerialised financial instruments)

This article lays down a special procedure in relation to the withholding tax return on income from dematerialised financial instruments that determines the manner and time limit for the payment of withholding tax as otherwise prescribed by the act.

**Paragraph one of Article 383e** provides that a special procedure applies when the payer of tax (defined in accordance with Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)) pays income from dematerialised financial instruments with a source in Slovenia into a foreign state to a person who has acquired the status of an authorised foreign intermediary (as determined in Article 383g of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)).

In this case the payer of tax shall calculate the withholding tax from the income at the tax rate (determined by a taxation act or international treaty) that would apply to the beneficial holder of dematerialised financial instruments in the event that the income was paid directly to him or her, on the condition that the authorised foreign intermediary delivers the data necessary for the tax assessment to determine the tax base and to exercise tax relief, benefits according to treaties and identification of the beneficial holders of dematerialised financial instruments who receive income on the basis of these financial instruments, to the payer of tax by the tenth of the month following that in which the income was paid by the person who is charged by such income (e.g. issuer of security); income beneficiaries may include both non-residents and residents of Slovenia. [[2]](#footnote-2). If the person who is charged by such income is also the payer of tax according to Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) (e.g. if the issuer of security does not pay the income from dematerialised financial instruments to the escrow financial account of the CSCC but directly to the authorised foreign intermediary), the income payment date shall be the date when such a person pays the income to beneficial holders of securities who are residents of Slovenia (the date is shown in the company's documents).

It follows from the above that when the special procedure from Article 383e applies, the benefits of residents of other states parties to international treaties for the avoidance of double taxation – in the form of reduction of or exemption from withholding tax – shall not be exercised as provided in Article 260 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) (i.e. by submitting special claims to the tax authority before the payment of income).

According to **paragraph two of Article 383e,** the payer of tax shall calculate, deduct and pay the amount of withholding tax from the previous paragraph at the same time as submitting a withholding tax return (REK-2, ODO, NUI), which shall be submitted to the competent tax authority at the latest by the fourteenth of the month following that in which the income was paid by the person who is charged by such income. To this end, the minister competent for finance issued the [Rules on the form for withholding the tax charge on income from financial instruments paid to persons who receive it for a third-party account](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10237), with the NUI form as an integral part.

This means that the payer of tax is given a lengthy period of time in which he or she can collect the information referred to in point 2 of paragraph one of Article 383e of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703), make the return and deduct and pay the withholding tax. The [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) does not stipulate when the payer of tax shall pay (transfer) the income to the authorised foreign intermediary. In the event of immediate transfers and in terms of securing one’s liabilities as the payer of tax, the most appropriate option is probably the following: the payer of tax first deducts the sum equal to the withholding tax calculated at the highest rate (referred to in paragraphs one and two of Article 383c) from the income to be transferred to an authorised foreign intermediary, and then, in the period before the expiration of the time limit referred to in paragraph two of Article 383e, when he or she receives the necessary information from an authorised intermediary (and has calculated the withholding tax at the rate that applies to a beneficial holder of dematerialised financial instruments), transfers to the intermediary the difference between the over-deducted withholding tax and the withholding tax that was actually calculated, deducted and paid on the basis of the information received. When the payer of tax does not receive the necessary data from the authorised foreign intermediary, he or she shall calculate the withholding tax at the highest rate (which means that the amount of calculated, withheld and paid tax is equal to that of the tax deducted before the transfer).

The figure below shows the procedure in relation to the withholding tax return on income from dematerialised financial instruments paid to the authorised foreign intermediary in the event that the income is paid by the issuer of security via the escrow financial account of the CSCC and an intermediary that is a bank in Slovenia. In this case, the intermediary – the bank – shall be considered the payer of tax (point 3 of paragraph two of Article 58 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)).

Figure 3: **Special procedure in relation to the withholding tax return on income from dematerialised financial instruments according to Article 383e of the** [**ZDavP-2**](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) **in the event that the intermediary (bank) that is the payer of tax, pays the income to an authorised foreign intermediary**

**AUTHORISED FOREIGN INTERMEDIARY**

**PAYMENT**

**BENEFICIAL**

**HOLDER OF SECURITY**

**PAYMENT**

**SUBMISSION OF INFORMATION**

**BY THE 10TH OF THE MONTH AT THE LATEST**

**INTERMEDIARY**

**(BANK)**

**FARS**

**CALCULATION AND PAYMENT OF WITHHOLDING TAX**

**BY THE 14TH OF THE MONTH AT THE LATEST**

**CERTIFICATE OF RESIDENCE OR**

**STATEMENT**

**ISSUER**

**OF SECURITY**

**INTERMEDIARY**

**(CSCC)**

**Paragraph three of Article 383e** provides that the form, method and subject matter of data from point 2 of paragraph one of this Article (i.e. details on the data that the authorised foreign intermediary shall deliver to the payer of tax or his or her authorised person referred to in Article 383f) shall be prescribed by the minister competent for finance. To this end, the minister responsible for finance issued the [Rules on the form, manner and content of data reported by an authorised foreign intermediary to the payer of tax or authorised person.](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10301)

**Paragraph four of Article 383e** lays down the rule for resolving cases in which an authorised foreign intermediary fails to deliver all data to the payer of tax by the prescribed deadline (i.e. he or she delivers only the data that refer to some beneficiaries but not to other beneficiaries). In this case, the payer of tax shall divide the income into two groups as follows:

* the group of income to be received by "disclosed" beneficial holders of dematerialised financial instruments (i.e. beneficiaries in relation to whom the payer of tax has received all necessary data); it has to be noted that beneficial holders may include the authorised foreign intermediary if he or she owns a certain quantity of instruments and has therefore received a part of the income for his or her own account;
* the group of income to be received by "undisclosed" beneficial holders of dematerialised financial instruments (i.e. beneficiaries in relation to whom the payer of tax has received no data or not all necessary data).

In the case of income from the first group, the withholding tax shall be calculated at the rate referred to in paragraph one of Article 383e, i.e. at the rate that applies to individual beneficial holders of dematerialised financial instruments under valid tax regulations – taxation acts (ZDDPO-2, ZDoh-2) or an international treaty. In the case of income from the second group, the withholding tax shall be calculated at the rate referred to in paragraphs one and two of Article 383c of the ZDavP-2 (to be detailed in the clarification of Article 383c).

It should be noted that, regardless of Article 383e (in conjunction with Article 262a of the ZDavP-2) of this Act, when income with a source in the Republic of Slovenia is derived from an entity or agreement or is derived through an entity or agreement considered fully or partially fiscally transparent under the tax legislation of another State Party to a treaty that is binding on Slovenia, the payer of tax calculates the tax at rates specified in the taxation act or the ZDavP-2. If this resulted in the payment of a tax amount that is higher than the tax amount that would be paid under the treaty, the income recipient may exercise the benefits specified in the treaty pursuant to Article 262 of this Act.

Figure 4: **Example of delivery of information to the payer of tax and the tax authority in the context of the special procedure in relation to the withholding tax return on income from dematerialised financial instruments according to Article 383e of the** [**ZDavP-2**](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703)

**AUTHORISED FOREIGN INTERMEDIARY**

**INTERMEDIARY (BANK)**

**FARS**

**BY THE 10TH OF THE MONTH**

**AT THE LATEST**

**BY THE 14TH OF THE MONTH**

**AT THE LATEST**

**Paragraph five of Article 383e** provides that a payer of tax who subsequently receives data on individual holders from the second group of income (i.e. the group of income of undisclosed beneficial holders of dematerialised financial instruments) may claim a refund of overpaid withholding tax with a correction of the return under Article 54 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703). The return correction shall be submitted at the latest within the time limit of three months following the expiry of the time limit for the submission of a withholding tax return from paragraph two of Article 383e of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703). After that date, the payer of tax can no longer submit a tax return correction under this paragraph or under Article 54 of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703). The payer of tax shall pay the refunded overpaid withholding tax to recipients in the same way as the income was paid.

**Paragraph six of Article 383e** provides that a beneficial holder of dematerialised financial instruments who has received income from which the payer of tax under Article 383c of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) has deducted withholding tax according to point 2 of paragraph four of Article 383e of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) may claim, in accordance with Article 383d, a refund of over-deducted and paid tax more than three months after the time limit for the submission of a withholding tax return from paragraph two of Article 383e.

6.0 CLARIFICATION TO ARTICLE 383f (Authorised person)

This article lays down the conditions for obtaining the status of an authorised person.

**Paragraph one of Article 383f** provides that, notwithstanding paragraph four of Article 58, the payer of tax may authorise only a person who has the status of authorised person according to Article 383f to fulfil on his or her behalf the obligations of calculation, withholding and payment of withholding tax from payments of income from dematerialised financial instruments with source in Slovenia to persons who have acquired the status of an authorised foreign intermediary.

This means that the payer of tax may fulfil his or her obligations of calculation, deduction and payment of withholding tax from payments of income from dematerialised financial instruments with a source in Slovenia to persons who have acquired the status of an authorised foreign intermediary in two ways: by directly fulfilling the obligation him- or herself or by authorising a person who has the status of an authorised person under Article 383f of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) to fulfil the obligation on his or her behalf. The payer of tax may not authorise a person without the status of an authorised person to fulfil the obligation on his or her behalf (the calculation, deduction and payment of withholding tax on income from dematerialised financial instruments with a source in Slovenia).

According to **paragraph two of Article 383f**, the status of authorised person may be acquired for a period of five years by a person who:

* is a resident of Slovenia or a non-resident business unit in Slovenia according to the ZDDPO-2;
* is a bank which has acquired a banking authorisation from the Bank of Slovenia on the territory of the Republic of Slovenia, or a branch of a bank from a third country which has acquired an authorisation from the Bank of Slovenia for establishment, or a branch of a bank from a EU Member State which performs banking activities on the territory of the Republic of Slovenia on the basis of an authorisation from the competent supervisory body[[3]](#footnote-3) for performing these activities;
* performs an activity which is or which includes receiving income for a third-party account (i.e. has an authorisation to perform depositary functions); and
* is due to regular, voluntary and accurate tax compliance and in relation to its organisational structure, type and extent of activities according to the tax authority’s opinion appropriate for the authorised person.

**Paragraph three of Article 383f** provides that the tax authority shall decide on granting the status at the latest within 15 days from receipt of the written (complete) application. Evidence on the fulfilment of conditions according to paragraph two of Article 383f shall be enclosed to the application.

The tax authority enters the persons who have acquired the status of authorised persons on the list of authorised persons and publishes it on its website. The list shall include the information necessary for the identification of individual authorised persons.

**Paragraph four of Article 383f** provides the grounds for rejecting an application for granting the status of authorised person. These are the following:

* The person who applied for the status does not fulfil the conditions from paragraph two of this Article, i.e. the person:
	+ is not a resident of Slovenia or a non-resident business unit in Slovenia according to the ZDDPO-2,
	+ is not a bank which has acquired a banking authorisation from the Bank of Slovenia on the territory of the Republic of Slovenia, or a branch of a bank from a third country which has acquired an authorisation from the Bank of Slovenia for establishment, or a branch of a bank from EU Member State which performs banking activities on the territory of the Republic of Slovenia on the basis of an authorisation from the competent supervisory body[[4]](#footnote-4) for performing these activities,
	+ does not perform an activity which is or a part of which is receiving income for a third-party account (i.e. does not have an authorisation to perform depositary functions), and
	+ is not appropriate to be an authorised person in the tax authority’s opinion due to its regular, voluntary and accurate tax compliance and in relation to its organisational structure, type and extent of activities;
* A court procedure against the responsible person of the person who applied for the status is underway due to criminal acts committed against the economy or legal transactions;
* The responsible person of the person who applied for the status has been convicted *res judicata* of criminal acts committed against the economy or legal transactions;
* The person who applied for the status has committed a serious tax offence and it has been less than three years since the date when the decision or judgment on the offence obtained the force of *res judicata*; or
* There are other circumstances which raise doubts about the suitability of the person who applied for the status for performing obligations of the authorised person.

**Paragraph five of Article 383f** provides that the tax authority may withdraw an authorised person’s status if it establishes that this person has failed to fulfil his or her obligations as an authorised person or if it establishes circumstances provided in paragraph four of this Article (i.e. that false data was provided/submitted upon the submission of the status application or that the relevant circumstances arose subsequently).

According to **paragraph six of Article 383f**,an authorised person’s status shall expire if an authorised person so requires in writing or if the authorised person fails to file an application for renewal of status within five years of the issuing of the previous decision on granting the same.

**Paragraph seven of Article 383f** provides that the tax authority shall remove an authorised person from the list of authorised persons following the withdrawal of the status or the expiry thereof.

According to **paragraph eight of Article 383f**, an authorised person shall inform the tax authority about any change of data from paragraph two of this Article, including data for his or her identification, within seven days of its occurrence. The tax authority shall therefore be notified about any change of data regardless of the reason for such change (e.g. a change of company name as a result of renaming or changing the legal form of the company or a change of address of the registered office).

Figure 5: **Special procedure in relation to the withholding tax return on income from dematerialised financial instruments according to Article 383e of the ZDavP-2 in the event that the payer of tax authorises a person with the status of an authorised foreign intermediary under Article 383f to fulfil on his or her behalf the obligations of calculation, deduction and payment of withholding tax on income paid to a foreign intermediary with the status of authorised foreign intermediary**

**AUTHORISED FOREIGN INTERMEDIARY**

**PAYMENT**

**BENEFICIAL**

**HOLDER OF SECURITY**

**PAYMENT**

**SUBMISSION OF INFORMATION**

**BY THE 10TH OF THE MONTH AT THE LATEST**

**INTERMEDIARY**

**(BANK)**

**FARS**

**CALCULATION AND PAYMENT OF WITHHOLDING TAX**

**BY THE 14TH OF THE MONTH AT THE LATEST**

**CERTIFICATE OF RESIDENCE OR**

**STATEMENT**

7.0 CLARIFICATION TO ARTICLE 383g (Authorised foreign intermediary)

This article lays down the conditions for obtaining the status of an authorised foreign intermediary.

**Paragraph one of Article 383g** provides that a foreign intermediary may, for a period of five years, acquire the status of an authorised foreign intermediary if:

* He or she is a resident of another EU Member State or a country with which Slovenia has concluded a treaty for the avoidance of double taxation with respect to taxes on income which enables the exchange of information for the implementation of domestic legislation;[[5]](#footnote-5)
* He or she performs an activity which is or which includes receiving income for a third-party account;
* is a person who or which:
	+ has (or is completely owned by a company which has) an authorisation from the supervisory body competent for performing banking activities in a EU Member State or a country with which Slovenia has concluded a treaty for the avoidance of double taxation with respect to taxes on income which enables the exchange of information for the implementation of domestic legislation;[[6]](#footnote-6)
	+ is a member of a recognised stock exchange in an EU Member State or other country with which Slovenia has concluded a treaty for the avoidance of double taxation with respect to taxes on income which enables the exchange of information for the implementation of domestic legislation (a recognised stock exchange is defined in paragraph ten of Article 383g), or
	+ is another person who, in the tax authority’s opinion, is suitable to be a foreign intermediary in relation to its organisational structure, type and extent of activities, and
* provides a statement that he or she will fulfil the following obligations as an authorised foreign intermediary:
	+ to deliver the data necessary for tax assessment for the determination of the tax base and for exercising tax relief, benefits according to treaties and identification of the beneficial holder of dematerialised financial instruments who receives income on the basis of these financial instruments, to the payer of tax or his or her authorised person from Article 383f of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) within the time limit and according to the terms from paragraphs one and three of Article 383e of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703);
	+ acquire from the beneficial holder of dematerialised financial instruments, who has received income on the basis of these financial instruments through the intermediary services of this person or this person and another intermediary, a certificate of tax residence of the beneficial holder as defined in paragraph eight of Article 383g and other types of evidence (statements or notices) which are submitted to the beneficial holder in connection with the payment of income and eligibility for tax relief and benefits according to treaties;[[7]](#footnote-7)
	+ upon the request of the payer of tax or his or her authorised person from Article 383f of the [ZDavP-2](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703) or his or her legal successor or tax authority, submit the requested evidence from point 4b of paragraph one of Article 383g to these persons within the time limit stated in the request;
	+ keep the evidence referred to in point 4b of paragraph one of Article 383g until the expiration of the time limit referred to in paragraph nine of Article 383g;
	+ exercise a duty of care and verification of evidence from point 4b of paragraph one of Article 383g and inform the payer of tax about all types of evidence for which the intermediary reasonably considers to be factually incorrect and inaccurate at the time when it was delivered to him or her.

It should be noted that, in addition to the activity of receiving income for a third-party account carried out by foreign intermediaries in the country of their residence, the status of an authorised foreign intermediary can also encompass the activity of receiving income for a third-party account carried out by the branches of the foreign intermediary that a foreign investor wants to include in the status of an authorised foreign intermediary if:

* the business unit performs an activity which is or which includes receiving income for a third-party account,

- the business unit gives a separate statement from point 4 of paragraph one of Article 383g of the ZDavP-2 and

 the business unit is located in an EU Member State or a country with which Slovenia has concluded a treaty for the avoidance of double taxation with respect to taxes, which enables the exchange of information for the implementation of domestic legislation (including for non-residents).

As a result, a branch (or branches) of a foreign intermediary cannot acquire the status of an authorised foreign intermediary if such status was not also acquired by the foreign intermediary that established the branch (or branches).

**Paragraph two of Article 383g** provides that the tax authority shall decide on granting the status of authorised foreign intermediary at the latest within 15 days of the receipt of the complete written application. The evidence on the fulfilment of conditions according to paragraph one of Article 383g shall be enclosed to the application.

The tax authority puts the persons who have acquired the status of authorised foreign intermediary on the [List of authorised foreign intermediaries](https://www.fu.gov.si/fileadmin/Internet/Davki_in_druge_dajatve/Podrocja/Davcni_odtegljaj_od_dohodkov_iz_nematerializiranih_financnih_instrumentov/Opis/Seznam_oseb_ki_so_pridobile_status_pooblascenega_tujega_posrednika.doc) and publishes it on its website. The list shall include the information necessary for the identification of individual authorised foreign intermediaries.

**Paragraph three of Article 383g** determines that the tax authority shall reject an application on granting the status of authorised foreign intermediary if the applicant does not fulfil conditions from paragraph one of Article 383g.

According to **paragraph four of Article 383g**, the tax authority shall withdraw the authorised foreign intermediary’s status if it establishes that the authorised foreign intermediary does not fulfil his or her obligations as an authorised foreign intermediary.

According to **paragraph five of Article 383g,** the authorised foreign intermediary’s status shall expire if the cessation of the status is requested by an authorised foreign intermediary in writing, or if an authorised foreign intermediary fails to file a new application for granting before the expiry of five years after issuing the decision on granting the status.

**Paragraph six of Article 383g** provides that the tax authority shall delete an authorised foreign intermediary from the list of authorised foreign intermediaries following the withdrawal of the status or the cessation of the status.

According to **paragraph seven of Article 383g**, the authorised foreign intermediary shall inform the tax authority about every change of data from paragraph one of this Article, including the data for his or her identification, within seven days after its occurrence. The tax authority shall therefore be notified of any data change regardless of the reason for such a change (e.g. a change in the company name as a result of renaming or changing the legal form of the company or a change in the registered office address).

**Paragraph eight of Article 383g** determines the contents of the certificate of tax residence referred to in point 4b of paragraph one of Article 383g of the ZDavP-2. The certificate shall be proposed in the event of exercising benefits under international treaties for the avoidance of double taxation of income.

The certificate of tax residence shall be issued by the tax authority of the state of tax residence of the beneficial holder of dematerialised financial instruments. The submitted certificate shall be valid for three years following the date of its issue or until the submission of a new certificate. The beneficial holder of dematerialised financial instruments shall submit a new certificate to an authorised foreign intermediary if the state of his or her tax residence changes.

The submission of such a certificate is not obligatory if the individual income of the beneficial holder, who is a natural person, does not exceed the amount prescribed by the [Order on the determination of beneficial holder’s income amount up to which the submission of a tax residency certificate is not obligatory](http://www.pisrs.si/Pis.web/pregledPredpisa?id=SKLE8446). According to the aforementioned order, the submission of a tax residency certificate is not obligatory if the individual income of a beneficial holder who is a natural person does not exceed EUR 1,000.

In this case, the beneficial holder of dematerialised financial instruments shall submit a special statement in writing. This statement shall be valid for three years from the date of its submission to an authorised foreign intermediary or until the submission of a new statement. The beneficial holder of dematerialised financial instruments shall submit a new statement to an authorised foreign intermediary if the data in the statement changes. The statement shall include the following information:

* first name and family name or title of the beneficial holder;
* date of birth or identification number of the beneficial holder;
* a statement that the beneficial holder is not a resident of Slovenia;
* an indication of the country a tax resident of which the beneficial holder is and the address of the beneficial holder in this state;
* addresses of all other places of residence of the beneficial holder anywhere in the world;
* a statement that the beneficial holder receives income for this person’s own account and that this person is not obliged to send it to a third person;
* a statement that the income does not belong to a Slovenian fixed establishment; and
* the type of income received.

It follows from the above that the submission of the certificate of residence shall be obligatory if the income is received by a beneficial holder who is liable under the ZDDPO-2.

**Paragraph nine of Article 383g** provides that an authorised foreign intermediary, in accordance with the provisions of the ZDavP-2, shall keep the evidence from point 4b of paragraph one of Article 383g for at least ten years after the end of the year to which it refers.

**Paragraph ten of Article 383g** defines the "recognised stock exchange" from point 3 of paragraph one of Article 383g: this is a stock exchange the organiser of which is a full member of the World Federation of Exchanges (WFE or FIBV).

The membership is evident from the website of the Federation:

<http://www.world-exchanges.org/>

**Paragraph eleven of Article 383g** provides that, notwithstanding point 4 of paragraph one of Article 383g, the minister competent for finance may prescribe a special procedure for the delivery of data, acquisition, submission and keeping of certificates and evidence if the beneficial holder of dematerialised financial instruments receives income on the basis of these financial instruments through intermediary services of several authorised foreign intermediaries.

1. It should be noted that, in the event that the beneficial holder of a dematerialised financial instrument has received the income via an authorised foreign intermediary, the tax may be refunded as specified in paragraph five of Article 383e of the ZDavP-2. [↑](#footnote-ref-1)
2. The authorised foreign intermediary shall also deliver the data to the payer of tax by the tenth of the month following that in which the income was paid by the issuer of security when another person (intermediary) and not the issuer of security is considered the payer of tax in an individual transaction under the provisions of paragraph two of Article 58 of the ZDavP-2. The time limit for the delivery of data is therefore not dependent on the date when the payer of tax has paid the income but on the date when the income has been paid by the person charged by such income. [↑](#footnote-ref-2)
3. The competent supervisory body shall mean a supervisory body that is responsible for supervising the bank pursuant to the laws and other regulations of such a country. [↑](#footnote-ref-3)
4. The competent supervisory body shall mean a supervisory body that is responsible for supervising the bank pursuant to the laws and other regulations of such a country. [↑](#footnote-ref-4)
5. In line with the above, the status of an authorised foreign intermediary cannot be granted to a foreign intermediary who is a resident of a country whose internal legislation prevents the disclosure of customer data to third persons such as the Financial Administration of the Republic of Slovenia. [↑](#footnote-ref-5)
6. The competent supervisory body shall mean a supervisory body that is responsible for supervising a bank pursuant to the laws and other regulations of such country. [↑](#footnote-ref-6)
7. When the beneficial holder is a resident of a country with which Slovenia has not concluded a treaty for the avoidance of double taxation, an authorised foreign intermediary, observing the obligations referred to in point 4e of paragraph one of Article 383g of the ZDavP-2, shall acquire the following data from the beneficial holder:

	* for the persons liable according to the ZDoh-2:
		+ name and surname,
		+ date of birth or identification number (used for tax purposes in the country of residence),
		+ the country of which the beneficial holder is a tax resident and the address of the beneficial holder in this country;
	* for persons liable according to the ZDDPO-2:
		+ name, including the legal form,
		+ identification number (used for tax purposes in the country of residence),
		+ the country of which the beneficial holder is a tax resident and the registered office of the beneficial holder in this country.When the recipient of income from dematerialised financial instruments is a person referred to in paragraph three of Article 383c of the ZDavP-2 (i.e. a person who receives income for a third-party account), an authorised foreign intermediary shall obtain from the recipient of income a statement that he or she exercises rights from dematerialised financial instruments on the basis of which income is paid for this person’s own account and not for a third-party account. If an authorised foreign intermediary does not obtain this statement (and accompanying evidence referred to in point 4b of paragraph one of Article 383g of the ZDavP-2 referring to such a recipient), he or she cannot consider such a recipient as a beneficial holder of dematerialised financial instruments. If it is evident from the statement that such a recipient partly exercises the rights from dematerialised financial instruments for a third-party account, he or she may submit to an authorised foreign intermediary the evidence referred to in point 4b of paragraph one of Article 383g of the ZDavP-2 that refers to beneficial holders of instruments for this part too. The part of income for which evidence is not submitted shall be classified by an authorised foreign intermediary into the group of income referred to in point 2b of paragraph four of Article 383e of the ZDavP-2. [↑](#footnote-ref-7)