



Eligibility criteria for tax information upon securities acceptance

Scope

This document is:

- issued by Clearstream Banking SA and Euroclear Bank S.A./N.V. (together the **International Central Securities Depositories (ICSDs)**)
- intended to provide practical guidance for Issuers, Issuer's Agents and Common Depositories with respect to all international securities

Before the eligibility of a **programme facility** (new or annual update) or a **stand-alone security** within the ICSDs can be granted, a review of the programme/stand-alone securities documentation is conducted. One key criteria is the **tax status** of the intended issuances and whether there is sufficient disclosure to ascertain if there are any tax implications for the ICSDs (or not) such as withholding tax, stamp duties, transfer taxes, other taxes or tax-related reporting and certification.

As stated in the ISMAG Market Practice Book, it is a mandatory requirement that information on the tax regime of the securities is provided. The ICSDs require a taxation summary which primarily describes the relevant tax regime specific to the securities (usually the Issuer's country of incorporation) or if the source of income is different a summary for that particular regime/country.

This document:

- is specific to securities primarily deposited with Clearstream Banking SA and Euroclear Bank S.A./N.V. where together they are acting as **Issuer CSD**
- sets out the necessary requirements for the provision of tax information to enable securities to be accepted in both ICSDs
- **does not** provide tax advice and all parties are advised to obtain independent legal advice on any potential tax implications applicable to securities issued via the ICSDs

Important to note

- The ICSDs may choose not to accept a security/programme facility if such acceptance would subject the ICSDs and/or their ICSD participants to legal, compliance, sanctioned activities and/or tax requirements (including withholding and/or reporting requirements) which in the reasonable opinion of (one of) the ICSDs are incompatible with:
 - their role as CSD
 - their existing operational or technical capabilities or
 - the services that they provide(s)
- Either one of the ICSDs reserve the right to reject acceptance for such reason, even though the other ICSD is willing to accept. Indeed, the operational or technical capabilities may be different in one ICSD to the other.

Submitting parties requesting the acceptance of a security/programme facility must provide the ICSDs with any information they may require in order to make their decision on whether or not to accept a security/programme facility into the respective ICSDs system.

Preliminary New Issue/Programme Documentation and Information

The ICSDs must receive the following in draft form before the closing date/signing date:

- the offering or invitation memorandum (if any)
- the allotment list with delivery instructions to allottees (to support syndicated distributions)
- the offering circular for a standalone issue or the base prospectus for a programme (or equivalent documentation). For an issuance under programme, draft final terms/pricing supplements are required where an issuance has a non-standard structure and/or a complex tax regime
- the fiscal agency, indenture, depository (in relation to DR/ADR issues) or other agreement including the text of any required form of ownership certification in connection with exchanges, redemptions, income payments on global securities and rights attached to the issue
- confirmation of the tax treatment of the security or programme facility and its tax jurisdiction, including text in respect of any required form of ownership certification for tax purposes should be included in the earlier referenced documentation or via an accompanying side letter.

Clear issuance documentation is critical for:

- the Issuer to ensure that its rights and obligations are clearly defined
- all intermediaries (Issuer's Agents/CD/CSP/ICSDs) to enable timely settlement
- effective asset servicing (e.g., corporate actions, income and tax events) throughout the lifetime of a security
- the investors to make appropriate investment decisions

Taxation section of draft and final documentation

Any security submitted to the ICSDs for eligibility assessment and ISIN allocation, must include a **full and comprehensive overview** of the associated and applicable tax treatment - applicable to both the security and intended holders of that asset.

Whilst there is a taxation section found within the terms and conditions which details whether the Issuer will pay additional amounts (gross-up), there are usually a number of carve-outs which ultimately means we cannot solely rely on this section to confirm that all payments will be paid to the ICSDs gross. In addition, this section alone would not be sufficient for any regimes where the ICSDs have reporting or withholding obligations (such as the US, Italy etc.) where a specific description of the applicable tax requirements/regime is necessary.

Of particular importance to note is the need to avoid a mix of tax treatments on an income payment (e.g. mix between dividends and interest; mix between income from sources in multiple jurisdictions) under the same security.

Important - where a programme facility allows for securities/products that have differing tax treatments, it is imperative that:

- the tax treatment is documented such that there is no ambiguity as to the tax treatment of each security or mix as to the tax treatment for an income payment (e.g. mix between dividends and interest; mix between income from sources in different jurisdictions)
- in the event the tax status of a security changes after the issuance, whether due to a change in regulation (e.g., change/repeal of tax regulation) or other reason/trigger, the instrument documentation (or the accompanying side letter) must be updated accordingly (including the effective date of the change)

Please note that the New Issues teams of the ICSDs are not involved in case of change in the tax status of a security after issuance. Amended terms/documentation are handled directly by the Corporate Actions teams of the ICSDs.

Withholding tax treatment of the securities

This section describes the specific tax treatment of the securities in relation to the individual issue, issuer and its country of residence. The details should be set out in this **Taxation Summary/Tax section** (whether a standalone issue or a program) and include:

- a description of taxable events and default withholding tax treatment
- the availability of withholding tax relief through at Source and/or Quick Refund and/or Standard Refund procedures
- the eligibility criteria for tax relief
- the documentation requirements for tax relief. The documentation part should cover any certification that would need to be provided by the beneficial owners, intermediary bank and ICSD's, as applicable)
- other tax related information, including but not limited to:
 - holding restrictions for certain holders/ beneficial owners for tax purposes
 - any relevant selling/transfer restrictions which the Issuer is relying on e.g., only non-taxable investors may be permitted from holding certain securities to enable all payments to be paid to the ICSDs gross

The **Taxation Summary/Tax section** should also:

- **inform** the ICSDs on:
 - the tax regimes applicable at Source (e.g., withholding taxes on income distributions and capital gains; disposition/ transfer of securities; etc.)
 - under which jurisdiction(s), the income derived from the securities will be subject to

Note: if the income is partially taxable under a specific jurisdiction, this should clearly be mentioned, and if applicable, the classification of such income under the relevant jurisdiction

- which tax law is applicable
- **confirm** whether any tax collection, tax remittance and tax reporting obligations regarding the applicable tax regimes that will be applied by the Issuer or Issuer's Paying Agent or any gross up clause applicable.

Please indicate which other parties are expected to comply with the tax collection, tax remittance and tax reporting obligations, should the issuer or the issuer's paying agent not have such obligation, US IRC section 871(m), various Financial Transaction Taxes, etc.

This information can be in the form of a separate document/annex/side letter and must be provided at issuance.

If the security in question is **listed on a regulated market**, the tax disclosure should be included in the prospectus or equivalent document.

However, for **Private Placements, unlisted securities** or **securities that are admitted to unregulated markets**, no Prospectus is produced and the type of document submitted to the ICSDs (Trust Deeds/Information Memorandums/Private Placement Memorandums/Agency Agreements etc) do not include a formal taxation summary. Therefore, the above-mentioned tax information should be provided in the form of a separate document/annex/side letter to enable the ICSDs to perform their eligibility assessment.