



## **BULLETIN – 111201/19**

# **ICMSA Bulletin with respect to Conditional Tax Gross-Up Clauses in International Debt Securities**

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The ICMSA has noted during a review of new Eurobond standalone and programme documentation increasing instances of conditional carve-outs to tax gross-up clauses, that is to say instances where the obligation on an issuer to gross-up payments in respect of an obligation to withhold tax is dependent on certain conditions being fulfilled such as e.g. a connection between the bondholder with the State in which the Issuer is resident. The association would like to highlight that the conditions specified in such carve-outs are not monitored by the paying agents or International Central Securities Depositories (ICSDs), Clearstream Banking and Euroclear SA/NV, when making payments on securities.

It is not possible to identify the end beneficiaries of interest or principal payments via the custodial chain without specific arrangements being put in place and obtaining the prior agreement of the ICSDs and paying agents that they will undertake the monitoring required. In the absence of these arrangements it is expected that all payments are made gross of tax and no collection of information regarding the end beneficiaries such as tax jurisdiction or country of residence is required. Therefore, it is expected that the relevant documentation should only include conditional carve-outs that can be applied.

Should a conditional tax gross up clause oblige an issuer to identify its investors this must be clearly notified to the ICSDs and paying agents well before the closing date of the issue to discuss if suitable procedures may be arranged and put in place. Such procedures are likely to be created specifically for each security and accordingly the timeframe for the acceptance of that issue for eligibility within the ICSDs will be longer given that many parties such as the ICSDs, paying agent and relevant common depository are impacted. Furthermore, the ICSDs and the paying agents cannot guarantee that a suitable procedure can be implemented in all cases.