



BULLETIN – 080617/05

Global Tax Procedures – Tax Relief Procedure for Spanish Eurobonds

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Disclaimer: In view of the extension of exemption to Tax Havens residents the Spanish tax procedure for international debt instruments subject to law 19/2003 has been slightly amended (removing the Tax Haven references) and may need to be modified further once the scope of the changes and the new applicable requirements have been clarified by the Spanish Tax authorities. The content of the procedure that may be further impacted, according to the ICSD's current understanding, has been underlined and highlighted in blue.

[Spanish Withholding Tax Procedures for international debt instruments issued by Spanish resident issuers subject to Law 13/1985, as amended by Laws 19/2003, 23/2005 and 36/2007, and under articles 59.q\) or 59.s\) of the Corporation Tax Regulations approved by Royal Decree 1777/2004, of 30 July 2004](#)

I. Immediate refund

As per the immediate refund procedure ([procedure which complies with Spanish Law 13/1985, as amended by Laws 19/2003, 23/2005 and 36/2007, and under article 59.s\) of the Corporation Tax Regulations approved by Royal Decree 1777/2004, of 30 July 2004](#)), Spanish withholding taxes will be deducted and then, where applicable, immediately refunded on the same date (the "Immediate Refund").

[The Immediate Refund Procedure is only available for or on behalf of beneficial owners which are eligible for relief from Spanish withholding tax where securities are held: \(i\) by/through Customers/Participants of the ICSDs which are a central bank, another public entity, or international body, a bank or credit entity or financial entity, including collective investment schemes, pension funds or insurance entities, resident in any OECD state \(including Spain\) or any country with which Spain has signed a double-taxation treaty, and subject to a specific regime of administrative supervision and registration; or \(ii\) by/through Customers/Participants which are not resident in an OECD country or country with which Spain has a double tax treaty and if the ICSDs issue an Anexo II or III \(although the ICSDs have no general obligation to do so\); and \(iii\) if such Customers/Participants have granted the ICSDs a power of attorney or other one-time certification to prepare and submit tax certification on their behalf. The ICSDs however reserve the discretion to amend the procedures described below.](#)

1. *Depending on the form of the notes¹, at least 20 Business Days before the income payment date or the Spanish International debt instruments' redemption or maturity date where such International debt instruments were initially issued below par (the "Payment Date") or as soon as possible if the information is not available before: The Depository notifies the ICSDs of such upcoming Payment Date and details of the event.*

¹ e.g. for short term notes the deadline of 20 Business Days does not apply



2. The ICSDs notify their respective Customers and Participants of an upcoming Payment Date according to their standard procedures and communication channels, specifying the certification requirements to be met to benefit from relief from withholding tax.
3. *Beginning as of the date specified in the contractual documentation between the ICSDs and their Customers/Participants:* The ICSD's Customer/Participant (as owner of the information) initiates the sending of provisional information on the beneficial owners which are eligible for relief and wish to benefit from an Immediate Refund. This information is collected by the ICSDs using electronic or other approved/authenticated channels of communication, amongst others SWIFT, tested telex, secured/approved email or mail. According to the contractual documentation between the ICSDs and their Customers/Participants, **this provisional beneficial owner information must include, inter alia, the identity (indicating the tax identification code for Spanish residents), the address and tax residency, the position and the amount of income for each beneficial owner requesting an Immediate Refund and must not include beneficial owners which are residents of Spain and not eligible for tax exemption ("the Provisional Beneficial Owner Information").**
4. The ICSDs' Customers/Participants are obliged to inform the ICSDs using the abovementioned communication channels of any change in the Provisional Beneficial Owner Information already provided, so that, in line with Spanish law as interpreted by the Spanish Tax Authorities (rulings dated 28 September 2007 and 31 January 2008), it is accurate at close of business on the business day before Payment Date ("the Record Date") (the "Final Beneficial Owner Information"). All such changes must be communicated to the ICSDs as soon as possible before or at Record Date close of business, but in the following two cases (a) and (b) the particular timetable set out below applies:

Case (a): any trade or transfer which takes place shortly before the close of business on Record Date which would result in a change in the Customer's/Participant's total position and would therefore lead to an incorrect claim for Immediate Refund;

Case (b): a change of ownership on the books of the Customer/Participant which takes place shortly before the close of business on Record Date and would have an impact on the information previously provided by the Customer/Participant on the beneficial owner(s) (whether reflected or not in the ICSDs' records).

In Case (a) and (b) above, the Customer/Participant must provide updated and accurate Final Beneficial Owner Information as soon as possible after close of business on the Record Date and in any event before 8:00 AM CET on Payment Date.

In addition to the contractual obligation of the Customer/Participant to update the Provisional Beneficial Owner Information, the ICSDs support their Customers'/Participants' reconciliation by monitoring that the sum of the positions reported in the Provisional Beneficial Owner Information by each Customer/Participant does not exceed its total position on close of business on Record Date.

Moreover, the ICSDs control that this sum of positions based on the Provisional Beneficial Owner Information remains in line with the total position of the Customer/Participant by automatically monitoring the settlement activity of each Customer/Participant which may affect its total position. The balances are continuously reconciled and any discrepancy, compared with the Provisional Beneficial Owner Information, is reported to the relevant Customer/Participant for action by using the most relevant approved communication channel (telephone, email if approved, SWIFT). If provided in a timely manner updates will be processed upon receipt and included in the Immediate Refund request. The maximum withholding tax rate will be applied for every position or portion of position for which no Final Beneficial Owner Information is provided by the above deadline or is provided on time but not reconciled.

5. *As from close of business on Record Date:* As mentioned in 4 above, the ICSDs process the Final Beneficial Owner Information (as updated by the Customer/Participant so as to be accurate at Record Date close of business) and control that the Final Beneficial Owner Information provided by each Customer/Participant is in line with its entitled position, and that no excessive Immediate Refund is claimed.
6. **As from close of business on Record Date and until Payment Date 10:30 CET: Annexes I, II or III (depending on the beneficial owner status and status of the ICSD's Customer/Participant) are completed and signed by the ICSDs, as duly authorised representatives of their Customers/Participants by virtue of Powers of Attorney or, where appropriate, by the relevant ICSD in its own name, which Annexes will each reflect the Final Beneficial Owner Information, position and amount of income.**
7. *On Payment Date at 10:30 CET at the latest:* The ICSDs transmit to the Depository electronically or by fax the final breakdown Cover Letter which includes the breakdown of the global position subject to tax and the position applying for Immediate Refund, **a consolidated list of beneficial owners applying for Immediate Refund and copies of the relevant Annexes (each Annex including the relevant Final Beneficial Owner Information) duly signed and dated on or after Record Date at close of business (together "the Documentation")**. According to the procedure agreed upon with the Paying Agent, the Depository will in turn transmit the Documentation to the Paying Agent, which can subsequently inform the issuer. If requested the ICSDs would endeavour to send a courtesy copy to the issuer.
8. *On Payment Date from 10.30 CET until 13:00 CET:* the Depository will i) check the good receipt of documents provided by the ICSDs against the breakdown cover letter (see §7) ii) reconcile the certificates with the global position and the position applying for Immediate Refund. If any discrepancy or problem is detected the Depository will immediately contact the ICSDs for urgent corrective action.



9. *On Payment Date 13:00 CET at the latest:* The Depository sends a pre-advise of funds (containing details of the amount and Immediate Refund to be paid) to the ICSDs based on the ICSDs' Documentation as checked and reconciled by the Depository (as per §8 above).
10. *On Payment Date for same day currencies (before the currency deadline):* *The Depository sends to the ICSDs a pre-advise of funds (MT564 SWIFT message) which includes the Immediate Refund amounts, and pays the income and the Immediate Refund amounts respectively to the accounts of Clearstream and Euroclear with good value.*
11. *On Payment Date for next day currencies (before the currency deadline):* *The Depository sends to the ICSDs a pre-advise of funds (MT564 SWIFT message) for the net entitlement (taxed at the maximum rate) and pays the income respectively to the accounts of Clearstream and Euroclear with good value. On the business day following the Payment Date the Depository sends a second pre-advise of funds (MT564 SWIFT message) for the Immediate Refund amount only, and pays the amount respectively to the accounts of Clearstream and Euroclear with current value.*
12. *As of the business day following the Quick Refund Deadline (as defined in Section II.1 below):* **All the original Annexes relevant to the Immediate Refund and the original ones related to the refunds claimed after Payment Date or not processed for Immediate Refunds are sent together (but separated in two different packages) by the ICSDs to the Depository which in turn will deliver them to the Paying Agent and then to the issuer. The original Annexes should be sent to the Depository at the latest on the 15th calendar day of the month immediately following the Payment Date.**

II. Quick refund procedure

As per the quick refund procedure **(procedure which complies with Spanish Law 13/1985, as amended by Laws 19/2003, 23/2005 and 36/2007, and under articles 59.g) and 59.s) of the Corporation Tax Regulations approved by Royal Decree 1777/2004, of 30 July 2004)**, Spanish withholding taxes will be refunded after Payment Date but before the relevant Spanish issuer is obliged to pay such withholding taxes to the Spanish Treasury (the "Quick Refund"). The ICSDs however reserve the discretion to amend the procedures described below.

Beneficial owners which are eligible for an exemption from withholding taxes and which have not obtained an Immediate Refund or a Quick Refund may seek a refund through the ICSDs from the Spanish Tax Authorities.

1. *The below procedure refers to the Quick Refund deadline, which is currently 10:00 AM CET on the Business Day before the 10th calendar day of the month following the relevant Payment Date ("the Quick Refund Deadline").*
2. *Customers/Participants which: (a) held positions or a portion of positions which were taxed at the maximum tax rate on Payment Date; (b) held these positions or portion of positions for beneficial*

owners (including themselves if applicable) which were eligible for relief from such Spanish taxes; and (c) wish to benefit from a Quick Refund should send to the ICSDs before the deadline specified by the ICSDs in their notification to their Customers/Participants (which in no event will be later than the Quick Refund Deadline) a list of beneficial owners, including their positions and amount of income according to the same requirements mentioned in the Immediate Refund section (thus providing Final Beneficial Owner Information which is accurate at close of business on Record Date).

3. As of the Payment Date until the Quick Refund Deadline: Upon receipt of the Final Beneficial Owner Information, the ICSDs will verify that the position for which the Customer/Participant claims a Quick Refund is equal to or smaller than the position which was taxed at the maximum rate on Payment Date for that Customer/Participant. If the reclaimed position exceeds the available position for Quick Refund the ICSDs will contact their Customer/Participant to request corrective action before the Quick Refund Deadline. The ICSDs will only send a Quick Refund request to the Depository for sufficient or reconciled positions. Depending on the status of the beneficial owner and the Customer/Participant, Annexes I, II or III will be completed and signed during the Quick Refund period - and no later than the Quick Refund Deadline - by the Customer/Participant or its legal representative (which may include the ICSDs acting under a power of attorney) or, where appropriate, by the relevant ICSD in its own name, each Annex including the Final Beneficial Owner Information and position for the Quick Refund.
4. By the Quick Refund Deadline: *The ICSDs will transmit to the Depository - electronically or by fax - the final breakdown Cover Letter which includes the total amount for Quick Refund, a consolidated list of Beneficial Owners applying for Quick Refund and copies of the relevant Annexes (each with the relevant Final Beneficial Owner Information) duly signed and dated as of Record Date close of business and until the Quick Refund Deadline. Until the business day following the Quick Refund Deadline the Depository will will i) check the good receipt of documents provided by the ICSDs against the breakdown cover letter (see §7) ii) reconcile the certificates with the global position and the position applying for Immediate Refund.. If there is any discrepancy or problem, the depository will contact the ICSDs for corrective action. According to the procedure agreed upon with the Paying Agent, the Depository will in turn transmit the documentation to the Paying Agent, which can subsequently inform the issuer. If requested, the ICSDs would endeavour to send a courtesy copy to the issuer.*
5. As of the business day following the Quick Refund Deadline: All the original Annexes relevant to the Immediate Refund and the original ones related to the Quick Refund are sent together (but separated in two different packages) by the ICSDs to the Depository which in turn will deliver them to the Paying Agent and then to the issuer. The original Annexes should be sent to the Depository at the latest on the 15th calendar day of the month immediately following the Payment Date.

6. On the business day following the Quick Refund Deadline: *The Depository sends a pre-advise of funds (MT564 message) to the ICSDs for the total Quick Refund amount including the breakdown per reclaim. The Paying Agent pays in a single payment per individual ISIN the Quick Refund amounts respectively to the accounts of Clearstream and Euroclear with current value date for the benefit of the beneficial owners.*
7. **By the 19th calendar day of the month immediately following the Payment Date: The ICSDs will consider that the original Annexes sent have been received and checked by the Depository if no notification mentioning otherwise has been received by that time.**

III. Summary of certification requirements

1. The information relative to the beneficial owners should be made available to the ICSDs by their Customers/Participants in accordance with the abovementioned procedures, communication channels and timetables, as completed/supplemented by the detailed notifications sent by the ICSDs to their Customers/Participants from time to time.
2. **As per Article 44 of Royal Decree 1065/2007 of 27 July 2007, as interpreted by the Spanish Tax Authorities, Annexes can be completed and signed at the earliest at the close of business of the business day before Payment Date (“Record Date”) until the Quick Refund Deadline, and must reflect the Final Beneficial Owner Information at close of business on Record Date.**
3. **Where securities are held: (i) by/through Customers/Participants of the ICSDs which are a central bank, another public entity, or international body, a bank or credit entity or financial entity, including collective investment schemes, pension funds or insurance entities, resident in any OECD state or any country with which Spain has signed a double-taxation treaty, and subject to a specific regime of administrative supervision and registration; (ii) such Customers/Participants have granted the ICSDs a power of attorney to prepare and submit tax certification on their behalf; and (iii) the Customers/Participants provide the ICSDs with the appropriate Final Beneficial Owner Information, the relevant Annexes I, II or III will be completed and signed by the ICSDs in the name and on behalf of their Customer/Participant. Depending upon when the Final Beneficial Owner Information is provided to the ICSDs and is reconciled, the ICSDs will submit such Annexes for Immediate or Quick Refund.**
4. **Where such Customers/Participants have not granted a power of attorney to the ICSDs, Annexes I, II or III (as appropriate) may be completed and signed by such Customers/Participants and submitted for Quick Refund.**
5. **Where Customers/Participants are not resident in an OECD country or country with which Spain has a double-taxation treaty, Immediate or Quick Refund is available only if the relevant**



ICSD, in its sole discretion, issues an Annex II or III for such Customers/Participants in its own name.

6. Certificates of Residence issued by the relevant tax authorities of the countries of tax residence of the beneficial owners must no longer be submitted for an Immediate or Quick Refund.