

## BULLETIN – 081119/09

# Global Tax Procedures – Tax Relief Procedure for UK Unlisted Eurobonds

Issued by the International Capital Market Services Association

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### 1. Scope

The procedures set out below apply to UK Unlisted Eurobonds that are subject to withholding tax<sup>1</sup> pursuant to Income Tax Act 2007 and related implementing regulations (for the purposes of this letter referred to hereinafter as “the Securities”).

### 2. Definitions

**Business Day** is used only for the purpose of these procedures to designate the day Clearstream Banking SA and Euroclear Bank SA/NV (the ICSDs) are open for business: which is currently every day with the exception of Christmas Day, New Year Day, Saturdays and Sundays.

**Deadline** any deadline mentioned in this document always corresponds to a business day as defined above. In the absence of an indication of timing, 18:00 CET applies.

**HMRC** Her Majesty’s Revenue and Customs (UK tax authority).

**Relief at Source Procedure** procedure whereby income proceeds are paid taking into account exemption or/and applicable reduced rate as foreseen by the local tax regulation or double taxation treaty.

**Standard Refund Procedure** procedure whereby tax relief is requested with local tax authorities as foreseen by the local tax regulation after the income has been paid net of withholding tax at the maximum rate.

Capitalised terms not defined herein shall have the meanings assigned to them in the Common Depository (CD)/Common Service Provider (CSP) Agreements.

The ICSDs accept no responsibility for the information provided by their clients, or for the information that they provide to the CD or CSP in the context of these procedures.

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<sup>1</sup> Interest on unlisted bonds issued by a bank in the ordinary course of its business is not subject to withholding tax under the Income Tax Act 2007 – s 878. Interest will not be regarded by HMRC as paid in the ordinary course of a bank’s business if: (i) the borrowing relates to the capital structure of the bank (i.e. if it conforms to Tier 1, 2 or 3 capital irrespective of whether it in fact counts towards the bank’s regulatory capital); and/or (ii) the characteristics of the transaction giving rise to the interest are primarily attributable to an intention to avoid UK tax. Interest on unlisted bonds issued by a building society is also not subject to withholding tax under the Income Tax Act 2007 – s 875. There is no ordinary course of business requirement for building societies but other conditions may need to be considered – see s 889 Income Tax Act 2007.



### 3. Withholding tax treatment of the Securities

Interest paid on UK Unlisted Eurobonds is subject to a withholding tax at a rate of 20% by default.

Exemption or relief at source may be obtained but certain exemptions require that sufficient evidence is provided.

*Eligibility criteria for exemption or relief at source through a DTT*

#### **Exemption at source**

The person beneficially entitled to gross interest payment is either a company within the charge to UK corporation tax or meets other conditions as defined in the Income Tax Act 2007<sup>2</sup>, and has given an attestation in the form set out in the Form of Noteholder Tax Certificate (attached). This Form of Noteholder Tax Certificate together with any supporting documentation is referred to below as “the Certificate”.

#### **Relief at source through a DTT**

Non-resident beneficial owners may qualify for the benefit of a reduced rate of withholding tax in accordance with a Double Taxation Treaty (DTT) between its country of residence and the United Kingdom. To be eligible for relief at source, the beneficial owner must seek prior approval from HMRC.

If approval is granted, HMRC issues a notice in writing to the payer of interest directing it not to deduct tax or to deduct tax at a specified rate in respect of interest paid to the beneficial owner pursuant to the applicable DTT (Hereafter referred to as Gross Payment Direction). A copy of the HMRC approval must be sent together with the attestation in the form set out in the Form of Noteholder Tax Certificate. Without the HMRC approval relief at source cannot be granted.

*Required documentation*

- **Attestation (See attached Form of Noteholder Tax Certificate)** certifying either that:
  - Option A. the beneficial owner is a company within the charge to UK corporation tax (or payments of interest are otherwise regarded as excepted payments for the purposes of s 930 of the Income Tax Act 2007), and remains beneficially entitled to interest payable in respect of the Relevant Note; or
  - Option B. the beneficial owner is eligible for a reduced rate of withholding tax in accordance with a DTT, and remains beneficially entitled to interest payable in respect of the Relevant Note. The beneficial owner has sought prior approval from HMRC and such approval has been granted and not expired.
- **Copy of Gross Payment Direction under applicable DTT from HMRC** (when applicable).

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<sup>2</sup> E.g. The payments are made to, or to the nominee, of a PEP/ISA Manager in respect of investments under the plan or a charity or registered pension scheme administrator etc – see ss 935, 936 and 937 Income Tax Act 2007.



**Important notice:**

- The beneficial owner must transmit the Certificate to the Principal Paying Agent (PPA) and Issuer, via the standard chain of communication (beneficial owner, custodian bank, ICSD, CD/CSP), in accordance with the deadlines communicated to it by its custodian. Please note that in any event, the ICSDs must receive the documentation no later than 7 business days (or if such day is not a Business Day, the immediately preceding Business Day) prior to the taxable income event payment date (PD).
- The beneficial owner must authorize the ICSD to disclose data relevant to the account.
- The Certificate includes an indemnity clause where the beneficial owner accepts full responsibility in case of any claims made for due taxes, interest thereon, or penalties levied by tax authorities in connection with any payments made subject to the Certificate and therefore to indemnify the Issuer (the Fiscal agent and Paying agent) in respect of any penalties, taxes and interest thereon, levied by HMRC or any other authority, or in respect of any other costs incurred in connection with any action taken in reliance upon the contents of the Certificate.

**4. Procedures**

4.1. Exemption or partial relief of withholding tax at source

The table below describes the different steps and responsibilities in the handling of:

- Exemption at source or/and;
- Reduced treaty rate at source

Step	Deadline	Action	Owner
1	at least 20 Business Days before the taxable income event payment date or , if no position is recorded at that point in time, upon credit of a position on Clearstream or Euroclear respective account within this 20 Business Days (BD) period	<p>The Depository notifies the ICSDs of an upcoming taxable income event via agreed means of communication.</p> <p>The notification shall specify:</p> <ul style="list-style-type: none"> <li>- the entitlement date (:98A//RDTE)</li> <li>- the payment date (:98A::PAYD)</li> <li>- the taxability of the event (:92A::TAXR)</li> <li>- the nature of the tax if specific and necessary (:70E ::ADTX)</li> <li>- the type of relief available (at source) and the deadline by which the Depository requires to receive the relevant certification</li> <li>- The applicable tax procedure (i.e. UK unlisted securities).</li> </ul>	CD, CSP

2	After being notified of the taxability of the event	<p>The ICSDs notify their respective Customers and Participants of an upcoming income payment specifying the requirements to be met to benefit from relief of withholding tax namely:</p> <ul style="list-style-type: none"> <li>- a breakdown of the beneficial owners</li> <li>- a “Noteholder Tax Certificate” (The Certificate)</li> <li>- a copy of the prior direction from HMRC (for DTT residents)</li> </ul> <p>As applicable, the ICSDs collect Certificate and instructions from their Customers and Participants.</p>	ICSDs
3	PD- 7 BD	<p>The ICSDs must to receive the Certificate no later than PD-7 BD.</p> <p>The deadline set for the beneficial owner will be set and communicated accordingly by the ICSDs’ concerned Participants/Customers.</p> <p>ICSDs’ Customers and Participants must notify ICSDs of any change of tax status of the beneficial owners or change in holding (i.e. key information contained in Certificate) subsequent to providing such Certificate (see step 7)</p>	ICSDs
4	PD- 6 BD	<p>The ICSDs instruct the CD by the means of communication as agreed between the ICSDs and the Depository. Such instruction specifies:</p> <ul style="list-style-type: none"> <li>- the holdings for which ICSDs will provide the required Certificate to benefit from tax relief and;</li> <li>- the holdings to be treated as subject to withholding tax.</li> </ul> <p>In addition,</p> <ul style="list-style-type: none"> <li>- ICSDs forward Certificates and prior approval from HMRC to CD</li> <li>- CD forwards Certificates to PPA</li> <li>- PPA forwards Certificates to issuer</li> </ul> <p>Certificates to be sent by all parties in electronic format.</p> <p>In case of missing instruction from ICSDs, maximum withholding tax is applied by default.</p>	ICSDs CD, CSP

5	PD 5-2 BD	Issuer/Agent reviews Certificates and advises ICSDs of any issue via standard communication flow.	Issuer, PPA
6	PD-2 BD	<ul style="list-style-type: none"> <li>- Issuer confirms to PPA acceptance of Certificates (i.e. whether each particular beneficial owner receives gross, net or with a reduced treaty rate).</li> <li>- PPA confirms with Issuer total amount of interest due and amount due to each beneficial owner.</li> <li>- PPA confirms with CD total amount of interest due and amount due to each beneficial owner.</li> <li>- CD/CSP sends pre-advice messages (Schedule of payment) to ICSDs via agreed means of communication, of the net and gross (or reduced treaty rate) amounts to be paid. In addition to the standard fields to be used for income pre-advice messages, the pre-advice shall include the cash amount due per tax rate.</li> </ul>	CD, CSP PPA
7	PD- 1 BD	<ul style="list-style-type: none"> <li>- Deadline for beneficial owners to notify ICSDs of any change of tax status or change in holding</li> <li>- CD advises ICSDs if any Certificates delivered at step 3 are to be rejected and a beneficial owner is therefore to receive interest net rather than gross. If no advice is given, ICSDs to assume that payment should be made in accordance with Certificates received at step 3, subject to receipt of any notification of any change of tax status or change in holding</li> <li>- Record date</li> </ul>	CD, CSP
8	On Payment Date	<ul style="list-style-type: none"> <li>- Issuer pays to the PPA the aggregate interest amount due to beneficial owners (i.e. taking into account beneficial owner's entitlement to gross or net amount (or with a reduced treaty rate)</li> <li>- PPA pays aggregate interest amount to ICSDs with value PD</li> <li>- ICSDs to credit direct customer accounts</li> <li>- ICSDs to forward original Certificates to CD/CSP (if required)</li> </ul>	Issuer PPA CD, CSP ICSDs



9	Payment Date	In case of change of holding on the Record Date, the Issuer amends the payment on a best efforts basis and credits/debits the tax when applicable.  As appropriate, the Issuer returns the retained funds to the PPA	Issuer PPA
10	Post Payment Date	CD/CSP to forward original Certificates to Issuer (if required) Issuer to pay withheld tax to HMRC.	CD/CSP



## FORM OF NOTEHOLDER TAX CERTIFICATE

So long as the securities identified below ("Relevant Note") are held directly or indirectly in an account with Euroclear Bank S.A./N.V. and/or Clearstream Banking, société anonyme (each an **ICSD**, together the **ICSDs**) this Noteholder Tax Certificate will need to be delivered to either of the ICSDs in accordance with the deadlines imposed by such ICSDs. The ICSDs will arrange for this Noteholder Tax Certificate to be delivered to the Fiscal Agent and Issuer.

Account number with the ICSDs (*to be completed by the ICSD's participant/customer*) \_\_\_\_\_

This certificate applies to the following interest payment on the Relevant Note described below:

Security name: \_\_\_\_\_

Security Code (ISIN or Common Code): \_\_\_\_\_

Total quantity of securities held: \_\_\_\_\_

Interest payment date (PD): \_\_\_\_\_

THIS DEED is made on .....<sup>1</sup>

BY .....<sup>2</sup> (**the Noteholder**)

1. We refer to the terms and conditions (the **Terms and Conditions**) of the Relevant Note.
2. We confirm that on the date hereof we are and on the relevant record date will be, the beneficial owner of the Relevant Note and beneficial owner of the interest payable in respect of the Relevant Note on the relevant PD.
3. We confirm that Option A or Option B set out below is, and will be, applicable to the interest payable in respect of the Relevant Note on the relevant PD.

***Tick the relevant box(es) and complete the following as appropriate:***

### **Option A**

- In order to enable the [Issuer/Paying Agent/\_\_\_\_\_ ] to form a reasonable belief that the interest payable in respect of the Relevant Note on the relevant PD is an excepted payment for the purposes of section 930 of the Income Tax Act (ITA) 2007, we confirm that one of the categories (a), (b), (c), (d), (e) outlined below applies:
- (a) The person beneficially entitled to interest payable in respect of the Relevant Note is a UK resident company within the charge to UK corporation tax;
  - (b) The person beneficially entitled to interest payable in respect of the Relevant Note is a non-UK resident company which carries on a trade in the UK through a permanent establishment and which brings into account interest payable in respect of the Relevant Notes in computing its chargeable profits (for the purposes of section 11(2) of the Income and Corporation Taxes Act 1988);

<sup>1</sup> Insert date.

<sup>2</sup> Insert name of Noteholder.

(c) The person to whom the payment is made is, or is the nominee of –

- the plan manager of a plan of a kind to which regulations under Chapter 3 of Part 6 of Income Tax (Trading and Other Income) Act (ITTOIA) 2005 (income from individual investment plans) apply and the payment is received by the plan manager in respect of investments under the plan.

(d) The person to whom the payment is made is, or is the nominee of –

- a local authority,
- a health service body within the meaning of section 519A(2) of the Income and Corporation Taxes Act (ICTA) 1988,
- a public office or department of the Crown other than one mentioned in section 978(2) of ITA 2007,
- a charity,
- a body for the time being mentioned in section 507(1) of ICTA 1988 (bodies that are allowed the same exemption from tax as charitable companies the whole income of which is applied to charitable purposes),
- an Association which complies with the conditions in section 508(1) of ICTA 1988 (scientific research organisations),
- the scheme administrator of a registered pension scheme,
- the sub-scheme administrator of a sub-scheme which forms part of a split scheme pursuant to the Registered Pensions (Splitting of Schemes) Regulations 2006 (SI 2006/569),
- the trustees of a scheme entitled to exemption under section 613(4) of ICTA 1988 (Parliamentary pension funds), and
- the persons entitled to receive the income of a fund entitled to exemption under section 614(3) of ICTA 1988 (certain colonial, etc pension funds).

(e) The person beneficially entitled to interest payable in respect of the Relevant Note is a partnership each member of which is:

- a person or body mentioned in (d) above, or
- a UK resident company, or
- a non-UK resident company which carries on a trade in the United Kingdom through a permanent establishment that is required to bring into account, in calculating its chargeable profits (for the purposes of section 11(2) of ICTA 1988), the whole of any share of the payment that is attributable to it by reason of sections 114 and 115 of ICTA 1988, or
- the European Investment Fund.



We further confirm that we meet all legal requirements to receive gross payment on the Relevant Notes.

### Option B

- We are beneficially entitled to interest payable in respect of the Relevant Note and confirm that:

We are treated as a resident for tax purposes in \_\_\_\_\_ and are entitled to application of withholding tax at reduced rate of \_\_\_\_\_ %, according to the Double Taxation Treaty (DTT) concluded between the United Kingdom and our country of residence (The Treaty); and

- (a) We do not carry on a business in the United Kingdom through a permanent establishment with which our participation in the Relevant Notes is effectively connected;
- (b) We meet all other conditions in the Treaty for full or partial exemption from tax imposed by the United Kingdom on interest, except that for this purpose it shall be assumed that any condition which relates (expressly or by implication) to there not being a special relationship between the Issuer and ourselves or between both of these and another person, or to the amounts or terms of the Relevant Notes, or to any other matter which is outside our exclusive control, is satisfied;
- (c) We have completed promptly all procedural formalities necessary for the Issuer to obtain authorisation to make a payment in respect of the Relevant Notes without a deduction (or with reduced reduction) for or on account of United Kingdom income tax; and
- (d) A Gross Payment Direction to be paid under the applicable DTT (at zero or reduced rate) has been obtained from HMRC and a copy of the direction (*tick as appropriate*)

is enclosed with this certificate; or

was enclosed with the certification for a previous payment. The direction is valid for all payments until \_\_\_\_\_ (*please insert date*).

- 4. The Noteholder confirms that it will promptly inform, via the appropriate chain of communication, the ICSDs and the Issuer in writing if between the date hereof and the relevant PD there is any change in the holding of the Relevant Note or either of the confirmations set out in paragraphs 2 and 3 above are no longer correct.
- 5. We irrevocably authorise the ICSDs, the Common Depository, Paying Agent and Issuer to act on the information contained in this certificate and to forward this certificate or a copy hereof and any other document submitted in connection herewith to the competent UK authorities, including HMRC, in connection with any administrative or legal proceedings or official inquiries for which this certificate is or would be relevant.
- 6. We accept full responsibility in case of any claims made for taxes, interest thereon, or penalties levied by tax authorities in connection with any payments made subject to this certificate and therefore to indemnify the Issuer (the Fiscal agent or paying agent) in respect of any penalties, taxes and interest thereon, levied by HMRC or any other authority, or in respect of any other costs incurred in connection with any action taken in reliance upon the contents of this certificate.



**7. Communication with Noteholder**

10. If during the review process of this Noteholder Tax Certificate, either the ICSDs or the Issuer needs to communicate with us, here are the contact details:

11. Name of contact person or department: \_\_\_\_\_

E-mail: \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

**For and on behalf of:**

Name of Noteholder: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**By (authorised signature/s):**

\_\_\_\_\_  
*Authorised Signature*

\_\_\_\_\_  
*Authorised Signature*

\_\_\_\_\_  
*Name*

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