



EUROPEAN CENTRAL BANK

EUROSYSTEM

Improvement of Taxation Processes

CMH-TF

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Single Collateral Management Rulebook for Europe
common rules for managing collateral



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Introduction

A [new CMU action plan](#) was announced on September 24th 2020 by the European Commission (EC), which aims to tackle key remaining obstacles to market integration and includes Taxation processes (e.g. “Taxation can present a serious obstacle to cross-border investment. [...] A significant burden ascribed to taxation is caused by divergent, burdensome, lengthy and fraud-prone refund procedures for tax withheld in cases of cross-border investment.”)

Action 10: *In order to lower costs for cross-border investors and prevent tax fraud, the Commission will propose a common, standardised, EU-wide system for withholding tax relief at source.*

- This takes on board the recommendations made by the High-level Forum on the Capital Markets Union and is in line with “Harmonisation of Tax Processing – Discussion Note”, issued by the T2S Advisory Group in 2016.

Introduction

Invitation to discuss

If/how the collateral management industry could formulate recommendations to improve the efficiency of tax collection and reclaim processes, e.g.:

- best practices focussing on harmonised processes and practices and taking into account collateral management.
- contribute on documenting the existing good practices of selected countries

Harmonisation of Tax Processing

Problem definition – lack of harmonisation of tax processes

- Very little harmonisation with respect to the processing of the tax on interest and dividend payments
 - Holder of securities from 27 EU countries is faced with 27 different processes
 - Collateral provider or receiver (of European securities as collateral) may have to manage up to 27 separate tax procedures
- Many tax procedures are costly, lengthy and burdensome
 - Tax procedures relating to payments on securities positions that have provided as collateral, or that have been lent, are particularly diverse and complex.

CMH-TF work

Work of the CMH-TF

Barriers and obstacles still exist, given fragmented legacy standards, structural constraints and complex and diverse market practices (2017).



Investor identification



- Investor entitlement: based on the number of shares held at close of business on record date at the issuer CSD
- Cascade down the custody chain



- Across Europe, there is great diversity in the national definitions of who is the “legal owner” or “shareholder” of a security.
- HLF identified this diversity in national definitions as being a significant problem



- Activity of collateral provision (short term transfer)
- Should be based on the tax status of the collateral giver (and not collateral taker) & avoid misuse



Focus of work

Need for two sets of rules:

1. Process for determining who is the “investor” for tax purposes.
 - the end investor is always the “investor” for tax purposes,
 - except in a limited set of circumstances in which a collateral giver will be treated as the “investor”, and not a collateral taker.
2. Process for determining if the “investor” is “eligible” for the tax on that payment to be withheld at a rate based on its tax status of the “investor”.
 - “investors” should be “eligible” to benefit from their own tax status,
 - except if they are holders of securities in which they have no economic interest, and/or which they hold only for a short period of time.

Next steps

1. Detailed drafting of these two sets of rules

Who is the investor? Is the investor entitled to tax benefits?

2. Comparison of these draft rules with existing best practices applicable in EU and non-EU countries

Selected EU country and e.g. Japan and US

Consider

- *The activities that can be identified by the different transactions types.*
- *Barriers to collateral mobility in some EU markets.*