

THE ASSOCIATION OF GLOBAL CUSTODIANS

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Mr. Peter Bach-Mortensen
Head of Division, Policy, Law, and Economics
Danish Ministry of Taxation
Nicolai Eigtveds Gade 28
DK 1402 Copenhagen
Denmark
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Re: Request for Guidance on Income Entitlement Rules

Dear Mr. Bach-Mortensen,

The Association of Global Custodians (“AGC”)¹ serves as a non-partisan advocacy organization representing our members’ common interests on regulatory and market structure through interaction with legislative and regulatory authorities and financial industry organizations.

The AGC is writing to you today to request that the Danish Authorities consider aligning the entitlement dates for determining the party entitled to receive dividends and the party entitled to submit withholding tax reclaims. The existence of two entitlement dates and therefore two entitlement positions (i.e., shares settled in the investor’s name as at the date of the Annual General Meeting (“AGM”) and shares settled in the investor’s name as at record date) results

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

in discrepancies between the party that was subject to withholding tax and the party entitled to furnish a reclaim.

If alignment of entitlement dates is not possible in the short term, we request that the Danish Authorities issue comprehensive regulatory guidance in the area of determining tax reclaim entitlement and provide sufficient time from the date comprehensive guidance is published for the industry to modify its systems and operating models to align to the new standards. The AGC sees this as imperative to enabling market participants and investors in Danish stocks to understand how and when to properly present tax reclaim applications. Additionally, the AGC notes that by specifying that the entitlement to recover withholding tax should not be aligned to investors subjected to Danish dividend withholding tax, it is conceivable that investors could be subject to excess Danish withholding tax, and that relief under Denmark's double taxation treaties could be limited in a manner inconsistent with commitments Denmark has made to contracting states. Issuing guidance will enable market participants to fully understand reclaim requirements, eliminate erroneous tax reclaim filings, and also reduce the need of the Danish Tax Authorities to request additional documentation and information after a reclaim has been filed.

Current entitlement rules

Key Dates:

- Annual General Meeting date - the date of the AGM of the Danish company where a dividend is usually declared. In most cases this is the day prior to ex-date.
- Ex-date - the day on which a security trades without receiving the right to the dividend. This is one day prior to record date.
- Record date - the date by which investors must be registered as owner on the company's books and records in order to receive a dividend.
- Pay date – the date dividends are paid to the registered holders of record

We understand the dividend and reclaim entitlement rules to be as follows:

With respect to dividend entitlement, dividends are paid based on the record date settled positions in the accounts.

It is a requirement that for withholding tax reclaim purposes the shareholder must be the beneficial owner of the shares on the date of adoption of the dividend resolution, which is on the day on which the AGM takes place.

The claimant must attach a custody account statement that provides an overview of the claimant's shareholding on the AGM date, so that the number of shares at that time

corresponds to the number of shares for which refund of Danish dividend tax is claimed. It is understood that the shares must be settled in the custody account on AGM in order for the claimant to be entitled to make a reclaim of withheld tax.

The custody account statement must also show any changes in the claimant's shareholding during the period from six months before the dividend distribution date until six months after the dividend distribution date. If a claim is made within six months after the dividend distribution date, the overview must show the changes up to the time when the claim was made.

It is understood that record date differs from the AGM date in order to accommodate the settling of shares with the trade dates on the day of the AGM or the day before, the standard settlement cycle being T+2. However, in order to properly configure market participants' systems to accommodate two entitlement dates, thorough guidance outlining how Denmark's rules apply under all applicable trading and holding permutations is imperative, including whether transfer of title happens as at trade date or settlement date for withholding tax reclaim purposes.

Particular difficulty arises in relation to interim and extraordinary dividends paid by Danish issuers. It is understood that at the AGM (to demonstrate the issue, assume this takes place in March), authorization may be given for the payment of an interim dividend later in the year (for example, in September), subject to certain conditions such as the company meeting its financial targets. The final decision to pay the interim dividend is confirmed in a board meeting and generally announced on the same day. We understand that the date of this board meeting should be used as the entitlement date for Danish withholding tax reclaims related to interim and extraordinary dividends. We have observed that whilst most issuers instruct the local Central Securities Depository (CSD) in due time, where this is not the case, there may be a gap from two days up to 12 days between the date of the board meeting and the record date. The above-mentioned discrepancies between parties that have been subject to withholding tax and the party entitled to reclaim are therefore multiplied.

Further to the above, the following are examples of permutations and complexities that global custodians may encounter:

- The AGM date settled position is higher than the position on which the dividend was paid. Example: on AGM date an account held a settled position of 1,500 shares with pending delivery trade of 500 shares. The dividend was ultimately paid for 1,000 shares. On what position does the market allow reclaims?
- The AGM date settled position is lower than the position on which the dividend was paid. Example: on AGM date an account had a settled position of 1,000 with a pending receivable trade of 500 shares. The dividend was ultimately paid for 1,500 shares. On what position does the market allow reclaims?

- The AGM date settled position is 0 but the investor received shares after and had a dividend paid. Example: on AGM date an account had a settled position of 0 shares with a pending receivable trade of 500 shares. The dividend was ultimately paid on 500 shares. On what position does the market allow reclaims?
- AGM date settled position is 500 but the investor sold shares after and had no dividend paid. Example: on AGM date an account had a settled position of 500 with pending delivery trade of 500 shares. The dividend was ultimately not paid to the account at all. On what position does the market allow reclaims?
- Investor's entitlement is 10,000 shares, where 5,000 shares settled on record date and 5,000 shares' contractual settlement date is on record date, but settled late. On pay date the investor received payment on the 5,000 settled shares. Investor receives payment on the 5,000 shares that did not settle by record date through a market claim. Claim payment is received late, therefore the investor is entitled to the income payment, but not entitled to the reclaim amount.
- Scenarios where Danish companies pay interim dividends (extraordinary dividends paid before the end of the financial year and approved by the Board of Directors), which drive the need to know the reclaim entitlement date.
- Scenarios where Danish companies pay multiple dividends per year, which date should be considered as the reclaim entitlement date.
- Scenarios where the actual and contractual settlement date of trades differ, which impact the holders' positions on AGM date.

Should our request for comprehensive guidelines be acceptable, we would ask that market participants are permitted eighteen months from the guideline issuance date to properly configure their systems to accommodate those guidelines.

The AGC appreciates your consideration of our concerns in this letter. Should you wish to discuss these items further or require further information then we will be pleased to work with you..

Sincerely yours on behalf of the Association,



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