

IT'S TAXING BEING A CUSTODIAN:

Current and future custody tax
developments

HANSUKE

GLOBAL CUSTODY FORUM
London, 11 December 2018



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AGENDA

STAKEHOLDERS EXPECTATIONS

- EU 2019 CMU and OECD TRACE
- User groups and other associations
- Relationship with tax authorities
- Alternative tax reclaim providers

DEVELOPMENTS IMPACTING CUSTODY TAX SERVICES

- Brexit
- Market developments

GOING DIGITAL?

- Tax authorities
- Custody entitlement management
- Securities Lending

TAX REGIMES

- CRS and QI: Salutory Lessons for ROs
- Corporate Criminal Offences of Failure to Prevent Tax Evasion
- DAC6



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EU 2019 CMU AND OECD TRACE

- Renewed efforts to complete CMU before the May 2019 European Parliament elections
- OECD to revisit simplified reclaim procedures
- Difficulty in finding political backing



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USER GROUPS AND OTHER ASSOCIATIONS

SERVICE STANDARDS:

- Efficiency demands on reclaim lodgement after income event
- More MI transparency
- Greater operational support

REALITY TAKE:

- Not separately priced
- Risk exposures



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RELATIONSHIP WITH TAX AUTHORITIES

Importance of Client service ethos

Approach to lobbying

Uniformity within peer group

Tax authorities increasing see financial institutions as their agents



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ALTERNATIVE TAX RECLAIM PROVIDERS

Promises...

Cost-effectiveness

Legal basis

Operational responsibility

Pricing in the support for parallel platforms

Better to appoint as sub-contractor to custodian?



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BREXIT

Re-papering

Tax-tables (custody and lending)

Client communications

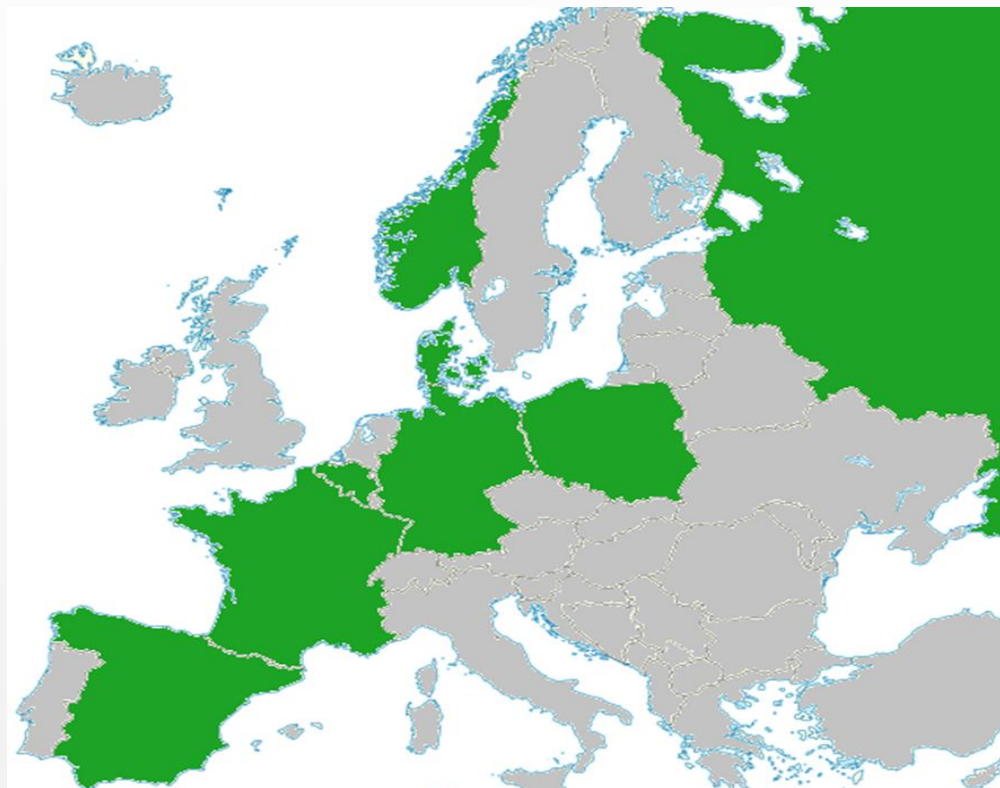
Supporting re-domiciliation



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MARKET DEVELOPMENTS



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MARKET DEVELOPMENTS

BELGIUM – ANTI-ABUSE

- New 60 day holding period for pension funds – reversal of burden of proof
- Tax assessment against beneficial owner without court application when withholding tax exemption claimed or reclaim wrongly refunded
- Requirement to demonstrate full ownership of underlying securities
- Tax authorities view that market claims don't constitute dividends so no tax recovery

DENMARK – MAKING HISTORIC CLAIMS

- ECJ “Fidelity Funds” case on freedom of movement of capital
- Court concluded in favour of the taxpayer
- Is the statute of limitation now 10 years ?
- If so clock is ticking... 21 December 2018



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MARKET DEVELOPMENTS

FRANCE – ANTI-ABUSE

- Senate amendments tabled to draft 2019 Finance Bill
- “Internal schemes” – Introduction of a withholding tax on manufactured dividends
- “External schemes” – From Relief at source to Reclaim mechanism for countries with which France has a double tax treaty but does not apply withholding tax or provides an exemption

GERMANY – ANTI-ABUSE

- Not new rules (came in from 1/1/17) but practical challenges have remained to apply anti-cum/cum treaty shopping rules for treaty reclaims below standard treaty rate of 15%



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MARKET DEVELOPMENTS

NORWAY – NEW DOCUMENTATION REQUIREMENTS (POSTPONED FROM 1/1/2018) AND ANTI-ABUSE (FOR RELIEF AT SOURCE)

Certificate of residence

Statement of beneficial ownership

Pre-approval from Norwegian tax authorities or approved reclaim (non-individuals)

POLAND – ANTI-ABUSE

New, extended definition of beneficial owner

Very onerous requirements for relief at source including tax remitter statement

Potential for personal fines/imprisonment

Move to reclaim mechanism (albeit with additional requirements)

RUSSIA - WIDENING WHT SCOPE AND ANTI-ABUSE

Trying to apply broader interpretation as to what is Russian source

Concerned about treaty abuse e.g. treaty benefits of Collective Investment Vehicles

More documentation requirements

Undefined/unlimited list of documents can be requested in a post-payment audit

New Tax Code to be issued



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MARKET DEVELOPMENTS

SPAIN – INTRODUCTION OF FINANCIAL TRANSACTION TAX

Acquisition of listed shares with a market capitalisation of more than 1,000 million euros

Also includes ADR and certain other specified securities

Certain exemptions including for example: primary market transactions, market making, securities financing and intra-group

Rate of 0.2% of the consideration (excluding fees)

Payer of the tax depends upon how share acquisition takes place

Earliest expected to come into force is Q4 2019



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GOING DIGITAL?

TAX AUTHORITIES E.G.

Belgium

Netherlands

CUSTODY ENTITLEMENT MANAGEMENT

Current custody process

Previous efforts to change the custody process

A new dawn ?

SECURITIES LENDING



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CRS AND QI: SALUTARY LESSONS FOR ROs

- Be careful what you ask for....you may just get it
- You look good in Orange
- Certifications of Internal Controls Effectiveness



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FAILURE TO PREVENT THE FACILITATION OF TAX EVASION

- Strict Liability offences
- Focus on 'Associated Persons'
- Outsourcing arrangements
- Instituting 'Reasonable Procedures'



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DAC 6

- CRS not working... OECD introduces Mandatory Disclosure Requirement (MDR)
- EU goldplates MDR and introduces DAC6
- Applies to aggressive cross-border tax-planning arrangements that meet 'hallmarks'.
- Reporting obligation on all involved in "designing, marketing, organising or managing the implementation of a reportable cross-border transaction". In certain circumstances, reporting obligation can shift to the taxpayer
- DAC6 go-live date 1 January 2020



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CONTACT

Ali Kazimi

alikazimi@hansuke.co.uk

+44 203 865 0625

Nigel Nelkon

nigel.nelkon@uk.bnpparibas.com

+44 207 410 2306



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