CHAPTER 5

Relief at Source

In this chapter, we will look at the first of the two broad types of processing used by tax authorities. Remember that the existence of a treaty only generates an entitlement. The way in which that entitlement is delivered to the market, and to the investor, is in the purview of each tax authority. Despite many years of words like "harmonisation", we have yet to see any really effective attempt deliver the goods. As this book is written, there is a more concerted effort being made through the efforts of Alberto Giovannini, G30, OECD and FISCO. However, even these groupings have a hard and long task ahead.

The most common comment I hear in the market is that relief at source or RAS is easier than long form claiming. While it's true, to an extent that the documentary requirements are often more simplistic, these are far outweighed by the processing requirements which have much tighter time deadlines. Appendix 1 shows the relief-at-source procedure required by the ICSDs (Euroclear and Clearstream) in order to obtain relief at source on Spanish Eurobond coupon distributions. I doubt, having read it, that anyone would think that this process is easier than the long form claim process.

So, in this chapter, I describe several types of relief-at-source jurisdiction ranging from the simple to the very advanced. From systems that have been developed commercially (e.g., DTC's EDS system) to those which have been developed at governmental level for example, US 1441 NRA regulations. Also, to show how these latter regulations are beginning to be adopted and adapted by other jurisdictions, I have described both the Japanese and Irish systems for comparison.

PRIMARY DIFFERENCE TO RECLAIM REGIMES

In basic terms RAS is simple. If, when an income event occurs, enough is already known about the beneficial owner to decide that he is eligible for

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treaty rate benefits, and the market concerned allows relief at source, then, subject to the appropriate procedures, the withholding agent can withhold the correct amount of tax due in the treaty thus removing the need for long form reclaims.

This may sound simple and indeed in theory it is. In practice however, different jurisdictions take a different view on what they require to evidence a relief-at-source claim. Fundamentally the problem is that investors change, many things change and someone who may be eligible on one day, may not be the next. So tax authorities take different approaches to the issue. In the United States part of the system permits the use of a W-8BEN form which is a certificate of tax status. This goes out of validity every 3 years. So overall, while investor's may view RAS regimes as more efficient because they do not involve long and complex reclaim processes, they are not devoid of complexity, particularly if one is dealing with large numbers of investors spread across the main markets. Management of documentation becomes a major issue.

Simple RAS systems generally require simple documentation. These can vary from presumption to documentary. In the presumption scenario the custodian can presume the eligibility for treaty rate based solely on very basic information such as the address of the investor. As the name suggests, a documentary regime will require specific documentation to establish treaty benefits. These may be required in advance, on a regular basis (e.g., Spain) or at the time of each payment. However, they are all simple in their application. Meet the simple rule and obtain the relief.

The problem generally with withholding tax, as with many other areas of financial services, is that the potential revenue streams and benefits are so great, that they attract highly competitive and commercial behaviour. This behaviour is most often aimed at reducing the transactional administration cost of processing. The bodies capable, through size of reach, of putting such systems in place, whilst great, are not all encompassing. The result is that some tax authorities, notably the United States, have devised RAS systems to apply in a certain set of circumstances. Some commercial groups, notably DTC, have also worked to a limited extent with tax authorities to make systems more efficient through the use of advanced technology and process analysis and simplification tools. However, none has yet managed to harmonise all the jurisdictions together with a single methodology which would be the utopian ideal for reducing costs and providing best value to investors.

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I've mentioned that one of the dimensions of complexity was whether a jurisdiction was reclaim or relief-at-source-oriented or a combination of both