



eurex clearing circular 028/17

Date: 22 March 2017
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Laux

 **Action required**

Implications of section 871 (m) of the U.S. Internal Revenue Code (IRC) on the clearing of potential 871 (m) IRC transactions

Contact: Group Client Key Account Management Clearing,
clearing_services-admission@deutsche-boerse.com, or your Key Account Manager

Content may be most important for:

➡ All departments

Attachment:

W-8IMY form of Eurex Clearing AG

Summary:

Retroactively as of **1 January 2017**, Eurex Clearing will apply for the Qualified Derivatives Dealer (QDD) status at the U.S. Internal Revenue Service (IRS). This circular contains information on the clearing of potential 871 (m) Internal Revenue Code (IRC) transactions and requests Clearing Members to provide Eurex Clearing QDD/primary Qualified Intermediary (QI) status certification.

- Eurex Clearing will apply for the QDD status as of 1 January 2017 by submitting an application for the renewal of the QI agreement prior to 31 March 2017.
- Eurex Clearing requests all Clearing Members to act either as QDD or primary QI in potential 871 (m) IRC transactions. Hence, Clearing Members are requested to provide Eurex Clearing with a duly executed form W-8IMY or W-9 by 31 March 2017 but no later than the first date a payment subject to withholding will be paid (or deemed paid) in order to avoid any adverse withholding tax consequences.
- Eurex Clearing is not required to provide its Clearing Members with any information identifying potential 871 (m) IRC transactions, applicable delta, dividend equivalent amount or the timing of withholding.

Implications of section 871 (m) of the U.S. Internal Revenue Code (IRC) on the clearing of potential 871 (m) IRC transactions

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1. Background

IRC section 871 (m) and the regulations thereunder impose a tax on “dividend equivalent amounts” (“DEAs”) paid or deemed paid pursuant to a derivative contract (such as a notional principal contract (“NPC”) or other equity-linked instrument (“ELI”) that references a U.S. equity security(s). Derivatives entered into (or significantly modified) on or after 1 January 2017 with a delta of one are in scope. Beginning 1 January 2018, derivatives with a delta of 0.8 or higher or that meet the substantial equivalent test (“SET”) are subject to these rules. A withholding agent, such as Eurex Clearing, is required to withhold tax as if the DEA is a U.S. sourced dividend at a rate of 30 percent (unless a reduced rate under the applicable U.S. tax treaty applies).

2. Eurex Clearing’s application for QDD status

Eurex Clearing will submit an application for the renewal of the QI-Agreement including the application for the QDD status pursuant to Revenue Procedures 2017-15 through the IRS QI-Registration Portal prior to 31 March 2017 requesting the application of the QI/QDD status as of 1 January 2017.

A duly executed Form W-8IMY certifying Eurex Clearing’s status of a QDD and QI with primary chapter 3 and chapter 4 withholding and Form 1099 reporting and backup withholding responsibility and Eurex Clearing’s compliance with the FATCA regulations is included in the attachment to this circular.

As per the IRS Notice 2016-76, an entity intending to submit the application for QDD status on or before 31 March 2017 may represent QDD status on a Form W-8IMY until the end of the sixth full month after the month in which it actually submits the application, provided that the application is submitted by 31 March 2017.

Therefore, no U.S. withholding tax should apply on any payment of U.S. FDAP income, including in particular the DEAs pursuant to section 871 (m) made or deemed to be made to Eurex Clearing.

3. QDD or Primary QI Requirements for Clearing Members

All Clearing Members, which are not U.S. Persons have to enter into a QI-Agreement with the IRS and either (1) elect the QDD status for principal transactions and/or (2) assume the primary chapter 3 and chapter 4 withholding and Form 1099 reporting and backup-withholding responsibility when acting as an intermediary from a U.S. tax point of view. It is each Clearing Member’s sole responsibility to assess, whether it is acting as a principal or an intermediary from a U.S. tax point of view.

In order to avoid any adverse withholding tax consequences, Clearing Members are requested to provide Eurex Clearing with a duly executed Form W-8IMY or a Form W-9 by **31 March 2017** but no later than the first date a payment subject to withholding will be paid (or deemed paid) certifying the above QI/QDD status and the FATCA compliance as applicable to them.

In order to meet this requirement, please send the filled-out and signed Form W-8IMY or Form W-9 to Group Client Key Account Management Clearing via e-mail to: clearing.services-admission@deutsche-boerse.com. Hence, this circular should be **immediately** forwarded to the QI Responsible Officer within your company.

Eurex Clearing intends to amend its clearing conditions accordingly. Details and timing of the amendment to the Clearing Conditions of Eurex Clearing AG will be subject to a separate circular.

4. Identification of potential section 871 (m) transactions and delta computation

Eurex Clearing is not a responsible party within the meaning of Treasury Regulations § 1.871-15T(p) and hence is not required to provide its Clearing Members with any information regarding the identification of potential section 871 (m) transactions, the applicable delta, dividend equivalent amount or the timing of withholding.

It is the responsibility of each Clearing Member to adhere to its responsible party obligations to the extent applicable to them.

If you have any questions or require further information, please contact your Key Account Manager or send an e-mail to: clearing.services-admission@deutsche-boerse.com.

22 March 2017