

## Eurex Clearing Circular 069/18

# Taxation of U.S. derivatives (Section 871 (m) IRC) and migration to new product group

### Summary

Under Section 871 (m) Internal Revenue Code (IRC), withholding taxes are being levied on “dividend equivalent amounts” (DEAs) paid or deemed paid pursuant to derivative contracts that reference United States (U.S.) equity security(ies).

Based on the U.S. tax documentation received (Form W-8IMY or W 9), Eurex Clearing AG (Eurex Clearing) has classified its Clearing Members as either Section 871 (m) IRC eligible or Section 871 (m) IRC non-eligible within the meaning of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions).

Derivative products, which are potentially subject to Section 871 (m) IRC, will be migrated to new product assignment groups. Only Clearing Members with the appropriate U.S. tax status (Primary Withholding Qualified Intermediary (QI) and/ or Qualified Derivatives Dealer (QDD)) will be assigned to the new product groups from **3 September 2018** onwards.

### Attachments:

none

**Date:** 13 August 2018

**Recipients:** All Clearing Members of Eurex Clearing AG and Vendors

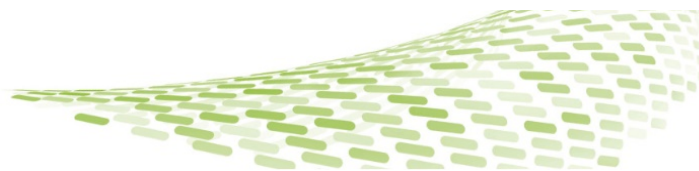
**Authorized by:**  
Heike Eckert

**Target group:**

- All departments

**Related circulars:**  
Eurex Clearing Circulars 028/17, 074/17, 021/18

**Contact:**  
Your Group Client Key Account Manager Clearing,  
Clearing.services-admission@eurexclearing.com



## Taxation of U.S. derivatives (Section 871 (m) IRC) and migration to new product group

### 1. Background and clearing framework

With the implementation of Section 871 (m) IRC, the U.S. Congress aimed to prevent non-U.S. trading participants from using derivatives in order to avoid the withholding tax on U.S. equities. The regulation imposes a (withholding) tax on DEA(s) paid or deemed paid out of delta one derivatives since 1 January 2017 and derivatives with a delta greater or equal to 0.8 from 1 January 2019.

With the preceding Eurex Clearing circulars 028/17, 074/17 and 021/18, Eurex Clearing informed its Clearing Members about the general clearing framework with particular reference to the amendments of its Clearing Conditions (please refer also to Chapter II Part 1 Number 1.7 Paragraphs (1) to (6)). Depending on the Clearing Member's U.S. tax status, Eurex Clearing has classified its Clearing Members as eligible or non-eligible with respect to the clearing of Section 871 (m) IRC-transactions.

### 2. Migration to new product groups

Clearing Members shall only be entitled to trade derivative products if they have fulfilled all prerequisites set out in Eurex Clearing Conditions, Chapter II Part 1 Number 1.7 Paragraphs (1) to (6), in particular:

- a) If acting as an intermediary by entering into transactions on behalf of customers (e.g. Non-Clearing Members, undisclosed clients, etc.), the Clearing Member has assumed primary withholding responsibility; or
- b) If acting for its own account by entering into principal transactions, it has selected the QDD status (U.S. Revenue Procedure 2017-15, Section 2.2.63).
- c) Clearing Members need to meet their general reporting obligations in accordance with Treasury Regulations Section § 1.1461-1 (b) and (c).

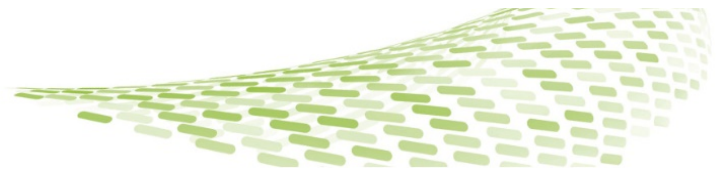
With effective date 3 September 2018, only Section 871 (m) IRC eligible Clearing Members with the appropriate U.S. tax status will be assigned to the newly created product groups, namely:

- "E/I Futures in USD Sec. 871 m – US appr." (XACF7U)
- "E/I Futures in EUR Sec. 871 m – US appr." (XACF7E)
- "USD Equity Fut. Cash Settl. Sec. 871 m" (XNCF7U)

### 3. Product scope

The following products will be migrated to the new product groups:

- Single Stock Futures (if referencing any U.S. equity security within the meaning of the Treasury Regulations under Section 1.871-15 (a) (15) and (c) (1)).
- Selected Dividends Indexes (if index does not qualify as a Qualified Index within the meaning of the Treasury Regulations under Section 1.871-15 (l) (2) and (3)).
- MSCI Index (if index does not qualify as a Qualified Index within the meaning of the Treasury Regulations under Section 1.871-15 (l) (2) and (3)).



All new derivative products, which will potentially be subject to Section 871 (m) IRC will be assigned to one of the above mentioned product groups.

#### **4. Further guidelines**

For further information, please refer to the information on our website [www.eurexclearing.com](http://www.eurexclearing.com) under the following path:

**Resources > US Taxation**

If you have any questions with respect to potential tax impacts, please contact your tax adviser. Eurex Clearing is not in a position to provide assistance beyond the information contained in this circular and in Eurex Clearing circulars 028/17, 074/17 and 021/18, as we are legally not permitted to give any tax advice.

If you have any non-tax related questions, please contact your Clearing Key Account Manager or send an e-mail to: [clearing\\_services-admission@eurexclearing.com](mailto:clearing_services-admission@eurexclearing.com).

13 August 2018