BULLETIN – 180305/42

ICMSA Bulletin – Guidelines for the acceptance and reporting of securities subject to US Tax Section 871(m)

Issued by the International Capital Market Services Association www.icmsa.org

The U.S. Internal Revenue Service (IRS) issued Final and Temporary Regulations on Dividend Equivalent Payments from U.S. sources on 19 January 2017. The purpose of the document is to provide guidance for:

- The acceptance of section 871(m) securities issued and held through the ICSDs.
- The reporting of section 871(m) DEPs (dividend equivalent payments) for the Form 1042-S reporting.
- The reporting of inventory of unsold positions deemed non-reportable by the issuer for the purposes of Form 1042-S reporting.

Securities acceptance

The issuer must meet a number of prerequisites to ensure securities acceptance in the ICSDs. These prerequisites are applicable to both stand-alone issuances and issuances under programmes.

For stand-alone transactions, the Prospectus/Offering Memorandum and for issuances under programmes, the Final Terms or Pricing Supplement must clearly indicate whether the security is subject to section 871(m) and confirm the applicable method of payment of DEPs and withholding, which must be either:
a) the issue will only pay actual cash dividends; or
b) tax will be withheld at source from the DEP by the issuer (or its agent) at the maximum applicable rate, notwithstanding that the ICSDs and other intermediaries in the chain may have furnished a valid Form W-8IMY to the respective upstream intermediary in which they certify the Chapter 3 status of Qualified Intermediary that assumes primary withholding responsibility and Chapter 4 status (FATCA) of Reporting Model 1 FFI (Foreign Financial Institution).

Issuers and their agents must refrain from requesting acceptance by the ICSDs of Section 871(m) securities for which the approach to DEP payment and withholding differs from that set out at points a) and b), above.
Such securities are not considered to be eligible in the ICSDs and will be rejected.

The entity requesting the eligibility of individual ISINs must flag and notify distinctly those issuances under programmes that are subject to section 871(m) (it is mandatory that the programme number is mentioned). The requesting entity must send an e-mail notification to both ICSDs. The requesting entity should ensure that they agree a process with their agent so that both the agent and the ICSDs are provided with the required information. If the ISIN code has been applied for by an automated source such as EPIM (European Pre-Issuance Messaging Service) or Pre-Code Allocation, the ICSDs should be notified before issue date/upon activation of the issuance with "ISIN code XXXXXXXXXXXX subject to section 871(m) ...." in the subject of the e-mail notification. The e-mail notification should confirm which section 871(m) withholding method is applicable (as described above).

All correspondence should be sent to: Clearstream Banking S.A (Clearstream Luxembourg): 871m@deutsche-boerse.com and NewIssuesLondon@clearstream.com and Euroclear Bank SA/NV (Euroclear Bank): Tax_ops_US@euroclear.com and newissues.underprogram@euroclear.com (or newissues@euroclear.com for stand-alone issuances). No e-mail should be sent if the issue is not subject to section 871(m) or not applicable. Additionally, for securities already issued that are later subject to a material change and lose their section 871(m) grandfathered status, in addition to any amendment of the issuance documentation, the above-noted information should be included and the ICSDs should be notified of such material change by the issuer or its agent.

In the absence of the required section 871(m) information being included in issuer's documentation and provided at creation of the securities or following a material change, the ICSDs will not be able to identify those securities that are subject to section 871(m).

Dividend Equivalent Payment (DEP) monthly reporting along the custody chain:

The reporting of DEPs must follow the standard custody chain: Issuer – Paying Agent – Common Depository – ICSDs.

For issuances where the tax is withheld upstream by the issuer on any DEP (option b) above:
* the issuer must notify the Paying Agent / Common Depository monthly of all withheld amounts paid to the IRS, per ISIN; and
* the Paying Agent / Common Depository must reconcile such information against the positions of the respective ICSDs and subsequently communicate such reconciled information to the ICSDs

Treatment of inventory or "unsold position"

Inventory (or unsold positions) may be deemed unreportable by the issuer under its own responsibility. However, certain conditions need to be met for the effective exclusion of the inventory from the reporting chain:
* Exclusion of the inventory position needs to be instructed by the issuer via the reporting template described below.

- The issuer needs to specifically designate ICSDs account(s) under which the inventory position is held.
- Inventory positions may be split under a maximum of two different accounts in the ICSDs.
- The account(s) under which inventory is held must be the issuer (or its agent) direct account(s) in the ICSDs.
- Inventory (unsold) and sold positions must not be commingled in the same account.

<u>Issuer monthly file section 871(m) DEP to Paying Agent / Common Depository</u>

Issuers must use the agreed format as per the template in Appendix A.

When populating the template, please note that:
- Reported DEPs should only relate to section 871(m) securities of which ICSDs were duly notified at acceptance or upon material modification.
- Each row should include one DEP per ISIN / Record date / Gross price.
- Quantities of securities should be expressed in units or in nominal, in line with how the section 871(m) security is recorded in the ICSDs.
- Total holding and Total quantity of securities sold should cover the securities positions held in both ICSDs, if applicable (no split between ICSD required).
- The inventory position, if any, should be split per ICSD, if applicable.
- The inventory position, if any, should be recorded for each ICSD, in maximum of two distinct accounts (and the account numbers should be communicated to the ICSDs).
- Record date of the DEP should be the date at which the holder of the security on record is deemed to have the benefit of the DEP. For a new issuance, where a DEP falls between trade date and settlement date, it should be the date at which securities positions are credited in the ICSDs (i.e. closing date).

<u>Paying Agent / Common Depository monthly file section 871(m) DEP to each ICSD</u>

Upon receipt of the monthly report from the issuer, the Paying Agent/Common Depositary must reconcile the information against its own records and segregate it at the level of each ICSD.

After successful reconciliation, the Paying Agent/Common Depositary must send the monthly report to each ICSD via email to the following addresses:
- 871m@deutsche-boerse.com for Clearstream Luxembourg
- Tax_ops_US@euroclear.com for Euroclear Bank

This report must be sent to each ICSD, if applicable, no later than the fifteenth business day of the month following the month of the reported DEPs.

The Paying Agent/Common Depositary must use the agreed format as per the template in Appendix B.

When populating the template, please note that:
- Only section 871(m) DEPs must be included in that template. Reportable amounts other than DEPs should continue to be reported separately using the existing agreed reporting means.

- Total holding and Total quantity of securities sold should cover the securities positions held in each ICSD (split).
- All other guidelines mentioned above also apply (including with respect to inventory positions).

Form 1042-S reporting to ICSDs' customers

Even though the ICSDs are acting as Qualified Intermediaries assuming primary Non-Resident Alien (NRA) withholding responsibility and 1099 reporting and backup withholding responsibility, the tax withholding in relation to section 871(m) securities DEPs is the responsibility of an upstream intermediary.

As a result, the ICSDs will report the DEPs in the Form 1042-S sent to its customers as follows:

- The income will be reported with the income code "40 - Other dividend equivalents under IRC section 871(m)"
- The tax withheld will be reported in box "8 - Tax withheld by other agents"

APPENDIX A

ISIN	Record Date	Value Date	Gross Price	Currency	Total Holding (in unit or in nominal) in EB AND in CBL	Expressed in	Par Value	Total quantity of securities sold (in unit or in nominal) in EB AND in CBL	Total Gross Amount (in USD)	Total Tax Withheld (in USD)	Primary Withholding Agent Name	Withholding Agent EIN	Inventory position (in unit or in nominal) in EB or in CBL	Institution holding inventory position - EB or CBL	Account for inventory position (in EB or in CBL)	Additional Inventory position (in unit or in nominal) in EB or in CBL	Institution holding the Additional inventory position - EB or CBL	Account for the additional inventory position (in EB or in CBL)
ISIN of the security subject to 871m (not the ISIN(s) of the underlying securities)	Record date of the DEP (not record date of the dividend of the underlying security) = date at which the holder of the security on record is deemed to have the benefit of the DEP	Theoretical payment date of the DEP (not payment date of the dividend of the underlying security). "Value Date" >= "Record Date"	Value of the DEP per unit (if the security is expressed in unit) or per USD of the security (if the security is expressed in nominal)	Always USD	Total holding in both ICSDs expressed in unit or nominal (including the inventory position in unit or in nominal)	Unit or Nominal	Par value per unit or nominal of the security	Quantity of securities sold in both ICSDs = Total holding in units - Inventory position in units OR = Total holding in nominal - Inventory position in nominal	Gross price per Unit x total quantity of securities sold in units OR Gross price per nominal x total quantity of securities sold in nominal	Total tax amount paid to the IRS by the issuer = "Total Gross Amount" x applicable tax rate (currently 30%)	Name of the entity that withheld the tax (Issuer Name)	EIN (IRS Employer Identification Number) of the entity that withheld the tax. (Issuer EIN)	Unsold position considered as not taxable by the issuer. Expressed in Units or in nominal	Institution where the inventory position is held: EB or CBL	Specific account where the inventory position is held in EB or CBL	Unsold position considered as not taxable by the issuer. Expressed in Units or in nominal	Institution where the inventory position is held: EB or CBL	Specific account where the inventory position is held in EB or CBL
12 digits	DD/MM/YYYY	DD/MM/YYYY	With Decimal separator sign. Without thousand separator	ISO Currency code	With Decimal separator sign. Without thousand separator			With Decimal separator sign. Without thousand separator	With Decimal separator sign. Without thousand separator	With Decimal separator sign. Without thousand separator	Name as known by the IRS	9 characters	With Decimal separator sign. Without thousand separator	EB or CBL	EB or CBL Participant account	With Decimal separator sign. Without thousand separator	EB or CBL	EB or CBL Participant account
Mandatory	Mandatory	Optional	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Optional	Optional	Optional	Optional

Illustration

Isin ABC123456789 is recorded in EB or CBL in **units**. A DEP takes place on 22/01/XXXX. There is no inventory position for this isin. Total quantity of securities held in ICSD is 10,000. Par value is USD 100. DEP gross price is USD 2.35 per unit of security

ISIN	Record Date	Value Date	Gross Price per unit	Currency	Total Holding (in unit or in nominal)	Expressed in	Par Value	Total quantity of securities sold (in unit or in nominal)	Total Gross Amount (in USD)	Total Tax Withheld (in USD)	Primary Withholding Agent Name	Withholding Agent EIN	Inventory position (in unit or in nominal)	Institution holding inventory position	Account for inventory position	Additional Inventory position (in unit or in nominal)	Institution holding the Additional inventory position	Account for the additional inventory position
ABC123456789	22/01/XXXX	22/01/XXXX	2.35	USD	10000	UNIT	100	10000	23500 i.e. 10000x2.35	7050 i.e. 23500 x 0.30	Company S.A.	98xxxxxxx						

Isin ABC123456789 is recorded in EB or CBL in **nominal**. A DEP takes place on 22/01/XXXX. There is no inventory position for this isin. Total quantity of securities held in ICSD is USD 1,000,000. Par value is USD 100. DEP gross price is USD 2.35 per USD 100 of security

ISIN	Record Date	Value Date	Gross Price in unit	Currency	Total Holding (in unit or in nominal)	Expressed in	Par Value	Total quantity of securities sold (in unit or in nominal)	Total Gross Amount (in USD)	Total Tax Withheld (in USD)	Primary Withholding Agent Name	Withholding Agent EIN	Inventory position (in unit or in nominal)	Institution holding inventory position	Account for inventory position	Additional Inventory position (in unit or in nominal)	Institution holding the Additional inventory position	Account for the additional inventory position
ABC123456789	22/01/XXXX	22/01/XXXX	**0.0235 i.e. 2.35/100**	USD	1000000	FMT	100	1000000	23500 i.e. 1000000x0.0235	7050 i.e. 23500 x 0.30	Company S.A.	98xxxxxxx						

APPENDIX B

ISIN	Record Date	Value Date	Gross Price	Currency	Total Holding (in unit or in nominal) in EB OR in CBL	Expressed in	Par Value	Total quantity of securities sold (in unit or in nominal) in EB or in CBL	Total Gross Amount (in USD)	Total Tax Withheld (in USD)	Primary Withholding Agent Name	Withholding Agent EIN	Inventory position (in unit or in nominal) in EB or in CBL	Institution holding inventory position in EB or in CBL	Account for inventory position in EB or in CBL	Additional Inventory position (in unit or in nominal) in EB or in CBL	Institution holding the Additional inventory position in EB or in CBL	Account for the additional inventory position in EB or in CBL
ISIN of the security subject to 871m (not the ISIN(s) of the underlying securities)	Record date of the DEP (not record date of the dividend of the underlying security) = date at which the holder of the security on record is deemed to have the benefit of the DEP	Theoretical payment date of the DEP (not payment date of the dividend of the underlying security). "Value Date" >= "Record Date"	Value of the DEP per unit (if the security is expressed in unit) or per USD of the security (if the security is expressed in nominal)	Always USD	Total holding in the ICSD expressed in value or nominal (including the inventory position in value or in nominal)	Unit or nominal	Par value per unit or nominal of the security	Quantity of securities sold = Total holding in Unit - Inventory position in Units OR = Total holding in nominal - Inventory position in nominal	Gross price per Unit x total quantity of securities sold in units OR Gross price per nominal x total quantity of securities sold in nominal	Total tax amount paid to the IRS by the issuer = "Total Gross Amount" x applicable tax rate (currently 30%)	Name of the entity that withheld the tax (Issuer Name)	EIN (IRS Employer Identification Number) of the entity that withheld the tax. (Issuer EIN)	Unsold position considered as not taxable by the issuer. Expressed in Units or in nominal	Institution where the inventory position is held: EB or CBL	Specific account where the inventory position is held in EB or CBL	Unsold position considered as not taxable by the issuer. Expressed in Units or in nominal	Institution where the inventory position is held: EB or CBL	Specific account where the inventory position is held in EB or CBL
12 digits	*DD/MM/YYYY*	*DD/MM/YYYY*	*With Decimal separator sign. Without thousand separator*	*ISO Currency code*	*With Decimal separator sign. Without thousand separator*			*With Decimal separator sign. Without thousand separator*	*With Decimal separator sign. Without thousand separator*	*With Decimal separator sign. Without thousand separator*	*Name as known by the IRS*	*9 characters*	*With Decimal separator sign. Without thousand separator*	*EB or CBL*	*EB or CBL Participant account*	*With Decimal separator sign. Without thousand separator*	*EB or CBL*	*EB or CBL Participant account*
Mandatory	*Mandatory*	*Optional*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Mandatory*	*Optional*	*Optional*	*Optional*	*Optional*	*Optional*	*Optional*

Illustration

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