

Annex 32 to the GTC of OeKB CSD

Guidelines in the context of safekeeping and administration of securities which are subject to “Section 871(m) of the US Internal Revenue Code of 1986” of the US tax regulations of the Internal Revenue Service (IRS) and for which OeKB CSD is acting as Issuer CSD

The guidelines of section 871(m) with the obligation to withhold US withholding tax are applied to so called Equity Linked Instruments (ELIs). These include beside Futures and Options also securities like convertible bonds, hybrid certificates and warrants. Basis for the withholding of US withholding tax is the Dividend Equivalent Payment (DEP).

Restricted possibility of safekeeping in the vault of OeKB CSD

The issuer of the security is solely responsible for the deduction and the associated transfer of US withholding tax. In addition to that, securities subject to section 871(m) that are intended to be safekept in the vault of OeKB CSD have to be reported to OeKB CSD in advance. In case the issuer or his paying agent does not accept any of these specifications safekeeping in the vault of OeKB CSD is not possible.

Delivery of securities into the vault of OeKB CSD

Should a security be subject to section 871(m) the issuer or his paying agent has to inform OeKB CSD via email to asset servicing@oekb-csd.at about this fact before the delivery into the vault of OeKB CSD. With regard to this notification there are no separate formal requirements. In case OeKB CSD does not receive a respective notification that section 871(m) is applied OeKB CSD assumes that the security is not subject to these US Treasury regulations. Possible disadvantages (in particular penalties imposed by the IRS) which arise for OeKB CSD from a non-report verifiably indebted by the issuer or its paying agent or a non-withholding of withholding tax and the associated obligatory transfer of the amount to the IRS have to be borne by the issuer of the security.

Change of status

Should a security due to changed circumstances not be subject to section 871(m) anymore or to be covered thereof after the delivery into the vault of OeKB CSD the issuer or his paying agent has to inform OeKB CSD via email to asset servicing@oekb-csd.at within 3 T2S Opening Days (days of operation) after gaining knowledge of the respective change. With regard to this notification of change there are no separate formal requirements. In case OeKB CSD does not receive a respective notification that section 871(m) has now to be applied or does not have to be applied anymore OeKB CSD assumes that the security has still the original status. Possible disadvantages (in particular penalties imposed by the IRS) which arise for OeKB CSD from a non-report verifiably indebted by the issuer or his paying agent or a non-withholding of tax and the associated obligatory transfer of the amount to the IRS have to be borne by the issuer of the security.

Payment

In case of an income payment of a security subject to section 871(m) and the withholding of US tax by the issuer OeKB CSD has to be informed about the key details of the ELI-payment by the issuer or his paying agent via email to asset servicing@oekb-csd.at before record date.

If the issuer refuses to take care of the withholding of US withholding tax and the associated transfer to the IRS OeKB CSD may refuse to process the distribution to the OeKB CSD securities account holders. In such a case the issuer or its paying agent has to pay the income amount due to the investors directly.

Withholding Tax and Reporting

OeKB CSD has a QI1 status (including “primary withholding responsibility“ and “primary Form 1099 reporting and backup withholding responsibility”). Regardless of whether OeKB CSD provides the issuer with a form W-8IMY the issuer has to withhold US withholding tax for each DEP (usually this is the full tax rate of 30%) and to transfer the amount due to the US tax authorities. Consequently the US withholding tax is administrated upstream.

As DEPs have to be included in the annual reporting 1042-S, information on these payments from the previous calendar year have to be sent in an excel spreadsheet predefined by OeKB CSD to asset servicing@oekb-csd.at by January 15th of the following calendar year at the latest.

The form 1042-S issued by the issuer of the respective securities has to be sent via mail to:

OeKB CSD GmbH
Service Center Asset Servicing
Strauchgasse 3
1011 Vienna
Austria