Eurex Clearing Circular 104/18

Impacts of German Investment Tax Act 2018 on the clearing of securities lending and repo transactions

Summary

On 15 May 2018, the German Federal Ministry of Finance (Bundesministerium für Finanzen, BMF) published a circular on the application of the German Investment Tax Act 2018 ("Investmentsteuergesetz; InvStG"). This BMF circular provided further clarification on withholding tax obligations in securities lending and repo transactions with German equity underlyings, in case one of the counterparties is an investment fund in meaning of the InvStG.

According to the BMF circular, Eurex Clearing in its role as central counterparty (CCP) will not be obliged to deduct German withholding tax on income derived from securities lending and repo transactions.

As of **1 January 2019**, Eurex Clearing will disclose the original counterparties to the securities lending transaction in its clearing reports ("Abrechnungsunterlagen"), whenever the Clearing Member lender is an investment fund and/or a capital management company acting on behalf of an investment fund in the meaning of section 1 paragraph 2 InvStG.

In addition, Eurex Clearing will inform in its clearing reports that the obligation for German withholding tax deduction remains with the original borrower. Clearing Members acting as investment funds or acting as capital management companies on behalf of investment funds will not be eligible for clearing of German equities in repo transactions.

Attachments.

- none

Date: 5 December 2018

Recipients:
All Clearing Members of Eurex Clearing AG and Vendors

Authorized by:
Heike Eckert

Target group:
- All departments

Contact:
Your Key Account Manager Clearing, clearing.services-admission@eurexclearing.com

Impacts of German Investment Tax Act 2018 on the clearing of securities lending and repo transactions

1. Background

The InvStG, which came into effect on 1 January 2018, introduced a new tax liability on incomes realised through securities lending and repo transactions (i.e. manufactured dividends or borrow fees respectively) relating to an investment fund in the meaning of section 6 paragraph 2 and 3 InvStG. This provision is applicable for German equity underlyings with German/non-German investment funds as lender or repo seller, whereas the German borrower or repo buyer is obliged to deduct the German withholding tax.

The BMF circular published on 15 May 2018 outlines that Eurex Clearing as CCP will, from a tax law perspective, not be treated as the relevant borrower or repo buyer in securities lending and repo transactions, and thus will not be obliged to deduct German withholding tax on manufactured dividends or borrow fees respectively. However, Eurex Clearing AG is required to disclose the original counterparties in its clearing reports ("Abrechnungsunterlagen") and has to inform the original borrower or repo buyer of its German withholding tax obligation. The reports shall contain:

- the Clearing Member IDs of the original counterparties,
- a statement that the withholding obligation was not transferred to Eurex Clearing AG, and
- a statement that the withholding obligation remains with the original German borrower or repo buyer.

2. Clearing of Securities Lending Transactions: Adjustment of Manufactured Payment Statement and Rebate Lending Fee reports

Eurex Clearing will disclose in its reports CL 165 (Manufactured Payment Statement) and CL 300 (Rebate Lending Fee) the original counterparties of securities lending transactions as of **1 January 2019**, whenever the Clearing Member lender is an investment fund and or a capital management company acting on behalf of an investment fund in the meaning of section 1 paragraph 2 InvStG.

3. Clearing of Repo Transactions

With effective date of **1 January 2019,** Clearing Members acting as investment funds and/or as capital management companies on behalf of investment funds in the meaning of section 1 paragraph 2 InvStG will not be eligible for clearing of German equities in repo transactions.

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, as we are legally not permitted to give any tax advice.

Link to the BMF circular (only in German):

https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Steuerarten/Investmentsteuer/2018-05-15-Anwendungsfragen-InvStG-2018.html

If you have any non-tax related questions, please contact your Key Account Manager Clearing or send an e-mail to: clearing.services-admission@eurexclearing.com.

5 December 2018