

Section 1256.—Section 1256 Contracts Marked to Market

(Also: §§ 446, 481, 7805; 1.446-1, 301.7805-1)

Rev. Rul. 2013-5

ISSUE

Is Eurex Deutschland, which is a regulated exchange of Germany, a qualified board or exchange within the meaning of section 1256(g)(7)(C) of the Internal Revenue Code?

FACTS

Eurex Deutschland is a regulated exchange of Germany. On August 10, 1999, the Commodity Futures Trading Commission (CFTC) issued—and on October 25, 2004, and April 25, 2006, it amended—a letter that granted Eurex Deutschland no-action relief. This relief allowed United States members to trade through Eurex Deutschland's electronic trading system, notwithstanding that the CFTC had not designated Eurex Deutschland as a contract market pursuant to sections 5 and 5a of the Commodity Exchange Act.

On December 23, 2011, the CFTC published final rules regarding the registration with the CFTC of foreign boards of trade (FBOTs), including those with existing no-action relief (“the CFTC FBOT registration system”). See Registration of Foreign Boards of Trade, 76 Fed. Reg. 80674 (Dec. 23, 2011), codified at 17 CFR Part 48. The effective date for the final rules was February 21, 2012. Under the CFTC FBOT registration system, the CFTC may issue an Order of Registration to an FBOT, allowing the FBOT to provide direct access to its electronic trading and order matching system from the United States. The CFTC FBOT registration system replaced the CFTC’s no-action relief system. Under 17 CFR 48.6(c), an FBOT with an existing no-action letter (like Eurex Deutschland) may continue to rely on the letter until the CFTC either revokes the letter or grants that FBOT an Order of Registration under the new system.

An FBOT’s status under the CFTC no-action relief system and the CFTC FBOT registration system is posted online at:

<http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ForeignTerminalRelief>.

LAW

Section 1256(g)(7) provides that the term “qualified board or exchange” means:

- (A) a national securities exchange which is registered with the Securities and Exchange Commission,
- (B) a domestic board of trade designated as a contract market by the CFTC,
or
- (C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of section 1256.

HOLDING

The Internal Revenue Service determines that Eurex Deutschland, which is a regulated exchange of Germany, is a qualified board or exchange within the meaning of section 1256(g)(7)(C) as long as—

- The CFTC continues to allow Eurex Deutschland to provide direct access to its electronic trading and order matching system from the United States under an existing no action letter, pending CFTC approval of an Order of Registration; or
- Eurex Deutschland holds a valid Order of Registration as an FBOT.

EFFECTIVE DATE

Under the authority of section 7805(b)(8) of the Code, this revenue ruling is effective for Eurex Deutschland Contracts (futures contracts and futures contract options) entered into on or after March 1, 2013.

CHANGE IN METHOD OF ACCOUNTING

A change in the treatment of Eurex Deutschland Contracts to comply with this revenue ruling is a change in method of accounting within the meaning of sections 446 and 481 and the regulations thereunder. The Commissioner grants consent to taxpayers to change to the section 1256 mark-to-market method for the first taxable year during which the taxpayer holds a Eurex Deutschland Contract that was entered into on or after March 1, 2013. Such a taxpayer need not file a Form 3115, Application for Change in Accounting Method, and Eurex Deutschland Contracts that were entered into before March 1, 2013 will not be covered by the change in method for which

consent is granted. Because the change is being made on a “cut-off” basis, there is no potential omission or duplication of income or deductions, and therefore no adjustment under section 481 is required.

DRAFTING INFORMATION

The principal author of this revenue ruling is Shawn Tetelman of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Ms. Tetelman at (202) 622-3930 (not a toll-free call).