



U.S.A. - IRS revises regulations on 305(c) Convertible Debt withholding - Update 4

Category NetInfo® 11-digit Custody Account - Taxation

Summary The U.S. Treasury Department and Internal Revenue Service (IRS) recently issued new proposed regulations under Internal Revenue Code (IRC) section 305(c) pertaining to tax withholding requirements on deemed dividend distributions made to non-U.S. recipients.

Impact NetInfo® 11-digit Custody Account - U.S.A.

For your information.

305(c) Update

Over the past year, BNY Mellon has continued to evaluate its approach to withholding and reporting on deemed dividends under IRC section 305(c). We had previously announced our intention to begin withholding during 2016.

Please refer to NetInfo@s dated March 7, 2016, April 25, 2016, June 22, 2016, and January 4, 2017. Due to the proposed regulations not being issued in final form, and continued discussion among industry participants concerning implementation of the proposed regulations, BNY Mellon had not begun withholding during the year 2016, as originally had been planned.

2016 Update

BNY Mellon has now made a determination of its approach to 305(c) for the 2016 tax year. BNY Mellon has been collecting Form 8937 to support the withholding and as **of January 31, 2017**, will use those forms to calculate withholdable amounts.

BNY Mellon will start to withhold, for the 2016 tax year during the week of **February 13, 2017** and our clients will be given notice through normal channels of the amount being debited to their accounts.

Withholding qualified intermediary clients will be provided with information detailing the amount of 305(c) deemed dividend income that is going to be reported to them on form 1042-S.

2017 Update

BNY Mellon expects to implement current notification and withholding on 305(c) deemed dividends in 2017.

If necessary a catch up adjustment to withholding will be made for any 305(c) deemed dividends arising between January 1, 2017 and the date that the current notification and withholding process begins, a NetInfo® providing further information will be issued closer to the time this begins.

Alignment of Accounts

BNY Mellon clients may hold convertible securities that are subject to deemed dividend withholding under section 305(c) of the Internal Revenue Code.

Clients should be aware that when a convertible debt instrument is convertible into an underlying U.S. equity, it may be subject to both the interest tax rates and dividend tax rates. The 305(c) deemed dividend and any tax withholding will be reported on the 1042S to non U.S. recipients as U.S. source dividend income.

- BNY Mellon requires clients to align their assets into the appropriate accounts which target a specific tax rate(s) for specific income types.
- Based on the requirements of 305(c), clients should be attentive to aligning a convertible debt instrument into an account which reflects both interest and dividend tax rates of the beneficial owner, as a “deemed dividend” on the underlying U.S. equity may now be subject to dividend taxation.
- BNY Mellon will not be in a position to analyze accounts for appropriateness of the tax rate associated with convertible debt instrument holdings. The responsibility will fall fully on the client to determine the appropriate accounts in which to place their holdings. Failure to align a convertible debt instrument to the appropriate account may result in overwithholding or under withholding on a 305(c) deemed dividend.

Clients should make any changes in alignment of convertible debt instrument as soon as possible.

Link to the Proposed 305(c) regulations:

<https://www.federalregister.gov/articles/2016/04/13/2016-08248/deemed-distributions-under-section-305c-of-stock-and-rights-to-acquire-stock>

Link to IRS Form 8937

<https://www.irs.gov/pub/irs-pdf/f8937.pdf>

Link to Instructions to Form 8937

<https://www.irs.gov/pub/irs-pdf/i8937.pdf>

Transmitted on February 1, 2017.

If you have any questions about this NetInfo®, please contact your Relationship Executive or Account Manager.

Related NetInfo®: [IRS revises regulations on 305\(c\) Convertible Debt withholding - Update 3, January 4, 2017 \(click to view\)](#)

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