



FTSE Russell Index Factsheets

**(Qualified Indices under Section 871(m) of
the US Internal Revenue Code and Treasury
Regulation Section 1.871-15)**



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Summary

This document provides links to factsheets for certain FTSE Russell indexes that customers of FTSE Russell indexes and those involved in the transactions of derivatives on FTSE Russell indexes can use in the context of determining their position with respect to section 871(m) of the US Internal Revenue Code.

Internal Revenue Code Section 871(m)

Section 871(m) of the Internal Revenue Code (26 USC 871(m)) seeks to ensure that non-US persons cannot avoid withholding tax on US-sourced dividend payments through the use of financial derivatives. Save for the exemption provided by Treasury Regulation 1.871-15 (below), such financial derivatives could include derivatives on financial indexes.

Summaries of the provisions of the Section 871(m) and legislative updates are provided in IRS public notices (see, e.g., <https://www.irs.gov/pub/irs-drop/n-18-72.pdf>)

Treasury Regulation Section 1.871-15

Treasury Regulation Section 1.871-15 provides exemption from Section 871(m) for certain “qualified indexes” (<https://www.govinfo.gov/content/pkg/CFR-2017-title26-vol11/pdf/CFR-2017-title26-vol11-sec1-871-15.pdf>). An extract from the Regulation is provided in the Appendix for convenience.

FTSE Russell Resources

To assist customers and those involved in transacting derivatives on FTSE Russell indexes in their determination of whether the indexes they use comply with the definitions of a “qualified index”, FTSE Russell publishes lists of constituents and constituent weighting information for certain indexes known to form the basis of financial derivatives at: *include link to 871(m) factsheets*.

FTSE Russell provides constituent weights for certain indexes at: <https://www.ftserussell.com/analytics/factsheets/home/constituentsweights>.

FTSE Russell provides additional index data including the number of constituent members of certain indexes in index factsheets which are accessible at: <https://www.ftserussell.com/analytics/factsheets/home/search>.

FTSE Russell index methodologies are publicly available at: [ftserussell.com/products/indexmenu](https://www.ftserussell.com/products/indexmenu). All indexes include a clear description of the relevant FTSE Russell index family.

A list of FTSE Russell index-linked derivatives can be found here: <https://www.ftserussell.com/index/index-linked-products/derivatives>.

Additional information is available to index subscribers and upon request. Any omissions from the list of indexes for qualified indices for the purposes of section 871(m) should be notified to regulation@ftserussell.com.

Disclaimer

Nothing in this document constitutes advice, whether legal, tax, accounting or otherwise and users of FTSE Russell indexes should seek their own expert and legal, tax and accounting advice regarding their position under the US Internal Revenue Code, including section 871(m) thereof. This document may be changed or withdrawn at any time without notice.

Further Information

Please address any questions or comments on this document to regulation@ftserussell.com.

Appendix

Extracts from Treasury Regulation Section 1.871-15

Definition of an Underlying Security

Paragraph (a)(15)

An underlying security is any interest in an entity if that interest could give rise to a U.S. source dividend pursuant to § 1.861-3, where applicable taking into account paragraph (m) of this section. Except as provided in paragraph (l) of this section, if a potential section 871(m) transaction references an interest in more than one entity described in the preceding sentence or different interests in the same entity, each referenced interest is a separate underlying security for purposes of applying the rules of this section.

Definition of a Qualified Index

The types of qualified index are often referred to as “broad-based” or “non-US” according to the criteria to be satisfied.

Broad-based index

Paragraph (l)(3)

A *qualified index* means an index that:

- “(i) References 25 or more component securities (whether or not the security is an underlying security);
- (ii) Except as provided in paragraph (l)(6)(ii) of this section, references only long positions in component securities;
- (iii) References no component underlying security that represents more than 15 percent of the weighting of the component securities in the index;
- (iv) References no five or fewer component underlying securities that together represent more than 40 percent of the weighting of the component securities in the index;
- (v) Is modified or rebalanced only according to publicly stated, predefined criteria, which may require interpretation by the index provider or a board or committee responsible for maintaining the index;
- (vi) Did not provide an annual dividend yield in the immediately preceding calendar year from component underlying securities that is greater than 1.5 times the annual dividend yield of the S&P 500 Index as reported for the immediately preceding calendar year; and
- (vii) Is traded through futures contracts or option contracts (regardless of whether the contracts provide price only or total return exposure to the index or provide for dividend reinvestment in the index) on—
 - (A) A national securities exchange that is registered with the Securities and Exchange Commission or a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission; or
 - (B) A foreign exchange or board of trade that is a qualified board or exchange as determined by the Secretary pursuant to section 1256(g)(7)(C) or that has a staff no action letter from the CFTC permitting direct access from the United States that is effective on the applicable testing date, provided that the referenced component underlying securities, in the aggregate, comprise less than 50 percent of the weighting of the component securities in the index.”

Non-US index

Paragraph (l)(4)

Safe harbor for certain indices that reference assets other than underlying securities.

Notwithstanding paragraph (l)(3) of this section, an index is a qualified index if the index is widely traded, the referenced component underlying securities in the aggregate comprise 10 percent or less of the weighting of the component securities in the index, and the index was not formed or availed of with the principal purpose of avoiding U.S. withholding tax.

Short Positions

Paragraph (1)(6)

(i) *In general.* When a potential section 871(m) transaction references a qualified index and one or more component securities or other indices, the qualified index remains a qualified index only if the potential section 871(m) transaction does not reference a short position in any referenced component security of the qualified index, other than a short position with respect to the entire qualified index (for example, a cap or floor) or a de minimis short position described in paragraph (l)(6)(ii) of this section. If, in connection with a potential section 871(m) transaction that references a qualified index, a taxpayer (or a related person within the meaning of section 267(b) or section 707(b)) enters into one or more transactions that reduce exposure to any referenced component security of the index, other than transactions that reduce exposure to the entire index, then the potential section 871(m) transaction is not treated as referencing a qualified index.

(ii) *Safe harbor for de minimis short positions.* Notwithstanding paragraphs (l)(3)(ii) and (l)(6)(i) of this section, an index may be a qualified index if the short position (whether part of the index or entered into separately by the taxpayer or related person within the meaning of section 267(b) or section 707(b)) reduces exposure to referenced component securities of a qualified index (excluding any short positions with respect to the entire qualified index) by five percent or less of the value of the long positions in component securities in the qualified index.

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FTSE Russell is a leading global index provider creating and managing a wide range of indexes, data and analytic solutions to meet client needs across asset classes, style and strategies. Covering 98% of the investable market, FTSE Russell indexes offer a true picture of global markets, combined with the specialist knowledge gained from developing local benchmarks around the world.

FTSE Russell index expertise and products are used extensively by institutional and retail investors globally. For over 30 years, leading asset owners, asset managers, ETF providers and investment banks have chosen FTSE Russell indexes to benchmark their investment performance and create investment funds, ETFs, structured products and index-based derivatives. FTSE Russell indexes also provide clients with tools for asset allocation, investment strategy analysis and risk management.

A core set of universal principles guides FTSE Russell index design and management: a transparent rules-based methodology is informed by independent committees of leading market participants. FTSE Russell is focused on index innovation and customer partnership applying the highest industry standards and embracing the IOSCO Principles. FTSE Russell is wholly owned by London Stock Exchange Group.

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