



Application of good faith standard by QI to its section 871(m) transactions for periodic review purposes

Closing the distance

On June 27, 2018, the Internal Revenue Service (IRS) published new [QI FAQ No. 13](#) (FAQ) clarifying how a qualified intermediary (QI) that is not acting as a qualified derivative dealers (QDD) should apply the good faith standard set forth in Notices 2016-76 and 2017-42 with respect to the QI's section 871(m) transactions.

Background of the FAQ

According to Notice 2016-76, the IRS takes into account the extent to which a withholding agent (WA) made a good faith effort to comply with the section 871(m) regulations when enforcing this regulation for delta one transactions for the 2017 calendar year, and for non-delta one transactions, for the 2018 calendar year. The Notice provides some examples of how IRS will determine whether the WA satisfies the good faith standard.

Notice 2017-42, extended the period during which the IRS will take into account the WA's good faith efforts to include 2018 for delta one transactions and 2019 for non-delta one transactions.

IRS Guidance under the FAQ

The good faith standard applies to WAs. Given that a QI may act as a WA and an intermediary for payments made on section 871(m) transactions, the good faith standard also applies to a QI with respect to such transactions. According to the new guidance, a QI that is acting as a WA in its intermediary capacity should include section 871(m) transactions in its review.

The QI should also disclose any section 871(m) transactions included in the review that they believe should be subject to the good faith standard for purposes of reporting the factual information with its periodic certification that includes the 2017, 2018, or 2019 years. The QI should make the disclosure by uploading an attachment to the Qualified Intermediary/Withholding Foreign Partnership/Withholding Foreign Trust Application Management System. The disclosure should include a brief description of the issue, how the QI will address any such issue by the end of 2018, and why the good faith standard should apply.

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