



IRS Notice 2018-72 announces amendment and delay of portions of section 871(m) regulations Global information reporting update

Executive Summary

On September 20, 2018, the IRS released Notice 2018-72,¹ announcing they intend to amend the section 871(m) regulations to delay the effective/applicability date of certain rules in those final regulations. Notice 2018-72 also extends the phase-in period provided in Notice 2016-76 for certain provisions of the section 871(m) regulations and permits withholding agents to apply the transition rules from Notice 2010-46 through 2020. A brief summary of the key changes is below.

Brief Discussion of Key Changes

1. Extension of the Phase-In Period Provided in Notice 2016-76

Notice 2016-76 provides that the IRS will take into account the extent to which a taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations with respect to delta-one transactions in 2017 and non-delta-one transactions in 2018 when enforcing the section 871(m) regulations. Notice 2016-76 also provides a simplified standard for withholding agents to determine whether transactions entered into in 2017 are combined transactions. Notice 2018-72 extends the application of the relaxed standards set out in Notice 2016-76 through 2020 including U.S. source dividends paid to Qualified Derivative Dealers ("QDDs") acting in their capacity as QDDs with respect to such dividends instead of in a non-dealer capacity. With respect to any non-delta one transaction that is a section 871(m) transaction pursuant to §1.871-15(d)(2) or (e), the relaxed standards set out in Notice 2016-76 are applicable through 2021.

2. Extension of Transition Rules from Notice 2010-46

Notice 2018-72 extends the transition relief described in Notice 2010-46 Part III and previously extended in Notice 2018-5² and Notice 2017-42,³ for dividend equivalent payments through the end of the year 2020 with respect to stock loans and equity sale repurchase transactions.

¹ Notice 2018-72, Aug 20, 2018, 2018-40 IRB 1.

² Notice 2018-5, Dec. 21, 2017, 2018-3 IRB 341 (extending the transition relief of Notice 2010-46 through the end of 2019).

³ Notice 2017-42, Aug. 4, 2017, 2017-34 IRB 1.

3. Delay the effective/applicability date of certain rules in the section 871(m) regulations Notice 2018-72

Notice 2018-72 provides that a Qualified Derivatives Dealer ('QDD') is not required to perform a periodic review with respect to its QDD activities for 2019 or 2020. Note that a QDD must use the same year for the periodic review of its QI activities and its QDD activities. A QI that is a QDD must choose 2021 or a later year within its certification period in which to perform its periodic review unless its applicable certification period ends in 2020 or an earlier year.

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