

Operational Tax News

QDD / 871(m) Update

11 August 2017

Extension of the phase-in period for the enforcement and administration of section 871(m)

On August 4th, 2017, the Internal Revenue Service (“IRS”) issued [Notice 2017-42](#) (“Notice”) which provides additional guidelines on certain aspects of the final and temporary regulations under Section 871(m), 1441, 1461, and 1473 of the IRS Code (referred to as “the section 871(m) regulations”). The Notice extends the effective date for certain rules, and extends the phase-in period provided in Notice 2017-76 for some other provisions of section 871 (m) regulations:

The main modifications of the Notice can be summarized as follows:

- Additional time to comply with section 871(m): Prior to the issuance of the Notice, section 871(m) was applicable to non-delta-one transactions issued on or after January 1, 2018. In order to grant taxpayers and withholding agents sufficient time to implement the section 871(m) regulations, the transition period has been extended by one year. Section 871(m) will thus apply to payments made with respect to non-delta-one transaction issued on or after January 1, 2019.
- Extension of the simplified standard for determining whether transactions are combined transactions: The 2016-76 Notice provided that a simplified standard for withholding agents to determine whether transactions entered into in 2017 must be combined for purposes of determining whether the transactions are “section 871(m) transactions” subject to withholding under the section 871(m) regulations. The Notice extends the transition period during which this simplified combination rule applies by one year. Therefore, a withholding agent is required to combine transactions entered into in 2017 and 2018 only when the transactions are over-the-counter transactions that are priced, marketed or sold in connection with each other. Transactions entered into in 2017 and 2018 that are combined under the simplified rule will continue to be treated as combined transactions for future years and transactions entered into in 2017 and 2018 that are not combined (from the perspective of the withholding agent) under the simplified rule will not become combined transactions in future years.
- Extension of phase-in relief for Qualified Derivatives Dealers (“QDD”): Prior to the issuance of the Notice, the final regulations and the final 2017 QI Agreement provided that dividends received by a QDD in its equity derivatives dealer capacity should not be subject to tax in 2017 but should become taxable from 2018 onwards. The Notice provides that a QDD will not be subject to withholding on dividends (including deemed dividends) received in both 2017 and 2018 in its equity derivatives dealer capacity. Finally, a QDD will not be required to perform a periodic review with respect to its QDD activities for calendar years 2017 and 2018.

Should you have any questions regarding the above, please do not hesitate to contact us.

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