

Alert

IRS To Extend Phase-In Period for US Dividend Equivalent Rules

October 31, 2018

On Sept. 20, 2018, the IRS issued Notice 2018-72 (“Notice”) to, among other things, (1) announce that the IRS intends to amend the Section 871(m) Treasury Regulations to extend the phase-in period for delta-one transactions and delay the applicability of the Section 871(m) Treasury Regulations to non-delta-one transactions and (2) extend the application of the simplified standard for determining whether transactions are combined transactions for withholding agents.

Extension of Phase-In Period

The IRS intends to revise the Section 871(m) Regulations to extend the phase-in period for delta-one transactions and delay the applicability of Section 871(m) to non-delta-one transactions by providing that the Section 871(m) Treasury Regulations do not apply to a non-delta-one transaction entered into before Jan. 1, 2021.

The IRS extends the phase-in period provided in Notice 2016-76, which provides that the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the Section 871(m) Regulations in enforcing those regulations for (1) any delta-one transaction entered into in 2017 through 2020 and (2) any non-delta-one transaction that is covered under Section 871(m) and entered into in 2021.

Extension of the Simplified Standard for Determining Whether Transactions Are Combined Transactions for Withholding Agents

The Notice extends the period during which the “simplified standard” for determining whether transactions are combined transactions for withholding agents provided in Notice 2016-76 and Notice 2017-42 to include 2019 and 2020.

Under the “simplified standard,” a withholding agent is required to combine transactions for purposes of determining whether transactions are Section 871(m) transactions only when the transactions are over-the-counter transactions that are priced, marketed or sold in connection with each other.

Please contact your attorney at Schulte Roth & Zabel at your earliest convenience if you wish to discuss this notice.

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