

TaxNewsFlash

United States

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Notice 2017-42: Additional time to comply with section 871(m) regulations

The IRS today released an advance version of Notice 2017-42 that announces the Treasury Department and IRS intend to amend the regulations issued under section 871(m) to delay the effective date of certain provisions. The notice provides additional guidance for complying with the regulations under section 871(m) in 2018 and 2019. Today's notice also extends a phase-in period previously provided by Notice 2016-76 for certain provisions of the section 871(m) regulations.

Read [Notice 2017-42](#) [PDF 24 KB]

Background

The IRS in December 2016 released Notice 2016-76 to announce delays in the effective date of certain portions of the section 871(m) regulations. Notice 2016-76 provided guidance for complying with final and temporary regulations issued under sections 871(m), 1441, 1461, and 1473—referred to as the “section 871(m) regulations”—and explained a phase-in schedule for certain rules under the section 871(m) regulations. In general, Notice 2016-76 explained:

- How the IRS intends to administer the section 871(m) regulations in 2017 and 2018
- That amendments to the section 871(m) regulations are expected
- That application of certain rules in the section 871(m) regulations will be phased in to facilitate the implementation of those regulations
- That, based on comments, taxpayers and withholding agents face challenges in complying with certain aspects of the section 871(m) regulations by their applicability date of January 1, 2017—for instance, the challenges include (1)

designing, building, and testing new withholding and reporting infrastructure for dealers, issuers, and other withholding agents; (2) implementing new system requirements for paying agents and clearing organizations; and (3) enhancing and developing data sources for determining whether transactions are section 871(m) transactions

- Certain taxpayers may face additional challenges applying for status as a “qualified derivatives dealer” (QDD) under the Qualified Intermediary (QI) withholding agreement (QI agreement) and implementing the QDD regime in a timely manner

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The IRS in December 2016 released [**Rev. Proc. 2017-15**](#) [PDF 558 KB] to provide a final qualified intermediary (QI) withholding agreement (QI agreement), including the requirements and obligations that apply to qualified derivatives dealers (QDDs).

Subsequently, the Treasury Department and IRS in January 2017 released final and temporary regulations (T.D. 9815) providing rules relating to dividend equivalents for purposes of section 871(m). The effective / applicability date in the final regulations reflected the phased-in application rules under Notice 2016-76. Read [**TaxNewsFlash-United States**](#)

Notice 2017-42

Today's notice extends parts of the phase-in period, provided by Notice 2016-76 and Rev. Proc. 2017-15, for one additional year.

Today's notice also extends through 2018 the period during which the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the 2017 QI agreement.

Notice 2017-42 also extends to include 2018, the period during which the simplified standard for withholding agents to determine whether transactions entered into in 2017 are “combined transactions.” Transactions that are entered into in 2017 and 2018 that are combined under the simplified standard will continue to be treated as combined transactions for future years, and will not cease to be treated as such if Reg. section 1.871-15(n) is applied or there is a disposal of less than all of the potential section 871(m) transactions that were combined under this rule.

The notice also extends the phase-in relief for QDDs. Treasury and the IRS intend to amend the regulations to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2017 and 2018 in its equity derivatives dealer capacity or withholding on dividends (including deemed dividends). Also, with respect to the 2017 QI agreement, a QDD is not required to perform a periodic review with respect to its QDD activities for calendar year 2017 and 2018.

Notice 2017-42 states that taxpayers may rely on this guidance before the amendments to the section 871(m) regulations and the 2017 QI agreement are made and promulgated.

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