



TaxNewsFlash

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Notice 2022-37: Further extended phase-in provisions under section 871(m) regulations

The IRS today released an advance version of Notice 2022-37 announcing an additional two-year extension for taxpayers to comply with the final regulations with respect to dividend equivalents under sections 871(m), 1441, 1461, and 1473.

[Notice 2022-37](#) [PDF 111 KB] states that Treasury and the IRS intend to revise the regulations and in the meantime provides the following extensions of time:

- An extension to the phased-in application of the section 871(m) regulations to delta-one and non-delta-one transactions (Treasury and the IRS intend to revise the effective/applicability date for Reg. section 1.871-15(d)(2) and (e) to provide that these rules will not apply to any payment made with respect to any non-delta-one transaction issued before January 1, 2025.)
- An extension of the simplified standard for determining whether transactions are combined transactions (Withholding agents are not required to combine any transactions that are listed securities entered into in 2017. Notice 2017-42, Notice 2018-72, and Notice 2020-2 extended the period during which this simplified standard for combined transactions applies to include 2018 through 2022. Notice 2022-37 further extends the period during which this simplified standard for combined transactions applies to include 2023 and 2024.)
- An extension of phase-in relief for qualified derivatives dealers (QDDs) (Notice 2017-42, Notice 2018-72, and Notice 2020-2 announced that Treasury and the IRS intended to amend Reg. sections 1.871-15(q)(1) and (r)(3), and 1.1441-1(b)(4)(xxii)(C) to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2017 through 2022 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends). Notice 2022-37 announces that Treasury and the IRS intend to amend those provisions to provide that a QDD will not be subject to tax on dividends and dividend equivalents received in 2023 and 2024 in its equity derivatives dealer capacity or withholding on those dividends (including deemed dividends) as well.)
- An extension of transition rules from Notice 2010-46 (Notice 2018-5, Notice 2018-72, and Notice 2020-2 provided that notwithstanding the preamble to the 2017 regulations, withholding agents may apply the

transition rules described in Notice 2010-46, Part III, for payments made in 2018 through 2022. Notice 2022-37 provides that withholding agents may also apply the transition rules described in Notice 2010-46, Part III, for payments made in 2023 and 2024.)

Notice 2022-37 further provides the anti-abuse rule provided in Reg. section 1.871-15(o) will continue to apply during the phase-in years (described above). As a result, a transaction that would not otherwise be treated as a section 871(m) transaction may nevertheless be a section 871(m) transaction under Reg. section 1.871-15(o).

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