

AN ALERT FROM THE BDO FINANCIAL SERVICES PRACTICE

ASSET MANAGEMENT **INSIGHTS**

IRS NOTICE PROVIDES EXTENSION FOR COMPLIANCE WITH CERTAIN SECTION 871(M) REGULATIONS

BACKGROUND

Over the past decade, Congress and the Treasury Department repeatedly expressed concern over perceived abuses by foreign investors' use of swap contracts and other derivatives to avoid U.S. withholding on dividend income from investments in U.S. stocks. In 2010, Congress enacted Section 871(m) to require U.S. withholding, in certain circumstances, on "dividend equivalents" from "specified" notional principal contracts, as well as "equity linked instruments." Compliance with these rules is highly complex and costly to the banking and asset management industries.

THE NOTICE

Due to the inherent complexity, the IRS and Treasury Department recently granted additional time to taxpayers to implement the Section 871(m) regulations. According to Notice 2017-42, the IRS will be amending the regulations to delay the effective date of certain rules and extending the phase-in period for certain transactions.

Of particular relevance for the asset management industry is the extension of the effective date for "non-delta-one" transactions by one year. As a result, the withholding rules of Section 871(m) will not apply to dividend equivalents on specified notional principal contracts and equity linked instruments with a delta of .80 or greater if the product was issued before January 1, 2019. Withholding continues to apply for delta-one transactions issued in 2017, but the Notice extends the period in which the IRS will take into account good faith efforts to comply by one year.

IMPLICATIONS

The Notice is welcome reprieve for the industry, and the IRS hinted that additional relief may be forthcoming. Pursuant to Executive Order 13777, the IRS will continue to evaluate the 871(m) regulations and consider other ways to reduce "unnecessary burdens" imposed by them. BDO will continue to monitor this area and keep our clients apprised of new developments.



For more information about Section 871(m) or other tax compliance issues, contact

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