

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2017
Stradley Ronon Stevens & Young, LLP
All rights reserved.

IRS Issues Guidance Extending Phase-In Period for Dividend Equivalent Regulations

The IRS issued Notice 2017-42 (<https://www.irs.gov/pub/irs-drop/n-17-42.pdf>) announcing that it will amend the Section 871(m) final regulations to delay the effective date of some rules under those regulations and extending for one additional year the phase-in period provided in Notice 2016-76 (see our prior coverage here (<http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-december-7-2016>)) for specified provisions of the Section 871(m) regulations. (Section references are to the Internal Revenue Code of 1986, as amended.)

Notice 2017-42 notes that dealers, issuers and other withholding agents have indicated that the phase-in period for delta-one transactions provided in Notice 2016-76 and Revenue Procedure 2017-15 (see our prior coverage here (<http://www.stradley.com/insights/publications/2017/01/tax-insights-january-11-2017>)) has given them valuable time to test and develop their withholding and reporting systems. Those market participants have cited the need for additional time before the Section 871(m) regulations require compliance. Further, consistent with an executive order, Treasury and the IRS continue to evaluate the Section 871(m) regulations and consider possible agency actions that may reduce unnecessary burdens imposed by the regulations.

Generally, Notice 2017-42 extends (a) parts of the phase-in period, provided by Notice 2016-76 and Revenue Procedure 2017-15; (b) for one additional year, through 2018, the period during which the IRS will take into account the extent to which a qualified derivatives dealer (QDD) made a good faith effort to comply with the Section 871(m) regulations and the relevant provisions of the 2017 qualified intermediary agreement (QI agreement); (c) to include 2018 in the period during which the simplified standard applies for withholding agents to determine whether transactions entered into in 2017 are “combined transactions”; and (d) 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.

IRS Rules on Consequences of Settlement Involving REMICs

In Private Letter Ruling 201730006 (<https://www.irs.gov/pub/irs-wd/201730006.pdf>), the IRS ruled on the following matters with respect to a settlement agreement executed by several REMICs and the payment each received in settlement of a dispute alleging breaches of representation and warranty claims under agreements with mortgage sellers:

1. None of (i) the execution of the settlement agreement, (ii) the right to receive the settlement payment or (iii) the receipt of the settlement payment causes the taxpayers to fail to meet the requirements of Section 860D(a)(4), relating to the definition of a REMIC.
2. The receipt of the settlement payment will be treated as a payment received on qualified mortgages within the meaning of Treasury Regulations Section 1.860G-2(g)(1)(ii).
3. The distribution of the settlement payment in accordance with the applicable governing agreements of the REMICs and the settlement agreement will not cause any regular interest in the taxpayers to fail to qualify as a “regular interest” as defined in Section 860G(a)(1) or the sole class of residual interest in the taxpayers to fail to qualify as a “residual interest” as defined in Section 860G(a)(2).

Foreign Financial Institutions Granted More Time to Renew FATCA Agreements

In an update to recently issued frequently asked questions (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>) (FAQs General, Registration Update, Q10 - Q12) on registering foreign financial institutions (FFI) under FATCA, the IRS has given entities that missed the July 31 deadline to renew their FFI agreements, and that have otherwise complied with the terms of their agreements, until Oct. 24 to renew them and continue to be treated as participating FFIs.

Fees for Letter Rulings, Closing Agreements and Other Rulings Must Be Paid Electronically

The IRS issued an information release (IR 2017-102 (<https://www.irs.gov/uac/newsroom/for-letter-rulings-and-similar-requests-electronic-payment-of-user-fees-starts-june-15-replaces-paying-by-check>)) stating that after Aug. 15 the Pay.gov electronic payment website will become the only permissible payment method for the fees that taxpayers must pay when they request letter rulings, closing agreements and certain other rulings from IRS.

MTC Announces Voluntary Disclosure Program for Fulfillment by Amazon Sellers

The Multi-State Tax Commission (MTC) announced a voluntary disclosure program for Amazon sellers (<http://www.stradley.com/~media/Files/Publications/2017/08/MTC%20Amazon.pdf>) who have had nexus created in a state because of the Fulfillment by Amazon (FBA) program. Pursuant to the FBA program, sellers can list their products with Amazon and have Amazon hold their inventory at one of its warehouses before shipping those products to the purchaser. The presence of inventory in a state is sufficient to create nexus for sales taxes, corporate taxes and personal income taxes regardless of whether the seller has any other presence within the state where its inventory is stored.

SIFMA Asks Treasury to Review Dividend Equivalent and FATCA Regulations

The Securities Industry and Financial Markets Association issued a letter (<http://www.sifma.org/issues/item.aspx?id=8589968197>) urging Treasury to review final and temporary regulations under Section 871(m) and subsequent amendments and FATCA regulations and consider ways to reduce regulatory burden and complexity for taxpayers.



Christopher C. Scarpa



Kristin M. McKenna

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Kristin M. McKenna at 215.564.8145 or kmckenna@stradley.com.