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## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9572]

RIN 1545-BK53

Dividend Equivalents from Sources within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendment.

SUMMARY: This document amends temporary regulations relating to dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations affect nonresident aliens and foreign corporations that hold notional principal contracts (NPCs) providing for payments determined by reference to payments of dividends from sources within the United States.

DATES: Effective Date: These regulations are effective **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §1.871-16T(g).

FOR FURTHER INFORMATION CONTACT: Mark E. Erwin or D. Peter Merkel at (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

On January 23, 2012, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published in the **Federal Register** a temporary regulation and a

notice of proposed rulemaking relating to dividend equivalents from sources within the United States. See TD 9572, 77 FR 3108 (Temporary Regulations); REG-120282-10, 77 FR 3202 (Proposed Regulations). Section 871(m)(2) defines the term “dividend equivalent” to include, in part, any payment made pursuant to a specified notional principal contract (specified NPC) that is contingent upon or determined by reference to a U.S. source dividend. Section 871(m)(3)(A) provides a definition for the term specified NPC that is applicable to payments made through March 18, 2012. Section 1.871-16T(b) of the Temporary Regulations provides that the definition of specified NPC contained in paragraphs (i) through (iv) of section 871(m)(3)(A) will apply to payments made after March 18, 2012, and before January 1, 2013. The Proposed Regulations provide a different definition of specified NPC that would apply to payments made on or after January 1, 2013.

### **Explanation of Provisions**

Treasury and the IRS received numerous comments on the Proposed Regulations, stating that the proposed effective date of January 1, 2013, would not allow taxpayers sufficient time to build and test the systems required to implement the withholding rules for specified NPCs and equity-linked instruments. In response to these comments, this document amends §1.871-16T(b) of the Temporary Regulations so that the definition of a specified NPC contained in paragraphs (i) through (iv) of section 871(m)(3)(A) will apply to payments made after March 18, 2012, and before January 1, 2014. When final regulations are issued adopting the Proposed Regulations, Treasury and the IRS intend that the rules contained in the final regulations will apply to payments made on or after January 1, 2014.

Treasury and the IRS continue to consider the other public comments made on the Temporary Regulations and the Proposed Regulations.

### **Drafting Information**

The principal author of these regulations is D. Peter Merkel, the Office of Associate Chief Counsel (International). Other personnel from Treasury and the IRS participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1-- INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.871-16T also issued under 26 U.S.C. 871(m).

**§1.871-16T(b) [Amended]**

Par. 2. Section 1.871-16T(b) is amended by removing the language “2013” and adding the language “2014” in its place wherever it appears.

Steven T. Miller,  
Deputy Commissioner for Services and Enforcement.

Approved: August 16, 2012.

Mark J. Mazur,  
Assistant Secretary of the Treasury (Tax Policy).

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