

Treasury Delays Implementation of Final Expanded Dividend-Equivalent Regulations By Two Years, Keeps Current Four-Factor Test in Place Through the End of 2015

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Tax Alert

The Department of the Treasury and the Internal Revenue Service (IRS) announced today (available [here](#)) that they are delaying the implementation by two years—until January 1, 2016—of final expanded regulations governing the taxation of “dividend-equivalent payments” under “specified” notional principal contracts (NPCs) made to nonresident alien individuals and foreign corporations under U.S. tax law section 871(m). Under today’s announcement, the current four-factor test for determining whether a dividend-equivalent payment on an NPC is subject to U.S. taxation and U.S. withholding tax will continue to apply to dividend-equivalent payments made prior to January 1, 2016—delaying the implementation of the final expanded regulations by two years.

By way of today’s announcement, Treasury and the IRS are also replacing the previously proposed seven-factor test for determining which dividend-equivalent payments are subject to U.S. taxation with a newly proposed single-factor test (the proposed single-factor regulations) (available [here](#)). The proposed single-factor regulations are intended to govern the taxation of dividend-equivalent payments made on or after January 1, 2016. The single-factor regulations, if implemented, will provide that a dividend-equivalent payment on an NPC is subject to U.S. taxation if the NPC has a “delta” of 0.70 or greater when the long party acquires the transaction. Implementation of the delta rule would be a unique and unprecedented approach and its application is sure to raise complicated issues and garner significant scrutiny and comment by market participants and tax practitioners.

Contact Information

If you have any questions regarding this alert, please contact:

Patrick B. Fenn

pfenn@akingump.com

212.842.1040

New York

Stuart E. Leblang

sleblang@akingump.com

212.872.1017

New York

Robert Rothman

rrothman@akingump.com

212.872.7411

New York

Brett Fieldston

bfieldston@akingump.com

212.872.8057

New York