

Extension of Transition Rules from Notice 2010-46

Notice 2018-05

I. PURPOSE

This Notice permits withholding agents to apply the transition rules from Notice 2010-46, 2010-24 I.R.B. 757, in calendar years 2018 and 2019, as described in more detail below.

II. BACKGROUND

Notice 2010-46 addresses potential overwithholding in the context of securities lending and sale repurchase agreements. Notice 2010-46 provides a two-part solution to the problem of overwithholding on a chain of dividends and dividend equivalents. First, it provides an exception from withholding for payments to a qualified securities lender (QSL). Second, it provides a proposed framework to credit forward prior withholding on a chain of substitute dividends paid pursuant to a chain of securities loans or stock repurchase agreements. The QSL regime requires a person that agrees to act as a QSL to comply with certain withholding and documentation requirements. The Department of Treasury (Treasury Department) and the Internal Revenue Service (IRS) permitted withholding agents to rely on transition rules described in Notice 2010-46, Part III, until guidance was developed that would include documentation and

substantiation of withholding.

On September 18, 2015, temporary regulations containing rules for qualified derivatives dealers (QDD) were published in the Federal Register (80 FR 56866). The Treasury Department and the IRS stated that the final QDD regulations would supplant the proposed regulatory framework described in Notice 2010-46. 80 FR at 56878. The Treasury Department and the IRS reiterated the intent to replace the proposed regulatory framework described in Notice 2010-46 with the QDD regime in Notice 2016-42, 2016-29 I.R.B. 67, which contained the proposed qualified intermediary agreement (QI Agreement) that included provisions relating to the QDD regime. Revenue Procedure 2017-15, 2017-3 I.R.B. 437, which sets forth the final QI Agreement, provided that taxpayers could continue to rely on Notice 2010-46 during calendar year 2017.

As part of transition relief announced in Notice 2016-76, 2016-51 I.R.B. 834, the Treasury Department and the IRS announced that taxpayers may continue to rely on Notice 2010-46 during 2017, and that Notice 2010-46 would be obsoleted as of January 1, 2018. On January 24, 2017, final regulations containing rules for QDDs were published in the Federal Register (82 FR 8144) (2017 Final Regulations). Consistent with Notice 2016-76, the “Effect on Other Documents” section of the preamble to the 2017 Final Regulations obsoleted Notice 2010-46 as of January 1, 2018. In response to a comment requesting that the QSL regime remain, the preamble to the 2017 Final Regulations noted that “[w]hile the Treasury Department and the IRS understand that

the QSL regime was administratively more convenient for taxpayers than the QI regime, it created administrability problems, particularly with respect to verification, for the IRS. That regime is being replaced by incorporating the QDD rules into the existing QI framework, including the specific rules for pooled reporting on Form 1042-S, and the QI requirements for compliance review and certification.” 82 FR at 8153.

Since the 2017 Final Regulations, comments have stated that securities lending does not pose a high risk for withholding tax avoidance. In these comments, market participants have requested that the QSL regime be extended for a longer transitional period and have requested that the Treasury Department and the IRS consider simplifying the rules for securities lenders. After considering comments from participants in the securities lending market and the tax administration concerns of the IRS, particularly with respect to verification, the Treasury Department and the IRS have decided to extend the QSL regime described in Notice 2010-46, Part III, but only for payments made in calendar years 2018 and 2019. During this period, the Treasury Department and the IRS intend to consider whether additional guidance is appropriate to address the particular circumstances of foreign lenders of U.S. dividend-paying stocks.

III. EXTENSION OF TRANSITION RULES FROM NOTICE 2010-46

Notwithstanding the preamble to the 2017 Final Regulations, withholding agents may apply the transition rules described in Notice 2010-46, Part III, for payments made

in calendar years 2018 and 2019.

IV. DRAFTING INFORMATION

The principal authors of this Notice are Karen Walny and Peter Merkel of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Karen Walny or Peter Merkel at (202) 317-6938 (not a toll-free call).