

# **Appendix F**

## **Application of Withholding Tax on Section 305(c) Events Prior 1/1/2016**



## INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

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1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Michael Gangwer,  
Chairperson

**Emerging Compliance  
Issues**

**Sub-Group:**

Beatriz Castaneda, Chair  
Terry Edwards  
Darrell Granahan  
Keith King  
Joel Levenson  
Nina Tross

Internal Revenue Service  
Attn: CC:PA:LPD:PR (REG-133673-15)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

RE: Application of Withholding Tax on Section 305(c) Events prior to 1/1/2016

Dear Commissioner Koskinen:

**Employee Information  
Reporting/ Burden  
Reduction**

**Sub-Group:**

Emily Rook, Chair  
Bob Birch  
Laura Burke  
Ernesto Castro  
Alan Ellenby  
Marcia Miller

This letter is in response to IRPAC's understanding that the IRS is considering holding withholding agents liable for any underwithholding on Section 305(c) deemed dividends for years prior to 2016. For the below reasons, IRPAC recommends that the IRS publically announce that it will not impose withholding tax liability, penalties, or interest on withholding agents for Section 305(c) events occurring in tax years prior to 2016. In an effort to direct withholding agents on how to treat such events, proposed regulations were released in April 2016 (the "2016 Proposed Regulations"). As such, it would be unfair to penalize withholding agents for events in years prior to the release of these proposed regulations by applying withholding tax liability, penalties, or interest on a retroactive basis.

**International Reporting &  
Withholding**

**Sub-Group:**

Frederic Bousquet, Chair  
Roseann Cutrone  
Carolyn Diehl  
Dana Flynn  
Robert Limerick  
Kevin Sullivan  
Kelli Wooten

It was not until proposed regulations under Section 871(m) published in 2014, which included a brief coordinating rule with Section 305(c), that withholding agents began to struggle with understanding a potential obligation to withhold tax on Section 305(c) deemed dividends notwithstanding the absence of cash payments. To date, the withholding tax regime followed by withholding agents has been based upon cash payments and an understanding the facts and circumstances of the income giving rise to such payments. Prior to the 2016 Proposed Regulations, there was no clear guidance on how to identify Section 305(c) events, how to calculate the income arising from such events, and the withholding tax obligations in light of cashless payments.

Since 2014, withholding agents have been forthcoming and cooperatively working with the IRS to address many of the open questions and complications relating to the withholding tax issues resulting from a conversion rate adjustment on convertible bonds and other securities. While the 2016 Proposed Regulations address many of the open questions and clarify many points of issue prospectively, uncertainty regarding previous years remains, which is causing, among other things, uncertainty amongst withholding agents as to whether to collect taxes for prior years.

While IRPAC lauds IRS efforts to clarify the applicable rules by issuing the 2016 Proposed Regulations, we feel that these proposed regulations serve as an acknowledgment by the IRS that additional guidance was needed in order to administer the Section 305(c) withholding obligations. As such, we do not believe withholding agents can reasonably be expected to have put a withholding process in place in years prior to 2016. In sum, to minimize an ever-growing burden placed on withholding agents and to allow them to focus on the development of procedures and

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processes for withholding tax on Section 305(c) events for tax year 2016 and beyond, IRPAC requests public acknowledgement from the IRS that withholding agents will not be held liable with respect to Section 305(c) events that occurred prior to 2016.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael Goyner".

2016 IRPAC Chairperson