

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9734]

RIN 1545-BJ56

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9734) that was published in the Federal Register on September 18, 2015 (80 FR 56866). These corrections include a change to the effective date that was applicable to transactions issued on or after January 1, 2016, and before January 1, 2017. This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments.

DATES: This correction is effective on December 7, 2015 and applicable on September 18, 2015.

FOR FURTHER INFORMATION CONTACT: Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9734) that are the subject of this correction are under sections 871 and 894 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9734) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 * * *

Par. 2. Section 1.871-15 is amended by revising paragraphs (i)(4) Example 1. (ii), (i)(4) Example 2. (ii), (r)(1), and (r)(3) and adding paragraph (r)(4) to read as follows:

§ 1.871-15 Treatment of dividend equivalents.

* * * * *

(i) * * *

(4) * * *

Example 1. * * *

(ii) Subject to paragraph (i)(2)(iv) of this section, the estimated dividend amounts are the per-share dividend amounts because the estimates are reasonable and specified in accordance with paragraph (i)(2)(iii) of this section. The estimated per-share dividend amounts are dividend equivalents for purposes of this section.

Example 2. * * *

(ii) Because the LIBOR leg of the swap contract is reduced to reflect estimated dividends and the estimated dividend amounts are not specified, Foreign Investor is treated as receiving the actual dividend amounts are in accordance with paragraph (i)(2) of this section. The actual per-share dividend amounts are dividend equivalents for purposes of this section.

* * * * *

(r) * * * (1) In general. This section applies to payments made on or after September 18, 2015 except as provided in paragraphs (r)(2), (3), and (4) of this section.

* * * * *

(3) Effective/applicability date for paragraphs (d)(2) and (e). Paragraphs (d)(2) and (e) of this section apply to any payment made on or after January 1, 2017, with respect to any transaction issued on or after January 1, 2017.

(4) Effective/applicability date for paragraphs (c)(2)(iv), (h), and (q) of this section. [Reserved]. For further guidance, see § 1.871-15T(r)(4).

Par. 3. Section 1.871-15T is amended by removing the language "transaction" and adding in its place "complex contract" in paragraph (h)(7) Example. (iv) and revising paragraph (h)(7) Example. (viii) to read as follows:

§ 1.871-15T Treatment of dividend equivalents (temporary).

* * * * *

(h) * * *

(7) * * *

Example. * * *

(viii) FI concludes that the Contract is not a section 871(m) transaction because the complex contract calculation of 7.68 exceeds the benchmark calculation of 4.473.

* * * * *

Par. 4. Section 1.1441-1 is amended by removing the second occurrence of paragraph (e)(3)(ii)(E) and adding paragraph (e)(3)(ii)(F) to read as follows:

§ 1.1441-1 Requirements for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(ii)(F).

* * * * *

Par. 5. Section 1.1441-1T is amended by revising the last sentence of paragraph (f)(3) to read as follows:

§ 1.1441-1T Requirements for the deduction and withholding of tax on payments to foreign persons (temporary).

* * * * *

(f) * * *

(3) * * * Paragraphs (e)(3)(ii)(E) and (e)(6) of this section apply beginning September 18, 2015.

* * * * *

Par. 6. Section 1.1461-1 is amended by adding a second sentence to paragraph (c)(2)(iii) to read as follows:

§ 1.1461-1 Payments and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(iii) * * * Paragraphs (c)(2)(i)(M) and (c)(2)(ii)(J) of this section apply beginning September 18, 2015.

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Martin V. Franks, Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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