

Comments on Proposed Rulemaking re Dividend Equivalents From Sources Within the U.S.

The Global Federation of Insurance Associations (GFIA) is writing in response to the request for comments in the Notice of Proposed Rulemaking, *Dividend Equivalents From Sources Within the United States*, published by the Department of Treasury (“Treasury”) and the Internal Revenue Service (the “IRS”). GFIA’s 40 member associations represent insurers that account for around 87% of total insurance premiums worldwide. The GFIA is a non-profit association established to represent national and regional insurance associations that serve the general interests of life, health, general insurance and reinsurance companies and to make representations to national governments, international regulators and others on their behalf.

The IRS and Treasury have requested comments on how section 871(m) withholding (which applies to dividends and effectively to dividend equivalents) should apply to:

- foreign life insurance companies and the contracts they issue that reference U.S. equities and
- reinsurance contracts.

We are concerned that payments under variable and indexed life insurance and annuity contracts could potentially be treated as “dividend equivalents,” thereby creating uncertainty as to the potential application of a 30% U.S. withholding tax to payments under such contracts.

Treasury and the IRS should be commended for providing several exceptions in the Proposed Regulations to the definition of “dividend equivalent” for payments made or received by foreign insurance companies. GFIA strongly encourages Treasury and the IRS to include these exceptions in the final regulations, giving careful consideration to the recommendations in the written comments provided by [GFIA members](#), which include the Canadian Life and Health Insurance Association (CLHIA) and the American Council of Life Insurers (ACLI).

Life insurance and annuity contracts are designed to provide financial protection and security to policyholders and life insurers are regulated to accomplish that goal. Payments under these contracts are not equivalent to dividends. Accordingly, section 871(m) should not apply to payments made under such contracts. Further support for this position is provided by the Prohibition Against “Over-withholding” under Section 871(m)(6). In the case of variable life insurance and annuity contracts, the life insurer typically holds the underlying assets in a segregated account

established under and maintained in accordance with applicable insurance law. Dividends on any U.S. equities in the segregated account will generally be subject to U.S. withholding tax when paid to the foreign insurance company. Thus, section 871(m)(6) should prevent a second layer of U.S. withholding tax from potentially applying to any payments to the policyholders.

The same logic also applies in the case of an indemnity reinsurance agreement under which the ceding company continues to hold the investment assets backing the reserve liabilities associated with the reinsured contracts. Dividends with respect to any U.S. equity securities included in that pool generally will be subject to U.S. withholding tax when paid to a foreign ceding company. Thus, section 871(m)(6) should prevent a second layer of U.S. withholding tax from potentially applying to reinsurance payments.

GFIA contact

Peggy McFarland, Chair of the GFIA taxation group; pmcfarland@clhia.ca

About the GFIA

Through its 40 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 60 countries. These companies account for around 87% of total insurance premiums worldwide. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.