

Part III - Administrative, Procedural, and Miscellaneous

Effective Dates of Regulations under Section 901

Notice 2007-95

PURPOSE

The purpose of this Notice is to provide guidance relating to the effective dates of final regulations to be issued under section 901.

BACKGROUND

On August 3, 2006, the Internal Revenue Service (IRS) and Treasury Department issued proposed regulations that would provide guidance relating to the determination of who is considered to pay a foreign tax for purposes of section 901 and section 903. In particular, the proposed regulations would provide guidance under section 1.901-2(f) relating to the person on whom foreign law imposes legal liability for tax, including in the case of taxes imposed on the income of foreign consolidated groups and entities that have different classifications for U.S. and foreign tax law purposes. The proposed regulations provide that the final regulations will be effective for foreign taxes paid or accrued during taxable years of the taxpayer beginning on or after January 1, 2007. The IRS and Treasury Department have received written comments on the proposed regulations and held a hearing on the proposed regulations on October 13, 2006.

On March 29, 2007, the IRS and Treasury Department issued proposed

regulations that would provide guidance under section 1.901-2(e)(5) relating to the amount of taxes paid for purposes of section 901. The proposed regulations would revise section 1.901-2(e)(5) in two ways. First, for purposes of determining compliance with section 1.901-2(e)(5), the proposed regulations would treat as a single taxpayer all foreign entities in which the same U.S. person has a direct or indirect interest of 80 percent or more (a “U.S.-owned foreign group”). Second, the proposed regulations would treat amounts paid to a foreign taxing authority as noncompulsory payments if those amounts are attributable to certain structured passive investments. The proposed regulations provide that the final regulations will be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the regulations are finalized. The IRS and Treasury Department have received written comments on the proposed regulations and held a hearing on the proposed regulations on July 30, 2007.

DISCUSSION

The IRS and Treasury Department are considering the comments received on the two proposed regulations.

The IRS and Treasury Department intended to finalize the proposed section 1.901-2(f) regulations in 2007. However, the IRS and Treasury Department are still in the process of considering comments received on the proposed regulations and no longer expect to finalize these proposed regulations in 2007. Because the proposed regulations will not be finalized in 2007, the IRS and Treasury Department believe it is appropriate to revise the effective date for the regulations. Accordingly, the final

regulations relating to the determination of who is considered to pay a foreign tax will be effective for taxable years beginning after the final regulations are published in the Federal Register.

In reviewing comments received, the IRS and Treasury Department have determined that the proposed change to section 1.901-2(e)(5) relating to U.S.-owned foreign groups may lead to inappropriate results in certain cases. The IRS and Treasury Department have therefore decided to sever the proposed rule for U.S.-owned foreign groups from the portion of the proposed section 1.901-2(e)(5) regulation addressing the treatment of foreign payments attributable to certain structured passive investment arrangements while continuing to study the appropriate treatment of U.S.-owned foreign groups. The IRS and Treasury Department also believe it is appropriate to revise the proposed effective date for the rules addressing the treatment of U.S.-owned foreign groups. Therefore, final regulations addressing U.S.-owned foreign groups will be effective for taxable years beginning after the final regulations are published in the Federal Register. For taxable years ending on or after March 29, 2007, and beginning on or before the date on which the final regulations are published, taxpayers may rely on the portion of the proposed regulations addressing U.S.-owned foreign groups. No inference is intended as to whether an amount paid by a foreign entity that is not a member of a U.S.-owned foreign group is a compulsory payment under existing section 1.901-2(e)(5).

The principal author of this notice is Bethany A. Ingwalson of the Office of Associate Chief Counsel (International). For further information regarding this notice

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