

Part III - Administrative, Procedural, and Miscellaneous

TD 9281 Effective Date

Notice 2007-1

On August 17, 2006, the Treasury Department and the IRS published temporary and proposed income tax regulations TD 9281 [71 FR 47443 (2006-39 IRB 517)] under §1.882-5 regarding the determination of the interest expense allocable to effectively connected income of foreign corporations engaged, or treated as engaged in a trade or business within the United States, and under §1.884-1(e)(3) regarding the determination of branch profits tax under a liability reduction election. The temporary and proposed regulations revised final regulations under §1.882-5 issued in TD 8658 [61 FR 15891 (1996-1 CB 161)] and under §1.884-1 issued in TD 8432 [57 FR 41644 (1992-2 CB 157)].

The temporary regulations provided in TD 9281 are effective for the first tax year end for which a foreign corporate taxpayer's original tax return due date (including extensions) is after August 17, 2006. Accordingly, for calendar-year taxpayers, the applicability date for TD 9281 is the tax year ended December 31, 2005, for which an original tax return due date (including extensions) was September 15, 2006. The temporary regulations provide a one-time, additional period for taxpayers whose original

tax return due date (including extensions) is after August 17, 2006, and not later than December 31, 2006, to adopt the tax return elections covered by the temporary regulations on an amended income tax return within 180 days after the original allowable extended due date (whether or not the taxpayer timely filed its tax return by the original due date (without regard to extensions)).

This notice permits foreign corporations engaged, or treated as engaged in a trade or business within the United States whose tax year end is on or after September 30, 2005, and whose original tax return due date (including extensions) was on or after June 15, 2006, and on or before August 17, 2006, to elect to apply the provisions of TD 9281 for such earlier tax return filing period. Such taxpayers may adopt the rules provided in TD 9281, including the one-time amended return elections of §§1.882-5T(a)(7)(iii), 1.882-5T(d)(5)(ii)(B) and 1.884-1T(e)(3)(iv), and the mandatory conforming election in §1.882-5(b)(2)(ii)(A)(2) for such year only if the rules are adopted in their entirety on an amended return filed within 180 days of December 18, 2006.

Accordingly, a taxpayer may not file an amended return for the tax period provided in this notice to adopt the annual published LIBOR rate election of §1.882-5T(d)(5)(ii)(B) and also remain on the 93-percent fixed ratio election and branch profits tax rules that were amended by the temporary rules in TD 9281. This notice does not change any of the temporary and proposed rules provided in TD 9281 other than allowing eligible taxpayers to elect to apply such rules to the earlier tax return filing period provided in this notice within 180 days of December 18, 2006.

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