

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Obligations under Section 956(c)

Notice 2008-91

SECTION 1. OVERVIEW

Section 956(c) defines United States property generally to include an obligation of a United States person. On September 16, 1988, the Internal Revenue Service and the Treasury Department published Notice 88-108, 1988-2 C.B. 445, which announced that final regulations issued under section 956 will exclude from the definition of the term "obligation" an obligation that would constitute an investment in United States property if held at the end of the controlled foreign corporation's taxable year, so long as the obligation is collected within 30 days from the time it is incurred. This exclusion shall not apply, however, if the controlled foreign corporation holds for 60 or more calendar days during such taxable year obligations which, without regard to the 30 day rule described in the preceding sentence, would constitute an investment in United States property if held at the end of the controlled foreign corporation's taxable year. See S. Rep. No. 103-37, at 178 (1993) ("The bill is not intended to change the measurement of U.S. property that may apply, for example, in the case of short-term obligations, as provided in IRS Notice 88-108").

SECTION 2. TREATMENT OF CERTAIN OBLIGATIONS UNDER SECTION 956(c)

Recently, circumstances affecting liquidity have made it difficult for taxpayers to

fund their operations. To facilitate liquidity in the near term, this notice announces that the Internal Revenue Service and the Treasury Department will issue regulations under section 956(e) that, for purposes of section 956, a controlled foreign corporation (within the meaning of section 957(a)) may choose to exclude from the definition of the term “obligation” an obligation held by the controlled foreign corporation that would constitute an investment in United States property provided the obligation is collected within 60 days from the time it is incurred. This exclusion shall not apply, however, if the controlled foreign corporation holds for 180 or more calendar days during its taxable year obligations that, without regard to the 60 day rule described in the preceding sentence, would constitute an investment in United States property.

This notice does not otherwise affect the application of Notice 88-108. A controlled foreign corporation may apply this notice or Notice 88-108, but not both.

SECTION 3. RELIANCE ON NOTICE

This notice shall only apply for the first two taxable years of a foreign corporation ending after October 3, 2008. However, this notice shall not apply to taxable years of a foreign corporation beginning after December 31, 2009. Thus, if a foreign corporation has a calendar tax year, this notice shall apply for the foreign corporation’s taxable years ending December 31, 2008, and December 31, 2009.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Ethan A. Atticks of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Atticks at (202) 622-3840 (not a toll free call).