

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.482-1: Allocation of income and deductions among taxpayers

Rev. Proc. 2008-31

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2006-9, 2006-1 C.B. 278, which informs taxpayers how to secure an advance pricing agreement (“APA”) from the APA Program within the Office of Associate Chief Counsel (International). This revenue procedure modifies Rev. Proc. 2006-9 to describe further the types of issues that may be resolved in the APA process.

SECTION 2. BACKGROUND

Since 1991, with the issuance of Rev. Proc. 91-22, 1991-1 C.B. 526, the Internal Revenue Service (“Service”) has offered taxpayers, through the APA Program, the opportunity to reach agreement in advance of filing a tax return on the appropriate transfer pricing method to be applied to related party transactions. In 1996, the Service updated and superseded Rev. Proc. 91-22 with the release of Rev. Proc. 96-53, 1996-2 C.B. 375. On July 1, 2004, the Service updated and superseded Rev. Proc. 96-53 by issuing Rev. Proc. 2004-40, 2004-2 C.B. 50. On December 19, 2005, the Service again updated the procedural rules for processing and administering APAs with the release of Rev. Proc. 2006-9, 2006-1 C.B. 278, superseding Rev. Proc. 2004-40.

SECTION 3. MODIFICATION OF REV. PROC. 2006-9

Section 2.01 of Rev. Proc. 2006-9 is modified to read as follows:

The APA Program provides a voluntary process whereby the Internal Revenue Service (“Service”) and taxpayers may resolve transfer pricing issues under Section 482 of the Internal Revenue Code (“Code”), the Income Tax Regulations under Section 482, and relevant income tax treaties to which the United States is a party in a principled and cooperative manner on a prospective basis. The APA program also provides a process whereby the Service and taxpayers may resolve other issues arising under certain income tax treaties, the Code, or the Income Tax Regulations, for which transfer pricing principles may be relevant, such as attribution of profits to a permanent establishment under an income tax treaty, determining the amount of income effectively connected with the conduct by the taxpayer of a trade or business within the United States, and determining the amounts of income derived from sources partly within and partly without the United States, as well as related subsidiary issues. The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present

to the Service all the facts relevant to a proper transfer pricing analysis and to work towards a mutual agreement in a spirit of openness and cooperation. The prospective nature of APAs lessens the burden of compliance by giving taxpayers greater certainty regarding their transfer pricing methods, and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance before the consequences of such resolution are fully known to taxpayers and the Service.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-9 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 9, 2008, the date this revenue procedure was published in Internal Revenue Bulletin 2008-23.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Per Juvkam-Wold of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Craig Sharon at (202) 435-5220 (not a toll free call).