

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

**Bulletin No. 2018-16**  
**April 16, 2018**

## ADMINISTRATIVE

### **Notice 2018-29, page 495.**

This notice announces that the Treasury Department and the IRS intend to issue regulations under new section 1446(f) regarding the disposition of a partnership interest that is not publicly traded. This notice also provides interim guidance that taxpayers may rely on pending the issuance of regulations.

### **Notice 2018-31, page 501.**

This notice impacts U.S. multinational enterprise groups that are required to file a Form 8975 and Schedule A (Form 8975) (Country-by-Country Report) (i.e., those that have more than \$850M in revenue in the prior reporting period) and that have more than 50 percent of their revenues attributable to contracts with the Department of Defense or other U.S. governmental intelligence or security agencies. Such specified national security contractors may file their Country-by-Country Report in the modified manner described in the notice.

### **REG-132434-17, page 503.**

These proposed regulations will narrow the scope of the current summons interview regulations by excluding certain non-government attorneys from receiving summoned books, papers, records, or other data, or from participating in the interview of a witness summoned by the IRS to provide testimony under oath. An attorney who is not an officer or employee of the United States may not be hired by the IRS to perform these activities unless the attorney is hired by the IRS as a specialist in foreign, state, or local law, including tax law, or in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney.

## EXEMPT ORGANIZATIONS

### **Announcement 2018-07, page 503.**

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

## INCOME TAX

### **Notice 2018-26, page 480.**

This notice provides additional guidance regarding the implementation of section 965 of the Internal Revenue Code as amended by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018", P.L. 115-97, which was enacted on December 22, 2017.

### **Notice 2018-28, page 492.**

This notice announces that the Department of the Treasury and the Internal Revenue Service (IRS) intend to issue proposed regulations providing guidance to assist taxpayers in complying with section 163(j) of the Internal Revenue Code (Code), as amended on December 22, 2017, by "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," P.L. 115-97 (the Act). This notice further describes certain of the rules that those proposed regulations will include to provide taxpayers with interim guidance as more comprehensive guidance is developed. The rules described in this notice apply only for purposes of determining the limitation on deductions for interest expense under section 163(j), as amended by the Act.

### **Notice 2018-29, page 495.**

This notice announces that the Treasury Department and the IRS intend to issue regulations under new section 1446(f)

regarding the disposition of a partnership interest that is not publicly traded. This notice also provides interim guidance that taxpayers may rely on pending the issuance of regulations.

**Rev. Rul. 2018–10, page 477.**

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2018 are set forth.

**T.D. 9832, page 477.**

These final regulations provide rules addressing the allocation of the credit for increasing research activities to corporations and trades or businesses under common control. These final regulations also contain rules relating to the allocation of the railroad track maintenance credit and the election for a reduced research credit.

## **Special Announcement**

**Notice 2018–29, page 495.**

This notice announces that the Treasury Department and the IRS intend to issue regulations under new section 1446(f) regarding the disposition of a partnership interest that is not publicly traded. This notice also provides interim guidance that taxpayers may rely on pending the issuance of regulations.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

### Rev. Rul. 2018–10

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61–21(g) of the

Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61–21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the

period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61–21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charge and SIFL mileage rates:

<i>Period During Which the Flight Is Taken</i>	<i>Terminal Charge</i>	<i>SIFL Mileage Rates</i>
1/1/18 - 6/30/18	\$41.71	Up to 500 miles = \$.2282 per mile 501–1500 miles = \$.1740 per mile Over 1500 miles = \$.1673 per mile

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Associate Chief Counsel (Tax Exempt/Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 317-6798 (not a toll-free number).

### T.D. 9832

#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Part 1

#### Allocation of Controlled Group Research Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the allocation of the credit for increasing research activities (research credit) to corporations and trades or businesses under common control (controlled groups). This document also contains final regulations relating to the allocation of the railroad

track maintenance credit and the election for a reduced research credit.

**DATES:** *Effective date:* These regulations are effective on April 2, 2018.

*Applicability date:* For dates of applicability, see §§ 1.41–6(j), 1.45G–1(g), and 1.280C–4(c).

**FOR FURTHER INFORMATION CONTACT:** James Holmes, at (202) 317-4137; (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document amends 26 CFR part 1 to provide rules relating to sections 41, 45G, and 280C of the Internal Revenue Code (Code). On April 3, 2015, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations (TD 9717) (temporary regulations) in the **Federal Register** (80 FR 18096) and a notice of proposed rulemaking by cross-reference to the temporary regulations (REG–133489–13) in the **Federal Register** (80 FR 18171) (proposed regulations). On April 27, 2015, the Treasury Department and the IRS published corrections to TD 9717 in the **Federal Register** (80 FR 23237 and 80 FR 23238). The temporary regulations expire on April 2, 2018.

The preamble to the temporary regulations fully describes the updates to the

regulations under sections 41, 45G, and 280C. See 80 FR 18097, April 3, 2015. The temporary regulations updated the section 41 rules in a manner that is consistent with the amendments made to section 41(f)(1)(A)(ii) and section 41(f)(1)(B)(ii) contained in Section 301(c) of the American Taxpayer Relief Act of 2012, Public Law 112–240, H.R. 8 (ATRA). The temporary regulations also updated the regulations under § 1.45G–1(f) and an example under § 1.280C–4(b)(2) because they are based on the rules of section 41(f) in effect before the ATRA amendments.

One written comment responding to the proposed regulations was received. No requests for a public hearing were made and no public hearing was held. After consideration of the comment, the proposed regulations are adopted without change by this Treasury decision.

#### Summary of Comment and Explanation of Provisions

No comments were received related to the proposed regulations under section 41 or section 280C. One commenter requested the regulations under § 1.45G–1(f)(8) be amended to explicitly provide that qualified railroad track maintenance expenditures (QRTMEs) associated with a track assignment reside with the assignee (and not with the track owner) when there has been an intra-group track assignment.

Revising those rules is beyond the scope of these regulations. Therefore, the Treasury Department and IRS decline to adopt the comment.

### Effect on Other Documents

The temporary regulations are obsolete for taxable years beginning on or after April 2, 2018.

### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received on the proposed regulations.

These final regulations provide necessary guidance for corporations that file a consolidated return regarding the allocation of the group credit to members of certain controlled groups of corporations and trades or businesses under common control. It is necessary to provide this administrative relief for these controlled groups as of April 2, 2018, the expiration date of the temporary regulations, to remove impediments to claiming the research and railroad track maintenance credits and making the election for a reduced research credit. Accordingly, good cause is found for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d).

### Drafting Information

The principal author of these regulations is James Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the sectional authority entries for §§ 1.41–6 and 1.280C–4 and adding a sectional authority for § 1.45G–1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
\* \* \* \* \*

Section 1.41–6 also issued under 26 U.S.C. 41(f)(1) and 1502.

\* \* \* \* \*

Section 1.45G–1 also issued under 26 U.S.C. 45G(e)(2).

\* \* \* \* \*

Section 1.280C–4 also issued under 26 U.S.C. 280C(c)(4)

\* \* \* \* \*

Par. 2. Section 1.41–6 is amended by revising paragraphs (c), (d)(1) and (3), (e), and (j)(4) and (5) to read as follows:

#### § 1.41–6 Aggregation of expenditures.

\* \* \* \* \*

(c) *Allocation of the group credit.* The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums taken into account for the taxable year by such controlled group for purposes of the credit. For purposes of paragraphs (c), (d), and (e) of this section, qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums are collectively referred to as QREs.

(d) *Special rules for consolidated groups—(1) In general.* For purposes of applying paragraph (c) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

\* \* \* \* \*

(3) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is

allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QREs taken into account for the taxable year by such consolidated group for purposes of the credit.

(e) *Examples.* The following examples illustrate the provisions of paragraphs (c) and (d) of this section.

*Example 1. Controlled group.* A, B, and C are a controlled group. A had \$100x, B \$300x, and C \$500x of qualified research expenses for the year, totaling \$900x for the group. A, in the course of its trade or business, also made a payment of \$100x to an energy research consortium for energy research. The group's QREs total 1000x and the group calculated its total research credit to be \$60x for the year. Based on each member's proportionate share of the controlled group's aggregate QREs, A is allocated \$12x, B \$18x, and C \$30x of the credit.

*Example 2. Consolidated group is a member of controlled group.* The controlled group's members are D, E, F, G, and H. F, G, and H file a consolidated return and are treated as a single member (FGH) of the controlled group. D had \$240x, E \$360x, and FGH \$600x of qualified research expenses for the year (\$1,200x aggregate). The group calculated its research credit to be \$100x for the year. Based on the proportion of each member's share of QREs to the controlled group's aggregate QREs for the taxable year D is allocated \$20x, E \$30x, and FGH \$50x of the credit. The \$50x of credit allocated to FGH is then allocated to the consolidated group members based on the proportion of each consolidated group member's share of QREs to the consolidated group's aggregate QREs. F had \$120x, G \$240x, and H \$240x of QREs for the year. Therefore, F is allocated \$10x, G is allocated \$20x, and H is allocated \$20x.

\* \* \* \* \*

(j) \* \* \* \*

(4) *Taxable years beginning after December 31, 2011.* Paragraphs (c), (d)(1) and (3), (e), and (j)(4) and (5) of this section apply to taxable years beginning on or after April 2, 2018. For taxable years ending before April 2, 2018, see § 1.41–6T as contained in 26 CFR part 1, as revised April 1, 2017.

(5) *Taxable years beginning before January 1, 2012.* See § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2014.

### § 1.41–6T [Removed]

Par. 3. Section 1.41–6T is removed.

Par. 4. Section 1.45G–1 is amended by revising paragraphs (f)(4) and (5) and (g)(4) and (5) to read as follows:

§ 1.45G-1 Railroad track maintenance credit.

\* \* \* \* \*

(f) \* \* \*

(4) *Allocation of the group credit.* The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such controlled group for purposes of the credit.

(5) *Special rules for consolidated groups—(i) In general.* For purposes of applying paragraph (f)(4) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(ii) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such consolidated group for purposes of the credit.

\* \* \* \* \*

(g) \* \* \*

(4) *Taxable years beginning after December 31, 2011.* Paragraphs (f)(4) and (5) and (g)(4) and (5) of this section apply to taxable years beginning on or after April 2, 2018. For taxable years ending before April 2, 2018, see § 1.45G-1T as

contained in 26 CFR part 1, as revised April 1, 2017.

(5) *Taxable years beginning before January 1, 2012.* See § 1.45-1 as contained in 26 CFR part 1, revised April 1, 2014.

§ 1.45G-1T [Removed]

Par. 5. Section 1.45G-1T is removed.

Par. 6. Section 1.280C-4 is amended by revising paragraphs (b)(2) and (c)(2) and (3) to read as follows:

§ 1.280C-4 Credit for increasing research activities.

\* \* \* \* \*

(b) \* \* \*

(2) *Example.* The following example illustrates an application of paragraph (b) of this section: A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2012 Form 6765, “Credit for Increasing Research Activities,” showing A and C were the only members of the controlled group to have qualified research expenses when calculating the group credit. A and C report their allocated portions of the group credit on the 2012 Form 6765 and B reports no research credit on Form 6765. Pursuant to paragraph (a) of this section, A and B, but not C, each make an election for the reduced credit under section 280C(c)(3)(B) on the 2012 Form 6765. In December 2013, B determines it had qualified research expenses in 2012 resulting in an increased group credit. On an amended 2012 Form 6765, A, B, and C each report their allocated portions of the group credit. B reports its credit as a regular credit under section 41(a) and reduces the

credit under section 280C(c)(3)(B). C may not reduce its credit under section 280C(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c) \* \* \*

(2) *Taxable years beginning after December 31, 2011.* Paragraphs (b)(2) and (c)(2) and (3) of this section apply to taxable years beginning on or after April 2, 2018. For taxable years ending before April 2, 2018, see § 1.280C-4T as contained in 26 CFR part 1, as revised April 1, 2017.

(3) *For taxable years ending before January 1, 2012.* See § 1.280C-4 as contained in 26 CFR part 1, revised April 1, 2014.

§ 1.280C-4T [Removed]

Par. 7. Section 1.280C-4T is removed.

Kirsten Wielobob,  
*Deputy Commissioner for Services and Enforcement.*

Approved: March 7, 2018.

David J. Kautter,  
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on March 27, 2018, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2018, 83 F.R. 13183)

## Part III. Administrative, Procedural, and Miscellaneous

### Additional Guidance Under Section 965; Guidance Under Sections 62, 962, and 6081 in Connection With Section 965; and Penalty Relief Under Sections 6654 and 6655 in Connection with Section 965 and Repeal of Section 958(b)(4)

#### Notice 2018–26

##### SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue regulations in connection with section 965 of the Internal Revenue Code (“Code”) as amended by “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97 (the “Act”), which was enacted on December 22, 2017. For prior guidance issued under section 965, see Notice 2018–07, 2018–4 I.R.B. 317; Notice 2018–13, 2018–6 I.R.B. 341; and Rev. Proc. 2018–17, 2018–9 I.R.B. 384. In addition, this notice announces relief from estimated tax penalties in connection with the amendment of section 965 and the repeal of section 958(b)(4) by the Act.

Section 2 of this notice provides background on section 965 and other relevant provisions of the Code. Section 3 of this notice describes regulations that the Treasury Department and the IRS intend to issue in connection with section 965 and announces the IRS’s intent to modify certain form instructions as a result of section 965. Section 4 of this notice describes a modification that the Treasury Department and the IRS intend to make with respect to regulations under section 965 that were described in section 3.04(a) of Notice 2018–13. Section 5 of this notice provides guidance under section 962 in connection with section 965. Section 6 of this notice provides guidance concerning the application of the estimated tax rules in sections 6654 and 6655 and a waiver

from the penalty imposed under those sections with respect to estimated taxes in connection with section 965 and the repeal of section 958(b)(4). Section 7 of this notice describes the effective dates of the regulations and other guidance described in this notice, as well as a clarification to the effective date provided in section 6 of Notice 2018–13 for the rule described in section 5.01 of Notice 2018–13. Section 8 of this notice requests comments and provides contact information.

##### SECTION 2. BACKGROUND

###### *.01 Treatment of Accumulated Post-1986 Deferred Foreign Income as Subpart F Income*

Section 965(a) provides that for the last taxable year of a deferred foreign income corporation (“DFIC”) that begins before January 1, 2018 (such year of the DFIC, the “inclusion year”), the subpart F income of the corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of (1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or (2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017 (each such date, a “measurement date,” and the greater of the accumulated post-1986 deferred foreign income of the corporation as of the measurement dates, the “section 965(a) earnings amount”). The section 965(a) earnings amount is not subject to the rules or limitations in section 952 and is not limited by the accumulated earnings and profits of the DFIC as of the close of the inclusion year.

###### *.02 Determination of United States Shareholder’s Section 951(a)(1) Inclusion by Reason of Section 965*

Section 965(b)(1) provides that, if a taxpayer is a United States shareholder with respect to at least one DFIC and at least one E&P deficit foreign corporation, then the portion of the section 965(a) earnings amount which would otherwise be taken into account under section 951(a) (1) by a United States shareholder with respect to each DFIC is reduced by the

amount of such United States shareholder’s aggregate foreign E&P deficit that is allocated to such DFIC. The portion of the section 965(a) earnings amount that is taken into account under section 951(a)(1) by a United States shareholder, taking into account the reduction described in the preceding sentence, is referred to in this notice as the “section 965(a) inclusion amount.”

###### *.03 Allocation of Aggregate Foreign E&P Deficit and Definition of E&P Deficit Foreign Corporation*

The aggregate foreign E&P deficit of any United States shareholder is allocated to each DFIC of the United States shareholder in an amount that bears the same proportion to such aggregate as (A) such United States shareholder’s pro rata share of the section 965(a) earnings amount of each such DFIC bears to (B) the aggregate of such United States shareholder’s pro rata shares of the section 965(a) earnings amounts of all DFICs of such United States shareholder. Section 965(b)(2). The term “aggregate foreign E&P deficit” means, with respect to any United States shareholder, the lesser of (I) the aggregate of such shareholder’s pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of such shareholder or (II) the aggregate of such shareholder’s pro rata shares of the section 965(a) earnings amounts of all DFICs of such shareholder. Section 965(b)(3)(A)(i).

The term “E&P deficit foreign corporation” means, with respect to any taxpayer, any specified foreign corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017, (i) such specified foreign corporation has a deficit in post-1986 earnings and profits, (ii) such corporation was a specified foreign corporation, and (iii) such taxpayer was a United States shareholder of such corporation. Section 965(b)(3)(B). The term “specified E&P deficit” means, with respect to an E&P deficit foreign corporation, the amount of such corporation’s deficit in post-1986 earnings and profits as of November 2, 2017. See section 965(b)(3)(C).

#### *.04 Application of the Participation Exemption*

Section 965(c)(1) provides that there shall be allowed as a deduction for the taxable year of a United States shareholder in which a section 965(a) inclusion amount is included in the gross income of such United States shareholder an amount equal to the sum of (A) the United States shareholder's 8 percent rate equivalent percentage (as defined in section 965(c)(2)(A)) of the excess (if any) of (i) the section 965(a) inclusion amount, over (ii) the amount of such United States shareholder's aggregate foreign cash position, plus (B) the United States shareholder's 15.5 percent rate equivalent percentage (as defined in section 965(c)(2)(B)) of so much of such United States shareholder's aggregate foreign cash position as does not exceed the section 965(a) inclusion amount. The deduction allowed to a United States shareholder under section 965(c) with respect to a section 965(a) inclusion amount of the United States shareholder is referred to in this notice as a "section 965(c) deduction."

Section 965(c)(3)(A) provides that the term "aggregate foreign cash position" means, with respect to any United States shareholder, the greater of (i) the aggregate of such United States shareholder's pro rata share of the cash position of each specified foreign corporation of such United States shareholder determined as of the close of the last taxable year of such specified foreign corporation that begins before January 1, 2018 ("final cash measurement date"),<sup>1</sup> or (ii) one half of the sum of (I) the aggregate described in clause (i) determined as of the close of the last taxable year of each such specified foreign corporation that ends before November 2, 2017 (the "second cash measurement date"), plus (II) the aggregate described in clause (i) determined as of the close of the taxable year of each such specified foreign corporation that precedes the taxable year referred to in subclause (I) ("first cash

measurement date"). Each date referred to in the preceding sentence is referred to in this notice as a "cash measurement date."

The cash position of any specified foreign corporation is the sum of (i) cash held by such corporation, (ii) the net accounts receivable of such corporation, and (iii) the fair market value of the following assets held by such corporation (each asset, a "cash equivalent asset"): (I) personal property which is of a type that is actively traded and for which there is an established financial market; (II) commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government; (III) any foreign currency; (IV) any obligation with a term of less than one year ("short-term obligation"); and (V) any asset which the Secretary identifies as being economically equivalent to any asset described in section 965(c)(3)(B). Section 965(c)(3)(B). For purposes of determining the aggregate foreign cash position of a United States shareholder, the term "net accounts receivable" means, with respect to any specified foreign corporation, the excess (if any) of (i) such corporation's accounts receivable, over (ii) such corporation's accounts payable (determined consistent with the rules of section 461). Section 965(c)(3)(C).

Section 965(c)(3)(D) provides that net accounts receivable, actively traded property, and short-term obligations shall not be taken into account by a United States shareholder in determining its aggregate foreign cash position to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is so taken into account by such United States shareholder with respect to another specified foreign corporation.

Section 965(c)(3)(F) provides that if the Secretary determines that a principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under section 965(c), such transaction shall be disregarded for purposes of section 965(c).

#### *.05 Definition of DFIC and Accumulated Post-1986 Deferred Foreign Income*

For purposes of section 965, a DFIC is, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder that has accumulated post-1986 deferred foreign income (as of a measurement date) greater than zero. Section 965(d)(1). The term "accumulated post-1986 deferred foreign income" means the post-1986 earnings and profits of the specified foreign corporation except to the extent such earnings and profits (A) are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1 ("effectively connected income"), or (B) in the case of a controlled foreign corporation ("CFC"), if distributed, would be excluded from the gross income of a United States shareholder under section 959 ("previously taxed income"). Section 965(d)(2).

Section 965(d)(3) provides that the term "post-1986 earnings and profits" means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986, and by taking into account only periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined (A) as of the measurement date that is applicable with respect to such foreign corporation, and (B) without diminution by reason of dividends distributed during the inclusion year other than dividends distributed to another specified foreign corporation.

#### *.06 Specified Foreign Corporation*

Section 965(e)(1) provides that the term "specified foreign corporation" means (A) any CFC and (B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder. For purposes of sections 951 and 961, a specified foreign corporation described in section 965(e)(1)(B) is treated as a CFC

<sup>1</sup>Notice 2018-07 and Notice 2018-13 referred to the year that includes the final cash measurement date as the "inclusion year" of such specified foreign corporation. However, only a DFIC can have an inclusion year, and therefore the final cash measurement date of a specified foreign corporation, which can be a DFIC, an E&P deficit foreign corporation, or neither, will not necessarily be the close of an inclusion year. The regulations described in Notice 2018-07 and Notice 2018-13 will describe the final cash measurement date consistently with section 965(c)(3)(A) and this notice. Any reference to an "inclusion year" for a specified foreign corporation that is not a DFIC will describe the last year of the specified foreign corporation that begins before January 1, 2018.

solely for purposes of taking into account the subpart F income of such corporation under section 965(a) (and for purposes of determining a United States shareholder's pro rata share of any amount with respect to a specified foreign corporation under section 965(f)). Section 965(e)(2). However, if a passive foreign investment company (as defined in section 1297) with respect to the shareholder is not a CFC, then such corporation is not a specified foreign corporation. Section 965(e)(3).

#### *.07 Determination of Pro Rata Share*

Section 965(f)(1) provides that the determination of any United States shareholder's pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a CFC).

#### *.08 Election Under Section 965(h) Concerning Payment of Net Tax Liability Under Section 965*

Section 965(h)(1) provides that in the case of a United States shareholder of a DFIC, such United States shareholder may elect to pay the net tax liability under section 965 in eight installments. Section 965(h)(5) provides that any election under section 965(h)(1) must be made not later than the due date for the return of tax for the year of the United States shareholder in which or with which the inclusion year of the DFIC ends and must be made in such manner as the Secretary provides.

If an election is made under section 965(h)(1), the first installment must be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the year of the United States shareholder in which or with which the inclusion year of the DFIC ends, and each succeeding installment must be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made. Section 965(h)(2).

Section 965(h)(6) defines the net tax liability under section 965 with respect to

any United States shareholder as the excess (if any) of (i) such taxpayer's net income tax for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of section 965, over (ii) such taxpayer's net income tax for such taxable year determined (I) without regard to section 965, and (II) without regard to any income or deduction properly attributable to a dividend received by such United States shareholder from any DFIC. For this purpose, the term "net income tax" means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

#### *.09 Election Under Section 965(i) Concerning Payment of Net Tax Liability Under Section 965 by S Corporation Shareholder and Related Reporting Requirements*

Section 965(i)(1) provides that in the case of any S corporation that is a United States shareholder of a DFIC, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under section 965 with respect to such S corporation until the shareholder's taxable year which includes the triggering event with respect to such liability.

Under section 965(i)(1), any net tax liability, payment of which is deferred under section 965(i)(1), will be assessed on the return of tax as an addition to tax in the shareholder's taxable year which includes the triggering event with respect to such liability. As defined in section 965(i)(2), in the case of any shareholder's net tax liability under section 965 with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first: (i) such corporation ceases to be an S corporation (determined as of the first day of the first taxable year that such corporation is not an S corporation); (ii) a liquidation or sale of substantially all the assets of such S corporation (including in a title 11 or similar case), a cessation of business by such S corporation, such S corporation ceases to exist, or any similar circumstance; or (iii) a transfer of any share of stock in such S corporation by the taxpayer (including by reason of

death, or otherwise). In the case of a transfer of less than all of the taxpayer's shares of stock in the S corporation, such transfer shall only be a triggering event with respect to so much of the taxpayer's net tax liability under section 965 with respect to such S corporation as is properly allocable to such stock. Section 965(i)(2)(B).

Section 965(i)(3) defines a shareholder's net tax liability under section 965 with respect to any S corporation as the net tax liability under section 965 which would be determined under section 965(h)(6) if the only amounts taken into account under section 951(a)(1) by reason of section 965 by such shareholder were allocations from such S corporation.

#### *.10 Election Under Section 965(m) Concerning Inclusions of Amounts Under Section 965*

Under section 965(m)(1)(B), a real estate investment trust (REIT) may elect, in lieu of including any amount required to be taken into account under section 951(a)(1) by reason of section 965 in the taxable year in which it would otherwise be included in gross income (for purposes of the computation of REIT taxable income under section 857(b)), to include such amount in gross income in eight installments.

#### *.11 Election Under Section 965(n) Not to Apply Net Operating Loss Deduction*

Under section 965(n)(1), a United States shareholder of a DFIC may make an election pursuant to which the amount described in section 965(n)(2) shall not be taken into account (A) in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year, or (B) in determining the amount of taxable income for such taxable year which may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 172. The amount described in section 965(n)(2) is the sum of (A) the amount required to be taken into account under section 951(a)(1) by reason of section 965 (determined after the application of section 965(c)), plus (B) in the case of a domestic corporation which chooses to have the benefits of sub-

part A of part III of subchapter N for the taxable year, the taxes deemed to be paid by such corporation under subsections (a) and (b) of section 960 for such taxable year with respect to the amount described in section 965(n)(2)(A) which are treated as a dividends under section 78.

#### *.12 Regulations or Other Guidance Under Section 965*

Section 965(o) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 965, including regulations or other guidance to provide appropriate basis adjustments, and regulations or other guidance to prevent the avoidance of the purposes of section 965, including through a reduction in earnings and profits, through changes in entity classification or accounting methods, or otherwise.

#### *.13 Definition of United States Shareholder*

For taxable years of foreign corporations beginning before January 1, 2018, under section 951(b), a United States shareholder is a United States person (within the meaning of section 957(c)) that owns within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the stock of a foreign corporation. Under section 957(c), a United States person generally has the meaning assigned to it by section 7701(a)(30), which includes a domestic partnership or domestic trust. *But see* Notice 2010-41, 2010-22 I.R.B. 715 (announcing that the Treasury Department and the IRS intend to issue regulations treating certain domestic partnerships as foreign partnerships for purposes of identifying which United States shareholders are required to include amounts in gross income under section 951(a)). Moreover, an S corporation is treated as a partnership for purposes of sections 951 through 965. *See* section 1373(a).

#### *.14 Attribution Rules in Section 958(b) and Section 318(a)*

Section 958 provides rules for determining direct, indirect, and constructive stock ownership. Under section 958(a)(1), stock is considered owned by a person if it is owned directly or is owned indirectly through certain foreign entities under section 958(a)(2). Under section 958(b), section 318 applies, with certain modifications, to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of a CFC for purposes of section 956(c)(2), or to treat a foreign corporation as a CFC under section 957.

Section 318 provides rules that attribute the ownership of stock to certain family members, between certain entities and their owners, and to holders of options to acquire stock. Section 318(a)(1) provides rules attributing stock ownership among members of a family. Section 318(a)(2) provides rules attributing stock ownership “upward” from partnerships, estates, trusts, and corporations to partners, beneficiaries, owners, and shareholders. In addition, section 318(a)(3) provides specific rules that attribute the ownership of stock “downward” from partners, beneficiaries, owners, and shareholders to partnerships, estates, trusts, and corporations. In particular, section 318(a)(3)(A) provides that stock owned, directly or indirectly, by or for a partner in a partnership or a beneficiary of an estate is considered as owned by the partnership or estate. This provision applies to all partners and beneficiaries without regard to the size of their interest in the partnership or estate. Section 318(a)(3)(B) similarly provides, subject to certain exceptions, that stock owned, directly or indirectly, by or for a beneficiary of a trust (or a person who is considered an owner of a trust) is considered owned by the trust. In comparison, section 318(a)(3)(C) provides that stock owned, directly or indirectly, by or for a shareholder in a corporation is considered owned by the corporation only if 50 percent or more in value of the stock in the corporation is owned, directly or indirectly, by such person.

Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of such foreign corporations, and for the taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, the Act repeals section 958(b)(4). As in effect prior to repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) (providing for “downward” attribution) were not to be applied so as to consider a United States person as owning stock that is owned by a person who is not a United States person.

#### *.15 Estimated Taxes Under Sections 6654 and 6655*

Taxpayers who fail to make sufficient and timely payments of estimated taxes are liable for additions to tax under sections 6654(a), for individuals, and 6655(a), for corporations. Generally, the addition to tax is calculated by applying the underpayment interest rate under section 6621 to the unpaid portion of any required installment for the period that portion goes unpaid.

#### *.16 Miscellaneous Itemized Deductions*

Under section 67(a), miscellaneous itemized deductions are allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income (the “2-percent floor”). As amended by the Act, section 67(g) provides that for taxable years beginning after December 31, 2017, and before January 1, 2026, no miscellaneous itemized deductions are allowable under section 67(a). In addition, under section 56(b)(1)(A)(i), an individual subject to the alternative minimum tax (“AMT”) in 2017 is not allowed a deduction for any miscellaneous itemized deduction. Under section 63(d), itemized deductions generally mean all allowable deductions except for the deductions allowable in arriving at adjusted gross income pursuant to section 62(a), the deduction provided by section 151, and the deduction provided in section 199A (added by the Act). Miscellaneous itemized deductions include all itemized deductions other than those listed in section 67(b), which does not reference the deduction under section 965(c).

*.17 Election Under Section 962 for Individual to be Subject to Tax at Corporate Rates*

As amended by the Act, section 962 provides that an individual who is a United States shareholder may elect to have the tax imposed under chapter 1 on amounts that are included in the individual's gross income under section 951(a) be an amount equal to the tax that would be imposed under section 11 if the amounts were received by a domestic corporation. In addition, if such election is made, the amounts included in the individual's gross income under section 951(a) are treated as if they were received by a domestic corporation for purposes of applying section 960 (relating to foreign tax credits). *See* § 1.962-1(a). However, the taxable income determined for purposes of applying section 11 is not reduced by any deduction of the United States shareholder. *See* § 1.962-1(b)(1)(i). An election under section 962 does not affect tax imposed under other chapters, including under chapter 2A.

*.18 Extensions of Time for Filing Income Tax Returns and Paying Tax for Certain Citizens and Residents Abroad*

In relevant part, regulations under section 6081 provide an extension of time to the fifteenth day of the sixth month following the close of the taxable year for filing returns of income and for paying any tax shown on the return in the case of United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico, and United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico ("specified individuals"). *See* § 1.6081-5(a)(5) and (6).

**SECTION 3. REGULATIONS TO BE ISSUED ADDRESSING THE APPLICATION OF SECTION 965**

*.01 Application of Section 318(a)(3)(A) to Treat a Foreign Corporation as a Specified Foreign Corporation*

As a result of the application of the constructive ownership rule in section 318(a)(3)(A) (providing for downward at-

tribution of stock from a partner to a partnership), it may be difficult to determine if a foreign corporation is a specified foreign corporation under certain circumstances. Assume, for example, that a person, A, owns 100 percent of the stock of a domestic corporation, DC, and 1 percent of the interests in a partnership, PS. Assume further that a United States citizen, USI, owns 10 percent of the interests in PS and 10 percent by vote and value of the stock of a foreign corporation, FC. The remaining 90 percent by vote and value of the stock of FC is owned by non-U.S. persons that are unrelated to A, USI, DC, and PS. Absent the application of sections 958(b), 318(a)(3)(A), and 318(a)(3)(C), FC would not be a specified foreign corporation, because FC is not a CFC and there would be no domestic corporation that is a United States shareholder of FC.

Under sections 958(b) and 318(a)(3)(A), PS would be treated as owning 100 percent of the stock of DC and 10 percent of the stock of FC. As a result, under sections 958(b), 318(a)(5)(A), and 318(a)(3)(C), DC would be treated as owning the stock of FC treated as owned by PS, and thus DC would be a United States shareholder with respect to FC, causing FC to be a specified foreign corporation within the meaning of section 965(e)(1)(B). USI is a United States shareholder with respect to FC and thus, absent an exception, would be required to include amounts in gross income under section 951(a)(1) by reason of section 965 with respect to FC. The results are the same whether A or PS or both are domestic or foreign persons.

The Treasury Department and the IRS have determined that it would pose compliance difficulties for taxpayers and administrative difficulties for the IRS to require a United States person to determine whether a foreign corporation with respect to which it is a United States shareholder is a specified foreign corporation if such foreign corporation may be a specified foreign corporation solely by reason of downward attribution under section 318(a)(3)(A) of stock from a partner to a partnership when such partner has only a de minimis interest in such partnership. Accordingly, the Treasury Department and the IRS intend to issue regulations, pursuant to the grant of authority under section 965(o), providing

that, solely for purposes of determining whether a foreign corporation is a specified foreign corporation within the meaning of section 965(e)(1)(B), stock owned, directly or indirectly, by or for a partner (tested partner) will not be considered as being owned by a partnership under sections 958(b) and 318(a)(3)(A) if such partner owns less than five percent of the interests in the partnership's capital and profits. For purposes of the preceding sentence, an interest in the partnership owned by another partner will be considered as being owned by the tested partner under the principles of sections 958(b) and 318, as modified by this notice, as if the interest in the partnership were stock.

Thus, for example, assume the same facts as in the example above, except that A is a corporation wholly owned by B, and B directly owns 4 percent of the interests in PS. For purposes of the rule in this section 3.01, applying the principles of sections 958(b) and 318, as modified by this notice, as if the interest in PS were stock, A is treated as owning the interests in PS owned by B (in addition to the 1 percent interest in PS that A owns directly), and thus A is not treated as owning less than five percent of the interests in PS's capital and profits. Accordingly, the rule in this section 3.01 does not apply, and PS is treated as owning A's stock in DC for purposes of determining whether FC is a specified foreign corporation within the meaning of section 965(e)(1)(B).

*.02 Determination of Cash Measurement Dates of a Specified Foreign Corporation with Respect to a United States Shareholder*

In certain cases, a specified foreign corporation may not be owned by a particular United States shareholder on all of the cash measurement dates, whether because the specified foreign corporation goes out of existence before the final cash measurement date or because its stock is acquired or disposed of between cash measurement dates. The Treasury Department and the IRS understand that section 965(c)(3)(A)(i) could be interpreted to treat the close of the final taxable year of a specified foreign corporation that ceased to exist before November 2, 2017, as the final cash measurement date of such specified foreign corporation. Additionally, if

a United States shareholder acquires or disposes of stock of a specified foreign corporation between cash measurement dates of the specified foreign corporation, questions have been raised as to whether the United States shareholder's pro rata share of the cash position of such specified foreign corporation as of an earlier or subsequent cash measurement date should be taken into account for purposes of determining the United States shareholder's aggregate foreign cash position.

The Treasury Department and the IRS intend to issue regulations providing that (i) the final cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that begins before January 1, 2018, and ends on or after November 2, 2017, if any; (ii) the second cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that ends after November 1,

2016, and before November 2, 2017, if any; (iii) the first cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that ends after November 1, 2015, and before November 2, 2016, if any; and (iv) a United States shareholder takes into account its pro rata share of the cash position of a specified foreign corporation as of any cash measurement date of the specified foreign corporation on which such United States shareholder is a United States shareholder of such specified foreign corporation, regardless of whether such United States shareholder is a United States shareholder of such specified foreign corporation as of any other cash measurement date, including the final cash measurement date of such specified foreign corporation. For purposes of applying this paragraph, a 52-53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52-53-week

taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52-53-week taxable year, as the case may be. See § 1.441-2(c).

*Example.* (i) *Facts.* Except as otherwise provided, for all relevant periods, USP, a domestic corporation, has owned directly at least 10 percent of the stock of CFC1, CFC2, CFC3, and CFC4, each a foreign corporation. CFC1 and CFC2 have calendar year U.S. taxable years. CFC3 and CFC4 have U.S. taxable years that end on November 30. No entity has a short taxable year, except as a result of the transactions described below.

(a) USP transferred all of its stock of CFC2 to an unrelated person on June 30, 2016, at which point USP ceased to be a United States shareholder with respect to CFC2.

(b) CFC4 dissolved on December 30, 2010, and, as a result, its final taxable year ended on December 30, 2010.

(ii) *Analysis.* Each of CFC1, CFC2, CFC3, and CFC4 is a specified foreign corporation. Taking into account the regulations described in this section 3.02, the cash measurement dates of the specified foreign corporations to be taken into account by USP in determining its aggregate foreign cash position are summarized in the following table:

	<i>Cash Measurement Dates</i>		
	<i>Final</i>	<i>Second</i>	<i>First</i>
CFC1	December 31, 2017	December 31, 2016	December 31, 2015
CFC2	N/A	N/A	December 31, 2015
CFC3	November 30, 2018	November 30, 2016	November 30, 2015
CFC4	N/A	N/A	N/A

### .03 Treatment of Certain Accrued Foreign Income Taxes for Purposes of Determining Post-1986 Earnings and Profits

Post-1986 earnings and profits are defined, in relevant part, as the earnings and profits of a specified foreign corporation determined as of each of the two measurement dates described in section 965(a) and "computed in accordance with sections 964(a) and 986." Section 965(d)(3). In general, section 964(a) provides that, under regulations prescribed by the Secretary, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations. As described in section 3.02 of Notice 2018-13, for purposes of measuring the post-1986 earnings and profits of a specified foreign

corporation as of a measurement date, the extent to which an item of income, deduction, gain, or loss is taken into account as of such measurement date must be determined under principles generally applicable to the calculation of the earnings and profits of a domestic corporation. Section 3.02(a) of Notice 2018-13 provided a limited exception to this general rule in order to reduce taxpayer compliance burdens. Section 3.02(a) of Notice 2018-07 also announced the intention to issue regulations that may provide exceptions to this general rule in limited cases that are contemplated by section 965 or the legislative history to the Act, such as to address double counting or double non-counting.

The Treasury Department and the IRS have determined that an additional limited exception to the general rule is appropriate for certain foreign income taxes that

accrue between measurement dates. Accordingly, the Treasury Department and the IRS intend to issue regulations providing that, for purposes of determining a specified foreign corporation's post-1986 earnings and profits as of the measurement date on November 2, 2017, any foreign income tax (as defined in section 901(m)(5)) that accrues (i) within the specified foreign corporation's U.S. taxable year that includes November 2, 2017, and (ii) after November 2, 2017, but on or before December 31, 2017, will be allocated between the respective portions of the foreign tax base on which the accrued foreign taxes are determined that are attributable to the part of the U.S. taxable year ending on November 2, 2017, and the part of the U.S. taxable year beginning after November 2, 2017.

The Treasury Department and the IRS have determined that it is appropriate to limit the scope of the regulations to for-

foreign income taxes that accrue on or before December 31, 2017, in order to allow for the section 965(a) earnings amounts of each specified foreign corporation to be determined as of the final measurement date, December 31, 2017.

The regulations announced in this section 3.03 are relevant solely for purposes of determining a specified foreign corporation's post-1986 earnings and profits (including a deficit) within the meaning of section 965(d)(3). Therefore, the regulations to be issued will not affect, for example, the computation of credits for taxes deemed paid under sections 902 and 960.

#### *.04 Prevention of the Reduction of the Section 965 Tax Liability of a United States Shareholder*

##### *(a) Anti-Avoidance Rule*

##### *(i) Transactions Undertaken with a Principal Purpose of Reducing Section 965 Tax Liability*

The Treasury Department and the IRS intend to issue regulations under sections 965(c)(3)(F) and 965(o) providing that a transaction will be disregarded for purposes of determining a United States shareholder's section 965 tax liability if each of the following conditions is satisfied: (i) such transaction occurs, in whole or in part, on or after November 2, 2017 (the "specified date"); (ii) such transaction is undertaken with a principal purpose of reducing the section 965 tax liability of such United States shareholder; and (iii) such transaction would, without regard to this sentence, reduce the section 965 tax liability of such United States shareholder (the "anti-avoidance rule").

For purposes of this section 3.04(a) and section 3.04(b) of this notice, a transaction (or change in method of accounting or election described in section 3.04(b) of this notice) reduces the section 965 tax liability of a United States shareholder if such transaction (i) reduces a section 965(a) inclusion amount of such United States shareholder with respect to any specified foreign corporation, (ii) reduces the aggregate foreign cash position of such United States shareholder, or (iii) increases the amount of foreign income taxes of any specified foreign corporation

deemed paid by such United States shareholder under section 960 as a result of an inclusion under section 951(a) by reason of section 965. Also for purposes of this section 3.04(a) and section 3.04(b) of this notice, in the case of a United States shareholder that is a domestic pass-through entity, a domestic pass-through owner of such domestic pass-through entity is also treated as a United States shareholder. For the definition of domestic pass-through entity and domestic pass-through owner, see section 3.05(b) of this notice.

Under section 3.04(a)(ii) through (iv) of this notice, certain transactions are presumed to be undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder for purposes of the anti-avoidance rule. The presumption described in the preceding sentence may be rebutted only if facts and circumstances clearly establish that the transaction was not undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder. The regulations will provide that a taxpayer that takes the position that the presumption is rebutted must attach a statement to its income tax return for its taxable year in which or with which the relevant taxable year of the relevant specified foreign corporation ends disclosing that it has rebutted the presumption. In the case of a transaction described in section 3.04(a)(ii) and (iii), if the presumption does not apply because such transaction occurs in the ordinary course of business, whether such transaction was undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder must be determined under all the facts and circumstances. Under section 3.04(a)(ii) through (iv) of this notice, certain transactions are also treated per se as being undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder. Further, under section 3.04(a)(ii), certain distributions are treated per se as not being undertaken with a principal purpose of reducing the section 965 tax liability of such United States shareholder and therefore are not subject to the anti-avoidance rule.

For purposes of the rules described in section 3.04(a)(ii) through (iv) of this no-

tice, a person is treated as related to a United States shareholder if (i) the person bears a relationship to the United States shareholder described in section 267(b) or section 707(b) and (ii) the relationship described in clause (i) of this sentence is satisfied either immediately before or immediately after the transaction. Furthermore, for purposes of the rules described in section 3.04(a)(ii) and (iv) of this notice, the term "transfer" includes any disposition, exchange, contribution, distribution, issuance, redemption, recapitalization, or loan, and includes an indirect transfer (for example, a transfer of an interest in a partnership is a transfer of the assets of such partnership).

No inference is intended as to the treatment, under general tax law, of transactions that occurred before the specified date. The IRS may, where appropriate, challenge such transactions under the Code, regulations, or judicial doctrines such as the step transaction doctrine or the economic substance doctrine.

##### *(ii) Application of the Anti-Avoidance Rule to Cash Reduction Transactions*

For purposes of applying the anti-avoidance rule, a cash reduction transaction is presumed to be undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder. For this purpose, the term "cash reduction transaction" means (i) a transfer of cash, accounts receivable, or cash equivalent assets by a specified foreign corporation to a United States shareholder of such specified foreign corporation or a person related to a United States shareholder of such specified foreign corporation, or (ii) an assumption by a specified foreign corporation of an accounts payable of a United States shareholder of such specified foreign corporation or a person related to a United States shareholder of such specified foreign corporation, if such transfer or assumption would, without regard to the anti-avoidance rule, reduce the aggregate foreign cash position of such United States shareholder. The presumption described in this paragraph does not apply to a cash reduction transaction that occurs in the ordinary course of business.

Notwithstanding the presumption described in the preceding paragraph, except

in the case of a specified distribution, a cash reduction transaction that is a distribution by a specified foreign corporation to a United States shareholder of such specified foreign corporation will be treated per se as not being undertaken with a principal purpose of reducing the section 965 tax liability of such United States shareholder for purposes of the anti-avoidance rule. A specified distribution will be treated per se as being undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder for purposes of the anti-avoidance rule. For purposes of this section 3.04(a)(ii), the term “specified distribution” means a cash reduction transaction that is a distribution by a specified foreign corporation of a United States shareholder if (i) at the time of the distribution, there was a plan or intention for the distributee to transfer, directly or indirectly, cash, accounts receivable, or cash equivalent assets to any specified foreign corporation of such United States shareholder, or (ii) the distribution is a non pro rata distribution to a foreign person that is related to such United States shareholder. For purpose of clause (i) of the preceding sentence, an indirect transfer includes, for example, a transfer of cash to a partnership if a specified foreign corporation of such United States shareholder is a partner.

*(iii) Application of the Anti-Avoidance Rule to E&P Reduction Transactions*

For purposes of applying the anti-avoidance rule, an E&P reduction transaction is presumed to be undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder. For this purpose, the term “E&P reduction transaction” means a transaction between a specified foreign corporation and any of (i) a United States shareholder of such specified foreign corporation, (ii) another specified foreign corporation of a United States shareholder of such specified foreign corporation, or (iii) any person related to a United States shareholder of such specified foreign corporation, if such transaction would, without regard to the anti-avoidance rule, reduce the accumulated post-1986 deferred foreign income or the post-1986 undistributed earn-

ings (as defined in section 902(c)(1) as in effect before the date of the enactment of the Act) of such specified foreign corporation or another specified foreign corporation of any United States shareholder of such specified foreign corporation. The presumption described in this paragraph does not apply to an E&P reduction transaction that occurs in the ordinary course of business.

Notwithstanding the presumption described in the preceding paragraph, a specified transaction will be treated per se as being undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder for purposes of the anti-avoidance rule. For purposes of the preceding sentence, the term “specified transaction” means an E&P reduction transaction that involves one or more of the following: (i) a complete liquidation of a specified foreign corporation to which section 331 applies; (ii) a sale or other disposition of stock by a specified foreign corporation, or (iii) a distribution by a specified foreign corporation that reduces the earnings and profits of such specified foreign corporation pursuant to section 312(a)(3).

*(iv) Application of the Anti-Avoidance Rule to Pro Rata Share Transactions*

For purposes of applying the anti-avoidance rule, a pro rata share transaction is presumed to be undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder. For this purpose, the term “pro rata share transaction” means a transfer of the stock of a specified foreign corporation to a United States shareholder of the specified foreign corporation or a person related to a United States shareholder of such specified foreign corporation if such transfer would, without regard to the anti-avoidance rule, (i) reduce such United States shareholder’s pro rata share of the section 965(a) earnings amount of such specified foreign corporation if it is a DFIC; (ii) increase such United States shareholder’s pro rata share of the specified E&P deficit of such specified foreign corporation if it is an E&P deficit foreign corporation; or (iii) reduce such United States shareholder’s pro rata share of the

cash position of such specified foreign corporation.

Notwithstanding the presumption described in the preceding paragraph, an internal group transaction will be treated per se as being undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder for purposes of the anti-avoidance rule. For purposes of the preceding sentence, the term “internal group transaction” means a pro rata share transaction if, immediately before or after the transfer, the transferor of the stock of the specified foreign corporation and the transferee of such stock are members of an affiliated group in which the United States shareholder is a member. For this purpose, the term “affiliated group” has the meaning set forth in section 1504(a), determined without regard to paragraphs (1) through (8) of section 1504(b), and the term “members of an affiliated group” means entities included in the same affiliated group. For purposes of identifying an affiliated group and the members of such group, (i) each partner in a partnership, as determined without regard to clause (ii) of this sentence, is treated as holding its proportionate share of the stock held by the partnership, as determined under the rules and principles of sections 701 through 777, and (ii) if one or more members of an affiliated group own, in the aggregate, at least 80 percent of the interests in a partnership’s capital or profits, the partnership will be treated as a corporation that is a member of the affiliated group.

*Example.* (i) *Facts.* FP, a foreign corporation, owns all of the stock of USP, a domestic corporation. USP owns all of the stock of FS, a foreign corporation. USP has held the stock of FS for more than one year. USP has a calendar year taxable year; FS’s taxable year ends November 30. On January 2, 2018, USP transfers all of the stock of FS to FP in exchange for cash. On January 3, 2018, FS makes a distribution with respect to the stock transferred to FP. USP treats the transaction as a taxable sale of the FS stock and claims a dividends received deduction under section 245A with respect to its deemed dividend under section 1248(j) as a result of the sale. FS has post-1986 earnings and profits as of December 31, 2017, and no previously taxed income or effectively connected income for any previous taxable year.

(ii) *Analysis.* The transfer of the stock of FS is a pro rata share transaction because such transfer is to a person related to USP, and the transfer would, without regard to the anti-avoidance rule, reduce USP’s pro rata share of FS’s section 965(a) earnings amount. Because USP and FP are also members of

an affiliated group within the meaning of this section 3.04(a)(iv), the transfer of the stock of FS is also an internal group transaction and is treated per se as being undertaken with a principal purpose of reducing the section 965 tax liability of USP. Accordingly, the transfer will be disregarded for purposes of determining USP's section 965 tax liability with the result that, among other things, USP's pro rata share of FS's section 965(a) earnings amount is determined as if USP owned (within the meaning of section 958(a)) 100 percent of the stock of FS on the last day of FS's inclusion year and no other person received a distribution with respect to such stock during such year. See section 951(a)(2)(A) and (B).

*(b) Disregard of Certain Changes in Method of Accounting and Entity Classification Elections*

The Treasury Department and the IRS also intend to issue regulations, pursuant to the grant of authority under section 965(o), providing that any change in method of accounting made for a taxable year of a specified foreign corporation that ends in 2017 or 2018 will be disregarded for purposes of determining the section 965 tax liability of a United States shareholder if such change in method of accounting would otherwise reduce the section 965 tax liability of such United States shareholder. The rule described in this section 3.04(b) will apply whether or not such change in method of accounting was made in accordance with the procedures described in Rev. Proc. 2015-13, 2015-5 I.R.B. 419 (or successor), and whether or not such change in method of accounting was properly made. These regulations will not apply to a change in method of accounting for which the original and/or duplicate copy of any Form 3115, Application for Change in Accounting Method, requesting the change was filed before the specified date, November 2, 2017.

The regulations will also provide that any entity classification election under § 301.7701-3 that is filed on or after the specified date will be disregarded for purposes of determining the section 965 tax liability of such United States shareholder if such entity classification election would otherwise reduce the section 965 tax liability of any United States shareholder. An entity classification election filed on or after the specified date will be subject to these regulations even if such entity classification election was effective on a date before the specified date.

The regulations described in this section 3.04(b) will apply regardless of whether such change in method of accounting or change of entity classification election is made with a principal purpose of reducing the section 965 tax liability of a United States shareholder.

*.05 Rules Related to Elections, Reporting, and Payment*

*(a) Documentation of Cash Position*

Section 965(c)(3)(D) provides that net accounts receivable, actively traded property, and short-term obligations shall not be taken into account by a United States shareholder in determining its aggregate foreign cash position to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is so taken into account by such United States shareholder with respect to another specified foreign corporation. The IRS intends to issue forms, publications, regulations, or other guidance that will specify the documentation that a United States shareholder must maintain or provide, and the time and manner for providing any such documentation, in order to make the required demonstration to the Secretary.

*(b) United States Persons Eligible to Make Elections Under Section 965 in the Case of a United States Shareholder that is a Domestic Pass-Through Entity*

Section 965 increases the amount included in the gross income of a United States shareholder under section 951(a)(1) only if such United States shareholder owns (within the meaning of section 958(a)) stock in one or more specified foreign corporations. See section 951(a)(2)(A). For purposes of this notice, the term "section 958(a) stock" means, with respect to a United States shareholder of a DFIC, the stock of the DFIC owned by the United States shareholder within the meaning of section 958(a).

The Treasury Department and IRS have determined that if a domestic pass-through entity is a United States shareholder of a DFIC and owns section 958(a) stock in such DFIC, the section 965(a) inclusion amount with respect to such section 958(a) stock and the section 965(c) deduction with respect to such amount

should be determined at the level of the domestic pass-through entity. However, the domestic pass-through owners of the domestic pass-through entity are subject to federal income tax on their share of the section 965(a) inclusion amount with respect to the section 958(a) stock of the domestic pass-through entity. Accordingly, in the case of a domestic pass-through entity that is a United States shareholder, the regulations will provide that each domestic pass-through owner takes into account its share of the section 965(a) inclusion amount with respect to section 958(a) stock of a DFIC of the domestic pass-through entity and the section 965(c) deduction with respect to such amount, regardless of whether such domestic pass-through owner is also a United States shareholder with respect to such DFIC. In this case, the section 965(a) inclusion amount and the related section 965(c) deduction must be allocated in the same proportion. For example, if a domestic pass-through owner is allocated 50 percent of the section 965(a) inclusion amount with respect to section 958(a) stock of a domestic pass-through entity, such domestic pass-through owner must be allocated 50 percent of the related section 965(c) deduction. If the domestic pass-through owner is also a United States shareholder with respect to such DFIC that owns section 958(a) stock of such DFIC, regulations will provide that the section 965(a) inclusion amount with respect to such section 958(a) stock of such domestic pass-through owner and the section 965(c) deduction with respect to such amount are determined separately from its share of the section 965(a) inclusion amount and section 965(c) deduction of the domestic pass-through entity.

For purposes of this notice, the term "domestic pass-through entity" means a pass-through entity that is a United States person (as defined in section 7701(a)(30)). Also for purposes of this notice, a "pass-through entity" means a partnership, S corporation, or any other person to the extent that the income or deductions of such person are included in the income of one or more direct or indirect owners or beneficiaries of the person. Accordingly, if, for example, a domestic trust is subject to federal income tax on a portion of its section 965(a) inclusion amount and its

domestic pass-through owners are subject to tax on the remaining portion, the domestic trust is treated as a domestic pass-through entity with respect to such remaining portion. Also for purposes of this notice, the term “domestic pass-through owner” means a United States person that is a partner, shareholder, beneficiary, grantor, or owner, as the case may be, in a domestic pass-through entity, except that, in the case of tiered pass-through entities, the term does not include a partner, shareholder, beneficiary, or owner that is itself a domestic pass-through entity. In the case of tiered pass-through entities, a reference in this notice to a domestic pass-through owner includes a United States person that is an indirect partner, shareholder, beneficiary, or owner through one or more other pass-through entities, and a reference to a domestic pass-through owner’s share of the section 965(a) inclusion amount and section 965(c) deduction of a domestic pass-through entity includes such domestic pass-through owner’s share of the section 965(a) inclusion amount and section 965(c) deduction of a domestic pass-through entity owned indirectly by such domestic pass-through owner through one or more other pass-through entities.

The elections under section 965(h), (m), and (n) (“specified elections”) are described in section 965 as available to a United States shareholder of a DFIC. However, because a domestic pass-through owner includes in income a share of the section 965(a) inclusion amount with respect to section 958(a) stock of a DFIC of a domestic pass-through entity, the Treasury Department and the IRS intend to issue regulations, pursuant to the grant of regulatory authority under section 965(o), allowing such domestic pass-through owner to make a specified election that applies to its share of the section 965(a) inclusion amount with respect to section 958(a) stock of a DFIC of the domestic pass-through entity. Such a domestic pass-through owner will be permitted to make a specified election regardless of whether the domestic pass-through owner is itself a United States shareholder of the DFIC. If a domestic pass-through owner makes a specified election for its taxable year, such election will be applicable to all section 965(a)

inclusion amounts included in the gross income of such domestic pass-through owner for such taxable year (other than amounts with respect to which elections under section 965(i) are effective), whether included directly by reason of owning section 958(a) stock in a DFIC or indirectly by reason of being a domestic pass-through owner.

If an S corporation is, directly or indirectly, a partner, beneficiary, or owner of a domestic pass-through entity and takes into account a share of the section 965(a) inclusion amount of a domestic pass-through entity with respect to a DFIC, and the S corporation is a United States shareholder of the DFIC, the regulations will provide that shareholders of the S corporation will be permitted to make an election under section 965(i) to defer the shareholder’s net tax liability under section 965 with respect to the S corporation. However, in such a case, if the S corporation is not itself a United States shareholder of a DFIC, the net tax liability under section 965 of a shareholder with respect to the S corporation for purposes of the election under section 965(i) will not include the shareholder’s share of the domestic pass-through entity’s section 965(a) inclusion amount with respect to the DFIC or section 965(c) deduction with respect to such amount.

*(c) Determination of Amount of Net Tax Liability Under Section 965 for Purposes of Section 965(h)*

As discussed in section 3.05(b) of this notice, if a domestic pass-through entity is a United States shareholder that has a section 965(a) inclusion amount with respect to section 958(a) stock in a DFIC, a United States person that is a domestic pass-through owner, directly or indirectly, in such domestic pass-through entity is subject to net income tax on its share of the section 965(a) inclusion amount. Accordingly, the Treasury Department and the IRS intend to issue regulations providing that for purposes of determining the net tax liability under section 965 of a domestic pass-through owner, the domestic pass-through owner will be treated as a United States shareholder. See, however, section 5 of this notice, which provides that a domestic pass-through owner that is

not itself a United States shareholder is not permitted to make an election under section 962.

Furthermore, the regulations will provide that, in the case of a taxpayer that has made one or more elections under section 965(i) for a taxable year, the taxpayer’s net tax liability under section 965 for purposes of section 965(h) is the taxpayer’s net tax liability under section 965 as determined under section 965(h)(6) (taking into account the rules in this section 3.05(c)) reduced by the aggregate amount of the taxpayer’s net tax liabilities under section 965 as determined under section 965(i)(3) (taking into account the rule provided in section 3.05(b) of this notice) with respect to which elections under section 965(i) are effective.

*(d) Application of Section 965(n) to Losses Arising in the Year in Which the Inclusion Year of a DFIC Ends*

A United States shareholder of a DFIC may elect the application of section 965(n) for the taxable year of the United States shareholder in which, or with which, the inclusion year of the DFIC ends. If such an election is made, the United States shareholder does not take into account the amount described in section 965(n)(2) in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year or in determining the amount of taxable income for such taxable year which may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 172.

Questions have arisen regarding the scope of the election under section 965(n) due to the use of the term “deduction” in section 965(n)(1)(A). A net operating loss “deduction” for a taxable year generally refers to the amount of a net operating loss carried to such taxable year from a prior or subsequent year rather than the net operating loss arising from such year. Compare section 172(a) and (c). However, interpreting “deduction” in section 965(n)(1)(A) to refer to carryovers or carrybacks (and not to the net operating loss for the taxable year) would cause that paragraph to be duplicative of section 965(n)(1)(B), which already provides that amounts described in section 965(n)(2) are disregarded for purposes of

applying net operating loss carryovers or carrybacks to such taxable year under section 172. The Treasury Department and the IRS have determined that section 965(n)(1)(A) was intended to apply to a different set of losses than those to which section 965(n)(1)(B) applies. Therefore, the Treasury Department and the IRS intend to issue regulations providing that, if an election under section 965(n) is made with respect to a taxable year in which or with which the inclusion year of a DFIC ends, the amount of a net operating loss for such taxable year will be determined without taking into account as gross income the amount described in section 965(n)(2). The regulations will also clarify that an election made under section 965(n) will be treated as made with respect to both the amount of a net operating loss for such taxable year and the net operating loss carryovers or carrybacks for such taxable year.

#### *(e) Filing and Payment Due Date for Specified Individuals*

A specified individual (as defined in section 2.18 of this notice) who does not make the election under section 965(h)(1) or (i)(1) is considered to have timely filed such person's return and paid the net tax liability under section 965 if the filing and payment are made on or before the fifteenth day of the sixth month following the close of the taxable year, and the specified individual attaches a statement to the return showing that the person for whom the return is made is a person described in § 1.6081-5(a). See § 1.6081-5(a)(5)-(6), and (b). For a specified individual who makes the election under section 965(h)(1), section 965(h)(2) provides that the installments must be paid on the due dates for the relevant returns (determined without regard to any extension of time for filing the return).

The question has arisen whether the disregarding of extensions of time to file in section 965(h)(2) applies to negate the extension of time to pay that is otherwise available under § 1.6081-5 for a specified individual that does not make the election under section 965(h)(1). The Treasury Department and the IRS intend to issue regulations providing that, if a specified individual receives an extension of time to file and pay under § 1.6081-5(a)(5) or (6), then the individual's due

date for an installment payment under section 965(h) is also the fifteenth day of the sixth month following the close of a taxable year.

#### *.06 Treatment of Section 965(c) Deduction for Purposes of Sections 62(a) and 63(d)*

Questions have arisen as to whether the section 965(c) deduction is a miscellaneous itemized deduction as defined in section 67(b). The Treasury Department and the IRS have determined that an individual's section 965(c) deduction was not intended to be subject to the 2-percent floor under section 67 or the deduction disallowance under the AMT, or, in the case of a taxable year beginning after December 31, 2017, the deduction disallowance under section 67 as modified by the Act. Therefore, the Treasury Department and the IRS intend to issue regulations, pursuant to the grant of authority under section 965(o), providing that a section 965(c) deduction will not be treated as an itemized deduction, including for purposes of sections 56 and 67.

### **SECTION 4. MODIFICATION OF RULE DESCRIBED IN SECTION 3.04(a) OF NOTICE 2018-13**

Section 3.04(a) of Notice 2018-13 announced that the Treasury Department and the IRS intend to issue regulations providing that, for purposes of calculating the net accounts receivable of a specified foreign corporation, the term "accounts receivable" means receivables described in section 1221(a)(4), and the term "accounts payable" means payables arising from the purchase of property described in section 1221(a)(1) or 1221(a)(8) or the receipt of services from vendors or suppliers. The Treasury Department and the IRS have determined that it is appropriate to exclude any receivable or payable with an initial term of one year or more for purposes of calculating a specified foreign corporation's net accounts receivable. Cf. section 965(c)(3)(B)(iii)(IV) (short-term obligations). Accordingly, the Treasury Department and the IRS intend to issue regulations providing that the terms "accounts receivable" and "accounts payable" will include only receivables or payables with a term of less than one year.

### **SECTION 5. REGULATIONS TO BE ISSUED ADDRESSING ELECTIONS UNDER SECTION 962**

As discussed in section 3.05(b) of this notice, if a domestic pass-through entity is a United States shareholder that has a section 965(a) inclusion amount with respect to section 958(a) stock in a DFIC, a domestic pass-through owner of such entity is subject to net income tax on its share of the section 965(a) inclusion amount. The Treasury Department and the IRS intend to issue regulations clarifying that a domestic pass-through owner who is an individual (including, as provided in § 1.962-2(a), a trust or estate) and a United States shareholder with respect to a DFIC may make an election under section 962 with respect to the individual's share of the section 965(a) inclusion amount of a domestic pass-through entity with respect to such DFIC. However, an individual who is not a United States shareholder of a DFIC is not permitted to make an election under section 962 with respect to the individual's share of a section 965(a) inclusion amount of a domestic pass-through entity with respect to such DFIC notwithstanding the rules in section 3.05(b) and (c) of this notice. See section 962(b). The regulations will clarify that the same principles apply to inclusions under section 951(a) other than by reason of section 965.

If an individual elects to have the provisions of section 962 apply for a taxable year, the tax imposed on amounts included in the individual's gross income under section 951(a) (directly by reason of owning section 958(a) stock or indirectly by reason of being a domestic pass-through owner), including by reason of section 965, is an amount equal to the tax that would be imposed under section 11 if the amounts were received by a domestic corporation. In addition, § 1.962-1(b)(1)(i) provides that a deduction of a United States shareholder does not reduce the amount included in gross income under section 951(a) for purposes of computing the amount of tax that would be imposed under section 11.

The Treasury Department and the IRS have determined that in the case of a taxpayer making an election under section 962, Congress intended for the section 965(c) deduction (which is generally available to United States shareholders of

DFICs, including individuals) to be allowed with respect to the tax imposed under section 11 rather than under section 1. *See* H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.). Pursuant to the grant of authority under section 965(o), the Treasury Department and the IRS intend to modify § 1.962–1(b)(1)(i) to provide that, in computing the amount of tax due as a result of a section 962 election, the section 965(c) deduction may be taken into account. Specifically, the regulations will provide that “taxable income” as used in section 11 shall be reduced by the section 965(c) deduction. These regulations will not apply to any other deductions, and therefore existing § 1.962–1(b)(1)(i) will continue to provide that “taxable income” as used in section 11 shall not be reduced by any other deductions. Any section 965(c) deduction allowed in determining “taxable income” as used in section 11 for purposes of computing the tax due as a result of a section 962 election will not also be allowed for purposes of determining an individual’s actual taxable income.

*Example.* (i) *Facts.* USI, a United States citizen, owns 10% of the capital and profits of USPRS, a domestic partnership that has a calendar year taxable year, the remainder of which is owned by foreign persons unrelated to USI or USPRS. USPRS owns all of the stock of FS, a foreign corporation that is a CFC with a calendar year U.S. taxable year. USPRS has a section 965(a) inclusion amount with respect to FS of \$1,000 and is allowed a section 965(c) deduction of \$700. FS has no post-1986 foreign income taxes (as defined in section 902(c)(1) as in effect before the date of the enactment of the Act). USI makes a valid election under section 962 for 2017.

(ii) *Analysis.* USI’s “taxable income” described in § 1.962–1(b)(1)(i) equals \$100 (USI’s distributive share of USPRS’s section 965(a) inclusion amount) minus \$70 (USI’s distributive share of USPRS’s allowable section 965(c) deduction), or \$30. No other deductions are allowed in determining this amount. USI’s tax on such amount will be equal to the tax imposed under section 11 as if \$30 were received by a domestic corporation. USI cannot deduct \$70 for purposes of determining USI’s taxable income that is subject to tax under section 1.

## **SECTION 6. PENALTY RELIEF UNDER SECTIONS 6654 AND 6655 IN CONNECTION WITH THE AMENDMENT OF SECTION 965 AND THE REPEAL OF SECTION 958(b)(4)**

### *.01 Penalty Waiver with Respect to Section 965*

A United States shareholder that has a net tax liability under section 965 gener-

ally includes the amount of the net tax liability on its return for the year in which or with which the inclusion year of the DFIC ends.

Section 965(h)(1) provides that a United States shareholder of a DFIC may elect to pay the net tax liability under section 965 in eight annual installments, the first of which is due on the due date (without regard to any extension of time to file) of the return for the shareholder’s taxable year in which or with which the inclusion year of the DFIC ends. Each successive installment is due on the due date (without regard to any extension of time to file) of the return for the taxable year following the taxable year the prior installment was made. Section 965(h)(2). The timely payment of an installment does not incur underpayment interest. *See* H.R. Rep. No. 115–466, at 611 (2017) (Conf. Rep.). Section 965(h), therefore, demonstrates Congress’s intent to permit a taxpayer to pay its net tax liability under section 965 without incurring additional liability, including additions to tax. Consistent with this intent, and in the interest of sound tax administration, the IRS will waive underpayment penalties under sections 6654 and 6655 with respect to a taxpayer’s net tax liability under section 965 for those taxpayers that make an election under section 965(h). In addition, the IRS will waive underpayment penalties under sections 6654 and 6655 with respect to a taxpayer’s net tax liability under section 965 for those taxpayers who do not elect to pay their net tax liability under section 965 in installments. Accordingly, a taxpayer’s required installments of estimated tax need not include amounts attributable to its net tax liability under section 965 to prevent the imposition of penalties under sections 6654(a) and 6655(a). If a taxpayer fails to timely pay its net tax liability under section 965 when due, other sections of the Code may apply; for example, additions to tax could result under section 6651, and installment payments could be accelerated under section 965(h)(3).

The instructions to estimated tax forms will be modified, as necessary, to clarify that no underpayment penalty will be imposed under section 6654 or section 6655 with respect to a taxpayer’s net tax liability under section 965 and that the taxpayer

may exclude such amounts when calculating the amount of its required installment.

### *.02 Penalty Waiver for 2017 with Respect to Amendments to Sections 965 and 958(b) by the Act*

In addition, because the amendment to section 965 and the repeal of section 958(b)(4) could also affect tax liability (other than by way of the imposition of the net tax liability under section 965) for periods that end before or shortly after the enactment of the Act, the IRS has determined that additional penalty relief is appropriate. Therefore, the IRS has determined that if the amendment to section 965 or the amendment to section 958(b) by the Act causes an underpayment related to a required installment of estimated tax due on or before January 15, 2018, the estimated tax penalty under section 6654 or section 6655 will not apply to that underpayment.

## **SECTION 7. EFFECTIVE DATES**

Section 965 is effective for the last taxable years of foreign corporations that begin before January 1, 2018, and with respect to United States shareholders, for the taxable years in which or with which such taxable years of the foreign corporations end. The Treasury Department and the IRS intend to provide that the regulations and instructions described in sections 3, 4, 5, and 6 of this notice are effective beginning for the first taxable year of a foreign corporation (and with respect to United States shareholders, the taxable years in which or with which such taxable years of the foreign corporations end) to which section 965 applies. Before the issuance of the regulations and instructions described in this notice, taxpayers may rely on the rules described in sections 3, 4, 5, and 6 of this notice.

This notice also clarifies one of the effective dates described in section 6 of Notice 2018–13, which provided that taxpayers could rely on the rules described in section 5.01 of Notice 2018–13 with respect to the last taxable year of foreign corporations beginning before January 1, 2018, and for the taxable years of United States shareholders in which or with which such taxable years of foreign cor-

porations end, pending the issuance of further guidance. Taxpayers may rely on section 5.01 of Notice 2018–13 with respect to the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of such foreign corporations, and for the taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, pending the issuance of further guidance (the application of which will be prospective).

## **SECTION 8. REQUEST FOR COMMENTS AND CONTACT INFORMATION**

The Treasury Department and the IRS request comments on the rules described in this notice. The Treasury Department and the IRS expect to issue additional guidance under section 965, and the Treasury Department and the IRS request comments on what additional guidance should be issued to assist taxpayers in applying section 965.

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Leni C. Perkins, Internal Revenue Service, IR–4579, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Comments will be available for public inspection and copying.

The principal author of this notice is Ms. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Perkins at (202) 317-6934 (not a toll-free number).

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## **Initial Guidance Under Section 163(j) as Applicable to Taxable Years Beginning After December 31, 2017**

### **Notice 2018–28**

#### **SECTION 1. PURPOSE**

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service

(IRS) intend to issue proposed regulations providing guidance to assist taxpayers in complying with section 163(j) of the Internal Revenue Code (Code), as amended on December 22, 2017, by “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97 (the Act). This notice further describes certain of the rules that those proposed regulations will include to provide taxpayers with interim guidance as more comprehensive guidance is developed. The rules described in this notice apply only for purposes of determining the limitation on deductions for interest expense under section 163(j), as amended by the Act. Before the issuance of the regulations described in this notice, taxpayers may rely on the rules described in sections 3 through 7 of this notice.

#### **SECTION 2. BACKGROUND**

Prior to the Act, section 163(j) disallowed a deduction for disqualified interest paid or accrued by a corporation in a taxable year if two threshold tests were satisfied. The first threshold test was satisfied if the payor’s debt-to-equity ratio exceeded 1.5 to 1.0 (safe harbor ratio). The second threshold test was satisfied if the payor’s net interest expense exceeded 50 percent of its adjusted taxable income (generally, taxable income computed without regard to deductions for net interest expense, net operating losses, domestic production activities under section 199, depreciation, amortization, and depletion). Disqualified interest for this purpose included interest paid or accrued to: (1) related parties when no Federal income tax was imposed with respect to such interest; (2) unrelated parties in certain instances in which a related party guaranteed the debt; or (3) a real estate investment trust (REIT) by a taxable REIT subsidiary of that REIT. Interest amounts disallowed for any taxable year under section 163(j) prior to the Act were treated as interest paid or accrued in the succeeding taxable year and could be carried forward indefinitely. In addition, any excess limitation (i.e., the excess, if any, of 50 percent of the adjusted taxable income of the payor over the payor’s net interest expense) could be carried forward three years.

Prior to the Act, section 163(j)(6)(C) provided that “[a]ll members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.” In addition, section 163(j)(9)(B) provided the Secretary with the authority to issue regulations providing for adjustments in the case of corporations that are members of an affiliated group as may be appropriate for carrying out the purposes of section 163(j). The Report of the Committee on the Budget, House of Representatives, House Report 101–247 at 1248 (Sept. 20, 1989) noted that “[i]n cases where a group of commonly controlled U.S. corporations would constitute an affiliated group but for the inclusion within the group of one or more entities other than includible corporations (as defined in section 1504(b)), the committee intends for the regulations to treat all U.S. corporations that are members of such a group as a single taxpayer where such treatment is appropriate in order to carry out the purposes of the bill or to prevent avoidance of the purposes of the bill.”

Proposed regulations under section 163(j) were issued on June 18, 1991 (Proposed Regulations). 56 FR 27907 (June 18, 1991). The Proposed Regulations contained affiliation rules for section 163(j) purposes (the super-affiliation rules). In particular, proposed § 1.163(j)–5(a)(2) contained a rule that would treat all members of an affiliated group (as defined in section 1504(a)) as one taxpayer for purposes of section 163(j), without regard to whether such affiliated group files a consolidated return pursuant to section 1501. The Proposed Regulations also contained rules in proposed § 1.163(j)–5(a)(3) under which, for purposes of section 163(j), if at least 80 percent of the total voting power and total value of the stock of an includible corporation (as defined in section 1504(b)) is owned, directly or indirectly, by another includible corporation, the first corporation would be treated as a member of an affiliated group that includes the other corporation and its affiliates.

Section 163(j) was amended by the Act to provide new rules limiting the deduction of business interest expense for taxable years beginning after December 31, 2017. *See* Section 13301(a) of the Act. For any taxpayer to which section 163(j) applies, section 163(j)(1) now limits the

taxpayer's annual deduction for business interest expense to the sum of: (1) the taxpayer's business interest income (as defined in section 163(j)(6)) for the taxable year; (2) 30 percent of the taxpayer's adjusted taxable income (as defined in section 163(j)(8)) for the taxable year; and (3) the taxpayer's floor plan financing interest (as defined in section 163(j)(9)) for the taxable year. The limitation in section 163(j) applies to all taxpayers, except for certain taxpayers that meet the gross receipts test in section 448(c), and to all trades or businesses, except certain trades or businesses listed in section 163(j)(7). Section 163(j)(2), as amended by the Act, provides that the amount of any business interest not allowed as a deduction for any taxable year as a result of the limitation in section 163(j)(1) is treated as business interest paid or accrued in the next taxable year and may be carried forward. Section 163(j), as amended by the Act, does not provide for the carryforward of any excess limitation. Section 163(j)(6)(C), which treated an affiliated group as one taxpayer, and section 163(j)(9)(B), which authorized the super-affiliation rules, were removed by the Act and no equivalent provisions are included in section 163(j), as amended by the Act.

The Conference Report to Accompany H.R. 1, Report 115-466 (Dec. 15, 2017) (the Conference Report) states in a footnote describing the House Bill that ". . . a corporation has neither investment interest nor investment income within the meaning of section 163(d). Thus, interest income and interest expense of a corporation is properly allocable to a trade or business, unless such trade or business is otherwise explicitly excluded from the application of the provision." See Conference Report footnote 688, at 386. Nothing in the Conference Report's description of the Senate Amendment or the Conference Agreement is inconsistent with this approach. The Conference Report also notes, in the description of the House Bill, that "[i]n the case of a group of affiliated corporations that file a consolidated return, the limitation applies at the consolidated tax return filing level." See Conference Report at 386. Nothing in the Conference Report's description of the Senate Amendment or the Conference Agreement is inconsistent with this ap-

proach. However, there is no mention in the Conference Report of applying section 163(j) to affiliated groups (within the meaning of section 1504(a)) that do not file a consolidated return.

### **SECTION 3. TREATMENT OF DISALLOWED DISQUALIFIED INTEREST FROM LAST TAXABLE YEAR BEGINNING BEFORE JANUARY 1, 2018**

Prior to the Act, C corporation taxpayers that could not deduct all of their interest expense under section 163(j)(1)(A) could carry their disallowed disqualified interest forward to the succeeding taxable year under section 163(j)(1)(B). Such interest was treated as paid or accrued in the succeeding taxable year. Similarly, under section 163(j)(2), as amended by the Act, taxpayers that cannot deduct all of their business interest because of the limitation in section 163(j)(1) may carry their disallowed business interest forward to the succeeding taxable year, and such interest is treated as business interest paid or accrued in the succeeding taxable year.

Consistent with the approach of section 163(j)(1)(B) prior to the Act and section 163(j)(2), as amended by the Act, the Treasury Department and the IRS intend to issue regulations clarifying that taxpayers with disqualified interest disallowed under prior section 163(j)(1)(A) for the last taxable year beginning before January 1, 2018, may carry such interest forward as business interest to the taxpayer's first taxable year beginning after December 31, 2017. The regulations will also clarify that business interest carried forward will be subject to potential disallowance under section 163(j), as amended by the Act, in the same manner as any other business interest otherwise paid or accrued in a taxable year beginning after December 31, 2017.

The regulations will also address the interaction of section 163(j) with section 59A, relating to the tax on base erosion payments of taxpayers with substantial gross receipts, which was added by section 14401 of the Act. The regulations will provide that business interest carried forward from a taxable year beginning before January 1, 2018, will be subject to section 59A in the same manner as interest paid or accrued in a taxable year beginning after December 31, 2017, and will clarify how

section 59A applies to that interest. Thus, for example, if interest paid or accrued by a taxpayer to a foreign person that is a related party as defined in section 59A(g) is carried forward to a taxable year beginning after December 31, 2017, and a deduction is otherwise allowable under Chapter 1 of the Code for such interest, then the interest is treated as a base erosion payment described in section 59A(d)(1) and is subject to the rules under section 59A(c)(3).

In addition, the regulations will provide rules for the allocation of business interest from a group treated as affiliated under the super-affiliation rules applicable to section 163(j) prior to the Act to taxpayers under section 163(j), as amended.

Prior to the Act, section 163(j)(2)(B)(ii) also allowed a corporation that was subject to the limitation in section 163(j)(1) to add to its annual limitation any "excess limitation carryforward" from the prior year, as defined in section 163(j)(2)(B)(ii). Section 163(j), as amended by the Act, does not have a provision that would allow an excess limitation carryforward. Thus, the Treasury Department and the IRS intend to issue regulations clarifying that no amount previously treated as an excess limitation carryforward may be carried to taxable years beginning after December 31, 2017.

For further information regarding carryforwards generally, contact Zachary King or Charles Gorham at (202) 317-7003 (not a toll-free number). For further information regarding the interaction of sections 59A and 163(j), contact Sheila Ramaswamy or Steve Jensen at (202) 317-6938 (not a toll-free number).

### **SECTION 4. C CORPORATION BUSINESS INTEREST EXPENSE AND INCOME**

Consistent with congressional intent as reflected in the Conference Report, the Treasury Department and the IRS intend to issue regulations clarifying that, solely for purposes of section 163(j), as amended by the Act, in the case of a taxpayer that is a C corporation, all interest paid or accrued by the C corporation on indebtedness of such C corporation will be business interest within the meaning of section 163(j)(5), and all interest on indebtedness held by the C corporation that is includible in gross income of such C corporation

will be business interest income within the meaning of section 163(j)(6). The regulations described in the foregoing sentence will not apply to a corporation that is an S corporation as defined in section 1361(a)(1). Regulations also will address whether and to what extent interest paid, accrued, or includible in gross income by a non-corporate entity such as a partnership in which a C corporation holds an interest is properly characterized, to such C corporation, as business interest within the meaning of section 163(j)(5) or business interest income within the meaning of section 163(j)(6).

For further information regarding this issue, contact John B. Lovelace at (202) 317-4723 (not a toll-free number).

### **SECTION 5. APPLICATION OF SECTION 163(j) TO CONSOLIDATED GROUPS**

Consistent with congressional intent as reflected in the Conference Report, the Treasury Department and the IRS intend to issue regulations clarifying that the limitation in section 163(j)(1) on the amount allowed as a deduction for business interest applies at the level of the consolidated group (as defined in § 1.1502-1(h)). Thus, for example, a consolidated group's taxable income for purposes of calculating adjusted taxable income (as defined in section 163(j)(8)) will be its consolidated taxable income (as determined under § 1.1502-11), and intercompany obligations (as defined in § 1.1502-13(g)(2)(ii)) will be disregarded for purposes of determining the limitation in section 163(j)(1).

Regulations also will address other issues concerning the application of section 163(j) to consolidated groups, including: the allocation of the section 163(j)(1) limitation among group members; the treatment of disallowed interest deduction carryforwards when a member leaves the group; the treatment of disallowed interest deduction carryforwards of a member that joins the group, including whether such carryforwards are subject to a separate return limitation year (SRLY) limitation (*see* §§ 1.1502-15, 1.1502-21(c), and 1.1502-22(c)); the application of § 1.1502-32 (providing rules for adjusting the basis of the stock of a subsidiary owned by another member) to disallowed interest deductions; and the application of section 163(j) to a

consolidated group with one or more members that conduct a trade or business described in section 163(j)(7)(A)(ii), (iii), or (iv), as amended by the Act, or whose members hold an interest in a non-corporate entity such as a partnership that conducts such a trade or business. The Treasury Department and the IRS anticipate that such regulations will not include a general rule treating an affiliated group that does not file a consolidated return as a single taxpayer for purposes of section 163(j), as amended by the Act.

For further information regarding this issue, contact John B. Lovelace at (202) 317-4723 (not a toll-free number).

### **SECTION 6. IMPACT OF SECTION 163(j) ON EARNINGS AND PROFITS**

The Treasury Department and the IRS intend to issue regulations clarifying that the disallowance and carryforward of a deduction for a C corporation's business interest expense under section 163(j), as amended by the Act, will not affect whether or when such business interest expense reduces earnings and profits of the payor C corporation.

For further information regarding this issue, contact John B. Lovelace at (202) 317-4723 (not a toll-free number).

### **SECTION 7. BUSINESS INTEREST INCOME AND FLOOR PLAN FINANCING OF PARTNERSHIPS, PARTNERS, S CORPORATIONS, AND S CORPORATION SHAREHOLDERS**

Section 163(j)(4) requires that the annual limitation on the deduction for business interest expense be applied at the partnership level and that any deduction for business interest be taken into account in determining the non-separately stated taxable income or loss of the partnership. Although section 163(j)(4) is applied at the partnership level with respect to the partnership's indebtedness, section 163(j) may also be applied at the partner level in certain circumstances. The Treasury Department and the IRS intend to issue regulations providing that, for purposes of calculating a partner's annual deduction for business interest under section 163(j)(1), a partner cannot include the partner's share of the partnership's business interest income for the

taxable year except to the extent of the partner's share of the excess of (i) the partnership's business interest income over (ii) the partnership's business interest expense (not including floor plan financing). Additionally, the Treasury Department and the IRS intend to issue regulations providing that a partner cannot include such partner's share of the partnership's floor plan financing interest in determining the partner's annual business interest expense deduction limitation under section 163(j). Such regulations are intended to prevent the double counting of business interest income and floor plan financing interest for purposes of the deduction afforded by section 163(j) and are consistent with general principles of Chapter 1 of the Code. Similar rules will apply to any S corporation and its shareholders.

For further information regarding this issue, contact Meghan Howard at (202) 317-5279, Adrienne Mikolashek at (202) 317-6850, or Anthony McQuillen at (202) 317-6850 (not a toll-free number).

### **SECTION 8. WITHDRAWAL OF PROPOSED REGULATIONS**

The Treasury Department and the IRS intend to withdraw the Proposed Regulations in connection with the issuance of proposed regulations under section 163(j), as amended by the Act.

### **SECTION 9. REQUEST FOR COMMENTS**

The Treasury Department and the IRS request comments on the rules described in this notice. In addition, the Treasury Department and the IRS expect to issue regulations under section 163(j) providing guidance with respect to issues not described in this notice and request comments on what additional issues should be addressed by those regulations to assist taxpayers in applying section 163(j). Comments must be submitted by May 31, 2018. All comments received will be available for public inspection and copying.

Written comments responding to this notice should be mailed to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2018-28)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Please include “Notice 2018–28” on the cover page.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service  
Courier’s Desk  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2018–28)

Submissions may also be sent electronically to the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include “Notice 2018–28” in the subject line.

## SECTION 10. DRAFTING AND GENERAL CONTACT INFORMATION

The principal authors of this notice are Zachary King and Charles Gorham of the Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. King or Mr. Gorham at (202) 317-7003 (not a toll-free number).

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# Guidance Regarding the Implementation of New Section 1446(f) for Partnership Interests That Are Not Publicly Traded

## Notice 2018–29

### SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to issue regulations under new section 1446(f) of the Internal Revenue Code (“Code”) regarding the disposition of a partnership interest that is not publicly traded. This notice also provides interim guidance that taxpayers may rely on pending the issuance of regulations. New section 1446(f) was added by section 13501 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97 (the

“Act”), which was enacted on December 22, 2017. Section 13501 of the Act also added new section 864(c)(8).

### SECTION 2. BACKGROUND AND SUMMARY OF COMMENTS

In general, section 864(c)(8) provides that gain or loss from the sale, exchange, or other disposition of a partnership interest by a nonresident alien or foreign corporation is effectively connected with the conduct of a trade or business in the United States to the extent that the person would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value. Section 864(c)(8) applies to sales, exchanges, or other dispositions occurring on or after November 27, 2017. *See* Rev. Rul. 91–32, 1991–1 C.B. 107, for the IRS’s position with respect to sales, exchanges, or other dispositions of an interest in a partnership by a nonresident alien individual or foreign corporation occurring before November 27, 2017.

In general, section 1446(f)(1) provides that if any portion of the gain on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, then the transferee must deduct and withhold a tax equal to 10 percent of the amount realized on the disposition. Under an exception in section 1446(f)(2), however, withholding is generally not required if the transferor furnishes an affidavit to the transferee stating, among other things, that the transferor is not a foreign person.

Section 1446(f)(4) provides that if a transferee fails to withhold any amount required to be withheld under section 1446(f)(1), the partnership shall be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold (plus interest under the Code on such amount).

Section 1446(f)(6) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary to carry out the purposes of section 1446(f), including regulations providing for exceptions from the provisions of section 1446(f). Furthermore, section 1446(g) authorizes the Secretary to prescribe such regulations as may be necessary to carry

out the purposes of section 1446 generally. Section 1446(f) applies to sales, exchanges, or other dispositions occurring after December 31, 2017.

On December 29, 2017, the Treasury Department and IRS advance released Notice 2018–08, 2018–7 I.R.B. 352 (“PTP Notice”). The PTP Notice suspended the requirement to withhold on dispositions of certain interests in publicly traded partnerships (“PTPs”) in response to stakeholder concerns that applying section 1446(f) to PTPs without guidance presented significant practical problems. The PTP Notice also requested comments on the implementation of section 1446(f), including whether a temporary suspension of section 1446(f) for partnership interests that are not publicly traded (“non-PTP interests”) was needed. Several comments were received.

Comments in response to the PTP Notice requested guidance minimizing the application of section 1446(f) until further guidance was issued, including suspension of section 1446(f) for non-PTP interests. This notice does not suspend the application of section 1446(f) for non-PTP interests in all cases, but does include guidance under section 1446(f) designed to allow for an effective and orderly implementation, including minimizing occasions of overwithholding. The rules in this notice (including section 6) that modify or suspend withholding under section 1446(f) do not affect the transferor’s tax liability under section 864(c)(8). *See* section 4.06 of this notice.

Comments stated that applying section 1446(f) to dispositions of non-PTP interests presents significant practical problems. Comments stated that a transferee is obligated to withhold with respect to dispositions occurring after December 31, 2017, but without forms, instructions or other guidance, it is unclear when or how to deposit the withheld amounts. To address this concern, section 5 of this notice provides interim guidance on reporting and paying over the amount required to be withheld under section 1446(f)(1). This guidance generally adopts the forms and procedures relating to withholding on dispositions of U.S. real property interests under section 1445 and the regulations thereunder.

Comments requested guidance on the procedures for the transferor to furnish an affidavit of non-foreign status to the transferee as described in section 1446(f)(2) to be relieved from withholding. Section 6.01 of this notice provides this guidance by generally adopting the rules in the section 1445 regulations for similar situations.

Section 1446(f) applies only when there is gain on a disposition of an interest in a partnership. To prevent withholding when no gain occurs on a disposition, section 6.02 of this notice provides that if a transferee receives a certification from a transferor that the disposition will not result in gain, then the transferee generally is not required to withhold under section 1446(f).

Comments requested relief from withholding obligations when the amount of effectively connected gain under section 864(c)(8) is zero or a small amount. One comment recommended a rule providing relief based on the value of the assets producing effectively connected income, modeled on § 1.1445-11T. Section 1.1445-11T provides an exception from the requirement that a transferee withhold on the transfer of an interest in a partnership that holds U.S. real property interests. The transferee is relieved from withholding under this exception if the partnership provides the transferee a statement certifying that fifty percent or more of the value of the gross assets does not consist of U.S. real property interests, or that ninety percent or more of the value of the gross assets of the partnership does not consist of U.S. real property interests plus cash or cash equivalents. Instead of adopting a rule based on the test in § 1.1445-11T, sections 6.03 and 6.04 of this notice provide two rules that relieve the transferee from withholding in circumstances similar to those described by the comments.

Section 6.03 of this notice provides generally that, if a transferor certifies to a transferee that for each of the past three years the transferor's effectively connected taxable income from the partnership was less than 25 percent of the transferor's total income from the partnership, the transferee is not required to withhold. This rule is designed to provide a simple approach, obviating the need for the part-

nership to make the computation required by section 864(c)(8) or to otherwise provide information to the transferor or transferee at the time of the transaction. However, in certain cases transferees may not be able to obtain this certification, so section 6.04 of this notice provides a separate rule relieving a transferee of its withholding obligation under section 1446(f)(1) when the transferee receives a certification from the partnership that the partnership's effectively connected gain under section 864(c)(8) would be less than 25 percent of the total gain on the deemed sale of all its assets. The Treasury Department and the IRS intend to provide future guidance that will reduce the threshold for withholding below 25 percent for both of these rules. Other limitations are also under consideration. The Treasury Department and the IRS expect that any such reduction in the threshold for withholding would be effective at the same time as guidance providing for withholding certificates or otherwise providing for withholding determined by reference to gain recognized under section 1446(f)(3).

A comment recommended guidance providing that no gain or loss be recognized under section 864(c)(8) in certain dispositions that would otherwise be considered nonrecognition transactions, provided that gain or loss is preserved. Specifically, the comment suggested alternative rules, one considering whether the gain or loss is preserved in the U.S. tax base, and the other considering whether the gain or loss is preserved in the hands of the transferee. The Treasury Department and the IRS are studying the appropriate treatment of nonrecognition transactions under section 864(c)(8), and comments are requested on this issue, including the relationship between nonrecognition transactions under sections 864(c)(8) and 897. See § 1.897-6T. Until this guidance is provided, section 6.05 of this notice provides that no withholding is required under section 1446(f) in a transaction in which no gain is recognized.

Section 1446(f)(1) applies to the amount realized on the disposition of a partnership interest. The amount realized includes a reduction in the transferor's share of partnership liabilities and other liabilities to which the partnership interest is subject.

See §§ 1.752-1(h) and 1.1001-2. Section 7 of this notice provides two rules for determining the amount of partnership liabilities that are included in the amount realized. Section 7.02 of this notice provides that a transferee may generally rely on a transferor's most recently issued Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, for purposes of determining the transferor's share of partnership liabilities included in the amount realized for purposes of section 1446(f). Alternatively, section 7.03 provides that a transferee may generally rely on a certification from the partnership providing the amount of the transferor's share of partnership liabilities.

Comments stated that when the amount realized includes a reduction in liabilities, the amount the transferee may be required to withhold could exceed the cash or other property the transferee pays to the transferor. Further, in some situations, a transferor may not provide any information to the transferee about its share of partnership liabilities, making a determination of the total amount realized difficult. To address these issues, section 8 of this notice provides that in certain cases, the total amount of withholding is generally limited to the total amount of cash and property to be transferred. The Treasury Department and the IRS expect that the exception in section 8 will not apply after guidance is issued providing for withholding certificates or otherwise providing for withholding determined by reference to gain recognized under section 1446(f)(3).

The comments also raised an issue relating to the determination of a transferor's basis in its partnership interest. Section 731(a) provides that in the case of a distribution by a partnership to a partner, gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution. Any gain recognized under section 731(a) is considered gain from the sale or exchange of the partnership interest of the distributee partner. Thus, section 1446(f) applies in certain cases when a distribution of money (including marketable securities) results in gain under section 731. According to a comment, when a partnership distributes money, it may not know the

distributee partner's basis in its interest and, thus, may not know whether the distribution will cause the distributee partner to recognize gain. In response to this comment, section 9 of this notice provides that the partnership may generally rely on its books and records, or on a certification received from the distributee partner, to determine whether the distribution exceeds the partner's basis.

Section 10 of this notice responds to requests for guidance on the interaction of section 1445 with section 1446(f).

The Treasury Department and the IRS are considering rules that would relieve a partnership of its obligation under section 1446(f)(4) if it provides the information required by a transferor and transferee to comply with the requirements under sections 864(c)(8) and 1446(f), including the certification described in section 6.04 of this notice, information on the calculation of the tax liability under section 864(c)(8) to the transferor, and information necessary to calculate the amount realized (including calculations relating to section 752) by the transferor. Section 11 of this notice provides that the withholding requirements described in section 1446(f)(4) will not apply until regulations or other guidance have been issued under that section.

### SECTION 3. DEFINITIONS

.01 *Effectively connected gain.* The term "effectively connected gain" means the amount of net gain (if any) that would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the transfer described in section 864(c)(8)(A).

.02 *Transfer.* The term "transfer" means any sale, exchange or other disposition.

.03 *Transferor.* The term "transferor" means any person that transfers a partnership interest, and includes a person that receives a distribution from a partnership.

.04 *Transferee.* The term "transferee" means any person that acquires a partnership interest by transfer, and includes a partnership that makes a distribution.

.05 *Related person.* The term "related person" is a person that is related within the meaning of section 267(b) or section 707(b)(1).

### SECTION 4. RULES OF GENERAL APPLICABILITY

.01 *U.S. taxpayer identification numbers ("U.S. TINs").* A certificate described in sections 6.02, 6.03, and 7.02 of this notice must include the transferor's U.S. TIN to the extent that the transferor is required to have, or does have, a U.S. TIN. A transferee may rely on an otherwise valid certificate that does not include a U.S. TIN for the transferor unless the transferee knows that the transferor is required to have a U.S. TIN or that the transferor does in fact have a U.S. TIN. An affidavit of non-foreign status or Form W-9, *Request for Taxpayer Identification Number and Certification*, provided for purposes of section 6.01 of this notice must include a U.S. TIN in all cases.

.02 *Penalties of perjury.* For purposes of this notice, a certification signed under "penalties of perjury" must provide the following: "Under penalties of perjury I declare that I have examined the information on this document, and to the best of my knowledge and belief, it is true, correct, and complete." Such a certification by an entity must further provide the following: "I further declare that I have authority to sign this document on behalf of [name of entity]."

.03 *Authority to sign certifications.* For purposes of this notice, a certification described in section 6, 7, or 9 of this notice from an entity must be signed by an individual who is an officer, director, general partner, or managing member of the entity, or, if the general partner or managing member of the entity is itself an entity, an individual who is an officer, director, general partner, or managing member of the entity that is the general partner or managing member.

.04 *Retention period.* A transferee that obtains and relies upon an affidavit or certification provided for in this notice must retain that document with its books and records for a period of five calendar years following the close of the last calendar year in which the entity relied upon the certification or as long as it may be relevant to the determination of the transferee's withholding obligation under section 1446(f), whichever period is longer.

.05 *Publicly traded partnerships.* The rules in this notice do not apply to the

transfer of a publicly traded interest in a publicly traded partnership (within the meaning of section 7704(b)).

.06 *Applicability of Section 864(c)(8).* The rules in this notice that modify or suspend withholding under section 1446(f) do not affect the transferor's tax liability under section 864(c)(8).

### SECTION 5. USE OF SECTION 1445 PRINCIPLES FOR REPORTING AND PAYING OVER SECTION 1446(f) WITHHOLDING FOR DISPOSITIONS OF NON-PUBLICLY TRADED PARTNERSHIP INTERESTS

The Treasury Department and the IRS have determined that, until regulations, other guidance, or forms and instructions have been issued under section 1446(f), transferees required to withhold under section 1446(f)(1) must use the rules in section 1445 and the regulations thereunder for purposes of reporting and paying over the tax, except as otherwise provided in this notice. *See, e.g.,* § 1.1445-1(c). The forms specified in those rules include Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, and Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*. The transferee must include the statement "Section 1446(f)(1) withholding" at the top of both the relevant Form 8288 and the relevant Form 8288-A. Except as provided in section 8 of this notice, the transferee must also enter the amount subject to withholding under section 1446(f)(1) on line 5b of Part I of the Form 8288 and on line 3 of Form 8288-A and enter the amount withheld on line 6 of Part I of Form 8288 and on line 2 of Form 8288-A. At this time, the IRS will not issue withholding certificates under section 1446(f)(3), such as those provided on Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*.

The rules for reporting and paying over amounts withheld and the rules regarding the contents of Form 8288 and Form 8288-A contained in § 1.1445-1(c) and (d) (such as the requirement to report and pay over withholding within 20 days of a transfer) apply to the submission of sec-

tion 1446(f)(1) withholding. A transferee that is required to pay over a withholding tax under section 1446(f) is made liable for that tax under section 1461 (including any applicable penalties and interest). A person that is required, but fails, to pay over the withholding tax required by section 1446(f) may also be subject to civil and criminal penalties. Officers or other responsible persons of either an entity that is required to pay over the withholding tax or any other withholding agent may be subject to a civil penalty under section 6672. The Treasury Department and the IRS intend to issue regulations providing that with respect to any forms that were required to be filed, or amounts that were due, under section 1446(f) on or before May 31, 2018, no penalties or interest will be asserted if these forms are filed with, and such amounts are paid over to, the IRS on or before May 31, 2018.

## **SECTION 6. EXCEPTIONS TO SECTION 1446(f) WITHHOLDING ON DISPOSITIONS OF NON-PUBLICLY TRADED PARTNERSHIP INTERESTS**

### *.01 Certifying Non-Foreign Status*

Section 1446(f)(2) provides that no person shall be required to deduct and withhold any amount under section 1446(f)(1) with respect to any disposition of an interest in a partnership if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's U.S. TIN and that the transferor is not a foreign person. Thus, unless the transferee receives the required affidavit, it must presume that the transferor is foreign for purposes of withholding under section 1446(f)(1).

The Treasury Department and the IRS intend to issue regulations applying rules substantially similar to § 1.1445-2(b), except § 1.1445-2(b)(2)(ii), for making a certification of non-foreign status for purposes of applying section 1446(f)(2). Section 1.1445-2(b) provides rules pursuant to which a transferor of a U.S. real property interest can provide a certification of non-foreign status to inform the transferee that withholding is not required. Until regulations on certifications of non-foreign status under section 1446(f) are issued, a transferor may furnish the certification de-

scribed in § 1.1445-2(b), as modified to take into account section 1446(f) to satisfy the requirements of section 1446(f)(2). Further, a transferor may submit a Form W-9 for this purpose if: (i) it includes the name and U.S. TIN of the transferor; (ii) it is signed and dated by the transferor; and (iii) the jurat has not been deleted. A transferee may generally rely on a Form W-9 that it has previously received from the transferor if it meets these requirements. Until further notice, the certification of non-foreign status or Form W-9 the transferor provides to the transferee should not be furnished to the IRS. See section 1446(f)(2)(B)(ii). If the transferee has actual knowledge that the certification or Form W-9 is false, or the transferee receives a notice (as described in section 1445(d)) from a transferor's agent or transferee's agent that it is false, it may not be relied upon. See section 1446(f)(2)(B)(i).

### *.02 Transferee Receives a Certification of No Realized Gain*

The Treasury Department and the IRS intend to issue regulations providing that, if the transferee receives a certification, issued by the transferor (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice), stating that the transfer of its partnership interest will not result in realized gain, a transferee may generally rely on the certification and be relieved from liability for withholding under section 1446(f). The transferee may not rely on the certification and is not relieved from withholding if it has knowledge that the certification is false under the principles of § 1.1445-2(b)(4). Pending the issuance of other guidance, the transferor should not submit to the IRS Form 8288-B for this purpose. If gain is realized in a transfer but not recognized as a result of a nonrecognition provision, the transferee cannot apply this section 6.02. In this circumstance, see section 6.05 of this notice.

### *.03 Transferee Receives a Certification that Transferor Had Less than 25 Percent Effectively Connected Taxable Income in Three Prior Taxable Years*

The Treasury Department and the IRS intend to issue regulations providing that

no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if no earlier than 30 days before the transfer the transferee receives from the transferor a certification (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice) that for the transferor's immediately prior taxable year and the two taxable years that precede it the transferor was a partner in the partnership for the entirety of each of those years, and that the transferor's allocable share of effectively connected taxable income (ECTI) (as determined under § 1.1446-2) for each of those taxable years was less than 25 percent of the transferor's total distributive share of income for that year. For this purpose, the transferor's immediately prior taxable year is the most recent taxable year of the transferor that includes the partnership taxable year that ends with or within the transferor's taxable year and for which both a Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, and a Schedule K-1 (Form 1065) were due (including extensions) or filed (if earlier) by the time of the transfer. In no event may a transferee rely on a certification provided prior to the transferor's receipt of the relevant Forms 8805 and Schedules K-1 (Form 1065). For purposes of this rule, a transferor that had a distributive share of deductions and expenses attributable to the partnership's U.S. trade or business but no ECTI allocated to it in a year must treat its allocable share of ECTI for that year as zero. A transferor that did not have a distributive share of income in any of its three immediately prior taxable years during which the partnership had effectively connected income cannot provide this certification. A transferee may not rely on the certification and is not relieved from withholding if it has actual knowledge that the certification is false. When a partnership is a transferee by reason of making a distribution, this section 6.03 does not apply.

### *.04 Transferee Receives a Certification from Partnership of Less than 25 Percent Effectively Connected Gain Under Section 864(c)(8)*

The Treasury Department and the IRS intend to issue regulations providing that

no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if the transferee is provided a certification, issued by the partnership and signed under penalties of perjury no earlier than 30 days before the transfer, certifying that if the partnership had sold all of its assets at their fair market value, the amount of gain that would have been effectively connected with the conduct of a trade or business within the United States would be less than 25 percent of the total gain. For purposes of this section 6.04, effectively connected gain includes gain treated as effectively connected with a trade or business in the United States under section 897. Principles similar to the rules of § 1.1445-11T(d)(2)(ii) and (iii) apply to certifications furnished pursuant to this section 6.04. When a partnership is a transferee by reason of making a distribution, the transferee partnership must retain a record of the documentation relied upon to determine the amount of gain (if any), and the portion of the gain that would have been effectively connected with the conduct of a trade or business in the United States (if any). This documentation must be retained for the period described in section 4.04 of this notice.

#### *.05 Nonrecognition Transactions*

The Treasury Department and the IRS intend to issue regulations providing that no withholding is required under section 1446(f)(1) upon the transfer of a partnership interest if the transferee receives from the transferor a notice that satisfies the requirements of § 1.1445-2(d)(2), treating references to section 1445(a) as references to section 1446(f), and references to “U.S. real property interest” as “partnership interest”, except as provided in this section 6.05. A transferee should not mail a copy of the transferor’s notice to the IRS as described in § 1.1445-2(d)(2)(i)(B). The Treasury Department and the IRS are studying the appropriate treatment of nonrecognition transactions under section 864(c)(8). Until guidance providing for the treatment of nonrecognition transactions under section 864(c)(8) is issued, a transfer in which the transferor is not required to recognize any gain or loss by reason of a nonrecognition provision of the Code (without regard to section 864(c)(8)) will be eligible for the exception from with-

holding provided in this section 6.05. When a partnership is a transferee by reason of making a distribution in which no gain is recognized, the transferee partnership is not required to withhold and the transferor is not required to provide a notice to the transferee partnership.

#### *.06 Rules for Agents*

Section 1446(f)(2)(C) provides that the rules of section 1445(d) shall apply to a transferor’s agent or transferee’s agent with respect to any affidavit of nonforeign status in the same manner as such rules apply with respect to the disposition of a United States real property interest under such section. The Treasury Department and the IRS intend to issue regulations providing that the principles of § 1.1445-4 apply for agents to fulfill their responsibilities with respect to any certification provided for purposes of section 1446(f).

### **SECTION 7. DETERMINING THE AMOUNT OF PARTNERSHIP LIABILITIES INCLUDED IN AMOUNT REALIZED**

#### *.01 In General*

The Treasury Department and the IRS intend to issue regulations providing that a transferee may rely upon a certification described in section 7.02 or section 7.03 of this notice to determine the amount of liabilities of the partnership that are included in the amount realized on a transfer for purposes of section 1446(f), unless the transferee has actual knowledge that the certification is incorrect or unreliable.

#### *.02 Transferor Certification*

A transferor that is not a controlling partner (as defined below) may provide to the transferee a certification (signed under penalties of perjury and including a U.S. TIN, to the extent required under section 4.01 of this notice) that provides (i) the amount of the transferor’s share of partnership liabilities reported on the most recently received Schedule K-1 (Form 1065) from the partnership, for a partnership taxable year that closed no more than 10 months before the date of transfer, and (ii) that the transferor does not have actual knowledge of events occurring after the Schedule K-1 (Form 1065) was issued

that would cause the amount of the transferor’s share of partnership liabilities at the time of the transfer to be significantly different than the amount shown on the Schedule K-1 (Form 1065). A difference in the amount of the transferor’s share of partnership liabilities of 25 percent or less is not a significant difference. A transferor is a controlling partner for purposes of this section 7.02 if the transferor (and related persons) owned a 50 percent or greater interest in capital, profits, deductions or losses in the 12 months before the transfer.

#### *.03 Partnership Certification*

The partnership may issue a certification, signed under penalties of perjury, no earlier than 30 days before the transfer, that provides (i) the amount of the transferor’s share of partnership liabilities, which may be the amount reported on the most recently prepared Schedule K-1 (Form 1065), and (ii) that the partnership does not have actual knowledge of events occurring after its determination of the amount of the transferor’s share of partnership liabilities that would cause the amount of the transferor’s share of partnership liabilities at the time of the transfer to be significantly different than the amount shown on the certification provided to the transferee. A difference in the amount of the transferor’s share of partnership liabilities of 25 percent or less is not a significant difference.

### **SECTION 8. WITHHOLDING LIMITATION IN CERTAIN CASES RELATING TO THE TRANSFEROR’S SHARE OF PARTNERSHIP LIABILITIES**

The Treasury Department and the IRS intend to issue regulations providing that if the amount otherwise required to be withheld under section 1446(f) exceeds the amount realized less the decrease in the transferor partner’s share of partnership liabilities, then the amount of withholding required by section 1446(f)(1) is the amount realized less the decrease in the transferor partner’s share of partnership liabilities. In addition, if a transferee is unable to determine the amount realized because it does not have knowledge of the transferor partner’s share of partnership liabilities (and does not receive a certifi-

cation described in section 7.02 or section 7.03 of this notice on which it can rely), then the amount of withholding required is the entire amount realized, determined without regard to the decrease in the transferor partner's share of partnership liabilities. In both cases, the amount of withholding under section 1446(f) is generally the amount that the transferor would, but for the transferee remitting it as withholding under section 1446(f), receive from the transferee. A transferee may rely on this rule only if the transferee (1) is not the partnership in which the transferor is a partner, and (2) is not a related person to the transferor. A transferee applying this section 8 must check the box on line 5c of Part I of Form 8288 and include the amount withheld in the total reported on line 6, Part I of Form 8288 and line 2 of Form 8288-A.

#### **SECTION 9. DETERMINATION OF APPLICABILITY OF SECTION 1446(f)(1) TO DISTRIBUTIONS BY PARTNERSHIPS**

The Treasury Department and the IRS intend to issue regulations providing that for purposes of section 1446(f)(1), if a partnership makes a distribution to a partner, the partnership may rely on its books and records, or on a certification received from the distributee partner, to determine whether the distribution exceeds the partner's basis in its partnership interest, provided that the partnership does not know or have reason to know that its books and records, or the distributee partner's certification, is incorrect and the partnership retains a record of the documentation relied upon to establish the partner's basis for the period described in section 4.04 of this notice.

#### **SECTION 10. COORDINATION WITH SECTION 1445 WITHHOLDING**

The Treasury Department and the IRS intend to issue regulations providing that a transferee that is otherwise required to withhold under section 1445(e)(5) or § 1.1445-11T(d)(1) with respect to the amount realized, as well as under section 1446(f)(1), will be subject to the payment and reporting requirements of section 1445 only, and not section 1446(f)(1),

with respect to such amount. However, this rule applies only if the transferor has not obtained a withholding certificate that is provided for in the last sentence of § 1.1445-11T(d)(1). If the transferor has obtained such a withholding certificate, the transferee must withhold the greater of the amounts required under section 1445(e)(5) or section 1446(f)(1). Under these circumstances, a transferee that has complied with the withholding requirements under either section 1445(e)(5) or section 1446(f)(1), as applicable, will be deemed to satisfy the other withholding requirement.

#### **SECTION 11. TIMING OF THE WITHHOLDING REQUIREMENT OF SECTION 1446(f)(4)**

The Treasury Department and the IRS intend to issue regulations providing that the withholding requirements in section 1446(f)(4) will not apply until regulations or other guidance have been issued under that section.

#### **SECTION 12. TIERED PARTNERSHIPS**

The Treasury Department and the IRS intend to issue regulations clarifying that if a transferor transfers an interest in a partnership (upper-tier partnership) that owns an interest (directly or indirectly) in another partnership (lower-tier partnership), and the lower-tier partnership would have effectively connected gain upon the deemed transaction described in section 864(c)(8)(B)(i)(I) that would be taken into account by the transferor at the time of the transfer of the interest in the upper-tier partnership, a portion of the gain recognized by the transferor is characterized as effectively connected gain. These regulations will require lower-tier partnerships to furnish information to their partners in order for their indirect partners to be able to comply with sections 864(c)(8) and 1446(f). See section 6031(b); § 1.6031(b)-1T.

#### **SECTION 13. REQUEST FOR COMMENTS AND CONTACT INFORMATION**

The Treasury Department and the IRS request comments on the rules to be issued under section 1446(f). In addition to

requests for comments identified in the PTP Notice (which may also be applicable to non-PTP interests) and in section 2 of this notice, comments are requested concerning the following:

(i) rules for determining the amount realized, including when the amount of required withholding may exceed the proceeds of a sale of a partnership interest;

(ii) procedures for reducing the amount required to be withheld, such as (a) limiting the withholding to the tax on the gain recognized (if determinable) and (b) relieving identifiable historically compliant taxpayers from withholding;

(iii) credit and refund forms and processes, such as (a) forms of standardized documentation that could be used by transferors when claiming refunds or credits for the withholding to facilitate IRS's evaluation of such claims, or (b) providing for an expedited refund procedure if a taxpayer can demonstrate substantial overwithholding;

(iv) rules implementing the requirement for a partnership to withhold under section 1446(f)(4) on distributions to a transferee that fails to withhold under section 1446(f)(1);

(v) rules that should apply under sections 864(c)(8), 897, 1445, and 1446(f) when a partner disposes of an interest in a partnership that holds both U.S. real property interests and other property used in the conduct of a trade or business in the United States; and

(vi) the calculation of the amount of gain or loss from the sale, exchange, or other disposition of a partnership interest that is effectively connected with the conduct of a trade or business in the United States by operation of section 864(c)(8).

Comments must be submitted by June 2, 2018. All comments received will be available for public inspection and copying.

Written comments responding to this notice should be mailed to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2018-29)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Please include "Notice 2018-29" on the cover page.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service  
Courier's Desk  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2018-29)

Alternatively, taxpayers may submit comments electronically to the following email address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Please include "Notice 2018-29" in the subject line of any electronic submission.

The principal authors of this notice are Ronald M. Gootzeit of the Office of Associate Chief Counsel (International) and Kevin I. Babitz of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS also participated in its development. For further information regarding this notice contact Mr. Gootzeit at 202.317.4953 (not a toll-free number).

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## National Security Considerations with Respect to Country-by-Country Reporting

### Notice 2018-31

#### SECTION 1. OVERVIEW

This notice provides additional guidance concerning country-by-country (CbC) reporting requirements under section 6038 and § 1.6038-4. In consideration of the national security interests of the United States, this notice addresses modifications to the reporting requirement under § 1.6038-4 with respect to certain U.S. multinational enterprise (MNE) groups. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend § 1.6038-4 to incorporate the guidance described in this notice. Prior to the issuance of these amendments, U.S. MNE groups may rely on the provisions of section 3 of this notice.

#### SECTION 2. BACKGROUND

On December 23, 2015, a notice of proposed rulemaking (REG-109822-15) relating to the furnishing of CbC reports by certain United States persons under section 6038 was published in the **Federal Register** (80 FR 79795). The preamble to the proposed regulations requested comments concerning the need for a national security exception to the CbC information reporting requirement. On June 30, 2016, the Treasury Department and the IRS published final regulations (TD 9773) requiring annual CbC reporting on Form 8975, *Country-by-Country Report* (CbC report), by certain United States persons that are ultimate parent entities of U.S. MNE groups that have annual revenue for the preceding reporting period of \$850,000,000 or more. The final regulations do not provide a general exception for information that may relate to national security, but the preamble to the final regulations stated that the Department of Defense would continue to consider the national security implications of CbC reports in particular fact patterns. Based on subsequent consultations with the Department of Defense, the Treasury Department and the IRS have determined that national security interests require modifications to the reporting requirements for U.S. MNE groups that are specified national security contractors as defined in section 3.01 of this notice and that have a reporting requirement under § 1.6038-4.

#### SECTION 3. MODIFICATIONS TO CBC REPORTING FOR SPECIFIED NATIONAL SECURITY CONTRACTORS

##### *.01 Specified National Security Contractor*

For purposes of this notice, a U.S. MNE group is a "specified national security contractor" if more than 50 percent of the U.S. MNE group's annual revenue, as determined in accordance with U.S. generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.

##### *.02 Modifications to Manner of Reporting on Form 8975*

The Treasury Department and the IRS intend to amend § 1.6038-4 to provide the definition of specified national security contractor and modifications to the manner of reporting on Form 8975 for such U.S. MNE groups. The amended regulations will provide that U.S. MNE groups that have a Form 8975 filing obligation under § 1.6038-4 and are specified national security contractors may provide Form 8975 and Schedules A (Form 8975) in the following manner:

- Complete Form 8975 with a statement at the beginning of Part II, Additional Information, that the U.S. MNE group is a specified national security contractor as defined in this notice;
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction of the United States with aggregated financial and employee information for the entire U.S. MNE group in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information; and
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction "Stateless" with zeroes in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information.

No other Schedule A (Form 8975) or additional information is required.

##### *.03 Amended Form 8975 and Schedules A (Form 8975)*

A specified national security contractor that has already filed Form 8975 and Schedules A (Form 8975) for prior reporting periods may file an amended Federal income tax return (following the instructions for filing of amended Federal income tax returns) and attach an amended Form 8975 and Schedules A (Form 8975) in the manner provided in section 3.02 with the amended report checkbox on Form 8975 marked. Specified national security contractors that do not electronically file their amended Federal income tax returns should, in addition to filing an amended Federal income tax return with an amended Form 8975 and Schedules A (Form 8975), mail a copy of page 1 of

their amended Form 8975 to Ogden as provided in the Instructions for Form 8975 and Schedule A (Form 8975) under the heading “Where to File.” In order to ensure originally-filed CbC reports are not automatically exchanged, specified national security contractors that are filing amended Form 8975 and Schedules A (Form 8975) to supersede an already-filed Form 8975 and Schedules A (Form 8975)

should do so by April 20, 2018, if filing an amended Federal income tax return on paper, or by May 25, 2018, if filing electronically.

#### **SECTION 4. EFFECTIVE DATE**

The amendments to the regulations described in this notice shall apply to CbC reports and amended CbC reports filed after March 30, 2018.

#### **SECTION 5. DRAFTING INFORMATION**

The principal author of this notice is Melinda E. Harvey of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Melinda E. Harvey (202) 317-6934 (not a toll-free number).

# Part IV. Items of General Interest

## Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2018-07

### Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 16, 2018 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Louisiana Elite Athletics Academy	3/21/2014	New Iberia, LA
Lifedback Foundation	1/1/2013	Liberty Lake, WA
Federation of Chians Cultural Educational Fund, Inc.	1/1/2012	Astoria, NY
Port Susan Food & Farming Center	1/1/2014	Stanwood, WA
Lon Morris College	8/1/2013	Dallas, TX
Nightingale Adult Day Center	1/1/2014	Houston, TX
Partners in Charity, Inc.	9/2/2011	Crystal Lake, IL
Educate Today, Inc.	12/31/2014	Jacksonville, FL
Provided by Chivon	1/1/2014	New York, NY
Free Truth Enterprises	1/1/2014	Cincinnati, OH
Sichuan Commercial Club of North America	1/1/2015	Monrovia, CA
New Beginnings of Philadelphia Corporation	1/1/2014	Philadelphia, PA

### Certain Non-Government Attorneys Not Authorized to Participate in Examinations of Books and Witnesses as a Section 6103(n) Contractor

REG-132434-17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to amend regulations under section 7602(a) of the Internal Revenue Code relating to administrative proceedings. Current regulations permit any person authorized to receive returns and return information under section 6103(n) and the regulations thereunder to receive and review summoned books, papers, and other data, and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness in a summons interview. These proposed regulations significantly narrow the scope of the current regulations by ex-

cluding non-government attorneys from receiving summoned books, papers, records, or other data or from participating in the interview of a witness summoned by the IRS to provide testimony under oath, with a limited exception. These proposed regulations affect taxpayers involved in a federal tax examination and other persons whose books and records or testimony are sought to be examined by the IRS under section 7602(a).

DATES: Written or electronic comments and requests for a public hearing must be received by June 26, 2018.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-132434-17), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA:LPD:PR (REG-132434-17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington D.C., or sent electronically via the Federal eRule-making Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-132434-17).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Regina Johnson, (202) 317-6901; concerning the proposed regulations, William V. Spatz at (202) 317-5461 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

These proposed regulations amend Procedure and Administration Regulations (26 CFR part 301) under section 7602(a) of the Internal Revenue Code relating to participation by persons described in section 6103(n) and Treas. Reg. § 301.6103(n)-1(a) in receiving and reviewing summoned books, papers, records, or other data and in interviewing a summoned witness under oath. These proposed regulations narrow the scope of the current regulations by providing that certain non-government attorneys hired by the IRS are not authorized to participate in an examination.

On June 18, 2014, temporary regulations (TD 9669) regarding participation in a summons interview of a person described in section 6103(n) were published in the **Federal Register** (79 FR 34625). A notice of proposed rulemaking (REG-121542-14) cross-referencing the temporary regulations was published in the **Federal Register** (79 FR 34668) the same day. No public hearing was requested or held. The Internal Revenue Service received two comments on the proposed regulations. One comment recommended that the regulations be revised to remove the provision permitting a contractor to question a witness under oath or to ask a witness's representative to clarify an objection or assertion of privilege. The other comment recommended that the proposed

and temporary regulations be withdrawn. After consideration of these comments, the proposed regulations were adopted in final regulations (TD 9778) published in the **Federal Register** (81 FR 45409) on July 14, 2016 ("Summons Interview Regulations"). The only change from the temporary regulations in the final regulations was to replace the word "examine" with "review" in the phrase describing what contractors may do with books, papers, records, or other data received by the IRS under a summons. The preamble to the final regulations explains that this was intended to clarify that the regulations do not authorize contractors to direct audits of a taxpayer's return. See 81 FR 45410.

##### *Description of Summons Interview Regulations*

The United States tax system relies upon taxpayers' self-assessment and reporting of their tax liability. The expansive information-gathering authority that Congress granted to the IRS under the Code includes the IRS's broad examination and summons authority, which allows the IRS to determine the accuracy of that self-assessment. See *United States v. Arthur Young & Co.*, 65 U.S. 805, 816 (1984). Section 7602(a) provides that, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any internal revenue tax, the IRS is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath. These provisions have been part of the revenue laws since 1864.

Use of outside specialists is appropriate to assist the IRS in determining the correctness of the taxpayer's self-assessed tax liability. The assistance of persons from outside the IRS, such as economists, engineers, appraisers, industry specialists, and actuaries, promotes fair and efficient administration and enforcement of the laws administered by the IRS by providing specialized knowledge, skills, or abilities that the IRS officers or employees assigned to the examination may not possess. Section 6103(n) and Treas. Reg. § 301.6103(n)-1(a) authorize the IRS to disclose returns and return information to these contractors. The regulations under

§ 301.7602-1(b)(3) were issued to clarify that persons described in section 6103(n) and Treas. Reg. § 301.6103(n)-1(a) may receive and review books, papers, records, or other data summoned by the IRS and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath. See 81 FR 45410.

##### *Executive Order 13789, Notice 2017-38, and the Reports to the President*

Executive Order 13789, issued on April 21, 2017 (E.O. 13789, 82 FR 19317), instructs the Secretary of the Treasury (the Secretary) to review all significant tax regulations issued on or after January 1, 2016, and to take appropriate action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the IRS.

E.O. 13789 further instructs the Secretary to submit to the President within 60 days a report (First Report) that identifies regulations that meet these criteria. Notice 2017-38 (2017-30 I.R.B. 147 (July 24, 2017)) included the Summons Interview Regulations in a list of eight regulations identified by the Secretary in the First Report as meeting at least one of the first two criteria specified in E.O. 13789. E.O. 13789 further instructs the Secretary to submit to the President a second report (Second Report) that recommends specific actions to mitigate the burden imposed by regulations identified in the First Report.

In response to Notice 2017-38, the Treasury Department and the IRS received seven comments from professional and business associations addressing the Summons Interview Regulations. All but one of these comments recommended removal of the regulations based primarily on the commentators' perception that the regulations create longer and less efficient examinations by improperly delegating authority to outside law firms to conduct examinations. The one commenter that did not recommend removal of the regulations in their entirety requested removal of the provisions permitting a contractor to directly question a witness during a summons interview.

As explained in the preamble to the final Summons Interview Regulations, the regulations do not delegate authority to conduct examinations or summons interviews. Rather, the regulations permit contractors authorized under section 6103(n) to review books and records and be present and ask questions during summons interviews, all under the supervision of IRS officers and employees. See 81 FR 45410-45412.

Comments in response to Notice 2017-38 also raised concerns that the regulations permit the IRS to hire law firms to receive and review summoned information and fully participate in a summons interview on behalf of the government.

On October 16, 2017, the Secretary published the Second Report in the **Federal Register** (82 FR 48013) stating that the Treasury Department and the IRS are considering proposing a prospectively effective amendment to the Summons Interview Regulations to narrow their scope to prohibit non-government attorneys from questioning witnesses on behalf of the IRS, reviewing summoned records, or playing a behind-the-scenes role in an examination, such as consulting on IRS legal strategy, with a limited exception.

The Code provides IRS officers and employees with significant and broad powers under its summons authority to question witnesses under oath and to require the production of books and records. The Summons Interview Regulations require the IRS to retain authority over important decisions when section 6103(n) contractors question witnesses, but there is a perceived risk that the IRS may not be able to maintain full control over the actions of a non-government attorney hired by the IRS when such an attorney, with the limited exception described below, questions witnesses. The actions of the non-governmental attorney while questioning witnesses could foreclose IRS officials from independently exercising their judgment. Managing an examination or summons interview is therefore best exercised solely by government employees, including government attorneys, whose only duty is to serve the public interest. These concerns outweigh the countervailing need for the IRS to use non-government attorneys, except in the limited circum-

stances set forth in proposed paragraph (b)(3)(ii). Treasury and the IRS remain confident that the core functions of questioning witnesses and conducting examinations are well within the expertise and ability of government attorneys and examination agents.

### Explanation of Provisions

Proposed § 301.7602-1(b)(3)(i) retains the rule from the Summons Interview Regulations authorizing section 6103(n) contractors to receive and review summoned information and fully participate in the summons interview, including questioning witnesses. However, proposed § 301.7602-1(b)(3)(ii) is added to prohibit contractors who are attorneys, with the limited exception described below, from participating in the administrative process contemplated by section 7602(a). Under this prohibition, a non-government attorney, with the limited exception described below, may not review summoned books, papers, records or other data or question summoned witnesses on behalf of the IRS unless the attorney is hired by the IRS for a permitted purpose.

As a limited exception to that prohibition, proposed § 301.7602-1(b)(3)(ii) permits the IRS to hire a non-government attorney if the attorney is being hired for specialized substantive subject matter expertise in an area other than federal tax law. Specifically, proposed § 301.7602-1(b)(3)(ii) permits the IRS to hire an attorney who has specialized knowledge of foreign, state, or local law, including tax law, or who is a specialist in non-tax substantive law such as patent law, property law, or environmental law. It would not permit IRS to hire an attorney for non-substantive specialized knowledge, such as civil litigation skills. Proposed § 301.7602-1(b)(3)(ii) also permits the IRS to hire a contractor who may happen to be an attorney, but who is hired for knowledge, skills, or abilities other than providing legal services as an attorney. Further, proposed § 301.7602-1(b)(3)(ii) permits the IRS to hire an entity that employs or is owned by attorneys so long as the expertise they are providing is not prohibited by proposed § 301.7602-1(b)(3)(ii).

These changes are proposed to be effective for examinations begun and sum-

mons served by the IRS on or after the date that these proposed regulations are published in the **Federal Register**.

### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and affirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Because the proposed regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comments about the regulations' impact on small businesses.

### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final, the IRS will consider any written (signed original and 8 copies) or electronic comments timely submitted. The IRS requests comments on all aspects of these proposed regulations. All comments will be available for public inspection and copying. The IRS will schedule a public meeting if one is requested, in writing, by a person who submits written comments. If the IRS does schedule a public hearing, the IRS will publish notice of the date, time, and place for the public hearing in the **Federal Register**.

### Drafting Information

The principal author of these regulations is William V. Spatz of the Office of Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.7602-1 is amended by revising paragraphs(b)(3) and (d) to read as follows:

§ 301.7602-1 *Examination of books and witnesses.*

\* \* \* \* \*

(b)\* \* \*

(3) *Participation of a person described in section 6103(n).* (i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, for purposes of this paragraph (b), a person authorized to receive returns or return information under section 6103(n) and § 301.6103(n)-1(a) of the regulations may receive and review books, papers, records, or other data produced in compliance with a summons, and, in the presence and under the guidance of an IRS officer

or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath. Fully participating in an interview includes, but is not limited to, receipt, review, and use of summoned books, papers, records, or other data; being present during summons interviews; and questioning the person providing testimony under oath.

(ii) *Exception for certain non-governmental attorneys.* An attorney who is not an officer or employee of the United States may not be hired by the IRS to perform the activities described in paragraph (b)(3)(i) of this section unless the attorney is hired by the IRS as a specialist in foreign, state, or local law, including tax law, or in non-tax substantive law that is relevant to an issue in the examination, such as patent law, property law, or environmental law, or is hired for knowledge, skills, or abilities other than providing legal services as an attorney.

\* \* \* \* \*

(d) *Applicability date.* This section is applicable after September 3, 1982, except for paragraphs (b)(1) and (2) of this

section which are applicable on and after April 1, 2005 and paragraph (b)(3) of this section which applies to examinations begun or administrative summonses served by the IRS on or after March 27, 2018. For rules under paragraphs (b)(1) and (2) of this section that are applicable to summonses issued on or after September 10, 2002 or under paragraph (b)(3) of this section that are applicable to summons interviews conducted on or after June 18, 2014 and before July 14, 2016, see 26 CFR 301.7602-1T (revised as of April 1, 2016). For rules under paragraph (b)(3) of this section that are applicable to administrative summonses served by the IRS before March 27, 2018, see 26 CFR 301.7602-1 (revised as of April 1, 2017).

Kirsten Wielobob,  
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on March 27, 2018, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2018, 83 F.R. 13206)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–27 through 2017–52 is in Internal Revenue Bulletin 2017–52, dated December 27, 2017.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–27 through 2017–52 is in Internal Revenue Bulletin 2017–52, dated December 27, 2017.

# Internal Revenue Service

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## INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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## We Welcome Comments About the Internal Revenue Bulletin

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