

<< Electronic Public Inspection

Fr. Doc. E7-13587

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9338]

RIN 1545-BG11

Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance under sections 6038 and 6038A of the Internal Revenue Code (Code). The final regulations clarify the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned domestic corporations. The final regulations also increase the amount of certain penalties, and make certain other changes, to reflect the statutory changes made by the Taxpayer Relief Act of 1997.

DATES: Effective Date: These regulations are effective July 13, 2007.

Applicability Date: For dates of applicability, see §§1.6038-2(m) and 1.6038A-2(h).

FOR FURTHER INFORMATION CONTACT: Kate Y. Hwa (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2020. Responses to this collection of information are mandatory.

The collection of information is in §1.6038-2(f)(11). This information is required by the IRS pursuant to section 6038 of the Code. The likely recordkeepers are business or other for-profit institutions. The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 1250 hours.

Estimated average annual burden per respondent: 15 minutes.

Estimated number of respondents: 5,000.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1) under sections 6038 and 6038A of the Code. On June 21, 2006, final and temporary regulations (TD 9268, 2006-30 IRB 94) under sections 6038 and 6038A were published in the Federal Register (71 FR 35524). On the same day, a notice of proposed rulemaking (REG-109512-05, 2006-30 IRB 100) was published by cross-reference to the temporary regulations in the Federal Register (71 FR 35592). The preamble of TD 9268 includes background information and an explanation of provisions regarding these regulations.

The IRS received no comments in response to the notice of proposed rulemaking. No requests to speak at a public hearing were received and no hearing was held. Accordingly, the proposed regulations are adopted without change by this Treasury decision and the corresponding temporary regulations are removed or reserved.

The Treasury Department, however, is considering additional information reporting pursuant to section 6038A of the Code regarding section 163(j) to further the administration of the earning stripping rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations only affect entities with significant foreign operations and any burden on small entities is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kate Y. Hwa, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 continues to read, in part, as follows:

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

Par. 2. Section 1.6038-2 is amended as follows:

1. Paragraphs (a)(1) and (a)(2) are revised.
2. Paragraphs (f)(11), (f)(12), (k)(1) and (m) are revised.
3. Paragraph (k)(5) is amended by adding Examples 3 and 4.

The revisions and additions read as follows:

§1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

(a) * * *

(1) Form 2952, "Information Return with Respect to Controlled Foreign Corporations," if such taxable year ends before December 31, 1982;

(2) Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations," if such taxable year ends on or after December 31, 1983; or

* * * * *

(f) * * *

(11) Transactions with certain related parties. (i) A summary showing the total amount of each of the following types of transactions of the corporation, which took place during the annual accounting period, with the person required to file this return, any other corporation or partnership controlled by that person, or any United States person owning at the time of the transaction 10 percent or more in value of any class of stock outstanding of the foreign corporation, or of any corporation controlling that foreign corporation--

(A) Sales and purchases of stock in trade;

(B) Sales and purchases of tangible property other than stock in trade;

(C) Sales and purchases of patents, inventions, models, or designs (whether or not patented), copyrights, trademarks, secret formulas or processes, or any other similar property rights;

(D) Compensation paid and compensation received for the rendition of technical, managerial, engineering, construction, scientific, or like services;

(E) Commissions paid and commissions received;

(F) Rents and royalties paid and rents and royalties received;

(G) Amounts loaned and amounts borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (f) (11) that arise and are collected in full in the ordinary course of business);

(H) Dividends paid and dividends received;

(I) Interest paid and interest received; and

(J) Premiums paid and premiums received for insurance or reinsurance.

(ii) Special rule for banks. For purposes of this paragraph (f) (11), if the United States person is a bank, as defined in section 581, or is controlled within the meaning of section 368(c) by a bank, the term transactions shall not, as to a corporation with respect to which a return is filed, include banking transactions entered into on behalf of customers; in any event, however, deposits in accounts between a foreign corporation, controlled (within the meaning of paragraph (b) of this section) by a United States person, and a person described in this paragraph (f) (11) and withdrawals from such accounts shall be summarized by reporting end-of-month balances.

(12) Accrued payments and receipts. For purposes of the required summary under paragraph (f) (11) of this section, a corporation that uses an accrual method of accounting shall use accrued payments and accrued receipts for purposes of computing the total amount of each of the types of transactions listed.

* * * * *

(k) Failure to furnish information--(1) Dollar amount penalty--(i) In general. If any person required to file Form 5471 under section 6038 and this section fails to furnish any information described in paragraphs (f) and (g) of this section within the time prescribed by paragraph (i) of this section, such person shall pay a penalty of \$10,000 for each annual accounting period of each foreign corporation with respect to which such failure occurs.

(ii) Increase in penalty for continued failure after notification. If a failure described in paragraph (k) (1) (i) of this section continues for more than 90 days after the date on which the Director of Field Operations, Area Director, or Director of Compliance Campus Operations mails notice of such failure to the person required to file Form 5471, such person shall pay a penalty of \$10,000, in

addition to the penalty imposed by section 6038(b)(1) and paragraph (k)(1)(i) of this section, for each 30-day period (or a fraction of) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038(b)(2) and this paragraph (k)(1)(ii) shall be limited to a maximum of \$50,000 for each failure.

* * * * *

(5) * * *

Example 3. A, a US person, owns 100 percent of the stock of FC. On April 15, 2008, A timely filed its 2007 income tax return but did not file Form 5471 with respect to FC's 2007 annual accounting period. On June 1, 2008, the Director of Field Operations mailed a notice to A of A's failure to file Form 5471 for 2007 with respect to FC. On August 1, 2008, A submits a written statement asserting facts for reasonable cause for failure to file the 2007 Form 5471 for FC. Based on A's statement and discussions with A, the Director of Field Operations agrees that A had reasonable cause for failure to file FC's 2007 Form 5471 and determined that it is reasonable for A to file FC's 2007 Form 5471 by September 15, 2008. The time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period described under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date. Thus, if A files a completed Form 5471 by September 15, 2008, A is not subject to the penalties under paragraphs (k)(1) and (k)(2) of this section. If A does not file a completed Form 5471 by December 14, 2008, in addition to the penalties under paragraphs (k)(1) and (k)(2) of this section, A will also be subject to the penalties for continued failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section.

Example 4. The facts are the same as in Example 3 except A submits the written statement to the Director before a notice of failure to furnish information is mailed to A. The notice is mailed to A on September 7, 2008. Under these facts, the time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period after mailing of notice of failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date.

* * * * *

(m) Effective/applicability dates. Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) Examples 3 and 4 of this section apply June 21, 2006.

§1.6038-2T [Amended]

Par. 3. In §1.6038-2T, paragraphs (e) through (m) are revised to read as follows:

§1.6038-2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations (temporary).

* * * * *

(e) through (l) [Reserved]. For further guidance, see §1.6038-2(e) through (l).

(m) Effective/applicability date. Paragraph (d) of this section shall apply for taxable years ending after October 22, 2004.

Par. 4. Section 1.6038A-2 is amended by revising paragraphs (b) (8) and (h) to read as follows:

§1.6038A-2 Requirement of return.

* * * * *

(b) * * *

(8) Accrued payments and receipts. For purposes of this section, a reporting corporation that uses an accrual method of accounting shall use accrued payments and accrued receipts for purposes of computing the total amount of each of the types of transactions listed in this section.

* * * * *

(h) Effective/applicability date. Except as otherwise provided, for applicability dates for this section for certain reporting corporations, see §1.6038A-1(n). Paragraph (b) (8) of this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 2, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

9

[FR Doc. E7-13587 Filed 7-12-07; 8:45 am]

BILLING CODE 4830-01-P

<< [Electronic Public Inspection](#)

<< Electronic Public Inspection

Fr. Doc. E7-13496

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9326]

RIN 1545-BE34

Guidance under Subpart F Relating to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of the temporary regulations.

SUMMARY: This document contains final regulations providing guidance under subpart F relating to partnerships. The final regulations add rules for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i). These regulations will affect CFCs that are qualified insurance companies, as defined in section 953(e)(3), that have an interest in a partnership and U.S. shareholders of such CFCs.

DATES: Effective Date: These regulations are effective July 13, 2007.

Applicability Date: For date of applicability, see §1.954-2(a)(5)(v).

FOR FURTHER INFORMATION CONTACT: Kate Y. Hwa, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2006, the IRS and the Treasury Department published in the Federal Register a notice of proposed rulemaking (REG-106418-05, 2006-7 IRB 461, 71 FR 2496) by cross-reference to temporary regulations (TD 9240, 2006-7 IRB 454, 71 FR 2462) (collectively, the January 2006 regulations), which provide that a CFC's distributive share of partnership income will qualify for the exception contained in section 954(i) of the Internal Revenue Code (Code) if the CFC is a qualifying insurance company and the income of the partnership would have been qualified insurance income under section 954(i) if received by the CFC directly. Thus, whether the CFC partner's distributive share of partnership income is qualified insurance income is determined at the CFC partner level.

The IRS and the Treasury Department received no comments responding to the January 2006 regulations and no public hearing was requested or held. Accordingly, the proposed regulations are adopted without

change by this Treasury decision and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does 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 these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kate Y. Hwa of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.954-2 is amended by revising paragraphs (a)(5)(ii)(C) and (a)(5)(iii) Example 2, to read as follows:

§1.954-2 Foreign personal holding company income.

(a) * * *

(5) * * *

(ii) * * *

(C) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(i) unless the controlled foreign corporation is a qualifying insurance company, as defined in section 953(e)(3), and the income of the partnership would have been qualified insurance income, as defined in section 954(i)(2), if received by the controlled foreign corporation directly. See §1.952-1(g)(1).

(iii) * * *

Example 2. D Corp, a Country F corporation, is a controlled foreign corporation within the meaning of section 957(a). D Corp is a qualifying insurance company, within the meaning of section 953(e)(3), that is engaged in the business of issuing life insurance contracts. D Corp has reserves of \$100x, all of which are allocable to exempt contracts, and \$10x of surplus, which is equal to 10 percent of the reserves allocable to exempt contracts. D Corp contributed the \$100x of reserves and \$10x of surplus to DJ Partnership in exchange for a 40-percent partnership interest. DJ Partnership is an entity organized under the laws of Country G and is treated as a partnership under the laws of Country G and Country F. DJ Partnership earns \$30x of investment income during the taxable year that is received from persons who are not related persons with respect to D Corp, within the meaning of section 954(d)(3). D Corp's distributive share of this investment income is \$12x. This income is treated as earned by D Corp in Country F under the tax laws of Country F and meets the definition of exempt insurance income in section 953(e)(1). This \$12x of investment income would be qualified insurance income, under section 954(i)(2), if D Corp had received the income directly, because the \$110x invested by D Corp in DJ Partnership is equal to D Corp's reserves allocable to exempt contracts under section 954(i)(2)(A) and allowable surplus under section 954(i)(2)(B)(ii). Thus, D Corp's distributive share of DJ Partnership's income will be excluded from foreign personal holding company income under section 954(i).

* * * * *

Dated: July 2, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

5

[FR Doc. E7-13496 Filed 7-12-07; 8:45 am]

BILLING CODE 4830-01-P

<< Electronic Public Inspection