

Part III - Administrative, Procedural, and Miscellaneous

Transaction of Interest - Subpart F Income Partnership Blocker

Notice 2009-7

The Internal Revenue Service (IRS) and the Treasury Department are aware of a type of transaction, described more fully below, in which a U.S. taxpayer that owns controlled foreign corporations (CFCs) that hold stock of a lower-tier CFC through a domestic partnership takes the position that subpart F income of the lower-tier CFC or an amount determined under section 956(a) of the Internal Revenue Code (Code) related to holdings of United States property by the lower-tier CFC does not result in income inclusions under section 951(a) for the U.S. taxpayer. The IRS and Treasury Department believe this transaction (which includes taking the position that the U.S. taxpayer has no income inclusion under section 951(a)) has the potential for tax avoidance or evasion, but lack enough information to determine whether the transaction should be identified specifically as a tax avoidance transaction. This notice identifies this transaction and substantially similar transactions as transactions of interest for purposes of § 1.6011-4(b)(6) of the Income Tax Regulations and sections 6111 and 6112 of the Code. This notice also alerts persons involved in these transactions to certain responsibilities that may arise from their involvement with these transactions.

FACTS

In a typical transaction, a U.S. taxpayer (Taxpayer) wholly owns two CFCs, (CFC1 and CFC2). CFC1 and CFC2 are partners in a domestic partnership (USPartnership). USPartnership owns 100 percent of the stock of another CFC (CFC3). Some or all of the income of CFC3 is subpart F income (as defined in section 952). As part of the transaction, Taxpayer takes the position that the subpart F income of CFC3 is currently included in the income of USPartnership (which is not subject to U.S. tax) and is not included in the income of Taxpayer. The result of the claimed tax treatment is that income that would otherwise be taxable currently to Taxpayer under subpart F of the Code is not taxable to Taxpayer because of the interposition of a domestic partnership in the CFC structure. Without the interposition of USPartnership, the section 951(a) inclusion resulting from the subpart F income of CFC3 would be taxable currently to Taxpayer. In some variations of the transaction, there may be more than one person that owns the stock of CFC1 and/or CFC2, USPartnership may own less than all of the stock of CFC3, a domestic trust may be used instead of a domestic partnership, or the section 951(a) inclusion amount may result from an amount determined under section 956.

The IRS and Treasury Department are concerned that taxpayers are taking the position that structures described in this notice result in no income inclusion to Taxpayer under section 951. Therefore the IRS and Treasury Department are identifying as transactions of interest such structures with respect to which the Taxpayer takes the position that there is no income inclusion to Taxpayer under section 951, as well as substantially similar transactions. The IRS and Treasury Department believe that the position there is no income inclusion to Taxpayer under section 951 is contrary to the purpose and intent of the provisions of subpart F of the Code.

TRANSACTION OF INTERESTEffective Date

Transactions that are the same as, or substantially similar to, the transactions described in this notice are identified as transactions of interest for purposes of § 1.6011-4(b)(6) and sections 6111 and 6112 effective December 29, 2008, the date this notice was released to the public. Persons entering into these transactions on or after November 2, 2006, must disclose the transaction as described in 1.6011-4. Material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after November 2, 2006, have disclosure and list maintenance obligations under sections 6111 and 6112. See § 1.6011-4(h) and §§ 301.6111-3(i) and 301.6112-1(g) of the Procedure and Administration Regulations.

Independent of their classification as transactions of interest, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the requirements of sections 6011, 6111, or 6112, or the regulations thereunder. When the IRS and Treasury Department have gathered enough information to make an informed decision as to whether these transactions are a tax avoidance type of transaction, the IRS and Treasury Department may take one or more administrative actions, including removing the transactions from the transactions of interest category in published guidance, designating the transactions as a listed transaction, or providing a new category of reportable transactions. In the interim, in appropriate situations, the IRS may challenge the taxpayer's position taken as part of these transactions under subpart F, subchapter K, or other provisions of the Code or under judicial doctrines such as sham transaction, substance over form, and economic substance.

Participation

Under § 1.6011-4(c)(3)(i)(E), Taxpayer and US Partnership are participants in this transaction for each year in which their respective returns reflect tax consequences or a tax strategy described in this notice.

Time for Disclosure

See § 1.6011-4(e) and § 301.6111-3(e).

Material Advisor Threshold Amount

The threshold amounts are the same as those for listed transactions. See § 301.6111-3(b)(3)(i)(B).

Penalties

Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to the penalty under section 6707A. Persons required to disclose these transactions under section 6111 who fail to do so may be subject to the penalty under section 6707(a). Persons required to maintain lists of advisees under section 6112 who fail to do so (or who fail to provide such lists when requested by the Service) may be subject to the penalty under section 6708(a). In addition, the Service may impose other penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under section 6662 or section 6662A.

DRAFTING INFORMATION

The principal author of this notice is John H. Seibert of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Seibert at (202) 622-3860 (not a toll-free call).