

Rev. Proc. 96-7

SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 Purpose

This revenue procedure updates Rev. Proc. 95-7, 1995-1 C.B. 482 by providing a list of subject matters under the jurisdiction of the Associate Chief Counsel (International) in which the Internal Revenue Service will not issue advance letter rulings or determination letters. Rev. Proc. 96-3, page 82, this Bulletin, lists the subject matters under the jurisdiction of the Associate Chief Counsel (Domestic) in which the Service will not issue advance letter rulings or determination letters.

.02 Changes

New section 4.01.25, dealing with various issues that arise in determining whether an intermediate entity is a conduit entity for purposes of sections 881, 882, 1441 or 1442, has been added to reflect the Service's view that the stated issues require fact and circumstance determinations that are not the proper subject of advance letter rulings and determination letters.

SEC. 2. BACKGROUND AND SCOPE OF APPLICATION

.01 Background

Whenever appropriate to sound tax administration, the Service answers inquiries from individuals and organizations about their status for tax purposes and the tax effects of their acts or transactions, before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue advance letter rulings or determination letters, either because the issues are inherently factual or for other reasons. This revenue procedure lists those areas.

Section 3 gives areas in which advance letter rulings and determinations will not be issued under any circumstances. Section 4 gives areas in which they will not ordinarily be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should contact

(by telephone or in writing) the Office of Associate Chief Counsel (International) (hereinafter "the Office") prior to making such request and discuss with the Office the unique and compelling reasons that the taxpayer believes justify issuing such letter ruling or determination letter. While not required, a written submission is encouraged since it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission. The Service may provide a general information letter in response to inquiries in areas on either list.

These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case; such decisions will not be announced in the Internal Revenue Bulletin.

.02 Scope of Application

This revenue procedure does not preclude District Directors, the Assistant Commissioner (International), or Chiefs, Appeals Offices from submitting requests for technical advice in the areas listed to the Office.

SEC. 3. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific Questions and Problems

1. Section 871(g).—Special Rules for Original Issue Discount.—Whether a debt instrument having original issue discount within the meaning of § 1273 of the Internal Revenue Code is not an original issue discount obligation within the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

2. Section 894.—Income Affected by Treaty.—Whether a person that is a resident of a foreign country and derives income from the United States is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

3. Section 954.—Foreign Base Company Income.—The effective rate of

tax that a foreign country will impose on income.

4. Section 7701.—Definitions.—Whether a foreign arrangement that is a participant in a domestic arrangement classified as a partnership for United States tax purposes will itself be classified as a partnership.

.02 General Areas.

1. The prospective application of the estate tax to the property or the estate of a living person, except that letter rulings may be issued on any international issues in a ruling request accepted pursuant to Rev. Proc. 88-50, 1988-2 C.B. 711, and § 5.05 of Rev. Proc. 96-1, page 8, this Bulletin.

2. The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

3. Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

4. Whether a proposed transaction would subject a taxpayer to criminal penalties.

5. Any area where the letter ruling request does not comply with the requirements of Rev. Proc. 96-1, page 8, this Bulletin.

6. Any area where the same issue is the subject of the taxpayer's pending request for competent authority assistance under a United States tax treaty.

7. A "comfort" ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (e.g., a request for a letter ruling required by a governmental regulatory authority in order to effectuate the transaction).

SEC. 4. AREAS IN WHICH LETTER RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific Questions and Problems.

1. Section 367(a).—Transfers of Property from the United States.—Whether an oil or gas working interest is transferred from the United States for use in the active conduct of a trade or business for purposes of § 367(a)(3); and whether any other property is so transferred, where the determination requires extensive factual inquiry.

2. Section 367(b).—Other Transfers.—Whether a foreign corporation is

considered a corporation for purposes of any nonrecognition provision listed in § 367(b), and related issues, unless the letter ruling presents a significant legal issue or subchapter C rulings are requested in the context of reorganizations or liquidations involving foreign corporations. (These matters are dealt with in detail in § 7.367(b) of the Temporary Income Tax Regulations.)

3. Section 864.—Definitions and Special Rules.—Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864-2(c)(2); whether a taxpayer effects transactions in the United States in stocks or securities under § 1.864-2(c)(2); whether an instrument or item is a commodity as defined in § 1.864-2(d)(3); and for purposes of § 1.864-2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transaction is of a kind customarily consummated at such place.

4. Section 871.—Tax on Nonresident Alien Individuals.—Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 871(h).

5. Section 881.—Tax on Income of Foreign Corporations Not Connected with United States Business.—Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by §§ 72(s) and 7702(a) is portfolio interest as defined in § 881(c).

6. Section 892.—Income of Foreign Governments and of International Organizations.—Whether income received by local governmental authorities of the United Kingdom from certain United States investments of money allocable to their superannuation funds is exempt from federal income taxation.

7. Section 892.—Income of Foreign Governments and of International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 892, and whether income received by a foreign government is derived from the conduct of such commercial activities.

8. Section 893.—Compensation of Employees of Foreign Governments and International Organizations.—Whether a foreign government is engaged in commercial activities for purposes of § 893, and whether the services of an employee of a foreign government are primarily in connection with such commercial activities.

9. Section 894.—Income Affected by Treaty.—Whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable to a permanent establishment in the United States.

10. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien student for services performed for a university or other educational institution is exempt from federal income tax or withholding under United States income tax treaties with Belgium, China, Cyprus, Egypt, Finland, France, Iceland, Japan, Korea, Morocco, the Netherlands, Norway, Pakistan, the Philippines, Poland, Romania, and Trinidad and Tobago. Rev. Proc. 87-8, 1987-1 C.B. 366, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

11. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien performing research or teaching at a university is exempt from federal income tax or withholding under United States income tax treaties with Belgium, China, Egypt, Finland, France, Hungary, Iceland, Italy, Jamaica, Japan, Korea, Luxembourg, the Netherlands, Norway, the Philippines, Poland, Romania, Sweden, Trinidad and Tobago, the former Union of the Soviet Socialist Republics, and the United Kingdom. Rev. Proc. 87-9, 1987-1 C.B. 368, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

12. Section 894.—Income Affected by Treaty.—Whether the income received by a nonresident alien teaching at a university is exempt from federal income tax or withholding under United States income tax treaties with Austria, Denmark, the Federal Republic of Germany, Greece, Ireland, Pakistan, and Switzerland. Rev. Proc. 87-9, 1987-1 C.B. 368, as modified by Rev. Proc. 93-22, 1993-1 C.B. 535, and as modified by Rev. Proc. 93-22A, 1993-2 C.B. 343.

13. Section 894.—Income Affected by Treaty.—Whether a foreign recipient of payments made by a United States person is ineligible to receive the benefits of a United States tax treaty under the principles of Rev. Rul. 84-152, 1984-2 C.B. 381, as modified by Rev. Rul. 85-163, 1985-2 C.B. 249, and modified and clarified by Rev. Rul. 89-110, 1989-2 C.B. 275; and Rev. Rul. 84-153, 1984-2 C.B. 383, as modified by Rev. Rul. 85-163, 1985-2 C.B. 249, and modified and clarified by Rev. Rul. 89-110, 1989-2 C.B. 275.

14. Section 894.—Income Affected by Treaty.—Whether a recipient of payments is or has been a resident of a country for purposes of any United States tax treaty. Pursuant to § 1.884-5(f), however, the Service may rule whether a corporation representing that it is a resident of a country is a qualified resident thereof for purposes of § 884.

15. Section 901.—Taxes of Foreign Countries and of Possessions of the United States.—Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901-2A(c)(2).

16. Sections 927, 936, 954, 993.—Manufactured Product. Whether a product is manufactured or produced for purposes of §§ 927(a), 936(h)(5), 954(d), and 993(c).

17. Section 956.—Investment of Earnings in United States Property.—Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956-2(c)(2).

18. Section 985.—Functional Currency.—Whether a currency is the functional currency of a qualified business unit.

19. Section 989(a).—Qualified Business Unit.—Whether a unit of the taxpayer's trade or business is a qualified business unit.

20. Section 1058.—Transfers of Securities under Certain Agreements.—Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind

of income for purposes of any United States income tax treaty.

21. Section 2501.—Imposition of Tax.—Whether a partnership interest is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

22. Section 7701.—Tax on Nonresident Alien Individuals.—Whether an alien individual is either a resident or a nonresident of the United States, in situations where the determination depends on facts that cannot be confirmed until the close of the taxable year (including, for example, the length of the alien's stay or the nature of the alien's activities).

23. Section 7701.—Definitions.—Whether what is generally known as a foreign corporation will be classified as a partnership for United States tax purposes, if the taxpayer requests classification as a partnership; and whether a foreign partnership will be classified as an association for United States tax purposes, if the taxpayer requests classification as an association. Requests for advance letter rulings about the classification of foreign entities should be submitted according to Rev. Proc. 95-1, this Bulletin. The Office of Associate Chief Counsel (Domestic) coordinates the response to such requests with the Office of Associate Chief Counsel (International).

24. Section 7701.—Definitions.—Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

25. Section 7701.—Definitions.—Whether an intermediate entity is a conduit entity under section §1.881-3(a)(4); whether a transaction is a financing transaction under section §1.881-3(a)(ii); whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan under section §1.881-3(b); whether an intermediate entity performs significant financing activities under section §1.881-3(b)(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under section §1.881-3(c).

.02 General Areas

1. Whether a taxpayer has a business purpose for a transaction or arrangement.

2. (a) Situations where a taxpayer or a related party is domiciled or orga-

nized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02.2(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

SEC. 5. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 95-7 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Gerard Traficanti of the Office of Associate Chief Counsel (International). For further information about this revenue procedure, please contact Mr. Traficanti at (202) 622-3830 (not a toll-free number).