

US Outbound Tax Newsalert

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IRS issues final and temporary foreign tax credit splitter regulations

The IRS today issued final and temporary regulations under section 909 that address situations in which foreign income taxes have been separated from the related income.

The text of the temporary regulations also serves as the text of proposed regulations.

Section 909

The temporary regulations provide an exclusive list of arrangements that will be treated as giving rise to foreign tax credit ("FTC") splitting events under section 909 with respect to foreign income taxes paid or accrued in tax years beginning on or after January 1, 2012, as well as an exclusive list of arrangements that will be treated as giving rise to FTC splitting events with respect to foreign income taxes paid or accrued in a tax year beginning on or after January 1, 2011, and before January 1, 2012.

The regulations further treat the foreign consolidated group splitter arrangement described in Treas. Reg. Sec. 1.909-6T(b)(2) as giving rise to an FTC splitting event with respect to foreign income taxes paid or accrued in a tax year beginning on or after January 1, 2012, and on or before February 14, 2012.

In addition, the regulations provide rules for determining related income and split taxes and for coordinating the interaction between section 909 and other Code



provisions. Finally, the regulations include the guidance described in Notice 2010-92, which primarily addresses the application of section 909 to foreign income taxes paid or accrued by section 902 corporations in tax years beginning on or before December 31, 2010.

Section 704(b)

Treas. Reg. Sec. 1.704-1(b)(4)(viii)(d)(3) provides that if a branch of a partnership (including a disregarded entity owned by the partnership) is required to include in income under foreign law a payment it receives from the partnership or another branch of the partnership, any creditable foreign tax expenditure (CFTE) imposed with respect to the payment relates to the income in the CFTE category that includes the items attributable to the recipient (the recipient CFTE category). However, because the interbranch payment is disregarded for US tax purposes, the income related to the CFTEs imposed with respect to the payment may remain in the CFTE category that includes the items attributable to the payor of the interbranch payment (the payor CFTE category). This is an exception to the general application of the principles of Treas. Reg. Sec. 1.904-6 that would allocate the CFTEs to the payor CFTE category that includes the related income. Because this exception allows the CFTEs and related income to be allocated to different CFTE categories, they may potentially be allocated to the partners in a manner that separates the CFTEs from the related income.

The temporary regulations remove the special exception for interbranch payments. As a result, the general principles of Reg. Sec. 1.904-6 will apply to an interbranch payment so that the CFTEs imposed on that payment will be allocated to the CFTE category that includes the related income for US tax purposes. Accordingly, if the CFTEs and related income are allocated to partners in the same ratios, the safe harbor is satisfied and the allocation does not give rise to a foreign tax credit splitting event.

Effective date

These changes are generally effective for tax years beginning on or after January 1, 2012. Allocations made in accordance with Treas. Reg. Sec. 1.704-1(b)(4)(viii)(d)(3) in tax years beginning on or after January 1, 2011, and before January 1, 2012, will result in an FTC splitting event and suspension of foreign income taxes that are allocated to a different partner than the covered person who is allocated the related income.

The temporary regulations also provide a transition rule for partnerships whose agreements were entered into prior to February 14, 2012.

Comments and public hearing

Comments on the proposed regulations and requests for a public hearing must be submitted to the IRS by May 14, 2012

To access final and temporary FTC splitter regulations, click [here](#).

To access the proposed FTC splitter regulations, click [here](#).

For more information, please do not hesitate to contact:

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