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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9255

RIN 1545-BF31

Agent for a Consolidated Group with Foreign Common Parent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that provide the IRS with the authority to designate a domestic member of the consolidated group as a substitute agent to act as the sole agent for the group where a foreign entity is the common parent. The regulations affect corporations that join in the filing of a consolidated Federal income tax return where the common parent of the consolidated group is a foreign entity that is treated as a domestic corporation pursuant to section 7874(b) of the Internal Revenue Code (Code) or as the result of a section 953(d) election. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective March 14, 2006.

Applicability Dates: These regulations apply to taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. The applicability of these regulations will expire on or before March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622-7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background and Explanation of Provisions

Section 1504(b)(3) of the Internal Revenue Code of 1986 (Code) excludes foreign corporations from the definition of “includible corporation.” As a result, a foreign entity generally cannot be a member of a consolidated group. In certain cases, section 7874 treats a foreign entity as a domestic corporation and section 953(d) allows a foreign insurance company to make an election to be treated as a domestic corporation. As a result, a foreign entity could be the common parent or a subsidiary of a consolidated group if it is treated as a domestic corporation under either section 7874(b) or section 953(d).

Under §1.1502-77(a)(1)(i) of the regulations, the common parent for a consolidated return year is generally the sole agent (agent for the group) that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year for each member of the group, and any successor of a member (as defined in §1.1502-77(a)(1)(iii)). The common parent’s agency for a consolidated return year generally continues until the common parent ceases to exist, regardless of whether any subsidiaries in that year cease to be members of the group, whether the group files a consolidated

return in any later year, or whether the common parent ceases to be the common parent or a member of the group in a later year. Section 1.1502-77(d) provides rules for designating a substitute agent if the common parent's existence terminates.

The IRS and Treasury Department believe that it may not always be practical or efficient for tax administration to have a foreign entity act as the agent for the group. Accordingly, where a foreign entity is the common parent because it is treated as a domestic corporation by reason of section 7874 or a section 953(d) election (a Foreign Common Parent), the temporary regulations provide the IRS with the authority to designate a domestic member of the group to be the sole agent (a Domestic Substitute Agent) even though the group's common parent continues in existence.

These temporary regulations provide flexibility in the method of communication the IRS may use to designate a Domestic Substitute Agent, allowing notification by mail or by faxed transmission. In addition, these regulations provide specificity for the determination of the effective date of the designation of a Domestic Substitute Agent: the designation is effective on the earliest of the 14th day following the date of a mailing, the 4th day following a faxed transmission, or the date the Commissioner receives written confirmation of the designation by a duly authorized officer of the designated agent, within the meaning of section 6062.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for dispensing with the notice and public comment procedures and that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to dispense with a delayed effective date. The regulations are necessary to allow the IRS to avoid potentially serious tax administration problems that may arise when a foreign entity is the agent for a consolidated group, and to provide immediate guidance to taxpayers regarding the IRS' authority to designate a substitute agent for the group in such a case. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the Notice of Proposed Rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS 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 is amended by adding entries in numerical order to read as follows:

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

Section 1.1502-77T also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.1502-77 is amended by adding and reserving paragraph (i) and adding paragraph (j) to read as follows:

§1.1502-77 Agent for the group.

* * * * *

(i) [Reserved]

(j) Designation by Commissioner if common parent is treated as a domestic corporation under section 7874 or section 953(d) [Reserved]. For further guidance, see §1.1502-77T(j).

Par. 3. Section 1.1502-77T is added to read as follows:

§1.1502-77T Agent for the group (temporary).

(a) through (i) [Reserved]. For further guidance see §1.1502-77(a) through (i).

(j) Designation by Commissioner if common parent is treated as a domestic corporation under section 7874 or section 953(d)--(1) In general. If the common parent is an entity created or organized under the law of a foreign country and is treated as a domestic corporation by reason of section 7874 (or regulations thereunder) or a section 953(d) election (a Foreign Common Parent), the Commissioner may at any time, with or without a request from any member

of the group, designate another member of the group to act as the agent for the group (a Domestic Substitute Agent) for any taxable year for which the due date (without extensions) for filing returns is after March 14, 2006 and the Foreign Common Parent would otherwise be the agent for the group. For each such year, the Domestic Substitute Agent will be the sole agent for the group even though the Foreign Common Parent remains in existence. The Foreign Common Parent ceases to be the agent for the group when the Commissioner's designation of a Domestic Substitute Agent becomes effective. The Commissioner may designate a Domestic Substitute Agent for the term of a single taxable year, multiple years, or on a continuing basis.

(2) Domestic Substitute Agent. The Domestic Substitute Agent, by designation or by succession, shall be a domestic corporation described in §1.1502-77(d)(1)(i)(A) (determined without regard to section 7874, a section 953(d) election, section 269B, or section 1504(d)).

(3) Designation by the Commissioner. The Commissioner will notify the Domestic Substitute Agent in writing by mail or faxed transmission of the designation. The Domestic Substitute Agent's designation is effective on the earliest of the 14th day following the date of a mailing, the 4th day following a faxed transmission, or the date the Commissioner receives written confirmation of the designation by a duly authorized officer of the Domestic Substitute Agent (within the meaning of section 6062). The Domestic Substitute Agent must give notice of its designation to the Foreign Common Parent and each corporation that was a member of the group during any part of any consolidated return year

for which the Domestic Substitute Agent will be the agent. A failure of the Domestic Substitute Agent to notify the Foreign Common Parent or any member of the group does not invalidate the designation. The Commissioner will send a copy of the notification to the Foreign Common Parent, and if applicable, to any Domestic Substitute Agent the designation replaces; a failure to send a copy of the notification does not invalidate the designation.

(4) Term of agency--(i) In general. If the Commissioner designates a Domestic Substitute Agent for a taxable year, the Domestic Substitute Agent will remain the agent for such year until the group ceases to exist or the Domestic Substitute Agent ceases to exist, ceases to be a member of the group, is replaced by a successor, or is replaced by the Commissioner. This designee remains the agent for such year regardless of whether one or more corporations that were members of the group during any part of such year cease to be members of the group, whether the group files a consolidated return for any subsequent year, or, except as provided by paragraphs (j)(4)(iv)(B) and (j)(4)(v) of this section, whether the group remains in existence with a new common parent in any subsequent year.

(ii) Agency of Domestic Substitute Agent upon termination of the group. If the Domestic Substitute Agent is the agent for the group for a year in which the group terminates, the Domestic Substitute Agent shall be the agent for that taxable year (and any prior taxable year for which it is the agent for the group) so long as the Domestic Substitute Agent continues its corporate existence unless it is replaced by a successor or a new designee by the Commissioner.

(iii) Replacement of §1.1502-77(d)(1) agent. If, pursuant to §1.1502-77(d)(1), the common parent of the group designates a Foreign Common Parent as the agent for the group for any taxable year, the Commissioner may, at any time, designate a Domestic Substitute Agent to replace the Foreign Common Parent, even if the Commissioner approved the terminating common parent's designation.

(iv) Group continues with a new common parent--(A) Year the new common parent becomes the common parent. If subsequent to a transaction to which section 7874 applies or a section 953(d) election, the group remains in existence with a new common parent and such new common parent is a domestic corporation (determined without regard to section 7874, a section 953(d) election, or section 269B), such new common parent will become the agent for the group with respect to the entire consolidated return year (including the portion of the year preceding the date on which the new common parent became the common parent)) and the former Domestic Substitute Agent will no longer be the agent for the group for any part of that year.

(B) Years preceding the year the new common parent becomes the common parent. If after the Commissioner's designation of a Domestic Substitute Agent the group remains in existence with a new common parent, and such new common parent is a domestic corporation (determined without regard to section 7874, a section 953(d) election, or section 269B), the Commissioner may designate the new common parent as the agent for the group for any of the group's prior taxable years (for which the due date (without extensions) for filing

returns is after March 14, 2006) in which the new common parent was a member of the group. For this purpose, the new common parent is treated as having been a member of the group for any taxable year it is primarily liable for the group's income tax liability.

(v) Replacement of Domestic Substitute Agent by the Commissioner.

The Commissioner may at any time, with or without a request from any member of the group, designate a replacement for a Domestic Substitute Agent (or a successor to such agent).

(5) Deemed §1.1502-77(d) designation--(i) Section 1.1502-78 adjustments. If the Commissioner designates a Domestic Substitute Agent under this paragraph (j), it will be treated as a designation of a substitute agent under §1.1502-77(d) for the purposes of §1.1502-78.

(ii) Default Substitute Agent. If the Domestic Substitute Agent goes out of existence and has a single successor that is eligible to be a Domestic Substitute Agent, such successor becomes the Domestic Substitute Agent and is treated as a default substitute agent under §1.1502-77(d)(2). See §1.1502-77(d)(4) regarding the consequences of the successor's failure to notify the Commissioner of its status as a default substitute agent. The default substitute agent shall use procedures in section 9 of Rev. Proc. 2002-43 (2002-2 C.B. 99) or a corresponding provision of a successor revenue procedure for notification. (See §601.601(d)(2)(ii) of this chapter.)

(6) Request that IRS designate a Domestic Substitute Agent--(i) Original designation. If the common parent of the group is a Foreign Common Parent,

and the IRS has not designated a Domestic Substitute Agent, one or more members of the group may request the IRS to make a designation for taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. Such request is deemed to be a request under §1.1502-77(d)(3)(i). Members of the group shall use the procedures in section 10 of Rev. Proc. 2002-43 (2002-2 C.B. 99) or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii) of this chapter.)

(ii) Request that IRS replace a previously designated substitute agent. If the IRS designates a Domestic Substitute Agent pursuant to this paragraph (j), one or more members of the group may request that the IRS replace the designated Domestic Substitute Agent with another member (or successor to another member). Such a request is deemed to be a request pursuant to §1.1502-77(d)(3)(ii). Members of the group shall use the procedures in section 11 of Rev. Proc. 2002-43 (2002-2 C.B. 99) or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii) of this chapter.)

(7) Effective Date. This paragraph (j) applies to taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. The applicability of this paragraph (j) expires on or before March 10, 2009.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: March 9, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).