

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

RIN 1545-BB28

Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations

REG-144784-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance needed to comply with amendments enacted by the American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA) and the Gulf Opportunity Zone Act of 2005, Public Law 109-135, 119 Stat. 2577 (December 22, 2005) (GOZA), concerning the treatment of dividends from noncontrolled section 902 corporations. The AJCA modified the treatment under section 904(d)(4) of dividends from noncontrolled section 902 corporations effective for taxable years beginning after December 31, 2002. GOZA permits taxpayers to elect to defer the effective date of the AJCA amendments until taxable years beginning after December 31, 2004. The temporary regulations affect domestic corporations that own stock in foreign corporations and that claim foreign tax credits. The text of those temporary

regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by July 24, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-144784-02), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-144784-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-144784-02).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Kelly Banks (202) 622-7180; concerning the regulations, Ginny Y. Chung (202) 622-3850 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### **Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports

Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by July 24, 2006. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burdens associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burdens of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§1.904-7(f)(9) and 1.964-1(c)(3)(ii). This information is required to enable the IRS to verify that taxpayers that make certain elections (described in the Background section of this document) applied the appropriate separate foreign tax credit limitation rules to dividends from noncontrolled section 902 corporations, and, in the case of shareholders making certain tax elections on behalf of a controlled foreign corporation or noncontrolled section 902 corporation, the shareholders complied with the applicable regulations

concerning such elections. The collections of information are mandatory. The respondents are domestic shareholders of noncontrolled section 902 corporations and controlled foreign corporations.

Estimated total annual reporting burden: 25 hours.

The estimated annual burden per respondent is a half hour.

Estimated number of respondents: 50.

The estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it 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**

Temporary regulations in this issue of the **Federal Register** provide rules concerning the application of separate foreign tax credit limitations to dividends received from noncontrolled section 902 corporations (10/50 corporations) under section 904(d)(4). Section 403 of the American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA), modified the treatment of such dividends effective for taxable years beginning after December 31, 2002 (post-2002 taxable years). Section 403(l) of the Gulf Opportunity Zone Act of 2005, Public Law 109-135, 119 Stat. 2577 (December 22, 2005) (GOZA),

permits taxpayers to elect to defer the effective date of the AJCA amendments until taxable years beginning after December 31, 2004 (post-2004 taxable years). The temporary regulations provide guidance needed to comply with these changes. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

The collections of information in these proposed regulations are in §§1.904-7(f)(9) and 1.964-1(c)(3). Section 1.904-7(f)(9)(ii) provides that a taxpayer electing to defer the effective date of the AJCA amendments until post-2004 taxable years must attach a statement to its next tax return for which the due date (with extensions) is more than 90 days after July 24, 2006. This statement must indicate that the taxpayer elects not to apply the provisions of section 403 of the AJCA to taxable years of its noncontrolled section 902 corporations beginning in 2003 and 2004 and that the taxpayer has filed original returns or will file amended returns reflecting tax liabilities for all affected years that satisfy the requirements described in §1.904-7(f)(9)(ii).

Section 1.964-1(c)(2) and (3) provides that the controlling United States shareholders of a controlled foreign corporation, and the majority domestic corporate shareholders of a noncontrolled section 902 corporation, may make an election, or adopt or change a method of accounting or taxable year, on behalf of the foreign corporation. Section 1.964-1(c)(3)(ii) requires that a jointly executed statement evidencing the controlling shareholders' consent to the election, or change in method of accounting or taxable year of the foreign corporation, be

retained by one or more of the shareholders, and that each controlling shareholder file a separate statement with its tax return for the taxable year with or within which the foreign corporation's taxable year ends.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do 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 Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### **Comments and Request for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

## Drafting Information

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

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1 – INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

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

Par. 2. In §1.861-9, paragraph (f) is revised to read as follows:

§1.861-9 Allocation and apportionment of interest expense.

\* \* \* \* \*

(f) [The text of proposed §1.861-9(f) is the same as the text of §1.861-9T(f) published elsewhere in this issue of the Federal Register.]

\* \* \* \* \*

Par. 3. In §1.861-12, paragraph (c) is revised to read as follows:

§1.861-12 Characterization rules and adjustments for certain assets.

\* \* \* \* \*

(c) [The text of proposed §1.861-12(c) is the same as the text of §1.861-12T(c) published elsewhere in this issue of the Federal Register.]

\* \* \* \* \*

Par. 4. In §1.902-1, paragraphs (a), (c), (d) and (g) are revised to read as follows:

§1.902-1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

[The text of the proposed amendments to §1.902-1(a), (c), (d), and (g) are the same as the text of §1.902-1T(a), (c), (d), and (g) published elsewhere in this issue of the Federal Register.

\* \* \* \* \*

Par. 5. In §1.904-2, paragraph (a) is revised and paragraph (h) is added to read as follows:

§1.904-2 Carryback and carryover of unused foreign tax.

[The text of the proposed amendment to §1.904-2(a) and the text of proposed §1.904-2(h) are the same as the text of §1.904-2T(a) and (h) published elsewhere in this issue of the Federal Register.]

Par. 6. In §1.904-4, paragraph (c) is revised to read as follows:

§1.904-4 Separate application of section 904 with respect to certain categories of income.

\* \* \* \* \*

(c) [The text of the proposed amendments to §1.904-4(c) is the same as the text of §1.904-4T(c) published elsewhere in this issue of the Federal Register.]



Par. 7. In §1.904-5, paragraphs (a), (b), (c), (i), (m), (n), and (o) are revised to read as follows:

§1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.

\* \* \* \* \*

[The text of the proposed amendments to §1.904-5(a), (b), (c), (i), (m), (n), and (o) are the same as the text of §1.904-5T(a), (b), (c), (i), (m), (n), and (o) published elsewhere in this issue of the Federal Register.]

Par. 8. In §1.904-7, paragraph (f) is added as follows:

§1.904-7 Transition rules.

\* \* \* \* \*

(f) [The text of proposed §1.904-7(f) is the same as the text of §1.904-7T(f) published elsewhere in this issue of the Federal Register.]

Par. 9. In §1.904(f)-12, paragraph (g) is added as follows:

§1.904(f)-12 Transition rules.

\* \* \* \* \*

(g) [The text of proposed §1.904(f)-12(g) is the same as the text of §1.904(f)-12T(g) published elsewhere in this issue of the Federal Register.]

Par. 10. In §1.964-1, paragraph (c) is revised to read as follows:

§1.964-1 Determination of the earnings and profits of a foreign corporation.

\* \* \* \* \*

(c) [The text of proposed §1.964-1(c) is the same as the text of §1.964-1T(c) published elsewhere in this issue of the Federal Register.]

Deputy Commissioner for Services and Enforcement.