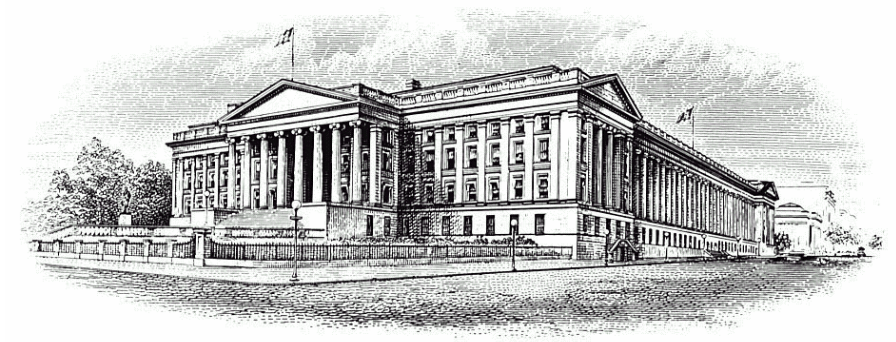

DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS

For Immediate Release
February 17, 2004

Contact: Tara Bradshaw
(202) 622-2014

TREASURY AND IRS ISSUE GUIDANCE ON ABUSIVE FOREIGN TAX CREDIT TRANSACTIONS

Today, the Treasury Department and the IRS issued two notices concerning transactions intended to generate foreign tax credits for U.S. taxpayers. Notice 2004-19 describes the administrative and regulatory approaches the Treasury and IRS are using to address foreign tax credit transactions that create results inconsistent with the purpose of the foreign tax credit rules. Notice 2004-19 also discusses the legislation proposed in the President's FY 2005 Budget. The legislation would provide additional statutory rules disallowing foreign tax credits in appropriate circumstances and would grant Treasury regulatory authority to ensure that the mechanical foreign tax credit rules cannot be used to achieve results that do not reflect the economic effect of the transactions.

Notice 2004-19 reflects careful consideration of Notice 98-5. Notice 98-5 described an approach for disallowing foreign tax credits based on a comparison of economic profit to the claimed tax benefits and stated that this approach would be implemented through regulations. Treasury and the IRS have decided not to issue regulations as described in Notice 98-5. This decision was influenced by recent court cases involving foreign tax credit transactions that clearly produced results inconsistent with the purpose of the foreign tax credit rules. The courts held that the approach taken in Notice 98-5 did not support the IRS's proposed disallowance of foreign tax credits in those cases. Treasury and the IRS disagree strongly with the result in those cases, but have concluded that the approach described in Notice 98-5 is unlikely to be an effective tool for addressing transactions that abuse the foreign tax credit rules. Accordingly, Notice 2004-19 withdraws Notice 98-5, and describes the approaches Treasury and the IRS are using to address transactions and arrangements structured to give rise to inappropriate foreign tax credit results.

Notice 2004-20 halts a specific transaction designed to generate credits for foreign taxes paid on gain that is not subject to tax in the United States. The claimed result of the transaction is a foreign tax credit but no corresponding income and U.S. tax for the U.S. taxpayer.

The transaction involves a purported acquisition of stock of a foreign target corporation by a domestic corporation, an accompanying election under section 338, and a prearranged plan to sell the target corporation's assets in a transaction that gives rise to foreign tax without corresponding income for U.S. tax purposes. This transaction does not produce the foreign tax credit benefits claimed to be generated. Under Notice 2004-20, this transaction, and any transaction that is substantially similar, are identified as "listed transactions" that are subject to disclosure, list-keeping, and registration requirements.

"The foreign tax credit serves the important purpose of eliminating potential double taxation. It was never intended to eliminate tax altogether," stated Treasury Assistant Secretary for Tax Policy Pam Olson. "Transactions structured so the taxpayer incurs foreign taxes without any corresponding U.S. tax liability because the underlying income is not recognized for U.S. tax purposes do not give rise to the double taxation that is the economic basis for the foreign tax credit. These types of transactions should not generate foreign tax credits."

"We are addressing abusive foreign tax credit transactions through proposed legislation and our ongoing administrative and regulatory actions. The guidance issued today reflects our determination to ensure that the foreign tax credit rules serve their intended purpose. These notices are an important part of our comprehensive efforts to address tax shelter transactions," continued Assistant Secretary Olson.

"The Treasury Department and the IRS will continue to use all of the tools available to stem abusive foreign tax credit transactions. In addition, we urge Congress to pass the legislation proposed in the President's Budget to ensure the government has additional tools to prevent abuse in this area," concluded Assistant Secretary Olson.

ATTACHMENTS:
Notice 2004-19
Notice 2004-20

-30-