

adding, in their place, the words “Collections Section at (317) 614–4514”;

■ c. Paragraph (e)(2) is further amended by removing the words “Customs Data Center” in the fifth and eighth sentences and adding, in their place, the words “CBP Data Center”;

■ d. Paragraph (e)(2) is further amended by removing the word “Customs” in the sixth and seventh sentences and adding, in its place, the term “CBP”; and

■ e. Paragraph (e)(2) is further amended by removing the words “U.S. Customs Data Center, on (703–644–5200)” in the last sentence and adding, in their place, the words “CBP Data Center, on (703–921–6000)”.

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

■ 29. The authority citation for part 115, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

§ 115.6 [Amended]

■ 30. In § 115.6, paragraph (c) is amended by removing the words “One World Trade Center, Suite 2757, New York, New York 10048” and adding, in their place, the words “17 Battery Place, Suite 1232, New York, New York 10004–1110”.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 31. The general authority for part 123, CBP regulations, continues to read, and the specific authority for § 123.2 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States) (HTSUS), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.2 also issued under 19 U.S.C. 1459.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

■ 32. The authority citation for part 134, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.3 [Amended]

■ 33. In § 134.3:

■ a. Paragraph (a) is amended by removing the word “Customs” and adding in its place the term “CBP”, and

by removing the word “shall” and adding, in its place, the word “will”; and

■ b. The paragraph (b) introductory text is amended by removing the word “Customs” and adding, in its place, the term “CBP”, by removing the lower case “a” at the beginning of the second sentence and adding, in its place, the upper case “A”, and by removing the word “shall” in the second sentence and adding, in its place, the word “will”.

PART 141—ENTRY OF MERCHANDISE

■ 34. The general authority citation for part 141, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.
* * * * *

§ 141.102 [Amended]

■ 35. In § 141.102, paragraph (a) is amended by removing the reference to “§ 11.2(a)” and adding in its place “§ 11.2a”.

PART 177—ADMINISTRATIVE RULINGS

■ 36. The authority citation for part 177, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

§ 177.21 [Amended]

■ 37. Section 177.21 is amended by removing the words “Federal Procurement Regulations (41 CFR part 1–6)” and adding, in their place, the words “Federal Acquisition Regulations (48 CFR chapter 1)”, and by removing the parenthetical citation “(32 CFR section VI)” and adding, in its place, the parenthetical citation “(48 CFR chapter 2)”.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 38. The general authority citation for part 181, CBP regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;
* * * * *

■ 39. Section 181.93 is amended by revising the second and third sentences of paragraph (a) to read as follows:

§ 181.93 Submission of advance ruling requests.

(a) * * * For any subject matter specified in § 181.92(b)(6)(i), (v), (vi), (vii), (viii), or (ix) of this part, the

request may be directed either to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229, or to the National Commodity Specialist Division, U.S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119. For any subject matter specified in § 181.92(b)(6)(ii), (iii), or (iv) of this part, the request must be directed to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.
* * * * *

Dated: July 3, 2008.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E8–15622 Filed 7–15–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9416]

RIN 1545–BH74

Determining the Amount of Taxes Paid for Purposes of Section 901

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 901 of the Internal Revenue Code providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit.

The regulations affect taxpayers that claim direct and indirect foreign tax credits. The text of these temporary regulations also serves as the text of the proposed regulations (REG–156779–06) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 16, 2008.

Applicability Dates: For dates of applicability, see § 1.901–1T(j) and § 1.901–2T(h)(2).

FOR FURTHER INFORMATION CONTACT: Michael Gilman, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

On March 30, 2007, the **Federal Register** published proposed amendments (72 FR 15081) to the Income Tax Regulations (26 CFR part I) under section 901 of the Internal Revenue Code (Code) relating to the amount of taxes paid for purposes of the foreign tax credit (the "2007 proposed regulations"). The 2007 proposed regulations would revise § 1.901-2(e)(5) in two ways. First, for purposes of § 1.901-2(e)(5), the 2007 proposed regulations would treat as a single taxpayer all foreign entities in which the same U.S. person has a direct or indirect interest of 80 percent or more (a "U.S.-owned foreign group"). Second, the 2007 proposed regulations would treat amounts paid to a foreign taxing authority as noncompulsory payments if those amounts are attributable to certain structured passive investment arrangements. The 2007 proposed regulations provide that the regulations will be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the regulations are finalized.

The IRS and Treasury Department received written comments on the 2007 proposed regulations, which are discussed in this preamble. A public hearing was held on July 30, 2007. In response to written comments, the IRS and Treasury Department determined that the proposed change to § 1.901-2(e)(5) relating to U.S.-owned foreign groups may lead to inappropriate results in certain cases. Accordingly, on November 19, 2007, the IRS and Treasury Department issued Notice 2007-95, 2007-49 IRB 1 (see § 601.601(d)(2)(ii)(b)). Notice 2007-95 provided that the proposed rule for U.S.-owned foreign groups would be severed from the portion of the 2007 proposed regulations addressing the treatment of foreign payments attributable to certain structured passive investment arrangements. Notice 2007-95 further provided that the proposed rules for U.S.-owned groups would be effective for taxable years beginning after final regulations are published in the **Federal Register**.

In light of comments, the IRS and the Treasury Department believe that it is appropriate to issue new proposed and temporary regulations addressing the treatment of foreign payments attributable to structured passive investment arrangements. These new regulations make several changes to the 2007 proposed regulations to take into account comments received, while adopting without amendment

substantial portions of the 2007 proposed regulations. The new temporary and proposed regulations will permit the IRS to enforce the rules relating to structured passive investment arrangements, while also allowing taxpayers a further opportunity for comment. The significant comments and revisions are described in this preamble.

Explanation of Provisions

The temporary regulations address the application of § 1.901-2(e)(5) in cases in which a person claiming foreign tax credits is a party to a structured passive investment arrangement. These complex arrangements are intentionally structured to create a foreign tax liability when, removed from the elaborately engineered structure, the basic underlying business transaction generally would result in significantly less, or even no, foreign taxes. The parties use these arrangements to exploit differences between U.S. and foreign law in order to permit a person to claim a foreign tax credit for the purported foreign tax payments while also allowing the foreign counterparty to claim a duplicative foreign tax benefit. The person claiming foreign tax credits and the foreign counterparty share the cost of the purported foreign tax payments through the pricing of the arrangement.

The temporary regulations treat foreign payments attributable to such arrangements as noncompulsory payments under § 1.901-2(e)(5) and, thus, disallow foreign tax credits for such amounts. For periods prior to the effective date of the temporary regulations, the IRS will continue to utilize all available tools under current law to challenge the U.S. tax results claimed in connection with these and other similar abusive arrangements, including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, other provisions of § 1.901-2, section 269, and the partnership anti-abuse rules of § 1.701-2.

The temporary regulations retain the general rule in the existing regulations that a taxpayer need not alter its form of doing business or the form of any transaction in order to reduce its foreign tax liability. However, § 1.901-2T(e)(5)(iv)(A) provides that, notwithstanding the general rule, an amount paid to a foreign country (a "foreign payment") is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to a structured passive investment arrangement. For this

purpose, § 1.901-2T(e)(5)(iv)(B) defines a structured passive investment arrangement as an arrangement that satisfies six conditions. The six conditions consist of features that are common to arrangements that are intentionally structured to generate the foreign payment.

A. Section 1.901-2T(e)(5)(iv)(B)(1): Special Purpose Vehicle

The first condition provided in the 2007 proposed regulations is that the arrangement utilizes an entity that meets two requirements (an "SPV"). The first requirement is that substantially all of the gross income (for United States tax purposes) of the entity, if any, is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. The second requirement is that there is a purported foreign tax payment attributable to income of the entity. The purported foreign tax may be paid by the entity itself, by the owner(s) of the entity (if the entity is treated as a pass-through entity under foreign law) or by a lower-tier entity (if the lower-tier entity is treated as a pass-through entity under U.S. law).

For purposes of the first requirement, § 1.901-2(e)(5)(iv)(C)(4) of the 2007 proposed regulations defines passive investment income as income described in section 954(c), with two modifications. The first modification excludes income of a holding company attributable to qualifying equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business (or that are themselves holding companies). The second modification is that passive investment income is determined by disregarding sections 954(c)(3) and 954(c)(6) and by treating income attributable to transactions with a counterparty as ineligible for the exclusions under sections 954(h) and 954(i).

One commentator recommended, in lieu of the holding company rules in the 2007 proposed regulations, applying look-through rules to income and assets of lower-tier entities similar to the rules of section 1297(c), under which a foreign corporation, if it owns at least 25 percent of the stock of another corporation, is treated as owning its proportionate share of the assets of the other corporation and receiving its proportionate share of the income of the other corporation. Alternatively, the commentator recommended that the holding company rules in the 2007 proposed regulations be modified to eliminate the requirement that

substantially all of the assets of the tested entity must consist of qualified equity interests; to permit income other than dividends (for example, interest and royalties) received from a lower-tier entity that is predominantly engaged in an active business to qualify as active income; and to treat a lower-tier entity as an operating company if more than 50 percent of either its assets or its income meet the active business test. In addition, commentators suggested eliminating the requirement that the U.S. party and the counterparty must share the opportunity for gain or loss with respect to the lower-tier entity, or replacing it with a rule disqualifying the equity interest if contractual restrictions limit the counterparty's recourse against the lower-tier entity's income or assets. Finally, commentators suggested that preferred stock should be treated as a qualifying equity interest.

These comments were not adopted. The holding company exception is intended only to clarify that a joint venture arrangement is not treated as a structured passive investment arrangement solely because it is conducted through a holding company structure, not to liberalize the definition of structured passive investment arrangements. The requirement that the parties share the opportunity for gain and risk of loss with respect to the holding company's assets is intended to ensure that the arrangement between the parties is a bona fide joint venture. In this regard, a commentator recommended that the regulations be clarified to provide that the holding company exception is not satisfied if either the U.S. party or the counterparty is solely a creditor with respect to the entity because it either owns a hybrid instrument that is debt for U.S. tax purposes or purchases stock subject to an obligation to sell the stock back. This modification is reflected in § 1.901-2T(e)(5)(iv)(C)(5)(ii) of the temporary regulations. In addition, *Example 2* of § 1.901-2T(e)(5)(iv)(D) is modified to clarify that the holding company exception is not met if the counterparty's interest is acquired in a sale-repurchase transaction.

The IRS and Treasury Department recognize that under the regulations an entity conducting business through an active foreign subsidiary may fail to meet the holding company exception, even though the entity would not be treated as an SPV under the "substantially all" test if it operated the subsidiary's business directly through a branch operation. The IRS and Treasury Department believe this result is appropriate because the segregation of active business income and assets in a

lower-tier entity may facilitate the use of an upper-tier entity to conduct a structured passive investment arrangement.

The IRS and Treasury Department remain concerned that taxpayers may continue to enter into structured passive investment arrangements designed to generate foreign tax credits through entities that meet the technical requirements of the holding company exception. The IRS and Treasury Department intend to monitor the use of holding companies to facilitate abusive foreign tax credit arrangements, utilize all available tools under current law to challenge the U.S. tax results claimed in connection with such arrangements (including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, other provisions of § 1.901-2, section 269, and the partnership anti-abuse rules of § 1.701-2) in appropriate cases, and to issue additional regulations modifying or eliminating the holding company exception if necessary to prevent abuse.

The second modification in the 2007 proposed regulations is that passive investment income is determined by disregarding sections 954(c)(3) and 954(c)(6) and by treating income attributable to transactions with a counterparty as ineligible for the exclusions under sections 954(h) and 954(i). The IRS and Treasury Department received a number of comments suggesting that the definition of passive investment income should be narrowed by excluding income that would be treated as non-subpart F income under section 954(c)(3) or 954(c)(6), excluding income from unrelated persons other than the counterparty, or eliminating the requirement in section 954(h) that the tested entity's activity be conducted in the entity's "home country." Other commentators suggested substituting other tests for the active financing exception in section 954(h), such as exempting financial services income as defined in section 904(d), with or without modification. For example, commentators suggested various modifications, such as excluding income derived from unrelated persons or from direct activities of employees of the tested entity; exempting any income derived from or related to transactions with customers; exempting income that would be considered attributable to an active foreign trade or business under the principles of section 864 and § 1.367(a)-2T(b); or exempting income other than income from "tainted" assets such as cash or cash equivalents, stock or notes of persons related to the U.S.

party or counterparty, or assets giving rise to U.S. source income. One commentator suggested that payments described in section 954(c)(3) should not be treated as passive investment income to the extent the payment was deductible under foreign law and the corresponding income inclusion by the tested entity did not result in a net increase in foreign taxes paid. This commentator suggested that the result in the U.S. borrower transaction described in *Example 2* of the 2007 proposed regulations was inappropriate since the foreign tax paid by the SPV was offset by a reduction in tax paid by the CFC borrower.

The IRS and Treasury Department carefully considered these suggestions but ultimately determined that none of the suggested approaches has significant advantages over relying on section 954(h) to determine whether income from financing activities is sufficiently active that it should be excluded from passive investment income for purposes of these regulations. Section 954(h) includes detailed requirements that ensure that the entity is predominantly engaged in the active conduct of a banking, financing or similar business and conducts substantial activity with respect to such business. In addition, the IRS and Treasury Department continue to believe it is not appropriate to exclude income described in sections 954(c)(3) and 954(c)(6) from passive investment income, because financing arrangements between related parties that are engaged in the active conduct of a trade or business are commonly used in the structured transactions that are the target of these regulations. The IRS and Treasury Department also do not believe that U.S. borrower transactions should not be considered to result in a net increase in foreign tax, since in the absence of the structured passive investment arrangement the CFC borrower would still reduce its foreign tax by reason of the interest expense deduction but the U.S. party would not claim foreign tax credits for foreign payments attributable to income in the SPV that is in substance the foreign lender's interest income. Accordingly, § 1.901-2T(e)(5)(iv)(C)(5)(i) generally retains the definition of passive investment income in the 2007 proposed regulations.

However, the temporary regulations include two modifications in response to comments. First, the IRS and Treasury Department agree it is appropriate to require the entity's activities to be conducted directly by its own employees rather than by employees of affiliates, because the purpose of the SPV condition is to

distinguish between active entities and those with largely passive income, and it is reasonable to require an entity engaged in an active business to conduct that business through its own employees. Accordingly, § 1.901-2T(e)(5)(iv)(C)(5)(i) provides that section 954(h)(3)(E) shall not apply, and that the entity must conduct substantial activity through its own employees.

Second, the IRS and Treasury Department agree that the requirement that activities be conducted in the entity's "home country" reflects a subpart F policy that is more restrictive than necessary for purposes of these regulations. Accordingly, § 1.901-2T(e)(5)(iv)(C)(5)(i) provides that for purposes of these regulations the term *home country* means any foreign country.

Concerning the requirement in § 1.901-2(e)(5)(iv)(B)(1)(i) of the 2007 proposed regulations that substantially all of the gross income of the entity be passive investment income and substantially all of the entity's assets are assets held to produce such passive investment income, one commentator recommended that the regulations provide examples illustrating situations in which such requirement is met. The IRS and Treasury Department did not adopt this comment because the "substantially all" test requires evaluation of all the facts and circumstances and cannot be satisfied by reference to a specific percentage benchmark.

Several commentators requested that the regulations clarify the time at which the six conditions must be met to result in a structured passive investment arrangement. Section 1.901-2T(e)(5)(iv)(B)(1)(ii) of the temporary regulations is revised to clarify that the foreign payment must be made with respect to a U.S. tax year in which substantially all of the gross income (for U.S. tax purposes) of the entity, if any, is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. This clarification is intended to ensure that foreign tax credits are disallowed for foreign payments that relate primarily to passive investment income, but not for taxes that relate to active business income earned in an earlier or later year when the entity is not treated as an SPV. The regulations do not, however, require all six conditions to be met in the same tax year. For example, the regulations disallow credits for foreign payments with respect to income of an SPV even if the U.S. party acquires its interest, or a hybrid instrument is issued to the

counterparty, after the foreign payments are made.

Other commentators recommended that the regulations eliminate the SPV condition and treat as noncompulsory payments only those foreign payments that directly relate to passive investment income, or with respect to which duplicative tax benefits are claimed. The IRS and Treasury Department did not adopt such an approach in the temporary regulations because of the administrative difficulty of tracing specific foreign payments to specific income or to the duplicative tax benefits. Accordingly, the temporary regulations retain the SPV condition and the approach of treating all foreign payments attributable to a structured passive investment arrangement as noncompulsory. However, the IRS and Treasury Department recognize that an element of the arrangements intended to be covered by the regulations is that they are designed to generate duplicative tax benefits, and that some connection between the counterparty's foreign tax benefit and the U.S. party's share of the foreign payments should be a pre-condition to the finding of a structured passive investment arrangement. Accordingly, as described in section D of this preamble, the foreign tax benefit condition is revised to provide that the counterparty's foreign tax benefit must correspond to 10 percent or more of the U.S. party's share of the foreign payments or the U.S. party's share (under U.S. tax principles) of the foreign tax base used to compute such payments.

B. Section 1.901-2T(e)(5)(iv)(B)(2): U.S. Party

Section 1.901-2T(e)(5)(iv)(B)(2) of the temporary regulations adopts without change the second overall condition of the 2007 proposed regulations that a person (a "U.S. party") would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment if such payment were an amount of tax paid.

One commentator requested that the regulations be amended to clarify that the "U.S. party" condition must be met at the same time as the other five conditions. The temporary regulations do not include this condition because the IRS and Treasury Department believe it is inappropriate to exempt arrangements that are structured so that the U.S. party claims a credit in a taxable year or period that is not the same taxable year or period in which the counterparty is entitled to a foreign tax benefit. In addition, the IRS and

Treasury Department are concerned that this modification would allow a person to acquire an interest in an SPV and claim credits with respect to purported foreign taxes paid in an earlier period by the SPV in connection with an arrangement that met the other five conditions of the regulations.

C. Section 1.901-2T(e)(5)(iv)(B)(3): Direct Investment

The third overall condition provided in the 2007 proposed regulations is that the foreign payment or payments are (or are expected to be) substantially greater than the amount of credits, if any, that the U.S. party would reasonably expect to be eligible to claim under section 901(a) if such U.S. party directly owned its proportionate share of the assets owned by the SPV, other than through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would subject the income generated by its share of the assets to a net basis foreign tax. Commentators recommended several changes to the direct investment condition, several of which are adopted in the temporary regulations. First, in order to reach appropriate results in cases where more than one person owns an equity interest in the SPV for U.S. tax purposes, the temporary regulations amend the direct investment test to compare the U.S. party's proportionate share of the foreign payment made by the SPV to the amount of foreign tax the U.S. party would be eligible to credit if the U.S. party directly owned its proportionate share of the assets. Second, the temporary regulations clarify that a dual resident corporation that is an SPV meets the direct investment condition since its ownership of the passive assets is treated the same as ownership through a branch operation. Third, a commentator suggested that the direct investment test of the 2007 proposed regulations could be avoided by entering into a sale-repurchase transaction using an SPV that acquires passive assets subject to foreign withholding tax. This commentator recommended that the direct investment condition be revised to reduce the value of the U.S. party's interest by any amount advanced by the foreign counterparty that is treated as debt for U.S. tax purposes but as equity for foreign tax purposes. The IRS and Treasury Department agree that situations where the SPV's income is subject to gross basis foreign taxes raise the same foreign tax credit policy concerns as situations where the SPV's income is subject to net basis foreign taxes. The IRS and Treasury

Department, however, believe the commentator's recommended solution is incomplete, since the other conditions of the regulations can be met by structures employing techniques other than sale-repurchase agreements. Accordingly, the temporary regulations provide that the U.S. party's proportionate share of the SPV's assets does not include any assets that produce income subject to gross basis withholding tax.

Several commentators recommended that the regulations include an exception for certain transactions in which the amount of the foreign payments attributable to income of an SPV does not substantially exceed the amount of foreign taxes that would have been paid by a controlled foreign corporation that owns the SPV in the absence of the arrangement. The commentators suggested that such foreign payments should not be treated as noncompulsory payments because they effectively substitute for taxes that would have been imposed on the controlled foreign corporation in the absence of the arrangement.

These comments raise the fundamental question as to the appropriate baseline to which such transactions should be compared to determine if there has been a significant increase in the total amount of foreign taxes paid. Although the IRS and Treasury Department carefully considered an exception from the definition of structured passive investment arrangements for such transactions, the IRS and Treasury Department have been unable to develop an exception that can be administered by the IRS and that does not exclude abusive cases. Accordingly, the temporary regulations do not include this exception.

D. Section 1.901-2T(e)(5)(iv)(B)(4): Foreign Tax Benefit

The fourth condition provided in the 2007 proposed regulations is that the arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a similar tax benefit) for a counterparty or for a person that is related to the counterparty, but not related to the U.S. party. In response to comments, to relieve administrative burdens these regulations clarify that while the benefit must be reasonably expected, there is no requirement to show that the benefit be intended or actually realized. The temporary regulations also provide that the ability to surrender the use of a tax loss to another person is a foreign tax benefit because a foreign tax benefit need only

be made available to a counterparty. See *Example 9* of § 1.901-2T(e)(5)(iv)(D).

Several commentators recommended that the regulations be revised to require a causal relationship between one or more of the six conditions. For example, one commentator recommended adding a requirement that the foreign tax benefit either relate to the foreign tax paid by the SPV or result from the counterparty being treated for foreign but not U.S. tax purposes as owning an equity interest in the SPV or a portion of the SPV's assets. Another commentator suggested requiring that the inconsistent aspect of the arrangement be created or used to achieve the foreign tax benefit. Another commentator recommended requiring that the foreign tax benefit would not have been allowed or allowable "but for" the existence of one or more of the other conditions.

In response to the comments, the temporary regulations revise the "foreign tax benefit" condition to provide that the credit, deduction, loss, exemption, exclusion or other tax benefit must correspond to 10 percent or more of the U.S. party's share (for U.S. tax purposes) of the foreign payment or 10 percent or more of the foreign tax base with respect to which the U.S. party's share of the foreign payment is imposed. The revisions are intended to clarify that a joint venture that does not involve any duplication of tax benefits is not covered by the temporary regulations. At the same time, the temporary regulations provide that the duplication need not be direct. For example, while the U.S. party generally seeks to claim foreign tax credits in the United States for foreign payments attributable to income of the SPV, the counterparty's foreign tax benefit may consist of tax-exempt income paid out of the SPV's income with respect to which foreign payments claimed as credits by the U.S. party were made and deductions or losses attributable to payments of corresponding amounts to the SPV or U.S. party. See *Example 3* of § 1.901-2T(e)(5)(iv)(D).

E. Section 1.901-2T(e)(5)(iv)(B)(5): Counterparty

The 2007 proposed regulations define a counterparty as a person (other than the SPV) that is unrelated to the U.S. party and that (i) directly or indirectly owns 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax or (ii) acquires 20 percent or more of the assets of the SPV

under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax.

Commentators proposed that the counterparty factor be amended to include certain related parties. Commentators noted that structured transactions engaged in by related persons under common foreign ownership present the same tax policy concerns as transactions between unrelated persons. However, these same commentators noted that structured transactions engaged in by related parties that are under common U.S. ownership do not pose the same tax policy concerns because the reduction in foreign tax liability obtained by the U.S.-controlled foreign counterparty will result in a corresponding increase in U.S. taxes when the foreign counterparty repatriates its earnings to the United States. The IRS and Treasury Department agree with these comments. Consequently, the temporary regulations amend the definition of a counterparty to include related persons, but excluding cases where the U.S. party is a U.S. corporation or individual that owns (directly or indirectly) at least 80 percent of the value of the potential counterparty and cases where at least 80 percent of the value of the U.S. party and the potential counterparty are owned (directly or indirectly) by the same U.S. corporation or individual.

Several commentators also suggested that the requirement that the counterparty own at least 10 percent (directly or indirectly) of the equity of the SPV or acquire at least 20 percent of the assets of the SPV should be revised. Some commentators proposed these thresholds be increased to 50 percent. Other commentators proposed that the ownership of all foreign parties deriving a foreign tax benefit should be aggregated to determine whether the thresholds are met. The IRS and Treasury Department agree that the regulatory conditions should be revised to better reflect that the counterparty is entitled to more than a nominal foreign tax benefit. Accordingly, the temporary regulations eliminate the percentage ownership thresholds from the counterparty definition, and modify the definition of a foreign tax benefit in § 1.901-2T(e)(5)(iv)(B)(4), as described in section D of this preamble.

F. Section 1.901-2T(e)(5)(iv)(B)(6): Inconsistent Treatment

The sixth condition in the 2007 proposed regulations is that the U.S. and an applicable foreign country treat

the arrangement differently under their respective tax systems. For this purpose, an applicable foreign country is any foreign country in which either the counterparty, a person related to the counterparty or the SPV is subject to net basis tax. To provide clarity and limit the scope of this factor, the 2007 proposed regulations provide that the arrangement must be subject to one of four specified types of inconsistent treatment. Specifically, the U.S. and the foreign country (or countries) must treat one or more of the following aspects of the arrangement differently, and the U.S. treatment of the inconsistent aspect must materially affect the amount of foreign tax credits claimed, or the amount of income recognized, by the U.S. party to the arrangement: (i) The classification of an entity as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes; (ii) the characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued in the transaction; (iii) the proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty; or (iv) the amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

Commentators recommended that this condition be clarified so that the U.S. treatment of the inconsistent aspect must materially increase the amount of the U.S. party's foreign tax credits or materially decrease the U.S. party's income for U.S. tax purposes. The temporary regulations reflect this clarification. In addition, commentators requested that this factor be limited to instances when the inconsistent treatment is reasonably expected to result in a permanent difference in the U.S. party's income or foreign tax credits. The IRS and Treasury Department believe that the revisions to the foreign tax benefit condition described in Section D of this preamble are sufficient to establish the appropriate linkage between the inconsistent U.S. and foreign law treatment and the duplicative tax benefits. Accordingly, the temporary regulations retain the inconsistent treatment factor without further changes.

One commentator also recommended that the inconsistent treatment condition be narrowed to instances where the inconsistent treatment under U.S. and foreign law related to definitions of ownership and the

amount of the SPV's taxable income. The IRS and Treasury Department have not adopted this recommendation because it would cause certain types of abusive arrangements to fall outside the scope of the regulations and because differences in entity classification are features common to structured passive investment arrangements.

G. Other Comments

Commentators also made suggestions that did not relate to any single factor. For example, commentators also requested clarification that the foreign payments treated as noncompulsory amounts under the regulation may be deductible payments under sections 162 and 212 and reduce a foreign corporation's earnings and profits for purposes of subpart F. The IRS and Treasury Department believe that providing guidance regarding sections 162, 212, and 964 is beyond the scope of this regulation project. The usual rules for determining the deductibility of a payment and determining the earnings and profits of a foreign corporation for subpart F purposes apply.

In addition, commentators requested that foreign payments attributable to a structured passive investment arrangement be excluded from the scope of the regulations if the arrangement has a valid business purpose. Other commentators suggested that the regulations adopt a broad anti-abuse rule that would deny a foreign tax credit in any case where allowance of the credit would be inconsistent with the purpose of the foreign tax credit regime. The IRS and Treasury Department are concerned that these approaches would create uncertainty for both taxpayers and the IRS. The IRS and Treasury Department have concluded that, at this time, a targeted rule denying foreign tax credits in arrangements described in the temporary regulations is more appropriate.

H. Other Examples

In response to comments, the temporary regulations include more examples illustrating additional variations of the structured passive investment arrangements that are covered by the regulations. For example, new *Example 3* illustrates a U.S. borrower transaction in which a foreign lender acquires assets instead of an equity interest in the SPV and new *Example 10* illustrates a joint venture in which the counterparty's foreign tax benefits do not correspond to the U.S. party's share of the base with respect to which the foreign payment is imposed. Modifications to examples in the 2007

proposed regulations were also necessary to reflect comments received and other changes to the regulations.

I. Effective/Applicability Dates

The 2007 proposed regulations were proposed to be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the final regulations are published in the **Federal Register**. A commentator observed that the final regulations would potentially be retroactively effective because the regulations would apply, for example, to calendar year taxpayers as of January 1 of the year in which the final regulations are published in the **Federal Register** and to taxpayers that participated in structured passive investment arrangements involving entities with taxable years that differ from the U.S. taxpayers' taxable years. Commentators also requested clarification of whether the relevant taxable year for purposes of the effective date is the taxable year of the SPV in which it pays or accrues the purported foreign taxes, or the taxable year of the U.S. taxpayer in which it claims a credit. For example, commentators observed that if the taxable year of the U.S. taxpayer in which it claims a credit is the relevant taxable year, the final regulations would apply to U.S. shareholders of controlled foreign corporations where the shareholder claims a deemed paid credit under section 902 with respect to foreign taxes paid by the foreign corporation in years prior to the effective date of the regulations. These commentators recommended that the regulations provide that the relevant taxable year is the SPV's taxable year. Commentators also recommended that the final regulations apply only to foreign taxes paid or accrued in taxable years beginning after the date the final regulations are published, or only to foreign taxes paid or accrued with respect to income accrued after the date the final regulations are published.

The IRS and Treasury Department have not adopted the recommendation to delay the effective date of these regulations to apply only in tax years beginning after the regulations are published. The IRS and Treasury Department generally believe the regulations should apply to disallow credits for foreign payments that would otherwise be eligible to be claimed as credits in taxable years ending after the regulations are published. The IRS and Treasury Department agree, however, that the regulations should not apply to foreign taxes paid or accrued by a foreign corporation in a U.S. taxable

year of the foreign corporation ending prior to the effective date of the regulations, provided that such year ends prior to the first taxable year of the domestic corporate shareholder for which these regulations are first applicable.

Accordingly, the effective date for these regulations is July 16, 2008. The regulations generally apply to foreign payments that, if they were an amount of tax paid, would be considered paid or accrued by a U.S. or foreign entity in taxable years ending on or after July 16, 2008. In the case of foreign payments by a foreign corporation that has a domestic corporate shareholder, the regulations also apply to such payments that would be considered paid or accrued in the foreign corporation's U.S. taxable years ending with or within taxable years of its domestic corporate shareholder ending on or after July 16, 2008. Finally, in the case of foreign payments by a partnership, trust or estate for which any partner or beneficiary would otherwise be eligible to claim a foreign tax credit, the regulations also apply to payments that would be considered paid or accrued in taxable years ending with or within taxable years of such partners or beneficiaries ending on or after July 16, 2008.

No inference is intended regarding the U.S. tax consequences of structured passive investment arrangements prior to the effective date of the regulations.

For periods after the effective date of the temporary regulations, the IRS and Treasury Department will continue to scrutinize other arrangements that are not covered by the regulations but are inconsistent with the purpose of the foreign tax credit. Such arrangements may include arrangements that are similar to arrangements described in the temporary regulations, but that do not meet all of the conditions included in the temporary regulations. The IRS will continue to challenge the claimed U.S. tax results in appropriate cases. In addition, the IRS and Treasury Department may issue additional regulations in the future in order to address such other arrangements.

J. Miscellaneous Amendments

The temporary regulations also amend § 1.901-1(a) and (b) to reflect statutory changes made by the Foreign Investors Tax Act of 1966 (Pub. L. 89-809 (80 Stat. 1539), section 106(b)), the Tax Reform Act of 1976 (Pub. L. 94-455 (90 Stat. 1520), section 1901(a)(114)), and the American Jobs Creation Act of 2004 (Pub. L. 108-357 (118 Stat. 1418-20), section 405(b)).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 continues to read in part as follows:

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

■ **Par. 2.** Section 1.901-1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.901-1 Allowance of credit for taxes.

(a) and (b). [Reserved]. For further guidance, see § 1.901-1T(a) and (b).

* * * * *

■ **Par. 3.** Section 1.901-1T is added to read as follows:

§ 1.901-1T Allowance of credit for taxes (temporary).

(a) *In general.* Citizens of the United States, domestic corporations, and certain aliens resident in the United States or Puerto Rico may choose to claim a credit, as provided in section 901, against the tax imposed by chapter 1 of the Code for taxes paid or accrued to foreign countries and possessions of the United States, subject to the conditions prescribed in paragraphs (a)(1) through (a)(3) and paragraph (b) of this section.

(1) *Citizen of the United States.* A citizen of the United States, whether

resident or nonresident, may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(ii) His share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary.

(2) *Domestic corporation.* A domestic corporation may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States;

(ii) Its share of any such taxes of a partnership of which it is a member, or of an estate or trust of which it is a beneficiary; and

(iii) The taxes deemed to have been paid under section 902 or 960.

(3) *Alien resident of the United States or Puerto Rico.* Except as provided in a Presidential proclamation described in section 901(c), an alien resident of the United States, or an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, may claim a credit for—

(i) The amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(ii) His share of any such taxes of a partnership of which he is a member, or of an estate or trust of which he is a beneficiary.

(b) *Limitations.* Certain Code sections, including sections 814, 901(e) through (l), 906, 907, 908, 911, 999, and 6038, limit the credit against the tax imposed by chapter 1 of the Code for certain foreign taxes.

(c) through (i) [Reserved]. For further guidance, see § 1.901-1(c) through (i).

(j) *Effective/applicability date.* This section applies to taxable years beginning after July 16, 2008.

(k) *Expiration date.* The applicability of this section expires July 15, 2011.

■ **Par. 4.** Section 1.901-2 is amended by adding paragraphs (e)(5)(iii) and (e)(5)(iv) and revising paragraph (h) to read as follows:

§ 1.901-2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iii) and (iv) [Reserved]. For further guidance, see § 1.901-2T(e)(5)(iii) and (iv).

* * * * *

(h) *Effective/applicability date—(1) In general.* This section and §§ 1.901-2A

and 1.903-1 apply to taxable years beginning after November 14, 1983.

(2) [Reserved]. For further guidance, see § 1.901-2T(h)(2).

■ **Par. 5.** Section 1.901-2T is added to read as follows:

§ 1.901-2T Income, war profits, or excess profits tax paid or accrued (temporary).

(a) through (e)(5)(ii) [Reserved]. For further guidance, see § 1.901-2(a) through (e)(5)(ii).

(e)(5)(iii) [Reserved].

(iv) *Structured passive investment arrangements—(A) In general.* Notwithstanding § 1.901-2(e)(5)(i), an amount paid to a foreign country (a “foreign payment”) is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable (within the meaning of paragraph (e)(5)(iv)(B)(1)(ii) of this section) to a structured passive investment arrangement (as described in paragraph (e)(5)(iv)(B) of this section).

(B) *Conditions.* An arrangement is a structured passive investment arrangement if all of the following conditions are satisfied:

(1) *Special purpose vehicle (SPV).* An entity that is part of the arrangement meets the following requirements:

(i) Substantially all of the gross income (for U.S. tax purposes) of the entity, if any, is passive investment income, and substantially all of the assets of the entity are assets held to produce such passive investment income. As provided in paragraph (e)(5)(iv)(C)(5)(ii) of this section, passive investment income generally does not include income of a holding company from qualified equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business. Thus, except as provided in paragraph (e)(5)(iv)(C)(5)(ii) of this section, qualified equity interests of a holding company in such lower-tier entities are not held to produce passive investment income and the ownership of such interests will not cause the holding company to meet the requirements of this paragraph (e)(5)(iv)(B)(1)(i).

(ii) There is a foreign payment attributable to income of the entity (as determined under the laws of the foreign country to which such foreign payment is made), including the entity’s share of income of a lower-tier entity that is a branch or pass-through entity under the laws of such foreign country, that, if the foreign payment were an amount of tax paid, would be paid or accrued in a U.S. taxable year in which the entity meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. A foreign payment attributable

to income of an entity includes a foreign payment attributable to income that is required to be taken into account by an owner of the entity, if the entity is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity also includes a foreign payment attributable to income of a lower-tier entity that is a branch or pass-through entity for U.S. tax purposes. A foreign payment attributable to income of the entity does not include a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a distribution or payment from the entity to a U.S. party.

(2) *U.S. party.* A person would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment described in paragraph (e)(5)(iv)(B)(1)(ii) of this section if the foreign payment were an amount of tax paid.

(3) *Direct investment.* The U.S. party’s proportionate share of the foreign payment or payments described in paragraph (e)(5)(iv)(B)(1)(ii) of this section is (or is expected to be) substantially greater than the amount of credits, if any, that the U.S. party reasonably would expect to be eligible to claim under section 901(a) for foreign taxes attributable to income generated by the U.S. party’s proportionate share of the assets owned by the SPV if the U.S. party directly owned such assets. For this purpose, direct ownership shall not include ownership through a branch, a permanent establishment or any other arrangement (such as an agency arrangement or dual resident status) that would result in the income generated by the U.S. party’s proportionate share of the assets being subject to tax on a net basis in the foreign country to which the payment is made. A U.S. party’s proportionate share of the assets of the SPV shall be determined by reference to such U.S. party’s proportionate share of the total value of all of the outstanding interests in the SPV that are held by its equity owners and creditors. A U.S. party’s proportionate share of the assets of the SPV, however, shall not include any assets that produce income subject to gross basis withholding tax.

(4) *Foreign tax benefit.* The arrangement is reasonably expected to result in a credit, deduction, loss, exemption, exclusion or other tax benefit under the laws of a foreign country that is available to a counterparty or to a person that is related to the counterparty (determined under the principles of paragraph

(e)(5)(iv)(C)(7) of this section by applying the tax laws of a foreign country in which the counterparty is subject to tax on a net basis). However, a foreign tax benefit is described in this paragraph (e)(5)(iv)(B)(4) only if any such credit corresponds to 10 percent or more of the U.S. party’s share (for U.S. tax purposes) of the foreign payment referred to in paragraph (e)(5)(iv)(B)(1)(ii) of this section or if any such deduction, loss, exemption, exclusion or other tax benefit corresponds to 10 percent or more of the foreign base with respect to which the U.S. party’s share (for U.S. tax purposes) of the foreign payment is imposed.

(5) *Counterparty.* The arrangement involves a counterparty. A counterparty is a person that, under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax, directly or indirectly owns or acquires equity interests in, or assets of, the SPV. However, a counterparty does not include the SPV or a person with respect to which for U.S. tax purposes the same domestic corporation, U.S. citizen or resident alien individual directly or indirectly owns more than 80 percent of the total value of the stock (or equity interests) of each of the U.S. party and such person. In addition, a counterparty does not include a person with respect to which for U.S. tax purposes the U.S. party directly or indirectly owns more than 80 percent of the total value of the stock (or equity interests), but only if the U.S. party is a domestic corporation, a U.S. citizen or a resident alien individual.

(6) *Inconsistent treatment.* The United States and an applicable foreign country treat one or more of the following aspects of the arrangement differently under their respective tax systems, and for one or more tax years when the arrangement is in effect either the amount of income recognized by the SPV, the U.S. party, and persons related to the U.S. party for U.S. tax purposes is materially less than the amount of income that would be recognized if the foreign tax treatment controlled for U.S. tax purposes, or the amount of credits claimed by the U.S. party (if the foreign payment described in paragraph (e)(5)(iv)(B)(1)(ii) of this section were an amount of tax paid) is materially greater than it would be if the foreign tax treatment controlled for U.S. tax purposes:

(i) The classification of the SPV (or an entity that has a direct or indirect ownership interest in the SPV) as a corporation or other entity subject to an entity-level tax, a partnership or other

flow-through entity or an entity that is disregarded for tax purposes.

(ii) The characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued by the SPV (or an entity that has a direct or indirect ownership interest in the SPV) to the U.S. party, the counterparty or a person related to the U.S. party or the counterparty.

(iii) The proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty.

(iv) The amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

(C) *Definitions.* The following definitions apply for purposes of paragraph (e)(5)(iv) of this section.

(1) *Applicable foreign country.* An applicable foreign country means each foreign country to which a foreign payment described in paragraph (e)(5)(iv)(B)(1)(ii) of this section is made or which confers a foreign tax benefit described in paragraph (e)(5)(iv)(B)(4) of this section.

(2) *Counterparty.* The term counterparty means a person described in paragraph (e)(5)(iv)(B)(5) of this section.

(3) *Entity.* The term entity includes a corporation, trust, partnership or disregarded entity described in § 301.7701-2(c)(2)(i) of this chapter.

(4) *Indirect ownership.* Indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), regardless of whether the interest is owned by a U.S. or foreign entity.

(5) *Passive investment income—(i) In general.* For purposes of paragraph (e)(5)(iv) of this section, the term passive investment income means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(5)(i) and paragraph (e)(5)(iv)(C)(5)(ii) of this section. In determining whether income is described in section 954(c), paragraphs (c)(3) and (c)(6) of that section shall be disregarded, and sections 954(h) and 954(i) shall be taken into account by applying those provisions at the entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). For purposes of the preceding sentence, any income of an entity attributable to transactions that, assuming the entity is an SPV, are with a person that is a counterparty, or with persons that are related to a

counterparty within the meaning of paragraph (e)(5)(iv)(B)(4) of this section, shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and 954(i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or 954(i), but only if any such person (or a person that is related to such person within the meaning of paragraph (e)(5)(iv)(B)(4) of this section) is eligible for a foreign tax benefit described in paragraph (e)(5)(iv)(B)(4) of this section. In addition, in applying section 954(h) for purposes of this paragraph (e)(5)(iv)(C)(5)(i), section 954(h)(3)(E) shall not apply, section 954(h)(2)(A)(ii) shall be satisfied only if the entity conducts substantial activity with respect to its business through its own employees, and the term “any foreign country” shall be substituted for “home country” wherever it appears in section 954(h).

(ii) *Holding company exception.* Except as provided in this paragraph (e)(5)(iv)(C)(5)(ii), income of an entity that is attributable to an equity interest in a lower-tier entity is passive investment income. If the entity is a holding company and directly owns a qualified equity interest in another entity (a “lower-tier entity”) that is engaged in the active conduct of a trade or business and that derives more than 50 percent of its gross income from such trade or business, then none of the entity’s income attributable to such interest is passive investment income, provided that substantially all of the entity’s opportunity for gain and risk of loss with respect to such interest in the lower-tier entity is shared by the U.S. party or parties (or persons that are related to a U.S. party) and, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty). For purposes of the preceding sentence, an entity is a holding company, and is considered to be engaged in the active conduct of a trade or business and to derive more than 50 percent of its gross income from such trade or business, if substantially all of its assets consist of qualified equity interests in one or more entities, each of which is engaged in the active conduct of a trade or business and derives more than 50 percent of its gross income from such trade or business and with respect to which substantially all of the entity’s opportunity for gain and risk of loss with respect to each such interest in a lower-tier entity is shared (directly or indirectly) by the U.S. party

or parties (or persons that are related to a U.S. party) and, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty). A person is not considered to share in the entity’s opportunity for gain and risk of loss if its equity interest in the entity was acquired in a sale-repurchase transaction, if its interest is treated as debt for U.S. tax purposes, or if substantially all of the entity’s opportunity for gain and risk of loss with respect to its interest in any lower-tier entity is borne (directly or indirectly) by the U.S. party or parties (or persons that are related to a U.S. party) or, assuming the entity is an SPV, a counterparty or counterparties (or persons that are related to a counterparty), but not both parties. For purposes of this paragraph (e)(5)(iv)(C)(5)(ii), a lower-tier entity that is engaged in a banking, financing, or similar business shall not be considered to be engaged in the active conduct of a trade or business unless the income derived by such entity would be excluded from section 954(c)(1) under section 954(h) or 954(i), determined by applying those provisions at the lower-tier entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions that, assuming the entity is an SPV, are with a person that is a counterparty, or with other persons that are related to a counterparty within the meaning of paragraph (e)(5)(iv)(B)(4) of this section, shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and 954(i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or 954(i), but only if any such person (or a person that is related to such person within the meaning of paragraph (e)(5)(iv)(B)(4) of this section) is eligible for a foreign tax benefit described in paragraph (e)(5)(iv)(B)(4) of this section. In applying section 954(h) for purposes of this paragraph (e)(5)(iv)(C)(5)(ii), section 954(h)(3)(E) shall not apply, section 954(h)(2)(A)(ii) shall be satisfied only if the entity conducts substantial activity with respect to its business through its own employees, and the term “any foreign country” shall be substituted for “home country” wherever it appears in section 954(h).

(6) *Qualified equity interest.* With respect to an interest in a corporation, the term qualified equity interest means

stock representing 10 percent or more of the total combined voting power of all classes of stock entitled to vote and 10 percent or more of the total value of the stock of the corporation or disregarded entity, but does not include any preferred stock (as defined in section 351(g)(3)). Similar rules shall apply to determine whether an interest in an entity other than a corporation is a qualified equity interest.

(7) *Related person.* Two persons are related if—

(i) One person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of the other person; or

(ii) The same person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of both persons.

(8) *Special purpose vehicle (SPV).* The term *SPV* means the entity described in paragraph (e)(5)(iv)(B)(1) of this section.

(9) *U.S. party.* The term *U.S. party* means a person described in paragraph (e)(5)(iv)(B)(2) of this section.

(D) *Examples.* The following examples illustrate the rules of paragraph (e)(5)(iv) of this section. No inference is intended as to whether a taxpayer would be eligible to claim a credit under section 901(a) if a foreign payment were an amount of tax paid.

Example 1. U.S. borrower transaction. (i) *Facts.* A domestic corporation (USP) forms a country M corporation (Newco), contributing \$1.5 billion in exchange for 100 percent of the stock of Newco. Newco, in turn, loans the \$1.5 billion to a second country M corporation (FSub) wholly owned by USP. USP then sells its entire interest in Newco to a country M corporation (FP) for the original purchase price of \$1.5 billion, subject to an obligation to repurchase the interest in five years for \$1.5 billion. The sale has the effect of transferring ownership of the Newco stock to FP for country M tax purposes. The sale-repurchase transaction is structured in a way that qualifies as a collateralized loan for U.S. tax purposes. Therefore, USP remains the owner of the Newco stock for U.S. tax purposes. In year 1, FSub pays Newco \$120 million of interest. Newco pays \$36 million to country M with respect to such interest income and distributes the remaining \$84 million to FP. Under country M law, the \$84 million distribution is excluded from FP's income. None of FP's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Under an income tax treaty between country M and the United States, country M does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result.* The \$36 million payment by Newco to country M is not a compulsory payment, and thus is not an amount of tax paid because the foreign payment is attributable to a structured passive

investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section; Newco's only asset, a note, is held to produce such income; the payment to country M is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. Second, if the foreign payment were treated as an amount of tax paid, USP would be deemed to pay the foreign payment under section 902(a) and, therefore, would be eligible to claim a credit for such payment under section 901(a). Third, USP would not pay any country M tax if it directly owned Newco's loan receivable. Fourth, the distribution from Newco to FP is exempt from tax under country M law, and the exempt amount corresponds to more than 10 percent of the foreign base with respect to which USP's share (which is 100 percent under U.S. tax law) of the foreign payment was imposed. Fifth, FP is a counterparty because FP owns stock of Newco under country M law and none of FP's stock is owned by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, FP is the owner of 100 percent of Newco's stock for country M tax purposes, while USP is the owner of 100 percent of Newco's stock for U.S. tax purposes, and the amount of credits claimed by USP if the payment to country M were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, FP and not USP were treated as owning 100 percent of Newco's stock. Because the payment to country M is not an amount of tax paid, USP is not deemed to pay any country M tax under section 902(a). USP has dividend income of \$84 million and also has interest expense of \$84 million. FSub's post-1986 undistributed earnings are reduced by \$120 million of interest expense.

Example 2. U.S. borrower transaction. (i) *Facts.* The facts are the same as in *Example 1*, except that FSub is a wholly-owned subsidiary of Newco. In addition, assume FSub is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its gross income from such business.

(ii) *Result.* The results are the same as in *Example 1*. Although Newco wholly owns FSub, which is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its income from such business, Newco's income that is attributable to Newco's equity interest in FSub is passive investment income because the sale-repurchase transaction limits FP's interest in Newco and its assets to that of a creditor, so that substantially all of Newco's opportunity for gain and risk of loss with respect to its stock in FSub is borne by USP. See paragraph (e)(5)(iv)(C)(5)(ii) of this section. Accordingly, Newco's stock in FSub is held to produce passive investment income. Thus, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section, Newco's assets are held to produce such income, the payment to

country M is attributable to such income, and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section.

Example 3. U.S. borrower transaction. (i) *Facts.* (A) A domestic corporation (USP) loans \$750 million to its wholly-owned domestic subsidiary (Sub). USP and Sub form a country M partnership (Partnership) to which each contributes \$750 million. Partnership loans all of its \$1.5 billion of capital to Issuer, a wholly-owned country M affiliate of USP, in exchange for a note and coupons providing for the payment of interest at a fixed rate over a five-year term. Partnership sells all of the coupons to Coupon Purchaser, a country N partnership owned by a country M corporation (Foreign Bank) and a wholly-owned country M subsidiary of Foreign Bank, for \$300 million. At the time of the coupon sale, the fair market value of the coupons sold is \$290 million and, pursuant to section 1286(b)(3), Partnership's basis allocated to the coupons sold is \$290 million. Several months later and prior to any interest payments on the note, Foreign Bank and its subsidiary sell all of their interests in Coupon Purchaser to an unrelated country O corporation for \$280 million. None of Foreign Bank's stock or its subsidiary's stock is owned, directly or indirectly, by USP or Sub or by any shareholders of USP or Sub that are domestic corporations, U.S. citizens, or resident alien individuals.

(B) Assume that both the United States and country M respect the sale of the coupons for tax law purposes. In the year of the coupon sale, for country M tax purposes USP's and Sub's shares of Partnership's profits total \$300 million, a payment of \$60 million to country M is made with respect to those profits, and Foreign Bank and its subsidiary, as partners of Coupon Purchaser, are entitled to deduct the \$300 million purchase price of the coupons from their taxable income. For U.S. tax purposes, USP and Sub recognize their distributive shares of the \$10 million premium income and claim a direct foreign tax credit for their distributive shares of the \$60 million payment to country M. Country M imposes no additional tax when Foreign Bank and its subsidiary sell their interests in Coupon Purchaser. Country M also does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result.* The payment to country M is not a compulsory payment, and thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Partnership is an SPV because all of Partnership's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section; Partnership's only asset, Issuer's note, is held to produce such income; the payment to country M is attributable to such income; and if the payment were an amount of tax paid, it would be paid or accrued in a U.S. taxable year in which Partnership meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. Second, if the foreign payment were an amount of tax paid, USP and Sub would be eligible to claim a credit for such payment

under section 901(a). Third, USP and Sub would not pay any country M tax if they directly owned Issuer's note. Fourth, for country M tax purposes, Foreign Bank and its subsidiary deduct the \$300 million purchase price of the coupons and are exempt from country M tax on the \$280 million received upon the sale of Coupon Purchaser, and the deduction and exemption correspond to more than 10 percent of the \$300 million base with respect to which USP's and Sub's 100% share of the foreign payments was imposed. Fifth, Foreign Bank and its subsidiary are counterparties because they indirectly acquired assets of Partnership, the interest coupons on Issuer's note, and are not directly or indirectly owned by USP or Sub or shareholders of USP or Sub that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the amount of taxable income of Partnership for one or more years is different for U.S. and country M tax purposes, and the amount of income recognized by USP and Sub for U.S. tax purposes is materially less than the amount of income they would recognize if the country M tax treatment of the coupon sale controlled for U.S. tax purposes. Because the payment to country M is not an amount of tax paid, USP and Sub are not considered to pay tax under section 901. USP and Sub have interest income of \$10 million in the year of the coupon sale.

Example 4. Active business; no SPV. (i) Facts. A, a domestic corporation, wholly owns B, a country X corporation engaged in the manufacture and sale of widgets. On January 1, year 1, C, also a country X corporation, loans \$400 million to B in exchange for an instrument that is debt for U.S. tax purposes and equity in B for country X tax purposes. As a result, C is considered to own stock of B for country X tax purposes. B loans \$55 million to D, a country Y corporation wholly owned by A. In year 1, B has \$166 million of net income attributable to its sales of widgets and \$3.3 million of interest income attributable to the loan to D. Country Y does not impose tax on interest paid to nonresidents. B makes a payment of \$50.8 million to country X with respect to B's net income. Country X does not impose tax on dividend payments between country X corporations. None of C's stock is owned, directly or indirectly, by A or by any shareholders of A that are domestic corporations, U.S. citizens, or resident alien individuals.

(ii) **Result.** B is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(1) of this section because the amount of interest income received from D does not constitute substantially all of B's income and the \$55 million note from D does not constitute substantially all of B's assets. Accordingly, the \$50.8 million payment to country X is not attributable to a structured passive investment arrangement.

Example 5. U.S. lender transaction. (i) Facts. (A) A country X corporation (Foreign Bank) contributes \$2 billion to a newly-formed country X company (Newco) in exchange for 100 percent of Newco's common stock. A domestic corporation (USP) contributes \$1 billion to Newco in exchange for securities that are treated as stock of

Newco for U.S. tax purposes and debt of Newco for country X tax purposes. Newco loans the \$3 billion to a wholly-owned, country X subsidiary of Foreign Bank (FSub) in return for a \$1 billion note paying fixed, non-contingent interest and a \$2 billion contingent interest zero coupon note, each note having a term of seven years. FSub is required to pay non-contingent interest to Newco annually on the \$1 billion note, but the contingent interest is only payable at maturity of the \$2 billion note (December 31 of year 7). The contingency is effective to prevent the current accrual of the contingent interest for U.S. tax purposes. At the end of year 5, pursuant to a prearranged plan, Foreign Bank acquires USP's stock of Newco for \$1 billion. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. Under an income tax treaty between country X and the United States, country X does not impose country X tax on interest received by U.S. residents from sources in country X. None of Foreign Bank's stock is owned, directly or indirectly, by USP or any shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals.

(B) In each of years 1 through 7, FSub pays Newco \$40 million of non-contingent interest. Even though none of the contingent interest is currently payable by FSub, for country X tax purposes Newco accrues an additional \$84 million of interest income attributable to the contingent note in each year. Newco distributes \$4 million to USP in each of years 1 through 5 and pays country X \$36 million with respect to \$120 million of taxable income from the two notes in each year. For U.S. tax purposes, only the \$40 million of non-contingent interest is included in computing Newco's post-1986 undistributed earnings.

(ii) **Result.** The \$36 million payment to country X is not a compulsory payment, and thus is not an amount of tax paid, because the foreign payment is attributable to a structured passive investment arrangement. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section; Newco's only assets, two notes of FSub, are held to produce such income; the payment to country X is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which Newco meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. Second, if the foreign payment were an amount of tax paid, USP would be deemed to pay all, or \$36 million, of the foreign payment under section 902(a) in each of years 1 through 5 and, therefore, would be eligible to claim a credit under section 901(a). Third, USP would not pay any country X tax if it directly owned its proportionate share of Newco's assets, the notes of FSub. Fourth, for country X tax purposes, Foreign Bank is eligible to receive a tax-free distribution of the \$84 million of contingent interest attributable to each of years 1 through 5, and that amount corresponds to more than 10 percent of the \$120 million foreign base with respect to

which USP's share of the foreign payment was imposed. The result would be the same whether or not the contingency occurs and whether or not FSub pays the contingent interest to Newco, because Foreign Bank would be entitled to receive the amount of the contingent interest from either FSub or Newco without including it in income for country X tax purposes. Fifth, Foreign Bank is a counterparty because it owns stock of Newco and none of Foreign Bank's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat various aspects of the arrangement differently, including whether USP's interest is debt or equity and the timing and amount of interest accruals on the contingent interest note. The amount of credits claimed by USP if the payment to country X were an amount of tax paid is materially greater than it would be if, for U.S. tax purposes, the securities held by USP were treated as debt, and the amount of income recognized by Newco for U.S. tax purposes is materially less than the amount of income recognized for country X tax purposes. Because the payment to country X is not an amount of tax paid, USP is not deemed to pay any country X tax under section 902(a). USP has dividend income of \$4 million in each of years 1 through 5.

Example 6. Holding company; no SPV. (i) Facts. A, a country X corporation, and B, a domestic corporation, each contribute \$1 billion to a newly-formed country X entity (C) in exchange for stock of C. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. C contributes \$1.95 billion to a newly-formed country X corporation (D) in exchange for 100 percent of D's stock. C loans its remaining \$50 million to D. Accordingly, C's sole assets are stock and debt of D. D uses the entire \$2 billion to engage in the business of manufacturing and selling widgets. In year 1, D derives \$300 million of income from its widget business and derives \$2 million of interest income. Also in year 1, C has dividend income of \$200 million and interest income of \$3.2 million with respect to its investment in D. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. C makes a payment of \$960,000 to country X with respect to C's net income.

(ii) **Result.** C's dividend income is not passive investment income, and C's stock in D is not held to produce such income, because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(5)(ii) of this section. As a result, less than substantially all of C's income is passive investment income and less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(1) of this section, and the \$960,000 payment to country X is not attributable to a structured passive investment arrangement.

Example 7. Holding company; no SPV. (i) Facts. The facts are the same as in *Example*

6, except that instead of loaning \$50 million to D, C contributes the \$50 million to E in exchange for 10 percent of the stock of E. E is a country Y corporation that is not engaged in the active conduct of a trade or business. Also in year 1, D pays no dividends to C, E pays \$3.2 million in dividends to C, and C makes a payment of \$960,000 to country X with respect to C's net income.

(ii) *Result.* C's dividend income attributable to its stock in E is passive investment income, and C's stock in E is held to produce such income. C's stock in D is not held to produce passive investment income because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(5)(ii) of this section. As a result, less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV because it does not meet the requirements of paragraph (e)(5)(iv)(B)(1) of this section, and the \$960,000 payment to country X is not attributable to a structured passive investment arrangement.

Example 8. Asset holding transaction. (i) *Facts.* (A) A domestic corporation (USP) contributes \$6 billion of country Z debt obligations to a country Z entity (DE) in exchange for all of the class A and class B stock of DE. A corporation unrelated to USP and organized in country Z (FC) contributes \$1.5 billion to DE in exchange for all of the class C stock of DE. DE uses the \$1.5 billion contributed by FC to redeem USP's class B stock. The class C stock is entitled to "all" income from DE. However, FC is obligated immediately to contribute back to DE all distributions on the class C stock. USP and FC enter into—

(1) A contract under which USP agrees to buy after five years the class C stock for \$1.5 billion; and

(2) An agreement under which USP agrees to pay FC periodic payments on \$1.5 billion.

(B) For U.S. tax purposes, these steps create a loan of \$1.5 billion from FC to USP, and USP is the owner of the class C stock and the class A stock. DE is a disregarded entity for U.S. tax purposes and a corporation for country Z tax purposes. In year 1, DE earns \$400 million of interest income on the country Z debt obligations. DE makes a payment to country Z of \$100 million with respect to such income and distributes the remaining \$300 million to FC. FC contributes the \$300 million back to DE. None of FC's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Country Z does not impose tax on interest income derived by U.S. residents.

(C) Country Z treats FC as the owner of the class C stock. Pursuant to country Z tax law, FC is required to report the \$400 million of income with respect to the \$300 million distribution from DE, but is allowed to claim credits for DE's \$100 million payment to country Z. For country Z tax purposes, FC is entitled to current deductions equal to the \$300 million contributed back to DE.

(ii) *Result.* The payment to country Z is not a compulsory payment, and thus is not an amount of tax paid because the payment is

attributable to a structured passive investment arrangement. First, DE is an SPV because all of DE's income is passive investment income described in paragraph (e)(5)(iv)(C)(5) of this section; all of DE's assets are held to produce such income; the payment to country Z is attributable to such income; and if the payment were an amount of tax paid it would be paid or accrued in a U.S. taxable year in which DE meets the requirements of paragraph (e)(5)(iv)(B)(1)(i) of this section. Second, if the payment were an amount of tax paid, USP would be eligible to claim a credit for such amount under section 901(a). Third, USP would not pay any country Z tax if it directly owned DE's assets. Fourth, FC is entitled to claim a credit under country Z tax law for the payment and recognizes a deduction for the \$300 million contributed to DE under country Z law. The credit claimed by FC corresponds to more than 10 percent of USP's share (for U.S. tax purposes) of the foreign payment and the deductions claimed by FC correspond to more than 10 percent of the base with respect to which USP's share of the foreign payment was imposed. Fifth, FC is a counterparty because FC is considered to own equity of DE under country Z law and none of FC's stock is owned, directly or indirectly, by USP or shareholders of USP that are domestic corporations, U.S. citizens, or resident alien individuals. Sixth, the United States and country X treat certain aspects of the transaction differently and the amount of credits claimed by USP if the country Z payment were an amount of tax paid is materially greater than it would be if FC, rather than USP, owned the class C stock for U.S. tax purposes. Because the payment to country Z is not an amount of tax paid, USP is not considered to pay tax under section 901. USP has \$400 million of interest income.

Example 9. Loss surrender. (i) *Facts.* The facts are the same as in *Example 8*, except that the deductions attributable to the arrangement contribute to a loss recognized by FC for country Z tax purposes, and pursuant to a group relief regime in country Z FC elects to surrender the loss to its country Z subsidiary.

(ii) *Result.* The results are the same as in *Example 8*. The surrender of the loss to a related party is a foreign tax benefit that corresponds to the base with respect to which USP's share of the foreign payment was imposed.

Example 10. Joint venture; no foreign tax benefit. (i) *Facts.* FC, a country X corporation, and USC, a domestic corporation, each contribute \$1 billion to a newly-formed country X entity (C) in exchange for stock of C. FC and USC are entitled to equal 50% shares of C's income, gain, expense and loss. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. In year 1, C earns \$200 million of passive investment income, makes a payment to country X of \$60 million with respect to that income, and distributes \$70 million to each of FC and USC. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation.

(ii) *Result.* FC's tax-exempt receipt of \$70 million, or its 50% share of C's profits, is not

a foreign tax benefit within the meaning of paragraph (e)(5)(iv)(B)(4) of this section, because it does not correspond to any part of the foreign base with respect to which USC's share of the foreign payment was imposed. Accordingly, the \$60 million payment to country X is not attributable to a structured passive investment arrangement.

(f) through (h)(1) [Reserved]. For further guidance, see § 1.901-2(f) through (h)(1).

(h)(2) This section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901-2(f) by a U.S. or foreign person in taxable years ending on or after July 16, 2008. In the case of foreign payments by a foreign corporation that has a domestic corporate shareholder, this section also applies to such payments that, if such payments were an amount of tax paid, would be considered paid or accrued in the foreign corporation's U.S. taxable years ending with or within taxable years of its domestic corporate shareholder ending on or after July 16, 2008. In the case of foreign payments by a partnership, trust or estate with respect to which any person would be eligible to claim a credit under section 901(b) if the payment were an amount of tax paid, this section also applies to such payments that would be considered paid or accrued in U.S. taxable years of the partnership, trust or estate ending with or within taxable years of such eligible persons ending on or after July 16, 2008.

(3) *Expiration date.* The applicability of this section expires on July 15, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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Internal Revenue Service

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Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.