

§ 1.1014-5 [Amended]

■ **Par. 3.** Section 1.1014-5 is amended by:

■ 1. In paragraph (a)(1), first sentence, removing the language “paragraph (b)” and adding “paragraph (b) or (c)” in its place.

■ 2. Re-designating paragraph (c) as newly-designated paragraph (d) and adding new paragraph (c).

■ 3. In newly-designated paragraph (d), adding new *Example 7* and *Example 8*.

The additions read as follows:

§ 1.1014-5 Gain or loss.

* * * * *

(c) *Sale or other disposition of a term interest in a tax-exempt trust—(1) In general.* In the case of any sale or other disposition by a taxable beneficiary of a term interest (as defined in § 1.1001-1(f)(2)) in a tax-exempt trust (as described in paragraph (c)(2) of this section) to which section 1001(e)(3) applies, the taxable beneficiary's share of adjusted uniform basis, determined as of (and immediately before) the sale or disposition of that interest, is—

(i) That part of the adjusted uniform basis assignable to the term interest of the taxable beneficiary under the rules of paragraph (a) of this section reduced, but not below zero, by

(ii) An amount determined by applying the same actuarial share applied in paragraph (c)(1)(i) of this section to the sum of—

(A) The trust's undistributed net ordinary income within the meaning of section 664(b)(1) and § 1.664-1(d)(1)(ii)(a)(1) for the current and prior taxable years of the trust, if any; and

(B) The trust's undistributed net capital gains within the meaning of section 664(b)(2) and § 1.664-1(d)(1)(ii)(a)(2) for the current and prior taxable years of the trust, if any.

(2) *Tax-exempt trust defined.* For purposes of this section, the term *tax-exempt trust* means a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664.

(3) *Taxable beneficiary defined.* For purposes of this section, the term *taxable beneficiary* means any person other than an organization described in section 170(c) or exempt from taxation under section 501(a).

(4) *Effective/applicability date.* This paragraph (c) and paragraph (d), *Example 7* and *Example 8*, of this section apply to sales and other dispositions of interests in tax-exempt trusts occurring on or after January 16, 2014, except for sales or dispositions occurring pursuant to a binding commitment entered into before January 16, 2014.

(d) * * *

Example 7. (a) Grantor creates a charitable remainder unitrust (CRUT) on Date 1 in which Grantor retains a unitrust interest and irrevocably transfers the remainder interest to Charity. Grantor is an individual taxpayer subject to income tax. CRUT meets the requirements of section 664 and is exempt from income tax.

(b) Grantor's basis in the shares of X stock used to fund CRUT is \$10x. On Date 2, CRUT sells the X stock for \$100x. The \$90x of gain is exempt from income tax under section 664(c)(1). On Date 3, CRUT uses the \$100x proceeds from its sale of the X stock to purchase Y stock. On Date 4, CRUT sells the Y stock for \$110x. The \$10x of gain on the sale of the Y stock is exempt from income tax under section 664(c)(1). On Date 5, CRUT uses the \$110x proceeds from its sale of Y stock to buy Z stock. On Date 5, CRUT's basis in its assets is \$110x and CRUT's total undistributed net capital gains are \$100x.

(c) Later, when the fair market value of CRUT's assets is \$150x and CRUT has no undistributed net ordinary income, Grantor and Charity sell all of their interests in CRUT to a third person. Grantor receives \$100x for the retained unitrust interest, and Charity receives \$50x for its interest. Because the entire interest in CRUT is transferred to the third person, section 1001(e)(3) prevents section 1001(e)(1) from applying to the transaction. Therefore, Grantor's gain on the sale of the retained unitrust interest in CRUT is determined under section 1001(a), which provides that Grantor's gain on the sale of that interest is the excess of the amount realized, \$100x, over Grantor's adjusted basis in the interest.

(d) Grantor's adjusted basis in the unitrust interest in CRUT is that portion of CRUT's adjusted uniform basis that is assignable to Grantor's interest under § 1.1014-5, which is Grantor's actuarial share of the adjusted uniform basis. In this case, CRUT's adjusted uniform basis in its sole asset, the Z stock, is \$110x. However, paragraph (c) of this section applies to the transaction. Therefore, Grantor's actuarial share of CRUT's adjusted uniform basis (determined by applying the factors set forth in the tables contained in § 20.2031-7 of this chapter) is reduced by an amount determined by applying the same factors to the sum of CRUT's \$0 of undistributed net ordinary income and its \$100x of undistributed net capital gains.

(e) In determining Charity's share of the adjusted uniform basis, Charity applies the factors set forth in the tables contained in § 20.2031-7 of this chapter to the full \$110x of basis.

Example 8. (a) Grantor creates a charitable remainder annuity trust (CRAT) on Date 1 in which Grantor retains an annuity interest and irrevocably transfers the remainder interest to Charity. Grantor is an individual taxpayer subject to income tax. CRAT meets the requirements of section 664 and is exempt from income tax.

(b) Grantor funds CRAT with shares of X stock having a basis of \$50x. On Date 2, CRAT sells the X stock for \$150x. The \$100x of gain is exempt from income tax under section 664(c)(1). On Date 3, CRAT distributes \$10x to Grantor, and uses the

remaining \$140x of net proceeds from its sale of the X stock to purchase Y stock. Grantor treats the \$10x distribution as capital gain, so that CRAT's remaining undistributed net capital gains amount described in section 664(b)(2) and § 1.664-1(d) is \$90x.

(c) On Date 4, when the fair market value of CRAT's assets, which consist entirely of the Y stock, is still \$140x, Grantor and Charity sell all of their interests in CRAT to a third person. Grantor receives \$126x for the retained annuity interest, and Charity receives \$14x for its remainder interest. Because the entire interest in CRAT is transferred to the third person, section 1001(e)(3) prevents section 1001(e)(1) from applying to the transaction. Therefore, Grantor's gain on the sale of the retained annuity interest in CRAT is determined under section 1001(a), which provides that Grantor's gain on the sale of that interest is the excess of the amount realized, \$126x, over Grantor's adjusted basis in that interest.

(d) Grantor's adjusted basis in the annuity interest in CRAT is that portion of CRAT's adjusted uniform basis that is assignable to Grantor's interest under § 1.1014-5, which is Grantor's actuarial share of the adjusted uniform basis. In this case, CRAT's adjusted uniform basis in its sole asset, the Y stock, is \$140x. However, paragraph (c) of this section applies to the transaction. Therefore, Grantor's actuarial share of CRAT's adjusted uniform basis (determined by applying the factors set forth in the tables contained in § 20.2031-7 of this chapter) is reduced by an amount determined by applying the same factors to the sum of CRAT's \$0 of undistributed net ordinary income and its \$90x of undistributed net capital gains.

(e) In determining Charity's share of the adjusted uniform basis, Charity applies the factors set forth in the tables contained in § 20.2031-7 of this chapter to determine its actuarial share of the full \$140x of basis.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-121534-12]

RIN 1545-BL00

Guidance for Determining Stock Ownership

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury

Department are issuing temporary regulations that identify certain stock of a foreign corporation that is disregarded in calculating ownership of the foreign corporation for purposes of determining whether it is a surrogate foreign corporation. The temporary regulations also provide guidance with respect to the effect of transfers of stock of a foreign corporation after the foreign corporation has acquired substantially all of the properties of a domestic corporation or of a trade or business of a domestic partnership. These regulations affect certain domestic corporations and partnerships (and certain parties related thereto), and foreign corporations that acquire substantially all of the properties of such domestic corporations or of the trades or businesses of such domestic partnerships. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

DATES: Comments and requests for a public hearing must be received by April 17, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-121534-12), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-121534-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-121534-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David A. Levine, (202) 317-6937; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874 of the Internal Revenue Code. The temporary regulations identify certain stock of a foreign corporation that is not taken into account for purposes of calculating the ownership percentage described in section 7874(a)(2)(B)(ii), and also address the effect of certain transfers of stock of a foreign corporation that occur

after the acquisition described in section 7874(a)(2)(B)(i). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these amendments.

Special Analyses

It has been determined that that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Given the complexity and cost of a transaction to which these regulations may apply, the IRS and the Treasury Department anticipate that these regulations primarily will affect large domestic corporations and partnerships and their shareholders and partners. Although small entities could be shareholders or partners of a larger domestic corporation or partnership involved in a transaction affected by the regulations, the IRS and the Treasury Department do not anticipate the number of these shareholders or partners to be substantial. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are David A. Levine of the Office of Associate Chief Counsel (International) and Mary W. Lyons,

formerly of the 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.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.7874-4 also issued under 26 U.S.C. 7874(c)(6) and (g). Section 1.7874-5 also issued under 26 U.S.C. 7874(c)(6) and (g).

■ **Par. 2.** Section 1.7874-4 is added to read as follows:

§ 1.7874-4 Disregard of certain stock related to the acquisition.

[The text of proposed § 1.7874-4(a) through (k) is the same as the text of § 1.7874-4T(a) through (k) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.7874-5 is added to read as follows:

§ 1.7874-5 Effect of certain transfers of stock related to the acquisition.

[The text of proposed § 1.7874-5(a) through (c) is the same as the text of § 1.7874-5T(a) through (c) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2014-00894 Filed 1-16-14; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 3, 5 and 11

[Docket No.: PTO-P-2013-0025]

RIN 0651-AC87

Extension of the Comment Period for Notice of Proposed Rulemaking on Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs

AGENCY: United States Patent and Trademark Office, Department of Commerce.