Section 1504(d) Elections — Deferral of Termination

Notice 2000–7

PURPOSE

The purpose of this Notice is to provide guidance regarding the effect of the repeal of certain Canadian banking legislation on elections under section 1504(d) of the Internal Revenue Code.

BACKGROUND

Section 1504(d) of the Code allows, in certain circumstances, a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock of a Mexican or Canadian corporation, to elect to treat such corporation as a domestic corporation for all purposes of subtitle A of the Code. Among other requirements, such an election may be made only if the sole purpose for maintaining such corporation is to comply with Canadian or Mexican law regulating the title and operation of property.

If an election under section 1504(d) is in effect with respect to a Canadian or Mexican corporation, and the relevant provision in Canadian or Mexican law regulating the title and operation of property is repealed, it is the view of Treasury and the IRS that the election under section 1504(d) generally is terminated as of the effective date of the repeal. However, a foreign corporation may continue to be viewed as maintained solely for the purpose of complying with Canadian or Mexican law for a short period of time following the repeal of that foreign law if the taxpayer takes reasonable and expeditious measures to respond to the change in foreign law and for good reason is unable to complete such measures by the effective date of the repeal, as would be the case if the taxpayer is required to obtain regulatory approval in order to convert the foreign corporation to a branch of the U.S. parent and cannot obtain such approval by the effective date of the repeal. In such a case, the foreign corporation will continue to be viewed as maintained solely for the purpose of complying with Canadian or Mexican law only for so long as is reasonably necessary to convert to branch form and only for so long as the taxpayer persists in its efforts to convert to branch form during that period. The IRS may issue guidance identifying whether and the extent to which this short period of time exists in appropriate circumstances not specifically addressed by

this Notice. Following the end of any such period (or immediately upon the effective date of the repeal of the foreign law if there is no such period), if the foreign corporation remains in existence, it is no longer maintained solely for the purpose of complying with the repealed foreign law.

Repeal of Canadian Banking Legislation

Until recently, Canada prohibited foreign banks from operating in branch form within Canada, under the Bank Act (Canada), S.C. 1991, c. 46 ("Original Act"). Canadian banking operations of a foreign bank were required to be conducted within a Canadian corporation. Thus, Canadian banking subsidiaries of U.S. banks may have qualified for the election under section 1504(d).

Effective June 28, 1999, the Original Act was amended to permit foreign banks to perform certain specified banking functions in Canada directly through foreign branches rather than through Canadian subsidiaries ("Amended Act"). Under the Amended Act, all Canadian subsidiaries of foreign banks seeking to convert to a branch operation must obtain the approval of the Minister of Finance and the Office of the Superintendent of Financial Institutions.

In addition, on May 11, 1999, the Canadian government announced its intention to enact legislation that would allow an indefinite deferral of the Canadian tax imposed upon the liquidation of a Canadian banking subsidiary as part of its conversion to branch form ("Relief Legislation"). Department of Finance Release 99–044 (May 11, 1999). Under the Relief Legislation, relief will be available only if the bank complies, on or before December 31, 2000, with paragraphs 1.0(1.1)(b) and (c) of the draft "Guide to Foreign Bank Branching" issued by the Office of the Superintendent of Financial Institutions ("Foreign Branch Guide"). In addition, the Canadian banking subsidiary must complete its conversion to branch form on or before the earlier of (i) the day that is six months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the Amended Act, or (ii) December 31, 2002. The terms of the proposed Relief Legislation indicate that Canada has determined that the period described above is a reasonable period for taxpayers to take the steps necessary to convert to branch form.

Effect of Repeal of Canadian Banking Legislation

Except as provided in the following sentence, a Canadian banking subsidiary that was, immediately prior to June 28, 1999, maintained solely for the purpose of complying with the Original Act shall be considered to be maintained solely for the purpose of complying with the Original Act until the earlier of the date that is six months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the Amended Act, or December 31, 2002. If, however, the bank does not comply with paragraphs 1.0(1.1)(b) and (c) of the Foreign Branch Guide on or before December 31, 2000, the Canadian banking subsidiary shall be considered to be maintained solely for the purpose of complying with the Original Act only until December 31, 2000.

After the applicable period described in the preceding paragraph, any Canadian banking subsidiary remaining in existence shall be maintained solely for the purpose of complying with foreign law as to title and operation of property only if it is maintained solely for the purpose of complying with the Amended Act or any other applicable Canadian law regulating the title and operation of property.

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