

## Rev. Proc. 2005-7

### SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 This revenue procedure updates Rev. Proc. 2004-7, 2004-1 I.R.B. 237, by providing a current list of those provisions of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters where the Internal Revenue Service will not issue letter rulings or determination letters.

#### .02 Changes

(1) Section 3.01(1) and (2) have been added dealing with the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a).

(2) Section 4.01(8) has been added dealing with income tax treaty provisions on compensation of employees of foreign governments.

### SECTION 2. BACKGROUND AND SCOPE OF APPLICATION

#### .01 Background

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Internal Revenue Code. There are, however, areas where the Service will not issue letter rulings or determination letters, either because the issues are inherently factual or for other reasons. These areas are set forth in sections 3 and 4 of this revenue procedure.

Section 3 lists areas in which letter rulings and determination letters will not be issued under any circumstances.

Section 4 lists areas in which they will not ordinarily be issued; in these areas, unique and compelling reasons may justify issuing a letter ruling or determination letter. A taxpayer who plans to request a letter ruling or determination letter in an area described in Section 4 should contact (by telephone or in writing) the Office of Associate Chief Counsel (International) (hereinafter "the Office") prior to making such request and discuss with the Office

the unique and compelling reasons that the taxpayer believes justify issuing such letter ruling or determination letter. While not required, a written submission is encouraged since it will enable Office personnel to arrive more quickly at an understanding of the unique facts of each case. A taxpayer who contacts the Office by telephone may be requested to provide a written submission. The Service may provide a general information letter in response to inquiries in areas on either list.

These lists are not all-inclusive. Future revenue procedures may add or delete items. The Service may also decline to rule on an individual case for reasons peculiar to that case, and such decision will not be announced in the Internal Revenue Bulletin.

#### .02 Scope of Application

This revenue procedure does not preclude the submission of requests for technical advice to the Office from other offices of the Service.

### SECTION 3. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT BE ISSUED

#### .01 Specific Questions and Problems

(1) Section 861. — Income from Sources Within the United States. — A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Revenue Procedure 2004-37, 2004-26 I.R.B. 1099.

(2) Section 862. — Income from Sources Without the United States. — A method for determining the source of a pension payment to a nonresident alien individual from a trust under a defined benefit plan that is qualified under § 401(a) if the proposed method is inconsistent with §§ 4.01, 4.02, and 4.03 of Revenue Procedure 2004-37, 2004-26 I.R.B. 1099.

(3) Section 871(g). — Special Rules for Original Issue Discount. — Whether a debt instrument having original issue discount within the meaning of § 1273 is not an original issue discount obligation within the meaning of § 871(g)(1)(B)(i) when the instrument is payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(4) Section 894. — Income Affected by Treaty. — Whether a person that is a resident of a foreign country and derives income from the United States is entitled to benefits under the United States income tax treaty with that foreign country pursuant to the limitation on benefits article. However, the Service may rule regarding the legal interpretation of a particular provision within the relevant limitation on benefits article.

(5) Section 954. — Foreign Base Company Income. — The effective rate of tax that a foreign country will impose on income.

(6) Section 1503(d). — Dual Consolidated Loss. — Whether the conditions under the regulations for excepting a net operating loss of a dual resident corporation from the definition of a dual consolidated loss, or for rebutting the presumption that an event constitutes a triggering event for purposes of § 1.1503-2(g)(2)(iii)(B), are satisfied.

(7) Section 7701(b). — Definition of Resident Alien and Nonresident Alien. — Whether an alien individual is a nonresident of the United States, including whether the individual has met the requirements of the substantial presence test or exceptions to the substantial presence test. However, the Service may rule regarding the legal interpretation of a particular provision of § 7701(b) or the regulations thereunder.

#### .02 General Areas.

(1) The prospective application of the estate tax to the property or the estate of a living person, except that rulings may be issued on any international issues in a ruling request accepted pursuant to § 5.06 of Rev. Proc. 2005-1.

(2) Whether reasonable cause exists under Subtitle F (Procedure and Administration) of the Code.

(3) Whether a proposed transaction would subject a taxpayer to criminal penalties.

(4) Any area where the ruling request does not comply with the requirements of Rev. Proc. 2005-1.

(5) Any area where the same issue is the subject of the taxpayer's pending request for competent authority assistance under a United States tax treaty.

(6) A "comfort" ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, reg-

ulations, decisions of a court, tax treaties, revenue rulings, or revenue procedures absent extraordinary circumstances (*e.g.*, a request for a ruling required by a governmental regulatory authority in order to effectuate the transaction.)

(7) Any frivolous issue, as that term is defined in § 6.10 of Rev. Proc. 2005-1.

#### SECTION 4. AREAS IN WHICH RULING OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

##### .01 Specific Questions and Problems

(1) Section 367(a). — Transfers of Property from the United States. — Whether an oil or gas working interest is transferred from the United States for use in the active conduct of a trade or business for purposes of § 367(a)(3); and whether any other property is so transferred, where the determination requires extensive factual inquiry.

(2) Section 367(b). — Other Transfers. — Whether a foreign corporation is considered a corporation for purposes of any nonrecognition provision listed in § 367(b), and related issues, unless the ruling request presents a significant legal issue or subchapter C rulings are requested in the context of reorganizations or liquidations involving foreign corporations.

(3) Section 864. — Definitions and Special Rules. — Whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States; whether an instrument is a security as defined in § 1.864-2(c)(2); whether a taxpayer effects transactions in the United States in stocks or securities under § 1.864-2(c)(2); whether an instrument or item is a commodity as defined in § 1.864-2(d)(3); and for purposes of § 1.864-2(d)(1) and (2), whether a commodity is of a kind customarily dealt in on an organized commodity exchange, and whether a transaction is of a kind customarily consummated at such place.

(4) Section 871. — Tax on Nonresident Alien Individuals. — Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 871(h).

(5) Section 881. — Tax on Income of Foreign Corporations Not Connected with United States Business. — Whether the income earned on contracts that do not qualify as annuities or life insurance contracts because of the limitations imposed by § 72(s) and § 7702(a) is portfolio interest as defined in § 881(c).

(6) Section 892. — Income of Foreign Governments and of International Organizations. — Whether income derived by foreign governments and international organizations from sources within the United States is excluded from gross income and exempt from taxation.

(7) Section 893. — Compensation of Employees of Foreign Governments and International Organizations. — Whether wages, fees, or salary of an employee of a foreign government or of an international organization received as compensation for official services to such government or international organization is excluded from gross income and exempt from taxation.

(8) Section 894. — Income Affected by Treaty. — Whether the income received by an individual in respect of services rendered to a foreign government or a political subdivision or a local authority thereof is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such individuals.

(9) Section 894. — Income Affected by Treaty. — Whether a taxpayer has a permanent establishment in the United States for purposes of any United States income tax treaty and whether income is attributable to a permanent establishment in the United States.

(10) Section 894. — Income Affected by Treaty. — Whether certain persons will be considered liable to tax under the laws of a foreign country for purposes of determining if such persons are residents within the meaning of any United States income tax treaty. But see Rev. Rul. 2000-59, 2000-2 C.B. 593.

(11) Section 894. — Income Affected by Treaty. — Whether the income received by a nonresident alien student or trainee for services performed for a university or other educational institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien students or trainees.

(12) Section 894. — Income Affected by Treaty. — Whether the income received by a nonresident alien performing research or teaching as personal services for a university, hospital or other research institution is exempt from federal income tax or withholding under any of the United States income tax treaties which contain provisions applicable to such nonresident alien teachers or researchers.

(13) Section 894. — Income Affected by Treaty. — Whether a foreign recipient of payments made by a United States person is ineligible to receive the benefits of a United States tax treaty under the principles of Rev. Rul. 89-110, 1989-2 C.B. 275.

(14) Section 894. — Income Affected by Treaty. — Whether a recipient of payments is or has been a resident of a country for purposes of any United States tax treaty. Pursuant to § 1.884-5(f), however, the Service may rule whether a corporation representing that it is a resident of a country is a qualified resident thereof for purposes of § 884.

(15) Section 894. — Income Affected by Treaty. — Whether an entity is treated as fiscally transparent by a foreign jurisdiction for purposes of § 894(c) and the regulations thereunder.

(16) Section 901. — Taxes of Foreign Countries and of Possessions of United States. — Whether a foreign levy meets the requirements of a creditable tax under § 901.

(17) Section 901. — Taxes of Foreign Countries and of Possessions of United States. — Whether a person claiming a credit has established, based on all of the relevant facts and circumstances, the amount (if any) paid by a dual capacity taxpayer under a qualifying levy that is not paid in exchange for a specific economic benefit. See § 1.901-2A(c)(2).

(18) Section 903. — Credit for Taxes in Lieu of Income, Etc., Taxes. — Whether a foreign levy meets the requirements of a creditable tax under § 903.

(19) Sections 927(a) (Repealed), 936(h)(5), 943(a), 954(d), 993(c). — Manufactured Product. — Whether a product is manufactured or produced for purposes of § 927(a), § 936(h)(5), § 943(a), § 954(d), and § 993(c).

(20) Section 936. — Puerto Rico and Possession Tax Credit. — What constitutes a substantial line of business.

(21) Section 956. — Investment of Earnings in United States Property. — Whether a pledge of the stock of a controlled foreign corporation is an indirect pledge of the assets of that corporation. See § 1.956-2(c)(2).

(22) Section 985. — Functional Currency. — Whether a currency is the functional currency of a qualified business unit.

(23) Section 989(a). — Qualified Business Unit. — Whether a unit of the taxpayer's trade or business is a qualified business unit.

(24) Section 1058. — Transfers of Securities under Certain Agreements. — Whether the amount of any payment described in § 1058(b)(2) or the amount of any other payment made in connection with a transfer of securities described in § 1058 is from sources within or without the United States; the character of such amounts; and whether the amounts constitute a particular kind of income for purposes of any United States income tax treaty.

(25) Section 1503(d). — Dual Consolidated Loss. — Whether an event presumptively constitutes a triggering event for purposes of § 1.1503-2(g)(2)(iii)(A)(1)-(7), apart from possible rebuttal of the presumption under § 1.1503-2(g)(2)(iii)(B). See § 3.01(6), Rev. Proc. 2005-7.

(26) Section 2501. — Imposition of Tax. — Whether a partnership interest is intangible property for purposes of § 2501(a)(2) (dealing with transfers of intangible property by a nonresident not a citizen of the United States).

(27) Section 7701. — Definitions. — Whether an estate or trust is a foreign estate or trust for federal income tax purposes.

(28) Section 7701. — Definitions. — Whether an intermediate entity is a conduit entity under § 1.881-3(a)(4); whether a transaction is a financing transaction under § 1.881-3(a)(ii); whether the participation of an intermediate entity in a financing

arrangement is pursuant to a tax avoidance plan under § 1.881-3(b); whether an intermediate entity performs significant financing activities under § 1.881-3(b)(3)(ii); whether an unrelated intermediate entity would not have participated in a financing arrangement on substantially the same terms under § 1.881-3(c).

#### .02 General Areas

(1) Whether a taxpayer has a business purpose for a transaction or arrangement.

(2) Whether a taxpayer uses a correct North American Industry Classification System (NAICS) code or Standard Industrial Classification (SIC) code.

(3) Any transaction or series of transactions that is designed to achieve a different tax consequence or classification under U.S. tax law (including tax treaties) and the tax law of a foreign country, where the results of that different tax consequence or classification are inconsistent with the purposes of U.S. tax law (including tax treaties).

(4)(a) Situations where a taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection 4.02(4)(a) above shall not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the

taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(5) The federal tax consequences of proposed federal, state, local, municipal, or foreign legislation.

(6)(a) Situations involving the interpretation of foreign law or foreign documents. The interpretation of a foreign law or foreign document means making a judgment about the import or effect of the foreign law or document that goes beyond its plain meaning.

(b) The Service, at its discretion, may consider rulings that involve the interpretation of foreign laws or foreign documents. In these cases, the Service may request information in addition to that listed in §§ 7.01(2)(b) and (c) of Revenue Procedure 2005-1, including a discussion of the implications of any authority believed to interpret the foreign law or foreign document, such as pending legislation, treaties, court decisions, notices or administrative decisions.

## SECTION 5. EFFECT ON OTHER REVENUE PROCEDURE

Rev. Proc. 2004-7 is superseded.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 3, 2005.

## SECTION 7. DRAFTING INFORMATION

This revenue procedure was compiled by Gerard Traficanti of the Office of Associate Chief Counsel (International). For further information about this revenue procedure, please contact Mr. Traficanti at (202) 622-3619 (not a toll-free number).