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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9634]

RIN 1545-BK41

Determining the Amount of Taxes Paid for Purposes of the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. These regulations address certain highly structured arrangements that produce inappropriate foreign tax credit results. The regulations affect individuals and corporations that claim direct and indirect foreign tax credits.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §1.901-2(h)(3).

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, at (202) 622-3850.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On July 18, 2011, a notice of proposed rulemaking (REG-126519-11) under section 901 of the Internal Revenue Code (Code) relating to the determination of the amount of taxes paid for

purposes of the foreign tax credit was published in the **Federal Register** (76 FR 42076). In the same issue of the **Federal Register**, final and temporary regulations were also issued. The text of those temporary regulations served as the text of the proposed regulations. No comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations with no substantive change, and the corresponding temporary regulations are removed.

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. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have foreign operations, which tend to be larger businesses. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey P. Cowan, 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.

Adoption of 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 1.901-2 is amended by:

1. Adding a sentence at the end of paragraph (e)(5)(iv)(B)(1)(ii).
2. Removing paragraph (e)(5)(iv)(B)(1)(iii).
3. Revising the first sentence of paragraph (h)(2).
4. Revising paragraph (h)(3).

The revisions and addition read as follows:

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

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(B) * * *

(1) * * *

(ii) * * * A foreign payment attributable to income of the entity also includes a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a dividend or other distribution (including distributions made by a pass-through entity or an entity that

is disregarded as an entity separate from its owner for U.S. tax purposes) with respect to the equity of the entity.

* * * * *

(h) * * *

(2) Except as provided in paragraph (h)(3) of this section, paragraph (e)(5)(iv) of 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) on or after July 13, 2011. * * *

(3) The last sentence of paragraph (e)(5)(iv)(B)(1)(ii) of 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) on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. See 26 CFR 1.901-2T(e)(5)(iv)(B)(1)(iii) (revised as of April 1, 2013) for rules applicable to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under §1.901-2(f) before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

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1.901-2T [Removed]

Par. 3. Section 1.901-2T is removed.

Beth Tucker
Deputy Commissioner for Operations Support.

Approved: August 6, 2013

Mark J. Mazur
Assistant Secretary of the Treasury (Tax Policy).

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