



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9973]

RIN 1545-BQ51

Single-Entity Treatment of Consolidated Groups for Specific Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that treat members of a consolidated group as a single United States shareholder in certain cases for purposes of section 951(a)(2)(B) of the Internal Revenue Code (the “Code”). The document finalizes proposed regulations published on December 14, 2022. The final regulations affect consolidated groups that own stock of foreign corporations.

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

Applicability date: These regulations apply to taxable years for which the original consolidated return is due (without extensions) after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Austin Diamond-Jones, (202) 317-5085 (Corporate) and Julie T. Wang, (202) 317-6975 (Corporate) regarding section 1502 and the amendments to §1.1502-80, and Joshua P. Roffenbender, (202) 317-6934 (International) regarding sections 951, 951A, and 959.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2022, the Department of the Treasury (“Treasury Department”)

and the IRS published a notice of proposed rulemaking (REG-113839-22) in the **Federal Register** (87 FR 76430) under sections 1502 and 7805(a) of the Code (the “proposed regulations”). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations as final regulations without modification.

Applicability Date

The final regulations apply to taxable years for which the original consolidated return is due (without extensions) after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section 1503(a).

Special Analyses

I. Regulatory Planning and Review -- Economic Analysis

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate

amount of receipts provided on all Forms 1120. Therefore, these final regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

III. Section 7805(f)

Pursuant to section 7805(f), the proposed regulations (REG-113839-22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal authors of these regulations are Joshua P. Roffenbender, Office of Associate Chief Counsel (International), and Jeremy Aron-Dine and Gregory J. Galvin, Office of Associate Chief Counsel (Corporate). 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. In §1.1502-80, reserved paragraph (i) and paragraph (j) are added to read as follows:

§1.1502-80 Applicability of other provisions of law.

* * * * *

(i) [Reserved]

(j) Special rules for application of section 951(a)(2)(B) to distributions to which section 959(b) applies--(1) Single United States shareholder treatment. In determining the amount described in section 951(a)(2)(B) that is attributable to distributions to which section 959(b) applies, members of a group are treated as a single United States shareholder (within the meaning of section 951(b) (or section 953(c)(1)(A), if applicable)) for purposes of determining the part of the year during which such shareholder did not own (within the meaning of section 958(a)) the stock described in section 951(a)(2)(A). The purpose of this paragraph (j) is to facilitate the clear reflection of income of a consolidated group by ensuring that the location of ownership of stock of

a foreign corporation within the group does not affect the amount of the group's income by reason of sections 951(a)(1)(A) and 951A(a).

(2) Examples. The following examples illustrate the application of paragraph (j)(1) of this section. For purposes of the examples in this paragraph (j)(2): M1 and M2 are members of a consolidated group of which P is the common parent (P group); each of CFC1, CFC2, and CFC3 is a controlled foreign corporation (within the meaning of section 957(a)) with the U.S. dollar as its functional currency (within the meaning of section 985); the taxable year of all entities is the calendar year for Federal income tax purposes; and a reference to stock owned means stock owned within the meaning of section 958(a). These examples do not address common law doctrines or other authorities that might apply to recast a transaction or to otherwise affect the tax treatment of a transaction.

(i) Example 1: Intercompany transfer of stock of a controlled foreign corporation--
(A) Facts. Throughout Year 1, M1 directly owns all the stock of CFC1, which directly owns all the stock of CFC2. In Year 1, CFC2 has \$100x of subpart F income (as defined in section 952). M1's pro rata share of CFC2's subpart F income for Year 1 is \$100x, which M1 includes in its gross income under section 951(a)(1)(A). In Year 2, CFC2 has \$80x of subpart F income and distributes \$80x to CFC1 (the CFC2 Distribution). Section 959(b) applies to the entire CFC2 Distribution. On December 29, Year 2, M1 transfers all of its CFC1 stock to M2 in an exchange described in section 351(a). As a result, on December 31, Year 2 (the last day of Year 2 on which CFC2 is a controlled foreign corporation), M2 owns 100% of the stock of CFC1, which owns 100% of the stock of CFC2.

(B) Analysis. Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the CFC2 Distribution, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own the stock of CFC2. Thus, the ratio of the number of days in Year 2 that such United States shareholder did not own the stock of CFC2 to the total number of days in Year 2 is 0/365. The amount described in section 951(a)(2)(B) is \$0, M2's pro rata share of CFC2's subpart F income for Year 2 is \$80x (\$80x - \$0), and M2 must include \$80x in its gross income under section 951(a)(1)(A).

(ii) Example 2: Transfer of stock of a controlled foreign corporation between controlled foreign corporations--
(A) Facts. The facts are the same as in paragraph (j)(2)(i)(A) of this section (the facts in Example 1), except that M1 does not transfer its CFC1 stock to M2. Additionally, throughout Year 1 and from January 1, Year 2, to December 29, Year 2, M2 directly owns all 90 shares of the only class of stock of CFC3. Further, on December 29, Year 2, CFC3 acquires all the CFC2 stock from CFC1 in

exchange for 10 newly issued shares of the same class of CFC3 stock in a transaction described in section 368(a)(1)(B). As a result, on December 31, Year 2, M1 owns 10% of the stock of CFC2, and M2 owns 90% of the stock of CFC2.

(B) Analysis. Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the portion of the CFC2 Distribution with respect to each of the CFC2 stock that M1 owns on December 31, Year 2, and the CFC2 stock that M2 owns on that day, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own such stock. In each case, the ratio of the number of days in Year 2 that such United States shareholder did not own such stock to the total number of days in Year 2 is 0/365, and the amount described in section 951(a)(2)(B) is \$0. M1's and M2's pro rata shares of CFC2's subpart F income for Year 2 are \$8x (\$8x - \$0) and \$72x (\$72x - \$0), respectively, and M1 and M2 must include \$8x and \$72x in gross income under section 951(a)(1)(A), respectively.

(3) Applicability date. This paragraph (j) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

Approved: February 6, 2023.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

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