

including the Department of Energy for NRC review of DOE sites under UMTRCA. However, as stated in response to similar comments (See FY 1992 Final Rule, 57 FR 32695) NRC is currently precluded under the Independent Offices Appropriation Act (IOAA) from assessing Part 170 fees to Federal agencies for specific services rendered. The NRC currently assesses annual fees under 10 CFR Part 171 to Federal agencies if those agencies have a license or approval/certificate from the NRC; however, OBRA-90 limits annual fee assessments to NRC licensees. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming, site had been achieved. Therefore, effective with the FY 1994 final rule published July 20, 1994, DOE is being assessed for costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under 10 CFR Part 171.

The Commission has recommended in its report submitted to Congress on February 23, 1994, that either OBRA-90 be modified to remove costs from the fee base for services to other Federal agencies or the Atomic Energy Act be modified to permit the NRC to assess application and other fees for specific services rendered to all Federal agencies.

For the reasons stated above, the NRC has denied this petition.

Dated at Rockville, Maryland, this 24th day of April, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0065-93]

RIN 1545-AS46

Exceptions to Passive Income Characterization for Certain Foreign Banks and Securities Dealers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers. This document affects persons who own direct or indirect interests in certain foreign corporations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by August 10, 1995. Outlines of oral comments to be presented at the public hearing scheduled for August 31, 1995 at 10 a.m. must be received by August 10, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL-0065-93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL-0065-93), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ramon Camacho at (202) 622-3870; concerning submissions and the hearing, Ms. Christina Vasquez, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A passive foreign investment company (PFIC) is any foreign corporation that satisfies either the income test or asset test in section 1296(a) of the Internal Revenue Code (Code). Under the income test, a foreign corporation is a PFIC if 75 percent or more of its gross income for the year is passive income. Sec. 1296(a)(1). Alternatively, a foreign corporation is a PFIC if 50 percent or more of the average value of its assets for the taxable year produce passive income or are held for the production of passive income. Sec. 1296(a)(2). Under section 1296(b)(1), passive income is foreign personal holding company income as defined in section 954(c) of the Code, and includes dividends, interest, certain rents and royalties, and gain from certain property transactions, including gain from the sale of assets that produce passive income.

Under section 1296(b)(2)(A), income earned in the active conduct of a banking business by a foreign corporation licensed to do business as a bank in the United States and, to the extent provided in regulations, by other corporations engaged in the banking business is not passive. Notice 89-81,

1989-2 CB 399, (Notice) described rules to be incorporated into subsequent regulations that would expand this exception to certain foreign banks not licensed to do a banking business in the United States. The rules contained in § 1.1296-4 of the proposed regulations would implement section 1296(b)(2)(A) for banking activities conducted by foreign corporations.

In 1993, Congress added section 1296(b)(3)(A) to the Code, effective for taxable years beginning after September 30, 1993. See Omnibus Budget Reconciliation Act of 1993 (1993 Act), Pub. L. 103-66, section 13231(d), 107 Stat. 312, 499. The provision treats as nonpassive any income derived in the active conduct of a securities business by a controlled foreign corporation (CFC) if the CFC is a U.S. registered dealer or broker and, to the extent provided in regulations, a CFC not so registered. The rules contained in § 1.1296-6 would implement section 1296(b)(3)(A).

Section 956A, added by the 1993 Act, requires each U.S. shareholder of a CFC to include in income its pro rata share of the CFC's excess passive assets. Under section 956A(c)(2), a passive asset is any asset that produces passive income as defined in section 1296(b). An asset that generates nonpassive income under § 1.1296-4 or § 1.1296-6 of the proposed regulations will be nonpassive for purposes of section 956A.

Explanation of Provisions

I. Description of Proposed Rules for Foreign Banks

A. General Rule

Section 1.1296-4(a) of the proposed regulations provides generally that, for purposes of section 1296(a)(1), passive income does not include banking income earned by an active bank or by a qualified affiliate of such a bank. For this purpose, an active bank is either a corporation that possesses a license issued under federal or state law to do business as a bank in the United States, or a foreign corporation that meets the licensing, deposit-taking, and lending requirements of paragraphs (c), (d), and (e), respectively, of § 1.1296-4.

The proposed rules generally adopt the deposit, lending, and licensing standards contained in the Notice. These standards are consistent with the provisions of the Code that define a bank as an institution that accepts deposits from and makes loans to the public and is licensed under state or federal law to conduct banking activities. See e.g., sec. 581. The IRS and Treasury believe that Congress intended