
Extension of Time to File FSC Grouping Redeterminations Under Transition Rule to be Included in Final Regulations

Notice 99-24

SECTION I. PURPOSE

This notice informs taxpayers of the intent of the Department of the Treasury (“Treasury”) and the Internal Revenue Service (the “Service”) to include in final regulations under section 925 of the Internal Revenue Code addressing foreign sales corporations (“FSCs”) and their related suppliers a one-year extension of the time for filing grouping redeterminations under the transition rule of Temp. Treas. Reg. § 1.925(a)-1T(c)(8)(i), as amended by T.D. 8764, 1998-15 I.R.B. 9 (63 F.R. 10305).

SECTION II. BACKGROUND

Section 927(d)(2)(B) of the Code provides generally that FSCs and their related suppliers may, to the extent provided in regulations, elect to apply the FSC transfer pricing provisions under section 925 on the basis of groups of transactions based on product lines, rather than on a transaction-by-transaction basis. Prior to the amendments made by T.D. 8764, Temp. Treas. Reg. § 1.925(a)-1T(c)(8)(i) permitted such a grouping of transactions to be elected on the FSC income tax return for the applicable taxable year. Further, Temp. Treas. Reg. § 1.925(a)-1T(e)(4) permitted FSCs and their related suppliers, upon determining that a different transfer pricing method or grouping of transactions may be more beneficial, to file amended returns to effect a redetermination of the transfer price payable by the FSC or the commission payable to the FSC. Such a redetermination could be made if the taxable years of the FSC and its related supplier were open under the statute of limitations for making claims for refund under section 6511 and if the redetermination affected both the FSC and the related supplier.

The temporary regulations were amended by T.D. 8764 to address an increasing number of situations in which taxpayers, assisted by sophisticated computer programs and typically employing complex estimating techniques, substantially revised their transaction grouping elections just prior to the expiration of the statute of limitations and many years after the original returns were filed. This practice placed a significant burden on the audit process and created a potential for abuse.

Effective March 3, 1998, for taxable years beginning after December 31, 1997, Temp. Treas. Reg. § 1.925(a)-1T(c)(8)(i), as amended by T.D. 8764, provides that an election to group transactions must be made on a timely filed (including extensions) FSC return and cannot be changed thereafter, and that no untimely or amended returns will be allowed to elect to group, to change a grouping basis, or to change from a grouping basis to a transaction-by-transaction basis (collectively “grouping redeterminations”). Thus, for example, for FSCs reporting on a calendar-year basis, the temporary regulations, as amended, apply to 1998 returns due March 15, 1999, or, as extended, September 15, 1999.

Temp. Treas. Reg. § 1.925(a)-1T(c)-(8)(i) also contains a transition rule which requires grouping redeterminations for any taxable year beginning before January 1, 1998, to be made no later than the due date of the FSC’s timely filed (including extensions) return for the FSC’s first taxable year beginning after December 31, 1997. Thus, for example, for a calendar-year taxpayer, the time for filing grouping redeterminations for all taxable years prior to the 1998 calendar year is March 15, 1999, or, as extended, September 15, 1999.

A notice of proposed rulemaking cross-referencing T.D. 8764 and inviting public comments was published on March 3, 1998, as REG-102144-98, 63 F.R. 10351, 1998-15 I.R.B. 25. On June 24, 1998, a public hearing was held regarding the proposed changes to the grouping redetermination rules. Written comments were also received by Treasury and the Service. Commentators generally expressed the view that the time for filing grouping redeterminations for taxable

years beginning before January 1, 1998 under the transition rule should be extended to allow taxpayers an appropriate amount of time to make the necessary calculations. They pointed out that many FSCs and their related suppliers are having difficulty assembling the data necessary to determine for each open taxable year whether a grouping redetermination would be advantageous and to calculate accurate amounts to be reported for such a redetermination. This data assembly may be especially difficult for taxpayers using computer software where data was not originally maintained in electronic form.

SECTION III. INTENT TO EXTEND TIME TO FILE UNDER THE TRANSITION RULE IN FINAL REGULATIONS

After considering these comments, Treasury and the Service have determined that the time for filing grouping redeterminations for taxable years beginning before January 1, 1998, under the transition rule will be extended by one year. Accordingly, the final regulations under section 925 will provide that for taxable years beginning before January 1, 1998, the time for filing a grouping redetermination is the due date (including extensions) of the FSC's timely filed return for the FSC's first taxable year beginning on or after January 1, 1999.

SECTION IV. DRAFTING INFORMATION

The principal author of this notice is Douglas Giblen of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Giblen at (202) 874-1490 (not a toll-free call).