

Section 1504(d).—Subsidiary Formed To Comply With Foreign Law

U.S. corporation; wholly-owned Mexican subsidiary treated as a domestic corporation. This ruling obsoletes Rev. Rul. 70-379 (1970-2 C.B. 179) relating to U.S. corporations electing under section 1504(d) of the Code to treat its wholly-owned Mexican subsidiary as a domestic corporation for the purpose of filing consolidated returns.

Rev. Rul. 2001-39

This revenue ruling obsoletes Rev. Rul. 70-379 (1970-2 C.B. 179).

Rev. Rul. 70-379 concluded that a U.S. corporation may elect under section 1504(d) of the Internal Revenue Code (the “Code”) to treat its wholly-owned Mexican subsidiary as a domestic corporation for the purpose of filing consolidated returns because the subsidiary was organized under the laws of Mexico solely to comply with Mexican law as to title and operation of property in Mexico. Because the U.S. parent corporation could not directly own Mexican real estate under Mexican law, organization of the Mexican subsidiary was necessary in order to comply with Mexican law relating to the title of real estate.

The rationale underlying Rev. Rul. 70-379 was based, in part, upon Mexican law and legal authorities that inter-

preted Article 27 of the Mexican Constitution to prohibit direct ownership of Mexican real estate by certain non-Mexican residents. In particular, it was based on Article 34 of the Mexican Nationality and Naturalization Law, and the Official Declarations of the Secretariat of Foreign Relations, issued January 7, 1936, representing an official interpretation of Article 27 of the Mexican Constitution.

Since the publication of Rev. Rul. 70-379, the Mexican legal interpretations on which the ruling were based have been subject to considerable revision. Most significantly for purposes of Rev. Rul. 70-379, Article 10A of the Mexican Foreign Investment Law of 1993, as amended effective December 25, 1996 (“1996 Amendment”), now allows direct foreign ownership of real estate in certain circumstances. As a result, after the effective date of the 1996 Amendment, a U.S. corporation in these circumstances does not meet the requirements for an election under section 1504(d) to treat its wholly-owned Mexican subsidiary as a domestic corporation for the purpose of filing consolidated returns because organization of such subsidiary would not be necessary to comply with Mexican law as to the title and operation of property in Mexico. Accordingly, the IRS is obsoleting Rev. Rul. 70-379, and taxpayers may not rely upon it on or after December 25, 1996 (the effective date of the 1996 Amendment). Application of section 1504(d) in circumstances other than those addressed by the 1996 Amendment continues to require an assessment of the status of the relevant Mexican law with respect to Mexican real estate holdings.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 70-379, 1970-2 C.B. 179, is obsoleted effective December 25, 1996.

DRAFTING INFORMATION

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