

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-106282-18]

RIN 1545-BP35

Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: The Rules and Regulations section of this issue of the **Federal Register** contains temporary regulations under the Internal Revenue Code (the "Code") that limit the dividends received deduction available for certain dividends received from current or former controlled foreign corporations. The temporary regulations also contain rules that limit the applicability of the exception to foreign personal holding company income for certain dividends received by upper-tier controlled foreign corporations from lower-tier controlled foreign corporations and temporary regulations to facilitate administration of certain rules in the temporary regulations. The temporary regulations affect certain U.S. persons that are domestic corporations that receive certain dividends from current or former controlled foreign corporations or are United States shareholders of upper-tier controlled foreign that receive certain dividends from lower-tier controlled foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 16, 2019.**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-106282-18), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-106282-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-106282-18).**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Logan M. Kincheloe, (202) 317-6937; concerning submission of comments

and/or requests for a hearing Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR 1. The temporary regulations limit the section 245A dividends received deduction for certain dividends from current or former controlled foreign corporations as well as the section 954(c)(6) exception to foreign personal holding company income for certain dividends received by an upper-tier controlled foreign corporation from a lower-tier controlled foreign corporation. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses*I. Paperwork Reduction Act*

The collections of information contained in these proposed regulations are explained in the temporary regulations under sections 245A, 954(c)(6), and 6038 published elsewhere in this issue of the **Federal Register**.

II. Regulatory Flexibility Act

It is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The small entities that are subject to proposed § 1.245A-5 are small entities that are U.S. shareholders of certain foreign corporations that are otherwise eligible for the section 245A deduction on distributions from the foreign corporation. Additionally, to be subject to the proposed regulations, the foreign corporation that is owned by the small entity must have engaged in certain related party transactions described in Part II.B of the Explanation of Provisions section of the preamble to the temporary regulations, or the U.S. shareholder must have transferred certain stock in the foreign corporation during the taxable year.

Based on 2014 Statistics of Income tax data, the Department of the Treasury ("Treasury Department") and the IRS estimate that there are approximately 15,000 U.S. corporations with controlled foreign corporations ("CFCs") of which approximately half

(6,000-9,000) have less than \$25 million in gross receipts. Not all of these corporations will be affected by the proposed regulations. In particular, only small U.S. taxpayers with fiscal year CFCs that transfer assets in related party transactions during the gap period, or U.S. taxpayers that transfer more than 10 percent of their stock of a CFC in a taxable year or U.S. taxpayers that reduce their ownership of stock of a CFC by more than 10 percent, have the potential to be affected by these regulations.

The Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of these proposed regulations. To make this determination, the Treasury Department calculated the ratio of estimated global intangible lowed-taxed income ("GILTI") and subpart F revenue attributable to these businesses to aggregate total sales data (Data on total sales of all U.S. parented companies are drawn from the Bureau of Economic Analysis Interactive Data accessed at this web address in December, 2018: <https://apps.bea.gov/iTable/iTable.cfm?ReqID=2&step=1>) adjusted to reflect the total sales of these businesses. Projected net tax proceeds from GILTI and subpart F are estimated to be below one percent of the sales of U.S. parented multinational enterprises for 2018 through 2027. The tax thus amounts to less than 3 to 5 percent of receipts (as defined in 13 CFR 121.104), an economic impact that the Treasury Department and IRS regard as the threshold for significant under the Regulatory Flexibility Act. This calculated percentage is furthermore an upper bound on the true expected effect of the proposed regulations because not all the GILTI and subpart F revenue estimated to be attributable to small entities will be captured by the proposed regulations. Consequently, the Treasury Department and the IRS have determined that proposed § 1.245A-5 will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on both the number of entities affected (including whether specific industries are affected) and the economic impact of this proposed rule on small entities.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on the impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. Comments are requested on all aspects of the proposed regulations, and specifically on the issues identified in Part II.B and Part III.A of the Explanation of Provisions section and the Parts I and II of the Special Analysis section of the preamble to the temporary regulations. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is Logan M. Kincheloe, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities for §§ 1.245A-5 and 1.954(c)(6)-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.245A-5 also issued under 26 U.S.C. 245A(g), 951A(a), 954(c)(6), and 965(o)
* * * * *
Section 1.954(c)(6)-1 also issued under 26 U.S.C. 954(c). * * *

■ **Par. 2.** Reserved sections 1.245A-1 through and § 1.245A-5 are added to read as follows:

Sec.
1.245A-1 [Reserved].
1.245A-2 [Reserved].
1.245A-3 [Reserved].
1.245A-4 [Reserved].
1.245A-5 Limitation of section 245A deduction and section 954(c)(6) exception.

§ 1.245A-5 Limitation of section 245A deduction and section 954(c)(6) exception.

The text of proposed § 1.245A-5 is the same as the text of § 1.245A-5T published elsewhere in this issue of the **Federal Register**.

■ **Par. 3.** Section 1.954(c)(6)-1 is added to read as follows:

§ 1.954(c)(6)-1 Certain cases in which section 954(c)(6) exception not available.

The text of proposed § 1.954(c)(6)-1 is the same as the text of § 1.954(c)(6)-1T published elsewhere in this issue of the **Federal Register**.

■ **Par. 4.** Section 1.6038-2 is amended by:

- 1. Adding reserved paragraphs (f)(13) through (15)
- 2. Adding paragraph (f)(16).
- 3. Revising paragraph (m).

The additions and revision read as follows:

§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *
(f) * * *

(13) through (15) [Reserved].

(16) The text of proposed § 1.6038-2(f)(16) is the same as the text of § 1.6038-2T(f)(16) published elsewhere in this issue of the **Federal Register**.

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(m) The text of proposed § 1.6038-2(m) is the same as the text of § 1.6038-2T(m) published elsewhere in this issue of the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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