

Time for Reporting Transfers to Foreign Entities Under Sections 1491 Through 1494

Notice 97-42

This notice modifies the guidance set forth in Notice 97-18, 1997-10 I.R.B. 35, regarding the time for reporting transfers of property to foreign corporations, partnerships, trusts, or estates as described in section 1491 (“section 1491 transfers”).

Background

Notice 97-18 provides guidance with respect to section 1491 transfers occurring after August 20, 1996, that are reportable under section 1494, including the time and manner for reporting such transfers, the manner for making elections pursuant to section 1492, and the penalty imposed by section 1494(c) for failure to report a section 1491 transfer. That notice provides that a U.S. transferor who is required to report a section 1491 transfer may either file Form 926 with the U.S. transferor’s annual tax return or information return for the taxable year that includes the date of the transfer or may file Form 926 on the day the transfer is made. Interest must be paid on the amount of excise tax due with respect to the period between the date on which the transfer occurred and the date on which the excise tax is actually paid.

A U.S. transferor can avoid the section 1491 excise tax by making certain elections under section 1492. One election allows a U.S. transferor to avoid the excise tax by electing, before the transfer, to apply principles similar to the principles of section 367. Section 1492(2)(B). Alternatively, a U.S. transferor can avoid the section 1491 excise tax by electing to treat the transfer as a taxable exchange

under section 1057. Section 1492(3). Section III.B of Notice 97-18 provides guidance on the time and manner for making these elections.

Section VIII of Notice 97-18 contains a transition provision with respect to the reporting requirements for the U.S. transferor’s tax year that includes August 20, 1996. That section provides that no penalties will be imposed under section 1494(c) if a Form 926 reporting a section 1491 transfer (or certain other adequate reporting described in the notice) is filed by the later of the due date of the U.S. transferor’s income tax return, including extensions, for the taxable year in which the transfer occurred, or May 9, 1997 (the date that is 60 days after the date that notice was published in the Internal Revenue Bulletin).

This notice extends the time during which certain section 1491 transfers may be reported under that transition provision without the imposition of the section 1494(c) penalty. This notice does not affect the interest that accrues on any excise tax due between the date of the transfer and the date on which the excise tax is actually paid. Moreover, this notice does not extend the time for filing under any duplicative reporting provision described in section II.B of Notice 97-18.

Guidance

With respect to Form 926 for the taxable year that includes August 20, 1996 (the “1996 Form 926”), no penalty will be imposed under section 1494(c) if the taxpayer files the 1996 Form 926 with the taxpayer’s timely-filed (including extensions) income tax return or information return for the first taxable year beginning on or after January 1, 1997, provided the taxpayer’s income tax return or informa-

tion return for the tax year that includes August 20, 1996, includes the items of gross income required to be taken into account as a result of an election on the 1996 Form 926 (for example, any gain recognized by the taxpayer as a result of a section 1057 election). Alternatively, no penalty will be imposed under section 1494(c) if the taxpayer files the 1996 Form 926 within the period set forth in Section VIII of Notice 97-18.

The U.S. transferor will be deemed to have made, as the case may be, a section 1492(2)(B) election before the transfer, or a section 1057 election in accordance with Treas. Reg. § 301.9100-12T, if the following requirements are satisfied:

- (i) The U.S. transferor otherwise complies with the requirements set forth in Notice 97-18 for making an election under section 1494(2)(B) to apply principles similar to the principles of section 367, or under section 1492(3) for treating the transfer as a taxable exchange under section 1057; and
- (ii) With respect to either election, the U.S. transferor’s 1996 Form 926 is filed within the time period set forth in this notice.

Effect on Other Guidance

Sections III.B and VIII of Notice 97-18 are hereby modified.

Drafting Information

The principal author of this notice is Michael Kirsch of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Kirsch on (202) 622-3880 (not a toll-free call).