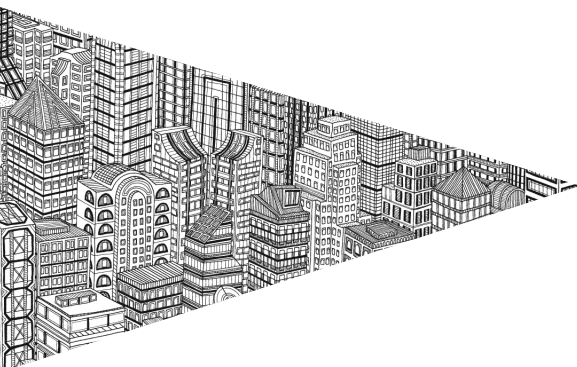


International Tax Alert



IRS's and Treasury's 2011-2012 Priority Guidance Plan contains numerous international tax projects

Executive summary

On 2 September 2011, the IRS and Treasury issued the 2011-2012 Priority Guidance Plan (the Plan). The Plan provides an overview of the issues that the IRS and Treasury intend to address over the next nine months. As in prior years, the IRS and Treasury state that they will update and reissue the Plan periodically to reflect additional guidance that they intend to publish, to allow for consideration of comments received from taxpayers and practitioners on additional projects, and to respond to developments arising during the plan year. The Plan also indicates items that have already been published.

Of the 317 projects that the IRS and Treasury intend to complete by June 2012, 49 are international projects. While this is a slight increase in the number of international projects from the 2010-2011 Priority Guidance Plan, which identified 44 international projects out of 310 overall projects, only 13 of the identified international projects are new or expanded projects with the rest being carried over from the 2010-2011 Priority Guidance Plan. Some of the new projects include:

- ▶ Guidance under Section 954, including final regulations under Section 954(d) relating to contract manufacturing for purposes of determining foreign base company sales income.
- ▶ Guidance under Section 901 on the definition of taxpayer.
- ▶ Regulations under Sections 861, 862, and 863(a) on the source of income.

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The Plan still indicates that guidance will be issued on most of the international provisions enacted in 2010 (e.g., Section 901(m), Section 960(c) and Section 909).

Detailed discussion

The Plan lists administrative guidance (e.g., notices, bulletins, revenue procedures, and regulations) that the IRS and Treasury intend to issue through June 2012. Listed below are the international-related items described this year's Plan. Projects completed or new have been noted in the description.

A. Subpart F/deferral

- ▶ Guidance under Section 954, including final regulations under Section 954(d) relating to contract manufacturing for purposes of determining foreign base company sales income. Temporary and proposed regulations were published on 23 December 2008.¹ **(New)**
- ▶ Guidance under Section 956, including regulations on the treatment of loans to related foreign partnerships.
- ▶ Final regulations under Section 959 on previously taxed earnings and profits. Proposed regulations were published on 29 August 2006.² **(New)**
- ▶ Regulations under Section 964 on accounting method elections.
- ▶ Guidance under Sections 1297 and 1298 on passive foreign investment companies. **(Expanded,**

the 2010-2011 Priority Guidance Plan listed regulations under Section 1297(c) as a project.)

B. Inbound transactions

- ▶ Regulations under Section 871(m) added by the Hiring Incentives to Restore Employment Act³ (the HIRE Act).
- ▶ Regulations under Section 892.
- ▶ Regulations under Section 1441 on withholding in connection with certain live events.
- ▶ Revenue procedure under Section 1441 updating Revenue Procedure 89-47 on central withholding agreements.
- ▶ Guidance under Sections 1471-1474 and 6011(e)(4) added by the HIRE. The IRS released Notice 2011-53 on 14 July 2011 and rereleased on 25 July 2011.⁴ **(Completed)**
- ▶ Regulations under Sections 1471-1474 and 6011(e)(4) added by the HIRE Act.
- ▶ Final regulations under Section 6049 on the reporting of bank deposit interest paid to nonresident aliens. Proposed regulations were published on 7 January 2011.⁵ **(New)**
- ▶ Final regulations under Section 7701(l) regarding conduit financing arrangements. Proposed regulations were published on 22 December 2008.⁶ **(New)**

C. Outbound transactions

- ▶ Guidance under Sections 367 and 1248. Temporary and proposed regulations were published on 10 February 2009.⁷ **(New)**
- ▶ Guidance under Section 367(a), including final regulations under Section 367(a)(5), regarding outbound asset reorganizations. Proposed regulations were published on 20 August 2008.⁸ **(Expanded,** the 2010-2011 Priority Guidance Plan listed regulations under Section 367(a)(5) as a project.)
- ▶ Regulations under Section 367(d) regarding transfers of intangible property to foreign corporations.
- ▶ Guidance under Section 6038B, including guidance regarding information reporting of transfers by partnerships to foreign corporations.
- ▶ Regulations under Section 7874, including final regulations on the definition of "surrogate foreign corporation." Temporary and proposed regulations were published on 8 June 2009.⁹ **(New)**

D. Foreign tax credits

- ▶ Revenue ruling under Section 901 on the creditability of UK Non-Domiciliary Tax. The IRS released Rev. Rul. 2011-19 on 11 August 2011.¹⁰ **(Complete)**

- ▶ Final regulations under Section 901 on noncompulsory payments. The Treasury issued final regulations on 18 July 2011.¹¹ **(Complete)**
- ▶ Guidance under Section 901 on the definition of taxpayer. **(New)**
- ▶ Guidance under Section 901(m), added by the Education, Jobs and Medicaid Assistance Act¹² (the Education Jobs Act), on covered asset acquisitions.
- ▶ Guidance under Section 904(d) (6), added by the Education Jobs Act, on the separate application of the foreign tax credit limitation to items resourced under treaties.
- ▶ Final regulations under Section 904(f) and (g) on overall domestic losses and overall foreign losses. Temporary and proposed regulations were published on 20 December 2007.¹³
- ▶ Final regulations under Section 905(c) on foreign tax redeterminations. Temporary and proposed regulations were published on 5 November 2007.¹⁴
- ▶ Regulations and other guidance under Section 909, added by the Education Jobs Act, on foreign tax credit splitting events.
- ▶ Guidance under Section 960(c), added by the Education Jobs Act, on the amount of foreign taxes deemed paid with respect to Section 956 inclusions.

E. Transfer pricing

- ▶ Guidance under Section 482, including final regulations relating to cost sharing arrangements.

Temporary and proposed regulations were published on 30 December 2008.¹⁵

- ▶ Regulations under Section 482 on global dealing operations. Proposed regulations were published on March 6, 1998.¹⁶
- ▶ Annual Report on the Advance Pricing Agreement Program.
- ▶ Revenue procedure updating Revenue Procedure 2006-9, as amended by Revenue Procedure 2008-31, on the Advance Pricing Agreement Program.

F. Sourcing and expense allocation

- ▶ Regulations under Section 861 regarding the allocation and apportionment of interest expense.
- ▶ Regulations under Section 861 on the source of event basis compensation. Proposed regulations were published on 17 October 2007.
- ▶ Regulations under Sections 861, 862, and 863(a) on the source of income. **(New)**
- ▶ Final regulations under Section 863(a) on the source of income from a qualified fails charge. Temporary and proposed regulations were published on 6 December 2010.

G. Treaties

- ▶ Guidance under Section 1(h)(11) updating the list of comprehensive income tax treaties. The IRS released Notice 2011-64 on 18 August 2011.¹⁷ **(Complete)**

- ▶ Guidance under Section 894 on issues under income tax treaties, including beneficial ownership.
- ▶ Revenue Procedure 2006-54 on procedures for taxpayers requesting Competent Authority assistance.
- ▶ Miscellaneous Announcements, e.g., of agreements under the Mutual Agreement Procedures (MAP) and of Reciprocal Exemption Agreements.

H. Other

- ▶ Revenue ruling under Section 274 regarding the definition of “North American area.” **(New)**
- ▶ Final regulations under Section 304 preventing the use of related corporations to avoid Section 304. Temporary and proposed regulations were published on 29 December 2009.¹⁸ **(New)**
- ▶ Guidance under Section 911 on the housing cost amounts for 2012.
- ▶ Regulations under Section 937(a) concerning the “presence test” for bona fide residency in US territories. **(New)**
- ▶ Final regulations under Section 987. Proposed regulations were published on 7 September 2006.¹⁹
- ▶ Guidance on Section 988 transactions, including hedging transactions.
- ▶ Guidance under Section 3402 on Military Spouses Residency Relief Act in relation to the US territories.

- ▶ Regulations and other guidance under various provisions of the HIRE Act including regulations on foreign financial asset reporting under Section 6038D.
- ▶ Regulations under Section 6039E on passport application information.
- ▶ Regulations under Sections 6048 and 6677 on foreign trust reporting.

Implications

The Plan provides taxpayers a general list of guidance projects that the IRS and Treasury intend to issue within the current business plan year (July 2011-June 2012). The current year plan demonstrates the

IRS and Treasury's continued intent to dedicate substantial resources to publish guidance necessary to implement the provisions of recent legislation and highlights the important international tax issues in the current economic environment. While it is difficult to determine the IRS and Treasury's focus on items with real specificity, it is likely that guidance for some projects in the Plan is imminent, including guidance with respect to certain provisions enacted as part of the Education, Jobs and Medicaid Assistance Act of 2010, such as, Section 901(m).

Although IRS and Treasury generally have historically issued guidance identified in the Plan, it is not a

guarantee that guidance will be issued on identified projects by June 2012. Additionally, as the IRS and Treasury intend to update the Plan over the course of the business plan year to reflect additional items that have become priorities during the plan year. Furthermore, the absence of an item from the original Plan (or any updated Plans) does not necessarily mean that the IRS and Treasury will not address an issue within the plan year. Therefore, the Plan should not be relied upon as an exclusive list of projects the IRS and Treasury will focus on during the coming year.

Endnotes

1. See International Tax Alert, *Treasury issues final, temporary and proposed contract manufacturing regulations*, dated 5 January 2009.
2. See International Tax Alert, *IRS and Treasury Release Proposed PTI Regulations*, dated 11 September 2006.
3. P.L. 111-146, 18 March 2010. See International Tax Alert, *Enacted International tax bill has immediate implications*, dated 13 August 2010.
4. I.R.B. 2011-32. See International Tax Alert, *Notice 2011-53 provides revised timelines for implementation of FATCA information reporting and withholding regime*, dated 15 July 2011.
5. See International Tax Alert, *Proposed regulations require bank deposit interest to be reported to all NRA individuals*, dated 13 January 2011.
6. See International Tax Alert, *IRS and Treasury issue proposed conduit regulations addressing disregarded entities; solicit comments on hybrid debt*, dated 23 December 2008.
7. See International Tax Alert, *IRS issues temporary and final regulations on applying Section 367 to a deemed Section 351 exchange resulting from a Section 304 transaction*, dated 13 February 2009.
8. See International Tax Alert, *IRS issues proposed regulations on outbound transfer of assets under Sections 367, 1248 and 6038B*, dated 26 August 2008.

9. See International Tax Alert, *IRS issues temporary and final regulations under Section 7874 removing safe harbor with respect to surrogate foreign corporations test*, dated 16 June 2009.
10. I.R.B. 2010-40. See International Tax Alert, *IRS and Treasury provide relief from application of Section 901(l) (1) for certain back-to-back licensing and retail distribution arrangements*, dated 30 September 2010.
11. T.D. 9535 and T.D. 9536. See International Tax Alert, *Final regulations update 2008 temporary regulations on structured passive investment arrangements*, dated 19 July 2011.
12. P.L. 111-226, 5 August 2010. See International Tax Alert, *Enacted International tax bill has immediate implications*, dated 13 August 2010.
- 13.. See International Tax Alert, *Regulations Issued Coordinating Overall Domestic Loss Provisions with the Overall Foreign Loss Provisions and Updating Separate Limitation Loss Guidance*, dated 26 December 2007. Note, these regulations have sunset.
14. See International Tax Alert, *Updated Proposed and Temporary Regulations Regarding Notification to the IRS of Foreign Tax Redeterminations under Section 905(c) and Civil Penalties under Section 6689 for Failure to Notify*, dated 9 November 2007. Note, these regulations have sunset.
15. See International Tax Alert, *Treasury and IRS release temporary cost sharing regulations*, dated 7 January 2009. Note, these regulations have sunset.
16. See Personal Finance Alert, *Treasury Issues Final Regulations Regarding Home Sales From Residence GRITs (QPRTs) and Trust Reformations---Certain Reformations Must Be Commenced Before March 23, 1998*, dated 9 January 1998.
17. I.R.B. 2011-37. See International Tax Alert, *IRS adds Bulgaria and Malta to list of treaty countries meeting the requirements of Section 1(h)(11) for reduced tax on dividends from qualified foreign corporations*, dated 26 August 2011.
18. See International Tax Alert, *Service issues final and temporary Section 304 anti-abuse regulations*, dated 8 January 2010.
19. See International Tax Alert, *IRS and Treasury Issue New Proposed Regulations under Section 987*, dated 22 September 2006.

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