Part III - Administrative, Procedural, and Miscellaneous

Guidance Related to Section 936 Termination

Notice 2005-21

This notice provides guidance to U.S. corporations allowed a credit under section 936 or 30A of the Internal Revenue Code (section 936 corporations) with regard to the termination of sections 936 and 30A. Specifically, this notice discusses certain issues that are likely to arise depending on the manner in which the business of a section 936 corporation continues to be conducted after this termination.

BACKGROUND

Subject to certain limitations, special tax credits are available under section 936 (possession tax credit) or section 30A (Puerto Rico Economic Activity Credit) for taxable income of a domestic corporation derived from the active conduct of a trade or business in a possession of the United States, provided that an election is made under sections 936(a) and (e). The tax credits provided by sections 936 and 30A will not be allowed for taxable years beginning after December 31, 2005. See sections 936(j) and 30A(h). The Treasury Department and the Internal Revenue Service (Service) anticipate that certain issues are likely to arise in connection with the termination of sections 936 and

30A (including election revocations in advance of such termination) and accordingly provide guidance with respect to these issues in this notice. The Treasury Department and the Service intend that these issues be resolved by applying existing provisions of the Internal Revenue Code and the Treasury regulations. This notice provides explanations and cross-references as appropriate to certain applicable statutory and regulatory provisions. Other issues not discussed in this notice may also arise, depending on a specific taxpayer's facts and circumstances.

Whether certain issues are likely to arise will depend on the manner in which a section 936 corporation's business continues to be conducted following the termination of sections 936 and 30A. Three possible situations and the issues that are likely to arise in each are discussed in Sections I through III below.

Regardless of how a section 936 corporation's business is conducted following the termination of sections 936 and 30A, in the case of a section 936 corporation that does not affirmatively revoke its election to be treated as a section 936 corporation and has not otherwise allowed the election to terminate (for example, by not claiming the possession tax credit on Form 5735 ("Possessions Corporation Tax Credit (Under Sections 936 and 30A)")), the election will terminate by operation of law for the taxable years of such corporation beginning after December 31, 2005. No new filing requirements (for example, a requirement to file a special form) will apply to such a corporation.

SECTION I. THE SECTION 936 CORPORATION CONTINUES ITS ACTIVITIES AS A

DOMESTIC CORPORATION.

One possible situation upon the termination of sections 936 and 30A (or earlier election revocation) is for the former section 936 corporation to continue its activities as a domestic corporation.

A. Membership in consolidated group

For taxable years following the last taxable year in which it was entitled to the credit under section 936 or 30A, a former section 936 corporation that continues its activities as a domestic corporation may be required to be included in an affiliated group of corporations filing a consolidated income tax return. Section 1504(b)(4) provides that section 936 corporations are not "includible corporations" that may join in a consolidated return group. If the section 936 corporation would have been includible in a consolidated return group were it not for section 1504(b)(4), the termination of sections 936 and 30A will automatically cause the corporation to be included in the consolidated return group for the first taxable year it is not a section 936 corporation. No election needs to be filed, and no approval from the Service needs to be obtained, to include the former section 936 corporation in the consolidated return group. If the section 936 corporation and its parent corporation do not have the same annual accounting period, the inclusion of the former section 936 corporation in the consolidated return group will result in a short taxable year for the former section 936 corporation. See Rev. Proc. 2002-37, 2002-1 C.B. 1030, and Rev. Proc. 2002-39, 2002-1 C.B. 1046, for guidance on changes to annual accounting periods.

When the former section 936 corporation becomes an includible corporation, the parent corporation is the agent for the group for many elections and other matters related to the tax liability of the former section 936 corporation and the other consolidated return group members. See § 1.1502-77 of the Income Tax Regulations.

If the former section 936 corporation becomes includible in a consolidated return group, the carryover of specific tax attributes of the corporation will be governed by applicable consolidated return provisions. The special rules governing prior losses and earnings are discussed below.

B. Former section 936 corporation with loss history

Each taxable year that the corporation was a section 936 corporation is a separate return limitation year (SRLY) in relation to the consolidated return group. See § 1.1502-1(f). Therefore, the rules of § 1.1502-21(c) will limit the extent to which net operating loss (NOL) carryovers of the former section 936 corporation arising (or treated as arising) in its SRLYs are included in the consolidated NOL deductions for the years the corporation is included in the consolidated return group. In general, § 1.1502-21(c)(1) provides that NOLs from SRLYs included in the group's consolidated NOL deduction may not exceed the aggregate consolidated taxable income for all consolidated taxable years of the group determined by reference to only the member's items of income, gain, deduction, and loss, as explained in the regulation. Under § 1.1502-15, built-in losses of the former section 936 corporation arising (or treated as arising) in its SRLYs may, in some cases, be limited by the SRLY limitation described above as if the built-in loss were a hypothetical NOL carryover or net capital loss carryover arising in a SRLY. SRLY limitations also apply to net capital losses (see

§ 1.1502-22(c)), net section 1231 losses (see § 1.1502-23), general business credits (see § 1.1502-3(d)), and minimum tax credits (see § 1.1502-55).

If a former section 936 corporation (whether or not includible in a consolidated return group) continues its activities as a domestic corporation, section 382 will not apply to limit the carryover of NOLs or built-in losses in the absence of an "ownership change" (as defined in section 382(g)). The termination of sections 936 and 30A or the revocation of a section 936 election alone will not constitute an ownership change for that purpose.

If the section 936 corporation is an unaffiliated dual resident corporation or an unaffiliated domestic owner that has filed an agreement described in § 1.1503-2(g)(2) with respect to dual consolidated losses, becoming a member of a consolidated group may cause the dual consolidated losses to be recaptured pursuant to § 1.1503-2(g)(2)(iii)(A).

C. Accumulated earnings of section 936 corporation

When a former section 936 corporation becomes a member of a consolidated return group, the treatment of the earnings and profits (E&P) of the former section 936 corporation will be determined by the rules provided in § 1.1502-33. When the former section 936 corporation joins the consolidated group, any undistributed E&P earned before it was a member of the consolidated return group carry over to the corporation's first taxable year in the group, and E&P earned after it becomes a member of the group will tier up to higher-tier corporations in the group under § 1.1502-33(b). When a former section 936 corporation becomes an includible corporation in a consolidated return group and distributes a dividend to its parent corporation attributable to E&P accumulated while the distributing corporation was a section 936 corporation, such a dividend will not result in an adjusted current earnings (ACE) adjustment under section 56(g)(4)(C) for alternative minimum tax (AMT) purposes. For regular tax purposes, such a dividend is not included in the parent corporation's gross income under § 1.1502-13(f)(2)(ii), and there is no change to the parent corporation's E&P as a result of such a distribution.

SECTION II. THE SECTION 936 CORPORATION LIQUIDATES INTO ITS DOMESTIC PARENT CORPORATION.

Another possible situation upon the termination of sections 936 and 30A (or earlier election revocation) is for the section 936 corporation to be completely liquidated into its domestic parent corporation.

A. Recognition of gain or loss upon liquidation distributions

Section 332(a) provides, subject to the requirements in section 332(b), that no gain or loss is recognized on receipt by a corporation of property distributed in complete liquidation of another corporation. Section 337(a) provides that no gain or loss is recognized to the liquidating corporation on the distribution of any property to the 80-percent distributee (that is, the corporation that meets the 80-percent stock ownership requirements in section 332(b)) in a complete liquidation to which section 332 applies. If the section 936 corporation has one corporate shareholder that satisfies the requirements of an 80-percent distributee, sections 332(a) and 337(a) allow the corporation to be liquidated into its parent corporation without recognition of gain or loss by either the liquidating section 936 corporation or its parent corporation. But see section 337(c) (denying section 337 nonrecognition, but not section 332 nonrecognition, if the liquidating corporation is owned by two or more members of a consolidated group that together meet the 80-percent ownership requirements by reason of the aggregate stock ownership rule of § 1.1502-34).

Section 901(g)(1) provides a special rule for taxes paid or accrued to foreign countries or possessions of the United States with respect to distributions that are attributable to periods during which the distributing corporation was a "possessions corporation." For this purpose, the term "possessions corporation" includes section 936 corporations. See section 901(g)(2). Under this special rule, to the extent the distribution is received in connection with a liquidation with respect to which gain or loss is not recognized, such taxes shall not be treated as taxes paid to a foreign country or U.S. possession. As a result, no foreign tax credit or deduction shall be allowed with respect to any amount so paid or accrued.

If the section 936 corporation is an unaffiliated dual resident corporation or an unaffiliated domestic owner that has filed an agreement described in § 1.1503-2(g)(2) with respect to dual consolidated losses, the liquidation of such corporation may cause the dual consolidated losses to be recaptured pursuant to § 1.1503-2(g)(2)(iii)(A).

B. Succession to section 381(c) items of the liquidated section 936 corporation

In the case of the acquisition of assets of a corporation by another corporation in a distribution to such other corporation to which section 332 applies, section 381 provides that the acquiring corporation shall succeed to and take into account, as of the close of the day of the distribution and subject to certain conditions and limitations, the items described in section 381(c). Section 381(c) enumerates more than twenty separate items, which include (but are not limited to) NOL carryovers, E&P, capital loss carryovers, and methods of accounting. When a section 936 corporation is liquidated into its parent corporation under section 332, section 381 requires that the parent corporation determine and take into account the items specified in section 381(c).

Section 381(c)(1) provides rules regulating the carryover of an NOL of a liquidating corporation to its parent corporation's first taxable year ending after the date of the liquidation. In particular, section 381(c)(1)(B) limits the deductibility of the NOL carryover for that taxable year of the parent to the proportion of the parent's taxable income that the number of days in the taxable year after the liquidation bears to the total number of days in the year. Also, section 381(b)(3) provides that the parent corporation may not carry back an NOL or a net capital loss for a taxable year ending after the date of the liquidation to a taxable year of the liquidated corporation.

If the parent corporation is a member of a consolidated return group, NOLs, built-in losses, and other tax attributes to which the parent corporation of a liquidated section 936 corporation succeeds are subject to the SRLY rules. The SRLY limitation applies to a carryover of NOLs from the subsidiary under § 1.1502-21, to built-in losses on assets distributed by the subsidiary under § 1.1502-15, and to certain other carryovers. All of the items of income, gain, deduction, and loss of the parent (that is, not solely the items attributable to the assets distributed by the subsidiary) are included for purposes of determining the SRLY limitation for the parent's taxable years after a section 332 liquidation. See § 1.1502-15(d), Example 1, part (iv) (applying a similar rule when assets are contributed to a corporation in a section 351 transaction).

The ACE adjustment under section 56(g)(4)(C) does not apply to a liquidation of a section 936 corporation into its parent corporation because, under section 331(b), a distribution in liquidation is not treated as a dividend.

SECTION III. THE SECTION 936 CORPORATION REINCORPORATES AS A FOREIGN CORPORATION.

A third possible situation upon the termination of sections 936 and 30A (or earlier election revocation) is for the section 936 corporation (or former section 936 corporation) to reincorporate as a foreign corporation. For these purposes, a foreign corporation includes a corporation formed under the laws of a possession of the United States. See section 7701(a)(5).

A. Section 367 consequences of a section 368(a)(1)(F) reorganization

A common form of reincorporation is effected through "a mere change in identity, form, or place of organization of one corporation, however effected," as described in section 368(a)(1)(F) (an "F reorganization"). Section 1.367(a)-1T(f) provides that, in every F reorganization where the transferor corporation is a domestic corporation and the acquiring corporation is a foreign corporation, there is considered to exist: (1) a transfer of assets by the transferor corporation to the acquiring corporation under section 361(a) in exchange for stock of the acquiring corporation and the assumption by the acquiring corporation of the transferor corporation's liabilities; (2) a distribution of the stock of the acquiring corporation by the transferor corporation to the shareholders of the transferor corporation; and (3) an exchange by the transferor corporation's shareholders of the stock of the transferor corporation for stock of the acquiring corporation under section 354(a).

Section 367(a) provides that, if in connection with any exchange described in section 361(a) a U.S. person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain will be recognized on such transfer, be considered a corporation. The transferee's loss of corporate status for U.S. tax purposes denies the transferor the benefit of nonrecognition treatment with respect to gain under section 361(a). A domestic corporation subject to gain recognition under section 367(a) recognizes gain on the transfer of its assets to a foreign corporation in a transaction described in section 361(a) as if the property had been disposed of in a taxable exchange with the transferee corporation. See § 1.367(a)-1T(b)(4). Section 367(a)(2) and (3), and the regulations thereunder, provide special exceptions to the rule of gain recognition provided in section 367(a)(1) when a U.S. person transfers certain types of property to a foreign corporation, including a limited exception for property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside the United States. This exception, however, does not apply to certain kinds of property, such as section 1221(a) inventory property or accounts receivable.

These special exceptions also do not apply in certain cases where the transferor corporation is widely held. <u>See</u> section 367(a)(5).

Section 367 generally will apply to transfers of property by a section 936 corporation to a foreign corporation without regard to whether the section 936 election is in effect at the time of the transfer. However, if the transfer is made while the section 936 election is in effect, the taxpayer may receive a possession tax credit with respect to income recognized on the transfer, to the extent such income is from sources outside the United States. <u>See</u> sections 936(a)(1)(A)(ii) and 30A(a)(1)(B).

B. <u>Effect of termination of section 936 on the use and transfer of intangibles</u>

Section 367(d) provides that, if a U.S. person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361, the U.S. person transferring such property shall be treated as having sold such intangible property in exchange for a series of annual payments over the useful life of such property which are contingent upon the productivity, use, or disposition of such property and which are commensurate with the income attributable to such property. These deemed payments are treated as ordinary income to the transferor.

Section 367(d) does not apply to the transfer of foreign goodwill or going concern value. Section 1.367(d)-1T(b). For this purpose, § 1.367(a)-1T(d)(5)(iii) defines “foreign goodwill or going concern value” as “the residual value of a business operation conducted outside the United States after all other tangible and intangible assets have been identified and valued.” The transfer of a section 936 corporation’s business to a foreign corporation typically will not involve the transfer of significant goodwill of the section 936 corporation to the foreign corporation, but it may in certain cases. Goodwill associated with a section 936 corporation's business operations in a possession, to the extent it exists, may or may not be considered "foreign goodwill" under § 1.367(a)-1T(d)(5)(iii), depending on the facts and circumstances.

Section 936 contains special rules regarding intangibles that may affect the application of section 367(d) to transfers of intangibles by a section 936 corporation or former section 936 corporation.

Section 936(h) provides that the intangible property income of a section 936 corporation – that is, the gross income of a section 936 corporation attributable to any intangible property (other than intangible property that has been licensed to the section 936 corporation since prior to 1948) – shall be included on a pro rata basis in the gross income of the shareholders of the section 936 corporation as income from sources within the United States. Under section 936(h)(5), however, the shareholders of a section 936 corporation are not required to recognize such intangible property income if an eligible section 936 corporation elects one of two alternative methods of computation of taxable income: (1) the cost sharing method of section 936(h)(5)(C)(i) ("section 936 CSM"); or (2) the profit split method of section 936(h)(5)(C)(ii) ("section 936 profit split method"). Under the section 936 CSM, the electing section 936 corporation pays a "cost sharing payment" (as defined in section 936(h)(5)(C)(i)(I)) and is treated as an owner (solely for purposes of earning a return thereon) of certain intangible property related to the section 936 corporation's economic activities in the possession. Under the section 936 profit split method, the electing section 936 corporation's taxable income is equal to 50 percent of the section 936(h)(5)(C)(ii)(II) "combined taxable income" of the affiliated group from covered sales of products produced or services rendered, in whole or in part, by the section 936 corporation in a possession.

Following the termination of sections 936 and 30A, the section 936 CSM and the section 936 profit split method will no longer apply and the income of a former section 936 corporation (or a successor entity), including income from intangibles, will be required to be determined under generally applicable federal income tax principles. Thus, for example, the arm's length amount charged in a controlled transfer of an intangible to a former section 936 corporation must be determined under one of the four methods listed in § 1.482-4(a), applied in accordance with all of the provisions of § 1.482-1, and must be commensurate with the income attributable to the intangible. In this regard, it is important to note that Congress intended for cost sharing under section 936(h)(5)(C)(i) to remain separate and distinct from cost sharing arrangements under section 482. See section 936(h)(5)(C)(i)(I) (providing that amounts paid under cost sharing agreements with related persons are not considered in the determination of section 936 CSM payments). A section 936 corporation does not obtain an interest in intangibles in exchange for payments it makes pursuant to an election of the section 936 CSM, but rather, it obtains a temporary limited entitlement to manufacturing intangible income. See section 936(h)(5)(C)(i)(II). That is, the statutorily determined section 936 CSM payment entitles the section 936 corporation to manufacturing intangible income only in the taxable year for which the payment is made. A section

936 corporation or a former section 936 corporation will accordingly not possess any interest in any intangible property as a result of payments made pursuant to an election of the section 936 CSM.

To the extent that a section 936 corporation (or a former section 936 corporation) does own intangible property ("possession-owned intangibles"), and transfers such property to a foreign corporation, certain of the section 367 consequences may depend on whether the section 936 election is in effect at the time of the property transfer. Under section 936(h)(6), when a section 936 corporation transfers possession-owned intangibles to a related foreign corporation, the shareholders of the section 936 corporation are generally required by section 936(h)(1) to include in gross income, on a pro rata basis, the annual payments provided for by section 367(d) as U.S. source ordinary income. In contrast, if a section 936 election is not in effect at the time of the transfer (for example, following the termination of sections 936 and 30A), the transferor of possession-owned intangibles (that is, a former section 936 corporation or a successor corporation) to a foreign corporation will itself be treated as having sold such possession-owned intangibles in exchange for the annual payments provided for by section 367(d), with the source of such payments generally determined by the applicable source rule in section 861(a)(4) or 862(a)(4), pursuant to section 865(d).

C. Subsequent dividends from earnings accumulated by the section 936 corporation

In a transfer connected with an F reorganization to which section 361 applies, section 381 provides that the acquiring corporation shall succeed to and take into account, as of the close of the day of the distribution and subject to certain conditions and limitations, the items described in section 381(c), which include E&P. See section 381(c)(2). Section 243(e) provides that any dividend from a foreign corporation from E&P accumulated by a domestic corporation during a period with respect to which the domestic corporation was subject to taxation shall be entitled to a DRD as if it were distributed by a domestic corporation which is subject to taxation for purposes of applying section 243(a). Notwithstanding that section 936 provides for a credit against taxes imposed on a corporation making a section 936 election, section 936 corporations are domestic corporations subject to tax and thus meet the requirements of sections 243(a) and (e). Section 243(a) provides a 100-percent dividends received deduction (DRD) for qualifying dividends. Section 243(b) provides that a qualifying dividend includes any dividend received by a corporation if the corporation is a member of the same affiliated group as the distributing corporation and the distributing corporation has a section 936 election in effect. For this purpose, the exclusion of a section 936 corporation from the affiliated group under section 1504(b)(4) does not apply. See section 243(b)(2)(A).

Section 1.243-3(b) provides that a foreign corporation shall, for purposes of section 243(e), maintain separate accounts for E&P to which it succeeds that were accumulated by a domestic corporation and for other accumulated E&P of the foreign corporation. Under § 1.316-2, every distribution made by a corporation is considered to be made first out of any current year E&P and then out of E&P accumulated in prior taxable years. With respect to the accumulated E&P of the foreign corporation, § 1.243-

3(c) provides that dividends paid by the foreign corporation shall be treated as having been paid out of the most recently accumulated E&P of such foreign corporation (regardless of whether such E&P was accumulated by a predecessor domestic corporation or by the foreign corporation itself). To the extent that a dividend is paid out of E&P accumulated by the foreign corporation and by a predecessor domestic corporation for taxable years ending on the same day (so that neither is more recently accumulated), then the portion of such dividend considered paid out of each account shall be the same proportion of the total dividend as the amount of E&P in that account bears to the sum of the E&P in all such accounts. Thus, for example, if a section 936 corporation is reincorporated as a newly formed foreign corporation, and the foreign corporation subsequently makes distributions to its U.S. parent, the distributions will be treated as first coming from current E&P, then from accumulated E&P with the latest E&P accumulated being treated as distributed first. Subject to section 245, dividends from earnings accumulated by the foreign corporation itself generally will not be entitled to the DRD. However, dividends from E&P accumulated while the predecessor corporation was a section 936 corporation will be entitled to the DRD.

Section 901(g)(1) provides in relevant part that no credit or deduction is allowed for any tax that is paid or accrued to any foreign country or possession of the United States with respect to any distribution from a corporation to the extent such distribution is attributable to periods during which such corporation is a section 936 corporation and a DRD is allowable with respect to such distribution. As a result, no foreign tax credit or deduction is allowed with respect to any foreign or possession tax imposed on dividend distributions by a foreign corporation from earnings accumulated by a predecessor section 936 corporation.

D. Alternative minimum tax

In determining ACE adjustments for AMT purposes, section 56(g)(4)(C)(i) generally provides that a deduction shall not be allowed for any item if such item would not be deductible for any taxable year for purposes of computing E&P. However, section 56(g)(4)(C)(ii) provides an exception for any deduction allowable under section 243 for any dividend that is a "100-percent dividend" (that is, a dividend with respect to which a 100-percent DRD is allowable), or that is received from a section 243(c)(2) "20-percent owned corporation," but only to the extent such dividend is attributable to income of the paying corporation that is subject to tax (determined after the application of sections 936 and 30A). Thus, to determine the effect on ACE of a distribution from a foreign corporation that has succeeded to the E&P of a section 936 corporation, the recipient of the distribution must determine: (1) the extent to which the section 243 DRD would be allowed with respect to the distribution by the foreign corporation; and (2) the extent to which the E&P comprising such distribution were accumulated in taxable years for which the election under section 936 (or section 30A) was in effect and were subject to tax in such taxable years.

For purposes of determining the alternative minimum foreign tax credit, section 56(g)(4)(C)(iii)(I) provides, subject to the limitation in section 56(g)(4)(C)(iii)(II), that 75 percent of any withholding or income taxes paid to a possession of the United States shall be treated as a tax paid to a foreign country by the corporation receiving the dividend. Taxes paid to a U.S. possession by a section 936 corporation shall be treated as a withholding tax paid with respect to any dividend distributed by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902. Section 56(g)(4)(C)(iii)(III). Section 56(g)(4)(C)(iii)(IV) provides that, in determining the alternative minimum foreign tax credit, section 904(d) shall be applied as if dividends from a section 936 corporation were a separate category of income referred to in a subparagraph of section 904(d)(1). To the extent a dividend distributed by a foreign corporation comprises E&P accumulated in taxable years for which an election under section 936 (or section 30A) was in effect (and to which the foreign corporation has succeeded), the recipient of the dividend will determine the alternative minimum foreign tax credit with respect to such part of the dividend pursuant to the rules provided in section 56(g)(4)(C)(iii).

E. Recapture of dual consolidated losses

If the section 936 corporation is an unaffiliated dual resident corporation or an unaffiliated domestic owner that has filed an agreement described in § 1.1503-2(g)(2) with respect to dual consolidated losses, an outbound asset reorganization may cause the dual consolidated losses to be recaptured pursuant to § 1.1503-2(g)(2)(iii)(A). Depending on the facts and circumstances, recapture issues in addition to those associated with dual consolidated losses may also arise. See sections 367(a)(3)(C) and 904(f)(3).

F. Reporting requirements

Depending on the facts and circumstances, certain reporting requirements may apply with respect to the former section 936 corporation. For example, section 6038B may require the transfer of tangible and intangible property to be reported on Form 926 ("Return by a U.S. Transferor of Property to a Foreign Corporation"). See § 1.6038B-1. Form 5471 ("Information Return of U.S. Persons With Respect to Certain Foreign Corporations") and its schedules (for example, Schedule O ("Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock")) may also be required to be filed. See generally sections 6038 and 6046.

G. Subpart F consequences to U.S. shareholders

Depending on the facts and circumstances, a section 936 corporation reincorporated as a foreign corporation may be a controlled foreign corporation (CFC) (as defined in section 957(a)) subject to the provisions of subpart F (sections 951 through 964). Section 951(a) requires that a United States shareholder (as defined in section 951(b)) of a CFC include in its gross income for the taxable year its pro rata share of certain items of the CFC's income ("subpart F income").

Certain taxpayers may choose to continue to conduct business in a possession through a branch of a CFC organized or created elsewhere. Such a branch may constitute a manufacturing branch for purposes of the regulations under section 954(d)(2). Under certain facts and circumstances, income derived by a CFC with a manufacturing branch located outside the country under the laws of which the CFC is organized may constitute foreign base company sales income, a form of subpart F income that the United States shareholder must include in income. See § 1.954-3(b)(4), Example (2).

DRAFTING INFORMATION

The principal author of this notice is Edward R. Barret of the Office of Associate Chief Counsel (International). However, other personnel from the Service and the Treasury Department participated in its development. For further information regarding this notice contact Thomas A. Vidano or Edward R. Barret at (202) 435-5265 (not a toll-free call).