

The tentative determination of the rates is set forth in Table 1.

Notice 97-17 Table 1

Tentative Determination of Rates To Be Used For Taxable Years Beginning in 1996

Differential earnings rate for 1996 .....	6.555
Recomputed differential earnings rate for 1995.....	0
Imputed earnings rate for 1995.....	12.625
Imputed earnings rate for 1996.....	15.777
Base period stock earnings rate.....	18.221
Current stock earnings rate for 1996 .....	17.422
Stock earnings rate for 1993.....	23.385
Stock earnings rate for 1994.....	11.437
Stock earnings rate for 1995.....	17.445
Average mutual earnings rate for 1994.....	9.222
Average mutual earnings rate for 1995.....	16.477

**Transfers to Foreign Entities Under Sections 1491 Through 1494**

**Notice 97-18**

This notice provides guidance with respect to certain transfers of property to foreign corporations, partnerships, trusts, or estates as described in section 1491 of the Internal Revenue Code (the "Code"). This notice also provides guidance concerning the penalty imposed by section 1494(c) ("section 1494(c) penalty") for failure to file a return reporting a transfer described in section 1491 ("section 1491 transfer"). Sections 1491 and 1494 were amended by the Small Business Job Protection Act of 1996 (the "Act").

The Act provides that the section 1494(c) penalty applies to transfers made after August 20, 1996. However, Notice 96-60, 1996-49 I.R.B. 7, announced that no section 1494(c) penalty would be imposed if a section 1491 transfer is reported no later than 60 days after issuance of forthcoming guidance. This notice provides the guidance referred to in Notice 96-60.

This notice is divided into eight sections. Section I provides background on the relationship of the new section 1494(c) penalty with sections 1491 through 1494, 6048, and 6677. Section II sets forth the section 1491 transfers that are reportable under section 1494. Section III explains various changes to the time and manner for reporting section 1491 transfers, including certain transfers by domestic trusts described in Notice 96-65, 1996-52 I.R.B. 28. Section IV contains examples illustrating the section 1494 reporting requirements. Section V provides guidance with respect to the section 1494(c) penalty.

Section VI clarifies the application of section 1491 to organizations that have made an election under section 761(a). Section VII announces that no reporting is required under section 1494 on certain distributions from a corporation or partnership while Treasury and the Service study the appropriate treatment of such transfers under section 1491. Section VIII sets forth the effective date of this notice.

**SECTION I. BACKGROUND**

*A. Sections 1491 through 1494*

Section 1491 of the Code imposes a 35 percent excise tax on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust that is not a foreign estate or a trust ("U.S. transferor") to a foreign corporation if the transfer is made as paid-in surplus or as a contribution to capital. The excise tax is also imposed on any transfer of property by a U.S. transferor to a foreign partnership, estate or trust. Tax-free exchanges, gifts, sales in which any portion of the gain realized is deferred, and private annuity transactions are examples of transactions that are within the scope of section 1491. S. Rep. No. 938, 94th Cong. 2d Sess. 223 (1976), 1976-3 C.B. 49, 261. See also Rev. Rul. 78-357, 1978-2 C.B. 227. The excise tax is 35 percent of the excess of the fair market value of the property transferred over the transferor's adjusted basis in such property plus any gain recognized to the transferor at the time of the transfer.

Under section 1492, the excise tax imposed by section 1491 does not apply to: transfers to certain exempt organizations (section 1492(1)); transfers de-

scribed in section 367 (section 1492(2)(A)); transfers with respect to which an election has been made to apply principles similar to the principles of section 367 (section 1492(2)(B)); or transfers with respect to which an election has been made under section 1057 (section 1492(3)).

Section 1494(a) provides that the excise tax is due and payable by the transferor at the time of the transfer, and shall be assessed, collected and paid under regulations prescribed by the Secretary. Under Treas. Reg. § 1.1494-1(a), a U.S. transferor is required to report a section 1491 transfer on Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership*, on the day the transfer is made. Any excise tax due must also be paid on the day of the transfer.

*B. Sections 1494(c), 6048 and 6677*

Section 6048(a), which requires a U.S. person to report certain transfers of property (including money) to foreign trusts, was amended by the Act to broaden the scope of reportable transactions between U.S. persons and foreign trusts. The Act also amended section 6677, which provides for a penalty equal to 35 percent of the gross value of the property transferred to a foreign trust if a U.S. person fails to comply with the reporting requirements of section 6048(a). Additional penalties are imposed if the failure to file continues after the Service mails notice of such failure to the person required to pay the penalty. The section 6677 penalty applies even if the transfer is to a foreign trust with respect to which the transferor is treated as the owner of the transferred property under sections 671 through

679. Congress imposed a significant penalty for failure to report such a transfer, even though there are no tax consequences resulting from the transfer, because of the need to trace transfers of property to a foreign trust to ensure that any subsequent income earned on the transferred property is correctly reported on the income tax return of a U.S. taxpayer. See H.R. Rep. No. 542, 104th Cong., 2d Sess., pt. 2, at 25 (1996).

The Act also adds new section 1494(c) to the Code, which imposes a penalty for failure to file a return required by the Secretary with respect to a section 1491 transfer. Section 1494(c) provides that a U.S. transferor shall be liable for the penalties provided in section 6677 as if such failure were a failure to file a notice under section 6048(a) (*i.e.*, a penalty equal to 35 percent of the gross value of the property transferred plus additional penalties for continuing failure to comply).

## SECTION II. TRANSFERS SUBJECT TO REPORTING UNDER SECTION 1494

### A. Reportable section 1491 transfers

Section 1491 applies to a broad range of transactions. Moreover, existing regulations require a U.S. transferor to report on the day of the transfer any transaction described in section 1491. *See* Treas. Reg. § 1.1494-1(a).

In order to administer section 1494(c) in a manner that is not overly burdensome, Treasury and the Service intend to amend the existing regulations to narrow the scope of transfers subject to reporting under section 1494. Until the regulations are amended, a U.S. transferor is required to report a section 1491 transfer only if it would be reportable under the guidance provided by this notice. Thus, no section 1494(c) penalty will be imposed on a transfer that is not reportable under this notice.

Treasury and the Service believe that a section 1491 transfer should be reported under section 1494 only if the United States has a significant tax interest in obtaining the required information. The United States has a significant tax interest in obtaining information on transfers of appreciated property to a foreign entity if the entire amount of gain is not immediately recognized by the U.S. transferor. In addition, the United States has a significant tax interest in obtaining information on transfers of any property to a foreign entity if the

U.S. transferor may be required to pay U.S. tax on the income or gain generated by that property after the transfer. The new foreign trust reporting provisions identify these types of transfers to foreign trusts. This notice identifies these types of transfers to other foreign entities. Finally, Treasury and the Service believe that reporting should not be required under section 1494 with respect to certain transfers that are adequately reported pursuant to another Code section.

Thus, this notice announces that a U.S. transferor is not required to report a section 1491 transfer if:

(i) The U.S. transferor immediately recognizes gain (if any) on the transfer equal to the difference between the fair market value of the property and the U.S. transferor's adjusted basis in such property; and

(ii) The U.S. transferor does not have a significant interest in the transferee immediately after the transfer.

Thus, a U.S. transferor must report any transfer if the entire gain is not immediately recognized, even if the U.S. transferor does not have a significant interest in the transferee after the transfer. In addition, a transfer of property must be reported if the U.S. transferor has a significant interest in the transferee after the transfer, even if the property transferred consists of money or other unappreciated property. However, even if the transfer would otherwise be reportable under this notice, such reporting will be deemed satisfied if the transfer is adequately reported by the U.S. transferor pursuant to a section of the Code specified in section II.B of this notice.

#### 1. Taxable transfers for fair market value

If the U.S. transferor immediately recognizes gain (if any) on the transfer equal to the difference between the fair market value of the property and the U.S. transferor's adjusted basis in such property, no excise tax is imposed and reporting is not required unless the U.S. transferor has a significant interest in the transferee, as discussed in Section II.A.2 of this notice. Therefore, unless the U.S. transferor has a significant interest in the transferee, fair market value sales of property by a U.S. person to a foreign partnership, trust or estate on which gain is immediately recognized are not required to be reported. However, if any portion of the gain realized on a transfer is not recognized

or is deferred (e.g., installment sales or private annuity transactions), the transfer must be reported. Thus, for example, a U.S. person who contributes appreciated property to a foreign partnership in a transaction in which gain is not recognized generally must report the transfer under section 1494.

Certain transfers by U.S. transferors (described below) would not result in an income tax liability regardless of the method of the transfers. Thus, solely for purposes of section 1491, Treasury and the Service believe it is appropriate to treat such transferors as having immediately recognized the full amount of gain with respect to these transfers. Hence, an excise tax will not be imposed on the following transfers and such transfers will not be subject to reporting:

(i) A transfer by a U.S. transferor who is exempt from federal income taxation under section 501(a) or section 664(c), unless a sale of the transferred property would be subject to tax under section 511 as unrelated business taxable income;

(ii) A transfer to a foreign partnership, trust or estate by a domestic corporation, of stock (including treasury stock) in exchange for money or other property if the domestic corporation is not required to recognize gain on the transfer under section 1032; or

(iii) A transfer to a foreign partnership, trust or estate by a domestic partnership, of an interest in the domestic partnership in exchange for property if the domestic partnership is not required to recognize gain on the transfer under section 721.

#### 2. Transfers where the U.S. transferor has a significant interest in the transferee

To obtain information on transfers of property by U.S. persons who may be required to pay U.S. tax on income or gain generated by that property, transfers of property (whether or not appreciated) to a foreign transferee must be reported if the U.S. transferor has a significant interest in the transferee after the transfer. Thus, this notice requires U.S. transferors to report section 1491 transfers of all types of property, including the taxpayer's functional currency ("money"), whenever the U.S. transferor has a significant interest in the transferee after the transfer, regardless of whether the transfers are fair market value sales in which all of the gain is recognized immediately.

For purposes of this notice, a U.S. transferor is treated as having a significant interest in a foreign transferee if the U.S. transferor and the foreign transferee are related persons within the meaning of section 643(i)(2)(B), with the following modifications:

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), “at least 10 percent” shall be substituted for “more than 50 percent” each place it appears;

(ii) The principles of section 267(b)(10), substituting “at least 10 percent” for “more than 50 percent,” shall apply to determine whether two corporations are related; and

(iii) The principles applicable to trusts shall apply to determine whether an estate is related to another person. For example, a U.S. transferor who owns a 10-percent interest in a foreign partnership immediately after the transfer will have a significant interest in the partnership.

## B. Duplicative reporting

A U.S. transferor otherwise required to report a section 1491 transfer will be deemed to have satisfied the section 1494 reporting requirement without having to file Form 926 if the transferor complies with the reporting requirements described in one of the four sections below.

### 1. Transactions with certain foreign corporations (section 6038)

Section 6038 requires reporting of certain transactions between a U.S. person and foreign corporations controlled by the U.S. person. A U.S. person generally satisfies the reporting requirements of section 6038 by filing Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*. Capital contributions to foreign corporations that are subject to reporting under section 6038 are also section 1491 transfers.

To the extent section 6038 adequately addresses the reporting requirements with respect to transfers to these foreign corporations, it is not necessary to require additional reporting under section 1494. Therefore, a U.S. transferor that transfers money or other unappreciated property (or appreciated property where the full amount of the gain is recognized immediately) to a foreign corporation described in section 6038(a) is not required to report such transfer on Form 926 provided the U.S. transferor has

otherwise complied with the reporting requirements of section 6038.

The reporting requirements of section 6038 do not provide sufficient information to determine the amount of excise tax due upon the transfer of appreciated property if the full amount of gain is not recognized immediately on the transaction. Therefore, a U.S. transferor is required to file Form 926 to report a section 1491 transfer of appreciated property in that case, even if the U.S. transferor has filed a Form 5471 with respect to the foreign transferee. See Section II.B.3, below, if a transfer of appreciated property is reported under sections 367 and 6038B.

### 2. Transactions with certain foreign-owned corporations (section 6038A)

Section 6038A requires reporting of certain transactions between U.S. corporations and related foreign parties if the U.S. corporation is 25-percent foreign owned. U.S. persons generally satisfy the reporting requirements of section 6038A by filing Form 5472, *Information Return of 25% Foreign-Owned U.S. Corporation or Foreign Corporation Engaged in a U.S. Trade or Business*. A transaction with a foreign entity that is subject to reporting under section 6038A may also be a section 1491 transfer.

To the extent section 6038A adequately addresses the reporting requirements with respect to transfers between a U.S. corporation and certain related foreign entities, it is not necessary to require additional reporting under section 1494. Therefore, a U.S. transferor that transfers money or other unappreciated property (or appreciated property where the full amount of the gain is recognized immediately) to a foreign entity described in section 6038A is not required to report such transfer on Form 926 provided the U.S. transferor reports the transfer on Form 5472 in compliance with the reporting requirements of section 6038A.

The reporting requirements of section 6038A do not provide sufficient information to determine the amount of excise tax due upon the transfer of appreciated property if the full amount of gain is not recognized immediately on the transaction. Therefore, a U.S. transferor is required to file Form 926 to report a section 1491 transfer of appreciated property in that case, even if the U.S. transferor has reported such transfer on Form 5472 with respect to the foreign transferee.

### 3. Certain transactions involving foreign corporations (sections 367 and 6038B)

Section 1492(2)(A) provides that to the extent a section 1491 transfer is described in section 367, such transfer is exempt from the section 1491 excise tax. For example, a transfer of property by a U.S. person to a wholly-owned foreign corporation as paid-in surplus or as a contribution to capital is a transfer described in both section 367 and section 1491. Existing regulations require U.S. persons to report transfers of property described in section 367(a) or (d) on Form 926 and to attach such information as is required under section 6038B. Temp. Treas. Reg. § 1.6038B-1T(b).

Because section 6038B addresses the reporting requirements for transfers of property described in section 367(a) and (d), it is not necessary to require additional reporting under section 1494. Therefore, a U.S. transferor that makes a transfer of property (either appreciated or unappreciated) described in both section 367 and section 1491 will satisfy the section 1494 reporting requirements to the extent the U.S. transferor reports the property transferred under section 6038B. If money or other unappreciated property is not reported under section 6038B such property must be reported under section 1494 unless the property is adequately reported under Section II.B.1 of this notice.

### 4. Transactions with foreign trusts (section 6048)

The Act amended section 6048(a) to require enhanced reporting of transfers of property, including money, between U.S. persons and foreign trusts. U.S. persons generally satisfy the reporting requirements of section 6048(a) by filing Form 3520. A transfer of property to a foreign trust for which reporting is required under section 6048(a) may also be a section 1491 transfer.

Because section 6048 adequately addresses the reporting requirements for transfers to foreign trusts, it is not necessary to require additional reporting under section 1494. Therefore, a U.S. transferor that makes a transfer of property (either appreciated or unappreciated) described in both sections 6048 and 1491 is not required to report such transfer on Form 926 provided the U.S. transferor complies with the reporting requirements of section 6048 and the U.S. transferor does not owe excise tax

under section 1491. Form 3520 will be revised to accommodate elections under section 1492(2)(B) or 1492(3) to avoid the section 1491 excise tax.

A U.S. transferor that makes a transfer of property described in both sections 6048 and 1491 is required to report such transfer on Form 926 only if the U.S. transferor owes excise tax under section 1491 on the transfer or fails to comply with the reporting requirements of section 6048.

### **SECTION III. CHANGES TO TIME AND MANNER FOR REPORTING TRANSFERS DESCRIBED IN SECTION 1491**

Existing regulations require that every person making a section 1491 transfer make a return on Form 926 on the day of the transfer and pay any excise tax due at that time. Treas. Reg. § 1.1494-1(a). Treasury and the Service will amend the regulations to change the time and manner for reporting section 1491 transfers and paying any excise tax due. Until the regulations are amended, U.S. transferors who are required to file Form 926 with respect to section 1491 transfers made after August 20, 1996, must file Form 926 and pay any excise tax due in accordance with the procedures set forth in this notice.

#### *A. Time for filing*

Regulations under section 1494 will be amended to allow a U.S. transferor to file information regarding section 1491 transfers on an annual basis instead of at the time of the transfer. Until the regulations are amended, a U.S. transferor 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. See Section III.D of this notice. See also Section VII of this notice for relief from penalties under section 1494(c) in certain cases.

#### *B. Elections made pursuant to section 1492*

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). A U.S. transferor that makes an election to apply principles similar to

the principles of section 367 must comply with the reporting requirements of section 6038B.

Regulations will be issued under section 1494 to allow such election to be made with the U.S. transferor's annual tax return or information return for the taxable year that includes the date of the transfer. Until regulations are issued, an election to apply principles similar to the principles of section 367 must be made on Form 926. Further, provided the U.S. transferor indicates on Form 926 that such an election is being made, the information required by the regulations under section 6038B is attached to Form 926, and Form 926 accompanies the U.S. transferor's tax return for the taxable year that includes the date of the transfer, the U.S. transferor will be deemed to have made the election before the transfer.

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). This election must also be made on Form 926. A Form 926 that accompanies the U.S. transferor's tax return for the taxable year that includes the date of the transfer will satisfy the requirements in Treas. Reg. § 301.9100-12T that specify the time and manner for making an election under section 1057.

As described in Notice 96-65, 1996-52 I.R.B. 28, the Act amended section 7701(a)(30) and (31) to set forth new criteria that must be met to qualify as a domestic trust. Certain domestic trusts will be treated as making section 1491 transfers on January 1, 1997 as a result of becoming foreign trusts under the new law. If a domestic trust relies in good faith on Notice 96-65 to continue to file tax returns as a domestic trust, but is unable to meet the new domestic trust criteria by the end of the two-year period set forth in the notice, the trust may avoid the section 1491 excise tax by making a section 1057 election on the Form 3520 which must be attached to the domestic trust's 1997 amended tax return. Such election will be considered timely for purposes of section 1494(c) and Treas. Reg. § 301.9100-12T if Form 3520 is attached to the domestic trust's 1997 amended tax return that is filed by the due date of the trust's tax return for the taxable year that includes the date that is two years from the due date of the trust's 1997 tax return (including extensions).

#### *C. Manner of reporting transactions*

A U.S. transferor who transfers appreciated property that is reportable on Form 926 under this notice must separately identify the property on Form 926 if the full amount of gain is not recognized immediately on the transfer. See Form 926, Part III. In contrast, to the extent the transfer consists of money or other unappreciated property (or appreciated property in which the full amount of gain is recognized immediately) to a transferee in which the U.S. transferor has a significant interest immediately after the transfer, the value of transferred property may be aggregated by category on a statement attached to Form 926. The categories referred to in the preceding sentence, which are based on the categories of transactions listed on Form 5471, Schedule M, are:

- (i) Sales of stock in trade (inventory);
- (ii) Sales of tangible property other than stock in trade;
- (iii) Sales of property rights (patents, trademarks, etc.);
- (iv) Purchases of stock in trade (inventory);
- (v) Purchases of tangible property, other than stock in trade;
- (vi) Purchases of property rights (patents, trademarks, etc.);
- (vii) Compensation paid for technical, managerial, engineering, construction, or like services;
- (viii) Commissions paid;
- (ix) Rents, royalties, and license fees paid;
- (x) Interest paid;
- (xi) Contributions to corporations, partnerships, trusts or estates (attach a brief description of the property transferred); and
- (xii) All other transfers not required to be separately identified (attach a brief description of the type of transfer and property transferred).

If the transferee is a foreign corporation the U.S. transferor is only required to report transfers described in paragraph (xi) (relating to contributions to capital or paid-in surplus).

#### *D. Payment of tax*

Any excise tax due on a transfer of assets to a foreign transferee may be paid by attaching Form 926 (with the tax due) to the U.S. transferor's income tax return for the taxable year in which the transfer occurs. Interest must be paid on the amount of excise tax due at the underpayment rate determined under

section 6621 with respect to the period between the date on which the transfer occurred and the date on which the excise tax is actually paid. To avoid paying interest in the case of a transfer for which the excise tax is due, a U.S. transferor may instead file Form 926 and pay any excise tax due on the day of the transfer.

#### E. Revisions to forms

Form 926 and Form 3520 are being revised to reflect the guidance set forth in this notice. Until the revised forms are issued, U.S. transferors should continue to use existing Form 926 to report section 1491 transfers, adjusted as necessary to conform with the new reporting requirements set forth in this notice.

### SECTION IV. EXAMPLES

The following examples illustrate the rules of this notice. In these examples UST is a U.S. transferor, FC is a foreign corporation, FP is a foreign partnership, and FT is a foreign trust.

*Example 1. Transfer of appreciated property to a foreign corporation.* UST transfers appreciated property to FC as a contribution to capital in a transfer described in section 351. The section 351 transfer is described in both section 367(a) and section 1491. UST is not required to report the transfer under section 1494 if the transfer is reported under section 6038B.

*Example 2. Transfer of money to a foreign corporation.* UST transfers money to FC as a contribution to capital. Immediately after the transfer UST owns 60 percent of the stock of FC. FC is not required to report the transfer on Form 926 provided UST files Form 5471 reflecting the transfer to FC for the taxable year in which the transfer took place.

*Example 3. Transfer of appreciated property to a foreign partnership.* UST transfers appreciated property to FP in a transaction described in section 721. UST must separately identify the property transferred on Form 926 and pay any excise tax due. UST may file Form 926 with its tax return for the taxable year in which the transfer took place and can make an election under section 1492 at that time to avoid the excise tax. (In contrast, under prior law UST would have been required to file Form 926 on the day of the transfer.)

*Example 4. Transfer of money to a foreign partnership.* UST makes several transfers of money to FP during a taxable year in transactions described in section 721. Immediately after each transfer UST has more than a 10 percent interest in the capital of FP. UST is required to report the transfers on Form 926. However, UST may aggregate the transfers of money into a single amount on Form 926.

*Example 5. Transfer to a foreign trust.* UST transfers appreciated property to FT. UST reports the transfer on Form 3520 under section 6048(a). UST is not required to report the transfer on Form 926 unless UST is liable for the section 1491 excise tax. UST can avoid any excise tax by making a section 1057 election directly on Form 3520.

### SECTION V. SECTION 1494(c) PENALTY

Section 1494(c) imposes a penalty on a U.S. transferor who fails to report a section 1491 transfer for which reporting is required to the extent the transfer is not reported or is reported inaccurately. See sections 1494(c), 6677(a). Thus, if a U.S. person makes a section 1491 transfer of property worth \$1,000,000 to a foreign transferee, but reports only \$400,000 of that amount, the section 1494(c) penalty is imposed only on the \$600,000 unreported amount. Further, the section 1494(c) penalty does not apply if failure to report a transfer is shown to be due to reasonable cause and not willful neglect. See sections 1494(c), 6677(d). For example, if an audit results in an allocation of income under section 482, and such allocation results in an adjustment treated as a capital contribution by a U.S. transferor to a foreign corporation, reasonable cause exists for failure to report such capital contribution under section 1494(c) if reasonable cause prevents the imposition of accuracy-related penalties under section 6662 in connection with the section 482 allocation.

Under Section II.B of this notice, a U.S. transferor is not required to report a section 1491 transfer on Form 926 if such transfer is subject to the reporting requirements of certain other Code sections. However, if the U.S. transferor has not complied with the reporting requirements of that section, the U.S. transferor will not be treated as having satisfied its reporting obligation under section 1494 and will be subject to penalties under section 1494(c). The amount of the penalty imposed under section 1494(c) will be reduced, however, by the amount of the penalty imposed for failing to comply with the reporting requirements of that other section.

### SECTION VI. ORGANIZATIONS ELECTING UNDER SECTION 761(a)

Section 761(a) allows certain organizations that would otherwise be treated as partnerships to elect not to be treated as partnerships for purposes of subchapter K of the Code. Treasury and the Service believe that it is inappropriate to apply section 1491 to a foreign partnership that has made a section 761(a) election. Thus, a transfer to a foreign partnership with a valid section 761(a) election in effect will not be

considered a transfer to that foreign partnership for purposes of section 1491.

### SECTION VII. DISTRIBUTIONS FROM CORPORATIONS AND PARTNERSHIPS

Treasury and the Service are studying the appropriate scope of section 1491, including the treatment of corporate distributions described in section 301, 302 or 305, and partnership distributions described in section 731. Notwithstanding any other provision of this notice, until further guidance is issued taxpayers are not required to report such distributions, whether or not they constitute transfers described in section 1491. In addition, if further guidance requires that these transactions be reported, no penalty will be imposed under section 1494(c) on the failure to report any such distribution as long as a return reporting these transfers is filed no later than sixty days after the issuance of that guidance (or such later date as may be specified in that guidance). Moreover, any applicable election with respect to such distribution will be considered timely for purposes of Treas. Reg. § 301.9100-12T if such an election is filed in the manner required no later than sixty days after the issuance of that guidance (or such later date as may be specified in that guidance).

### SECTION VIII. EFFECTIVE DATE

This Notice is effective for transfers of property occurring after August 20, 1996. No penalties will be imposed under section 1494(c) if a Form 926 reporting the section 1491 transfer (or other adequate reporting described in Section II.B of this notice) is filed by the due date of the U.S. transferor's income tax return, including extensions, for the taxable year in which the transfer occurred, or the date that is 60 days after the date this notice is published in the Internal Revenue Bulletin, whichever is later. See Notice 96-60.

### PUBLIC COMMENT INVITED

Treasury and the Service invite comments on the guidance provided by this notice. Written comments should be submitted by June 10, 1997 to:

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Attn: CC:CORP:T:R (Notice 97-18)  
Room 5228  
Washington, D.C. 20044;

or, alternatively, via the internet at: [http://www.irs.ustreas.gov/prod/tax\\_reggs/comments.html](http://www.irs.ustreas.gov/prod/tax_reggs/comments.html).

The comments you submit will be available for public inspection and copying.

#### DRAFTING INFORMATION

The principal authors of this notice are Wendy Stanley and Michael Kirsch of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Stanley or Mr. Kirsch on (202) 622-3860 (not a toll-free call).

### Guidance for Expatriates Under Sections 877, 2501, 2107 and 6039F

#### Notice 97-19

#### PURPOSE

The Health Insurance Portability and Accountability Act of 1996 (the "Act") recently amended sections 877, 2107 and 2501 of the Internal Revenue Code ("Code"), and added new information reporting requirements under section 6039F.<sup>1</sup> This notice provides guidance regarding certain federal tax consequences under these sections and section 7701(b)(10) for certain individuals who lose U.S. citizenship, cease to be taxed as U.S. lawful permanent residents, or are otherwise subject to tax in the manner provided by section 877.

This notice has eleven sections. Section I provides background regarding the general application of sections 877, 2107 and 2501. Section II explains how to compute tax under section 877. Section III explains how an individual must determine his or her tax liability and net worth for purposes of sections 877, 2107 and 2501. Section IV explains the procedures that an individual must use to request a private letter ruling that the individual's loss of U.S. citizenship did not have for one of its principal purposes the avoidance of U.S. taxes. Section IV also provides that certain former long-term U.S. residents may use this ruling procedure to request a ruling that cessation of long-term U.S. residency did not have for one of its principal

purposes the avoidance of U.S. taxes. Section V provides that certain transactions are treated as exchanges of property under section 877 and explains how to enter into a gain recognition agreement to avoid the immediate recognition of gain on exchanges of property. Section VI provides anti-abuse rules that apply to contributions made to certain foreign corporations. Section VII sets forth annual filing requirements for certain individuals subject to section 877. Section VIII explains how new section 877 interacts with certain U.S. income tax treaties. Section IX explains how to file information statements in accordance with section 6039F and describes the information that must be included on such statements. Section X explains how the transition provision of the Act affects certain individuals who performed an expatriating act prior to February 6, 1995. Section XI explains the application of section 7701(b)(10) and how that section interacts with section 877, as amended by the Act.

Treasury and the Service expect to issue regulations under sections 877 and 6039F, and amend regulations under sections 2107 and 2501, to incorporate the guidance set forth in this notice. Until regulations are issued, taxpayers must comply with the guidance set forth in this notice.

#### SECTION I. GENERAL APPLICATION OF SECTIONS 877, 2107 and 2501

Section 877 generally provides that a citizen who loses U.S. citizenship or a long-term resident who ceases to be taxed as a U.S. resident (collectively, individuals who "expatriate") within the 10-year period immediately preceding the close of the taxable year will be taxed on all of his or her U.S. source income (as modified by section 877(d)) for such taxable year, unless such loss or cessation did not have for one of its principal purposes the avoidance of U.S. taxes.

Section 877(a)(2) provides that a former citizen is considered to have lost U.S. citizenship with a principal purpose to avoid U.S. taxes if the former citizen's tax liability or net worth exceeded certain amounts on the date of expatriation. However, a former citizen will not be considered to have expatriated with a principal purpose to avoid U.S. taxes as a result of the individual's tax liability or net worth if he or she qualifies for an exception under section 877(c). To qualify for an exception, a former citi-

zen must be described in certain statutory categories and submit a ruling request for a determination by the Secretary as to whether the individual's expatriation had for one of its principal purposes the avoidance of U.S. taxes. Section 877(c).

Section 2107(a)(1) generally provides that U.S. estate tax will be imposed on the transfer of the taxable estate of every nonresident decedent if, within the 10-year period ending with the date of death, the decedent lost U.S. citizenship, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Unless a former citizen qualifies for an exception as provided by section 877(c), such individual will be considered to have expatriated with a principal purpose to avoid U.S. taxes for purposes of section 2107 if the individual's tax liability or net worth exceeded certain amounts on the date of expatriation. Sections 2107(a)(2)(A) and (a)(2)(B).

Section 2501(a)(1) generally provides that a tax will be imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. Section 2501(a)(2) provides that section 2501(a)(1) will not apply to the transfer of intangible property made by a nonresident not a citizen of the United States. Section 2501(a)(3)(A) provides that this exception does not apply in the case of a donor who, within the 10-year period ending with the date of a transfer, lost U.S. citizenship, unless such loss did not have for one of its principal purposes the avoidance of U.S. taxes. Unless a former citizen qualifies for an exception as provided by section 877(c), such individual shall be treated as having a principal purpose to avoid U.S. taxes for purposes of section 2501 if the individual's tax liability or net worth exceeded certain amounts on the date of expatriation. Sections 2501(a)(3)(B) and (a)(3)(C).

Section 877(e) provides comparable treatment for long-term residents. A long-term resident of the United States will be treated as if such resident lost U.S. citizenship for purposes of sections 877, 2107, 2501 and 6039F if the resident (i) ceases to be a lawful permanent resident of the United States, or (ii) commences to be treated as a foreign resident under the provisions of an income tax treaty between the United States and a foreign country and does

<sup>1</sup> There are currently two provisions of the Internal Revenue Code designated as section 6039F. Treasury intends to seek a technical correction to the Act to redesignate section 6039F, as added by the Act, as section 6039G. All subsequent references to section 6039F in this notice relate to section 6039F as contained in the Act.