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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9959]

RIN 1545-BP70

Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to Treasury Decision 9959, which was published in the **Federal Register** on Tuesday, January 4, 2022. Treasury Decision 9959 contained final regulations relating to the foreign tax credit, including the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction, the allocation and apportionment of interest expense, foreign income tax expense, and certain deductions of life insurance companies; the definition of a foreign income tax and a tax in lieu of an income tax; the definition of foreign branch category income; and the time at which foreign taxes accrue and can be claimed as a credit.

DATES: These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and applicable on or after January 4, 2022.

FOR FURTHER INFORMATION CONTACT: Concerning §§1.861–20, 1.960–1, and 1.960–2, Suzanne M. Walsh, (202) 317–4908, and Teisha Ruggiero, (202) 317-5282; concerning §1.901–2, Tianlin (Laura) Shi, (202) 317–6987 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9959) that are the subject of this correction are issued under sections 861, 901, and 903 of the Internal Revenue Code.

Correction

As published on January 4, 2022 (87 FR 276), the final regulations (TD 9959) contain errors that need to be corrected.

Correction of Publication

Accordingly, the final regulations (TD 9959) that are the subject of FR Doc. 2021-27887, starting on page 276 in the **Federal Register** of January 4, 2022, are corrected as follows:

1. On page 278, in the first column, in the second line from the top of the second full paragraph, the language "§ 1.861–20," is corrected to read "the rules of §1.861-20,".

2. On page 281, in the second column, in the fourth and fifth lines of the second full paragraph, the language, "that, together, they" is corrected to read "that the rules".

3. On page 281, in the second column, the fifth sentence of the second full paragraph is corrected to read: "To fill this gap, §1.861–20(d)(3)(v)(E) of the final regulations defines a 'contribution' as the excess amount of a disregarded payment, other than a payment described in §1.861-20(d)(3)(v)(D), made by a taxable unit to another taxable unit that the first taxable unit owns over the portion of the disregarded payment, if any, that is a reattribution payment."

4. On page 281, in the third column, in the third and fourth lines from the top of the first partial paragraph, the language "that is neither a contribution nor"

is corrected to read “other than a contribution, a payment described in §1.861-20(d)(3)(v)(D), or”.

5. On page 287, in the third column, in the fifth sentence of the first full paragraph, the language, “‘*income*, war profits, and profits taxes’.” is corrected to read “’*income*, war profits, and profits taxes.’”.

6. On page 291, in the first column, in the third line from the bottom of the first partial paragraph, the language, “section 903” is corrected to read “sections 901 and 903.”

7. On page 291, in the first column, the first and second sentences of the first full paragraph are corrected to read: “Another comment recommended that the example in proposed §1.901-2(c)(3) (§1.901-2(b)(5)(iii) of the final regulations) be expanded to illustrate the application of the attribution requirement in the case where a nonresident taxpayer is earning income from electronically supplied services in a country that imposes tax on such services (ESS tax) and the taxpayer either (1) maintains its own branch in the foreign country imposing the tax, with employees of the branch conducting routine sales, marketing, and customer support functions or (2) uses a related party disregarded entity resident in that country to perform local marketing, customer support, and other routine functions that is subject to that country’s resident corporate income tax. With respect to the second scenario, the comment noted that where the ESS tax is imposed on the nonresident but the resident disregarded entity is subject to a resident corporate income tax and the base of such corporate income tax is determined under arm’s length principles, without taking into account as a significant factor the location of customers, users, or any other similar destination-based criterion, then such resident corporate income tax would meet the residence-based nexus requirement and would be creditable but

that the ESS tax imposed on the nonresident taxpayer would not meet the nexus requirements.”.

8. On page 292, in the second column, in the seventh line from the bottom of the last partial paragraph, the language “§ 1.901-2(a)(3).” is corrected to read “§1.901-2(b)(1).”.

9. On page 294, in the second column, under the paragraph heading “2. Alternative Gross Receipts Test”, in the third line, the language “§ 1.901–2(b)(3),” is corrected to read “§1.901–2(b)(3)(i)(B),”.

10. On page 298, in the first column, in the second and third lines from the bottom of the last partial paragraph, delete the language “§1.901–2(b)(4)(i)(C)(*1*) provides that”.

11. On page 310, in the third column, the fourth line from the bottom of the first partial paragraph, the language, “there is,” is corrected to read “there is”.

12. On page 311, in the first column, in the first and second lines from the bottom of the first partial paragraph, the language, “a activity” is corrected to read “an activity”.

13. On page 317, in the second column, before the caption “**Drafting Information**,” add section VII. to read as follows:

VII. *Congressional Review Act*

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) (‘‘CRA’’). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register. Accordingly, the Treasury Department and IRS are adopting these final regulations with the delayed effective date generally prescribed under the Congressional Review Act.

Oluwafunmilayo A. Taylor,
Branch Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel,
(Procedure and Administration).

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