INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–40
October 3, 2016

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Action On Decision 2016–03, page 424.

Nonacquiescence to the holding that all events fixing a liability for federal income tax purposes occur when discount fuel purchase coupons are issued to a customer for retail grocery purchases.

Notice 2016–52, page 425.

Notice 2016–52 provides guidance relating to certain transactions, undertaken in anticipation of foreign-initiated adjustments to foreign income tax liabilities of section 902 corporations, which will be treated as splitter arrangements under section 909.

Notice 2016–55, page 432.

This notice provides that the IRS will not assert that cash payments an employer makes to §170(c) organizations (in exchange for vacation, sick, or personal leave that its employees elect to forgo) constitute gross income or wages of the employees under certain circumstances.

EMPLOYEE PLANS

Announcement 2016–32, page 434.

This announcement requests comments on ways in which Treasury and the IRS can facilitate compliance with the qualification requirements for qualified plan documents in light of the changes to the determination letter program described in Rev. Proc. 2016–37, 2016–29 I.R.B. 136.

Notice 2016–54, page 429.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for September 2016 used under §417(e)(3)(D), the 24-month average segment rates applicable for September 2016, and the 30-year Treasury rates. These rates reflect the application of §430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

Notice 2016–57, page 432.

Notice 2016–57 extends the temporary nondiscrimination relief for closed defined benefit plans that is provided in Notice 2014–5, 2014–2 I.R.B. 276, by making that relief available for plan years beginning before 2018 if the conditions of Notice 2014–5 continue to be satisfied.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Federal Register.**

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does NOT ACQUIESCE in the following decision:

Giant Eagle, Inc. v. Commissioner,[1] 822 F.3d 666 (3rd Cir. 2016), *rev'g* T.C. Memo 2014–146

[1]Nonacquiescence to the holding that all events fixing a liability for federal income tax purposes occur when discount fuel purchase coupons are issued to a customer for retail grocery purchases.

Part III. Administrative, Procedural, and Miscellaneous

Foreign Tax Credit Guidance under Section 909 Related to Foreign-Initiated Adjustments

Notice 2016–52

SECTION 1. OVERVIEW

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue regulations under section 909 to address the separation of related income from foreign income taxes paid by a section 902 corporation (as defined in section 909(d)(5)) pursuant to a foreign-initiated adjustment. Under section 905(c), certain foreign income taxes paid by a section 902 corporation after the taxable year to which the taxes relate generally are taken into account by adjusting section 902 pools of post-1986 foreign income taxes in the taxable year in which the taxes are paid, rather than accounting for the taxes in the prior taxable year to which the taxes relate. The Treasury Department and the IRS are aware that, in anticipation of a large foreign-initiated adjustment that relates to a prior taxable year, a taxpayer may take steps to separate the additional payment of foreign income tax from the income to which it relates. Such foreign-initiated adjustments may arise under European Union (EU) State aid law, to the extent EU State aid payments result in creditable foreign taxes. Specifically, before a payment is made pursuant to a foreign-initiated adjustment, a taxpayer may attempt to change its ownership structure or cause the section 902 corporation to make an extraordinary distribution so that the subsequent tax payment creates a high-tax pool of post-1986 undistributed earnings that can be used to generate substantial amounts of foreign taxes deemed paid, without repatriating and including in U.S. taxable income the earnings and profits to which the taxes relate.

The Treasury Department and the IRS have determined that guidance to address these transactions is appropriate under section 909, which is intended to prevent the separation of creditable foreign taxes from related income generally by deferring the right to claim credits until the related income is included in U.S. taxable income. Accordingly, this notice announces that the Treasury Department and the IRS intend to issue regulations under section 909 that will identify two new splitter arrangements relating to section 902 corporations that pay foreign income taxes pursuant to foreign-initiated adjustments. The regulations will apply similar rules to taxpayers that take the position that taxes paid by a U.S. person pursuant to a foreign-initiated adjustment to the tax liability of a section 902 corporation are eligible for a direct foreign tax credit under section 901.

No inference is intended from this notice as to the treatment of transactions described in this notice under current law, and the IRS may challenge such transactions under applicable Code provisions or judicial doctrines. In addition, no inference is intended under this notice as to whether (1) payments made pursuant to any particular foreign-initiated adjustment, including those arising under EU State aid law, qualify as payments of creditable foreign income taxes, or (2) taxes paid by a U.S. person pursuant to a foreign-initiated adjustment to the tax liability of a section 902 corporation are eligible for a direct foreign tax credit under section 901.

SECTION 2. BACKGROUND

.01 *Application of Section 905(c) to Taxes Paid by Section 902 Corporations Pursuant to Foreign-Initiated Adjustments*

If a foreign income tax liability for a prior year changes, section 905(c)(1) generally requires the taxpayer to notify the Secretary, who will redetermine the amount of the U.S. tax for the year or years affected. In the case of foreign income taxes deemed paid under section 902 or 960, section 905(c)(1) also authorizes the Secretary to prescribe adjustments to section 902 pools of post-1986 foreign income taxes and post-1986 undistributed earnings in lieu of redetermining the U.S. shareholder's U.S. tax. If accrued foreign taxes of a section 902 corporation are paid more than two years after the close of the taxable year to which such taxes relate, section 905(c)(2)(B)(i)(I) provides that such taxes are taken into account in the taxable year in which the foreign taxes are paid. Temporary and proposed regulations issued in 1988 and 2007 implemented these rules. *See* §1.905–3T (2007). Portions of the temporary regulations expired on November 5, 2010, but remain outstanding in proposed form. Neither section 905(c) nor the regulations under that section specifically address how to account for additional payments of foreign income tax with respect to earnings of a section 902 corporation if, as the result of a liquidation, reorganization, or other corporate transaction, the person that makes an additional payment of tax pursuant to a foreign-initiated adjustment is different from the section 902 corporation that would have paid the tax had it been paid in the year to which the additional tax relates.

.02 *Foreign Tax Credit Splitter Arrangements under Section 909*

Section 909(a) provides that, if there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a taxpayer, such tax will not be taken into account before the taxable year in which the related income is taken into account by the taxpayer.

Section 909(b) provides that, if there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax is not taken into account for purposes of section 902 or 960, or for purposes of determining earnings and profits under section 964(a), before the taxable year in which the related income is taken into account by the section 902 corporation or a domestic corporation that meets the ownership requirements of section 902(a) or (b) with respect to the section 902 corporation. Section 909(c)(1) provides that sections 909(a) and (b) apply at the partner level. *See also* §1.909–1(b).

Section 909(d)(3) provides that the term "related income" means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of the foreign income tax relates.

Section 909(d)(1) provides that there is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account by a covered person.

Regulations under section 909 narrow the statutory definition in section 909(d)(1) to provide that there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued only if, in connection with a "splitter arrangement," the related income was, is, or will be taken into account for U.S. federal income tax purposes by a person that is a covered person (as defined in §1.909–1(a)(4)) with respect to the payor of the tax. §1.909–2(a)(1). The term "payor" means a person that pays or accrues a foreign income tax within the meaning of §1.901–2(f), as well as a person that takes foreign income taxes paid or accrued by a partnership into account pursuant to section 702(a)(6). §1.909–1(a)(3).

Section 1.909–2(b) provides an exclusive list of splitter arrangements and identifies the split taxes and related income for each such arrangement. The preamble to the final regulations under section 909 states that the Treasury Department and the IRS will continue to consider other arrangements that inappropriately separate foreign income taxes from the related income. TD 9710, 80 FR 7323.

Section 1.909–2(a)(2) provides that split taxes are not taken into account for U.S. federal income tax purposes before the taxable year in which the related income is taken into account by the payor or, in the case of split taxes paid or accrued by a section 902 corporation, by a section 902 shareholder (as defined in §1.909–1(a)(2)) of the section 902 corporation.

Section 909(e) authorizes the Secretary to issue regulations or other guidance as is necessary or appropriate to carry out the purposes of section 909.

SECTION 3. FOREIGN-INITIATED ADJUSTMENT SPLITTER ARRANGEMENTS

.01 *Splitter Arrangements Arising from the Application of Section 905(c) to Successor Entities*

This section 3.01 describes regulations that the Treasury Department and the IRS intend to issue in order to address changes in ownership structures that, in connection with a foreign-initiated adjustment, result in a foreign tax credit splitting event. These regulations will provide that a splitter arrangement arises when, as a result of a "covered transaction," a section 902 corporation pays "covered taxes" during a taxable year (the "splitter year").

For purposes of this notice, "covered taxes" are foreign income taxes that:

(1) are taken into account by adjusting the payor's pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the taxable year paid pursuant to section 905(c); and

(2) result from a "specified foreign-initiated adjustment" to the amount of foreign income tax accrued with respect to one or more prior taxable years ("relation-back years").

A "specified foreign-initiated adjustment" is a foreign-initiated adjustment (or series of related adjustments to more than one taxable year) that results in additional foreign income tax liability that is greater than $10 million, regardless of whether such liability is actually paid in one or more taxable years (due, for example, to an installment plan).

A "covered transaction" generally is any transaction or series of related transactions that meet the following conditions:

(1) The transaction or series of related transactions results in covered taxes being paid by a payor that is a section 902 corporation and that is not the section 902 corporation that would have been the payor of the covered taxes (the predecessor entity) if the covered taxes had been paid or accrued in the relation-back year; and

(2) The predecessor entity (or a successor of the predecessor entity) was a covered person with respect to the payor immediately before the transaction or series of related transactions, or, if the payor did not exist immediately before the transaction or series of related transactions, the predecessor entity (or a successor of the predecessor entity) was a covered person with respect to the payor immediately after the transaction or series of related transactions.

However, a transaction or series of related transactions will not be treated as a covered transaction if either of the following exceptions applies:

(1) The transaction or series of related transactions results in the transfer of the earnings and profits of the predecessor entity to the payor pursuant to section 381(c)(2); or

(2) The taxpayer demonstrates by clear and convincing evidence that the transaction or series of related transactions were not structured with a principal purpose of separating covered taxes from the post-1986 undistributed earnings of the predecessor entity that include the earnings to which the covered taxes relate.

In the case of a splitter arrangement described in this section 3.01, "related income" equals the sum of the portions of the predecessor entity's earnings and profits for each of the relation-back years that are:

(1) described in section 316(a)(2) ("section 316(a)(2) earnings");

(2) in the separate category or categories to which covered tax is assigned; and

(3) attributable to all activities that gave rise to income (computed under foreign law) included in the foreign tax base that was adjusted pursuant to the specified foreign-initiated adjustment ("adjusted foreign tax base"), regardless of which particular activities gave rise to the adjustment.

If foreign income tax is imposed on the combined income (within the meaning of §1.901–2(f)(3)(ii)) of two or more entities, including for this purpose disregarded entities, the principles of these rules will apply on an entity-by-entity basis.

The principles of §1.909–6(d) will apply to determine the amount of related income of the predecessor entity that is transferred to other persons or taken into account by a section 902 shareholder or the payor section 902 corporation (for example, due to a transaction that is described in section 381(a)(1) or (a)(2)) in any relation-back year or subsequent year before the splitter year.

In the case of a splitter arrangement described in this section 3.01, "split taxes" are the amount of the covered taxes that relate to the predecessor entity's related income that was not transferred to the payor in the covered transaction, reduced by the ratable portion of the covered taxes that would no longer be treated as split taxes under the principles of §1.909–6(e)(4) because a section 902 shareholder or the payor section 902 corporation took related income into account prior to the splitter year.

The following example illustrates the regulations described in this section 3.01. All dollar amounts in this example are in millions.

Example. (i) *Facts*. USP, a domestic corporation, wholly owns CFC1. CFC1 wholly owns CFC2. CFC1 and CFC2 are foreign corporations that were formed at the beginning of Year 1, are residents of Country X, and use the U.S. dollar as their functional currency. CFC1 wholly owns DE, a disregarded entity for U.S. federal income tax purposes that is organized in Country X and treated as a corporation for Country X tax purposes. CFC1 does not earn any income or pay any foreign taxes, other than through DE. For each of Years 1 through 5, DE earns $200 of earnings and profits with respect to which it accrues and pays no foreign tax. These earnings and profits constitute CFC1's pool of post-1986 undistributed earnings, which equals $1,000 as of the end of Year 5. The earnings and profits are all in the general income category. In Year 6 (a year when DE earns no income), CFC1 transfers all of its interest in DE to CFC2 in exchange for CFC2 stock in a transaction that qualifies under section 351. In Year 8, after exhausting all effective and practical remedies to minimize its liability for Country X tax, DE pays $200 in foreign income taxes to Country X to settle a series of related adjustments proposed by Country X with respect to Years 1 through 5.

(ii) *Splitter arrangement*. CFC1's transfer of its interest in DE to CFC2 in Year 6 and the payment of foreign income taxes by CFC2 through DE in Year 8 will give rise to a splitter arrangement under the rules described in section 3.01 of this notice, unless USP satisfies the principal purpose exception. The $200 of foreign income taxes paid by CFC2 are covered taxes because (1) they are added to CFC2's pool of post-1986 foreign income taxes in Year 8 pursuant to section 905(c), and (2) they result from a specified foreign-initiated adjustment with respect to one or more relation-back years. Unless USP establishes by clear and convincing evidence that the transfer of CFC1's interest in DE to CFC2 was not structured with a principal purpose of separating covered taxes from the post-1986 undistributed earnings of CFC1 that include the earnings to which the covered taxes relate, that transfer is a covered transaction because (1) it resulted in CFC2 being the payor of the covered taxes and CFC1 would have been the payor of the covered taxes if they were paid or accrued in the relation-back years; (2) immediately before the transfer, CFC1 was a covered person with respect to CFC2; and (3) the transfer did not result in a transfer of CFC1's earnings and profits to CFC2 pursuant to section 381(c)(2).

(iii) *Related income*. The related income equals $1,000, the sum of CFC1's section 316(a)(2) earnings with respect to each of Years 1 through 5 that are attributable to the activities of DE that gave rise to income (computed under foreign law) included in the adjusted foreign tax base of DE. Because CFC1 made no distributions before Year 8, the full amount of the related income remains in CFC1's pool of post-1986 undistributed earnings as of the beginning of Year 8, the splitter year.

(iv) *Split taxes*. The split taxes equal $200, the amount of the covered taxes paid by CFC2.

.02 *Splitter Arrangements Arising From Distributions Made Before the Payment of Additional Tax Pursuant to Foreign-Initiated Adjustments*

Taxpayers could achieve a result similar to the arrangement described in section 3.01 of this notice by using distributions to, in effect, move post-1986 undistributed earnings from one section 902 corporation to another section 902 corporation before the first section 902 corporation makes a tax payment pursuant to a specified foreign-initiated adjustment. In such a case, the earnings to which the tax payment relates are first taken into account by the payor but, as a result of the distributions, are then taken into account by a covered person that is a section 902 corporation ("section 902 covered person") before the first section 902 corporation pays the tax. Accordingly, the Treasury Department and the IRS intend to issue regulations that will provide that a splitter arrangement results when a payor that is a section 902 corporation pays covered taxes (as defined in section 3.01 of this notice) during a taxable year (the "splitter year"), and the payor (or a predecessor of the payor) has made a "covered distribution."

A "covered distribution" is any distribution with respect to the payor's stock to the extent such distribution:

(1) Occurred in a taxable year of the payor to which the covered taxes relate or any subsequent taxable year up to and including the taxable year immediately before the taxable year in which the covered taxes are paid;

(2) Resulted in a distribution or allocation (for example, pursuant to §1.312–10) of the payor's post-1986 undistributed earnings (but for this purpose not including earnings and profits attributable to income effectively connected with the conduct of a trade or business within the United States or otherwise subject to tax under chapter 1 in the hands of the payor) to a section 902 covered person; and

(3) Was made with a principal purpose of reducing the payor's post-1986 undistributed earnings that included the earnings to which the covered taxes relate in advance of the payment of covered taxes.

A distribution will be presumed to have been made with a principal purpose described immediately above if the sum of all distributions that would be covered distributions without regard to the principal purpose requirement is greater than 50 percent of the sum of (i) the payor's post-1986 undistributed earnings as of the beginning of the payor's taxable year in which the covered tax is paid, and (ii) the sum of all distributions that would be covered distributions without regard to the principal purpose requirement. A taxpayer may rebut this presumption with clear and convincing evidence that the distribution was not made with a principal purpose of reducing the payor's post-1986 undistributed earnings that included the earnings to which the covered taxes relate in advance of the payment of covered taxes. For example, a taxpayer may rebut this presumption by demonstrating that the distributions were consistent with the payor's pattern of distributions before the taxpayer reasonably anticipated the specified foreign-initiated adjustment. In the case of a distribution from a pool of post-1986 undistributed earnings that included earnings to which the covered taxes relate and earnings to which the covered taxes did not relate, a taxpayer may not rebut this presumption by claiming that the distribution reduced only the unrelated earnings.

In the case of a splitter arrangement described in this section 3.02, "related income" is determined by first determining the "initial related income" in the hands of the payor. The "initial related income" is the sum of the portions of the payor's earnings and profits for each of the relation-back years that are:

(1) section 316(a)(2) earnings;
(2) in the separate category or categories to which covered tax is assigned; and
(3) attributable to all activities that gave rise to income (computed under foreign law) included in the adjusted foreign tax base (as defined in section 3.01 of this notice), regardless of which particular activities gave rise to the adjustment.

If foreign income tax is imposed on the combined income (within the meaning of §1.901–2(f)(3)(ii)) of two or more entities, including for this purpose disregarded entities, the principles of these rules will apply on an entity-by-entity basis.

Each covered distribution will be treated as resulting in a distribution of initial related income to the recipient on a pro rata basis under the principles of §1.909–6(d)(3). The recipient of initial related income in a covered distribution is treated as having taken into account "related income" in the taxable year in which the covered distribution was made. The principles of §1.909–6(d) will apply to determine the amount of related income of the recipient of the covered distribution that is transferred to other persons or taken into account by a section 902 shareholder or the payor section 902 corporation after the covered distribution was made, in a taxable year before the splitter year.

In the case of a splitter arrangement described in this section 3.02, "split taxes" are the covered taxes multiplied by a ratio, the numerator of which is the total amount of related income as of the beginning of the splitter year (appropriately reduced for any amounts taken into account prior to the splitter year by a section 902 shareholder or the payor section 902 corporation), and the denominator of which is the payor's (or any predecessor corporation's) initial related income.

The following examples illustrate the regulations described in this section 3.02. All dollar amounts in these examples are in millions.

Example 1. (i) *Facts*. USP, a domestic corporation, wholly owns CFC1. CFC1 wholly owns CFC2. CFC1 and CFC2 are foreign corporations that were formed at the beginning of Year 1, are resident in Country X, and use the U.S. dollar as their functional currency. For each of Years 1 through 9, CFC2 earns $100 of earnings and profits with respect to which it does not accrue or pay any foreign income tax. In Year 10, CFC2 earns $120 of earnings and profits with respect to which it accrues and pays $20 of foreign income tax. Its post-1986 undistributed earnings as of the end of Year 10 are $1,000 (($100 × 9) + $120 – $20). On July 1, Year 11, CFC2 distributes $750 of its post-1986 undistributed earnings to CFC1. Pursuant to section 954(c)(6), CFC1's $750 of dividend income does not result in an income inclusion to USP. In Year 12, after having exhausted all available and practical remedies to minimize its liability for Country X tax, CFC2 pays $20 of foreign income tax to Country X with respect to each of Years 1 through 9 to settle related audit adjustments proposed by Country X. Pursuant to section 905(c), CFC2 adds $180 of additional tax relating to Years 1 through 9 to its pool of post-1986 foreign income taxes in Year 12. CFC2 does not earn any other income or pay any other foreign tax in Years 11 and 12. CFC2's post-1986 undistributed earnings as of the beginning of Year 12 are $250 ($1,000 – $750).

(ii) *Splitter arrangement*. The distribution of $750 to CFC1 in Year 11 and the payment of $180 of foreign income taxes in Year 12 will give rise to a splitter arrangement under section 3.02 of this notice, unless USP rebuts the presumption that the distribution was made with a principal purpose of reducing CFC2's post-1986 undistributed earnings in advance of the payment of the $180 of covered taxes. The $180 of foreign income taxes paid are covered taxes because (1) they are added to CFC2's pool of post-1986 foreign income taxes in Year 12 pursuant to section 905(c), and (2) they result from a specified foreign-initiated adjustment with respect to one or more relation-back years. The $20 of foreign income taxes previously accrued and paid with respect to Year 10 are not covered taxes because they did not result from a foreign-initiated adjustment. Unless USP establishes by clear and convincing evidence that the $750 distribution in Year 11 was not made with a principal purpose to reduce CFC2's post-1986 undistributed earnings in advance of the payment of covered taxes, the distribution is a covered distribution because it (1) occurred in or after Years 1 through 9, the relation-back years with respect to the covered taxes, and in a taxable year preceding Year 12, the year in which the covered taxes were paid, (2) resulted in a distribution of $750 of CFC2's post-1986 undistributed earnings to CFC1, a section 902 covered person with respect to CFC2, and (3) is presumed to have a principal purpose to reduce CFC2's post-1986 undistributed earnings in advance of the payment of covered taxes because it is greater than 50 percent of CFC2's post-1986 undistributed earnings as of the beginning of Year 12 plus the distribution ($750 > 0.50 × ($250 + $750)).

(iii) *Related income*. The initial related income in the hands of CFC2 is $900, which is the sum of CFC2's section 316(a)(2) earnings for Years 1 through 9, all of which were attributable to activities that gave rise to income included in the adjusted foreign tax base of CFC2. Under the principles of §1.909–6(d), the covered distribution of $750 in Year 11 results in a pro rata distribution of initial related income of $675 ($750 × ($900/$1000)). Therefore, CFC1 is treated as taking into account related income equal to $675 in Year 11, the year of the covered distribution. Because CFC1 made no distributions in Year 11, the full amount of the related income remains in CFC1's pool of post-1986 undistributed earnings as of the beginning of Year 12, the splitter year.

(iv) *Split taxes*. The split taxes equal the covered taxes multiplied by a ratio, the numerator of which is the total amount of related income as of the beginning of the splitter year, and the denominator of which is the initial related income, or $135 ($180 × ($675/$900)).

Example 2. (i) *Facts*. The facts are the same as in *Example 1*, except that USP wholly owns CFC3, which wholly owns CFC1. CFC3 is a foreign corporation resident in Country X. In Year 11, CFC1 distributes $300 to CFC3. Pursuant to section 954(c)(6), CFC3's $300 of dividend income does not result in an income inclusion to USP.

(ii) *Result*. Because CFC1 made a distribution of $300 to CFC3 in Year 11, and CFC1's $750 of post-1986 undistributed earnings consisted of related income and other income, CFC1 is treated as having distributed $270 ($300 × ($675/$750)) of related income to CFC3 under the principles of §1.909–6(d). Accordingly, as of the beginning of Year 12, CFC3 has $270 of related income and CFC1 has $405 of related income. The amount of split taxes remains $135.

.03 *Conforming Revisions*

Section 1.909–6(g)(3) provides that if a redetermination of foreign tax paid or accrued by a section 902 corporation occurs in a post-2010 taxable year and increases the amount of foreign income taxes paid or accrued by the section 902 corporation with respect to taxable years beginning on or before December 31, 2010 (a pre-2011 taxable year), such taxes will be treated for purposes of section 909 as being paid or accrued in a pre-2011 taxable year (pre-2011 taxes). Section 1.909–6(b) provides an exclusive list of splitter arrangements (which differs from the list provided in section 1.909–2(b)) that can give rise to foreign tax credit splitting events with respect to pre-2011 taxes. Section 1.909–6(g)(3) will be revised to provide that foreign tax redeterminations in a post-2010 taxable year with respect to pre-2011 taxes of a section 902 corporation in connection with a splitter arrangement described in section 3.01 or section 3.02 of this notice will not be treated as pre-2011 taxes for purposes of those sections.

SECTION 4. EFFECTIVE DATE

The regulations described in section 3 of this notice will apply to foreign income taxes paid on or after September 15, 2016.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS solicit comments on the rules described in this notice. In particular, the Treasury Department and the IRS solicit comments on whether the transactions addressed in section 3 of this notice would be more appropriately addressed pursuant to rules under section 905(c) providing that additional payments of tax be accounted for through adjustments to the pools of post-1986 foreign income taxes and post-1986 undistributed earnings of section 902 corporations that are not the same entity as the payor of the tax. The Treasury Department and the IRS also are considering whether an objective test, rather than a subjective test based on taxpayer intent, should be used to determine when the transactions described in sections 3.01 and 3.02 of this notice are treated as splitter arrangements. Accordingly, the Treasury Department and the IRS solicit comments on this issue, as well as on the types of objective tests that could be used for this purpose.

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Jeffrey Parry, Internal Revenue Service, IR–4554, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to Notice.comments@irscounsel.treas.gov. Comments will be available for public inspection and copying. For further information regarding this notice, contact Mr. Parry of the Office of Associate Chief Counsel (International) at (202) 317-6936 (not a toll-free number).

Written or electronic comments must be received by December 14, 2016.

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2016–54

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under §417(e)(3), and the 24-month average segment rates under §430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under §417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under §431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under §414(y), §430 of the Code specifies the minimum funding requirements that apply to single-employer plans pursuant to §412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under §430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under §430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007–81, the monthly corporate bond yield curve derived from August 2016 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2016 are, respectively, 1.39, 3.27, and 4.18.

The 24-month average segment rates determined under §430(h)(2)(C)(i) through (iii) must be adjusted pursuant to §430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2015 and 2016 were published in Notice 2014–50, 2014–40 I.R.B. 590 and Notice 2015–61, 2015–39 I.R.B. 408, respectively. For plan years beginning in 2017, based on the segment rates applicable for October 1991 to September 2016, the 25-year averages for the period ending September 30, 2016, of the first, second, and third segment rates are 4.62, 6.35, and 7.20 percent, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for September 2016 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	First Segment	Second Segment	Third Segment
September 2016	1.52	3.80	4.79

Based on §430(h)(2)(C)(iv), the 24-month averages applicable for September 2016 adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

[1]Pursuant to §433(h)(3)(A), the 3rd segment rate determined under §430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under §433(c)(7)(C)).

For Plan Years Beginning In	Applicable Month		Adjusted 24-Month Average Segment Rates		
			First Segment	Second Segment	Third Segment
2015	September	2016	4.72	6.11	6.81
2016	September	2016	4.43	5.91	6.65
2017	September	2016	4.16	5.72	6.48

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, §431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to §412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in §431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for August 2016 is 2.26 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in May 2046 determined each day through August 10, 2016 and the yield on the 30-year Treasury bond maturing in August 2046 determined each day for the balance of the month. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
September	2016	2.97	2.67		3.11

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under §417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for August 2016 are as follows:

First Segment	Second Segment	Third Segment
1.39	3.27	4.18

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 202-317-8698 (not toll-free numbers).

Table I
Monthly Yield Curve for August 2016
Derived from August 2016 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.79	20.5	3.95	40.5	4.20	60.5	4.30	80.5	4.35
1.0	1.00	21.0	3.96	41.0	4.21	61.0	4.30	81.0	4.35
1.5	1.18	21.5	3.97	41.5	4.21	61.5	4.30	81.5	4.35
2.0	1.32	22.0	3.98	42.0	4.21	62.0	4.30	82.0	4.35
2.5	1.42	22.5	3.99	42.5	4.22	62.5	4.30	82.5	4.35
3.0	1.49	23.0	4.00	43.0	4.22	63.0	4.31	83.0	4.35
3.5	1.56	23.5	4.01	43.5	4.22	63.5	4.31	83.5	4.35
4.0	1.63	24.0	4.01	44.0	4.23	64.0	4.31	84.0	4.35
4.5	1.71	24.5	4.02	44.5	4.23	64.5	4.31	84.5	4.35
5.0	1.81	25.0	4.03	45.0	4.23	65.0	4.31	85.0	4.35
5.5	1.92	25.5	4.04	45.5	4.24	65.5	4.31	85.5	4.35
6.0	2.04	26.0	4.05	46.0	4.24	66.0	4.31	86.0	4.36
6.5	2.17	26.5	4.05	46.5	4.24	66.5	4.32	86.5	4.36
7.0	2.30	27.0	4.06	47.0	4.24	67.0	4.32	87.0	4.36
7.5	2.43	27.5	4.07	47.5	4.25	67.5	4.32	87.5	4.36
8.0	2.57	28.0	4.08	48.0	4.25	68.0	4.32	88.0	4.36
8.5	2.70	28.5	4.08	48.5	4.25	68.5	4.32	88.5	4.36
9.0	2.82	29.0	4.09	49.0	4.25	69.0	4.32	89.0	4.36
9.5	2.94	29.5	4.10	49.5	4.26	69.5	4.32	89.5	4.36
10.0	3.04	30.0	4.10	50.0	4.26	70.0	4.32	90.0	4.36
10.5	3.14	30.5	4.11	50.5	4.26	70.5	4.33	90.5	4.36
11.0	3.24	31.0	4.12	51.0	4.26	71.0	4.33	91.0	4.36
11.5	3.32	31.5	4.12	51.5	4.26	71.5	4.33	91.5	4.36
12.0	3.40	32.0	4.13	52.0	4.27	72.0	4.33	92.0	4.36
12.5	3.47	32.5	4.13	52.5	4.27	72.5	4.33	92.5	4.36
13.0	3.53	33.0	4.14	53.0	4.27	73.0	4.33	93.0	4.37
13.5	3.59	33.5	4.14	53.5	4.27	73.5	4.33	93.5	4.37
14.0	3.64	34.0	4.15	54.0	4.28	74.0	4.33	94.0	4.37
14.5	3.68	34.5	4.15	54.5	4.28	74.5	4.33	94.5	4.37
15.0	3.72	35.0	4.16	55.0	4.28	75.0	4.34	95.0	4.37
15.5	3.75	35.5	4.16	55.5	4.28	75.5	4.34	95.5	4.37
16.0	3.78	36.0	4.17	56.0	4.28	76.0	4.34	96.0	4.37
16.5	3.81	36.5	4.17	56.5	4.28	76.5	4.34	96.5	4.37
17.0	3.83	37.0	4.18	57.0	4.29	77.0	4.34	97.0	4.37
17.5	3.85	37.5	4.18	57.5	4.29	77.5	4.34	97.5	4.37
18.0	3.87	38.0	4.18	58.0	4.29	78.0	4.34	98.0	4.37
18.5	3.89	38.5	4.19	58.5	4.29	78.5	4.34	98.5	4.37
19.0	3.91	39.0	4.19	59.0	4.29	79.0	4.34	99.0	4.37
19.5	3.92	39.5	4.20	59.5	4.30	79.5	4.34	99.5	4.37
20.0	3.93	40.0	4.20	60.0	4.30	80.0	4.35	100.0	4.37

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of Severe Storms and Flooding in Louisiana that Began on August 11, 2016

Notice 2016–55

This notice provides guidance on the treatment of leave-based donation programs to aid victims of the severe storms and flooding in Louisiana that began on August 11, 2016 (Louisiana storms).

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of the Louisiana storms, employers may have adopted or may be considering adopting leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations described in §170(c) of the Internal Revenue Code (§170(c) organizations). This notice provides guidance for income and employment tax purposes on the treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the Louisiana storms.

Notice 2014–68, 2014–47 I.R.B. 842, Notice 2012–69, 2012–51 I.R.B. 712, and Notice 2005–68, 2005–2 C.B. 622, provided similar guidance following the Ebola Virus Disease outbreak in West Africa, Hurricane Sandy, and Hurricane Katrina, respectively. *See also* Notice 2001–69, 2001–2 C.B. 491, as modified and superseded by Notice 2003–1, 2003–1 C.B. 257, regarding charitable relief following the September 11, 2001, terrorist attacks.

The Service will not assert that cash payments an employer makes to §170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the §170(c) organizations for the relief of victims of the Louisiana storms; and (2) paid to the §170(c) organizations before January 1, 2018.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under §170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of §170 rather than the rules of §162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W–2.

DRAFTING INFORMATION

For further information, please contact Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free number).

Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2017

Notice 2016–57

I. PURPOSE

This notice extends the temporary nondiscrimination relief for closed defined benefit plans that is provided in Notice 2014–5, 2014–2 I.R.B. 276, by making that relief available for plan years beginning before 2018 if the conditions of Notice 2014–5 are satisfied.

II. BACKGROUND

Notice 2014–5 provides temporary nondiscrimination relief for certain "closed" defined benefit pension plans (i.e., defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date). Specifically, for plan years beginning before 2016, Section III.B of Notice 2014–5 permits a DB/DC plan that includes a closed defined benefit plan (that was closed before December 13, 2013) and that satisfies certain conditions set forth in the notice to demonstrate satisfaction of the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of equivalent benefits even if the DB/DC plan does not meet any of the existing eligibility conditions for testing on that basis under §1.401(a)(4)–9(b)(2)(v).

Notice 2015–28, 2015–14 I.R.B. 848, extends the temporary nondiscrimination relief provided in Notice 2014–5 for an additional year by applying that relief to plan years beginning before 2017 if the conditions of Notice 2014–5 are satisfied. Notice 2015–28 further provides that, during the period for which the extension applies, the remaining provisions of the nondiscrimination regulations under §401(a)(4) continue to apply.

Proposed regulations relating to nondiscrimination requirements for closed plans were published in the Federal Register on January 29, 2016 (81 FR 4976). The proposed regulations set forth relief for closed plans under §§1.401(a)(4)–4, 1.401(a)(4)–8, and 1.401(a)(4)–9 (subject to satisfaction of certain conditions set forth in the regulations), and contain other proposed nondiscrimination rules. The regulations are proposed to apply generally to plan years beginning on or after the date of publication of the final regulations. The proposed regulations provide that taxpayers are permitted to apply certain provisions of the proposed regulations (including all of the provisions that apply specifically to closed plans) for certain plan years beginning before the proposed applicability date.

Many detailed and thoughtful comments have been submitted on the proposed regulations, including oral comments made at the public hearing held on May 19, 2016. The Internal Revenue Service (IRS) and the Treasury Department are taking the recommendations received from the public into account in finalizing the regulations. It is anticipated that the final regulations will not be published in time for plan sponsors to make plan design decisions based on the final regulations before expiration of the relief provided under Notice 2014–5 (as extended

by Notice 2015–28). Accordingly, the IRS and the Treasury Department have determined that it is appropriate to extend the relief provided under Notice 2014–5 for an additional year.

III. EXTENSION OF RELIEF FOR CLOSED PLANS

The temporary nondiscrimination relief for closed plans that is provided in Notice 2014–5 is hereby extended to plan years beginning before 2018 if the conditions of Notice 2014–5 are satisfied. This extension is provided in anticipation of the issuance of final amendments to the §401(a)(4) regulations. Those regulations are expected to be effective for plan years beginning on or after January 1, 2018, and are expected to permit plan sponsors to apply the provisions of the regulations that apply specifically to closed plans for certain earlier plan years.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2014–5 and Notice 2015–28 are modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in development of this guidance. For further information regarding this notice, please contact Ms. Bloom or Linda Marshall at (202) 317-6700 (not a toll-free number).

Part IV. Items of General Interest

Facilitating Compliance with Qualified Plan Document Requirements

Announcement 2016–32

This announcement requests comments on ways in which the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) can improve compliance with plan qualification requirements by making it easier for plan sponsors to satisfy requirements for qualified plan documents, particularly in light of the changes to the determination letter program described in Rev. Proc. 2016–37, 2016–29 I.R.B. 136. Rev. Proc. 2016–37 provides, in part, that the five-year staggered remedial amendment cycle system will be eliminated effective January 1, 2017. Rev. Proc. 2016–37 further provides that a sponsor of an individually designed plan will be permitted to submit a determination letter application only for initial qualification, for qualification upon plan termination, and in certain other circumstances to be determined by Treasury and the IRS.

REQUEST FOR COMMENTS

Treasury and the IRS request comments on the following:

1. *Incorporation by reference*. Stakeholders have suggested that expanding the use of incorporation by reference could help plan sponsors avoid inadvertent errors in plan documents. A list of Internal Revenue Code requirements that the IRS currently permits to be incorporated by reference for purposes of meeting the qualification requirements is provided in Internal Revenue Manual Exhibit 7.11.1–3, *Employee Plans Determination Letter Program*, which can be found at IRS.gov at: *https://www.irs.gov/irm/part7/irm_07-011-001.html*. Comments are requested on any additional qualification requirements plan sponsors believe should be permitted to be incorporated by reference in their retirement plans and the areas in which guidance relating to incorporation by reference would provide the greatest assistance. Commenters are requested to describe the reasons why incorporation by reference of a particular qualification requirement would be appropriate (for example, in view of the characteristics of a type of plan or the characteristics of a type of plan sponsor). Comments are also requested on suggested language that could be used in plan documents to incorporate qualification requirements by reference. See, for example, §1.401(a)(9)–1, Q&A–3.

2. *Circumstances under which plan provisions may not be required*. Plan sponsors have raised concerns about being required to include certain plan provisions or amendments in situations in which the provisions or amendments are not applicable, or not yet applicable, to their plans. For example, the provisions of §401(a)(35), which impose diversification requirements on certain defined contribution plans that hold or are treated as holding publicly traded employer securities under §401(a)(35)(F), are not required to be included in certain plans, including plans maintained by tax-exempt organizations or sole proprietorships, but are currently required to be included in certain other plans, even if the plans do not provide for the acquisition or holding of publicly traded employer securities. Comments are requested on whether certain plan provisions or amendments should be required to be included in a plan only if the underlying qualification requirements are applicable to that plan (for example, because of the type of plan, employer, or benefits offered). In considering which provisions should be required only if applicable, Treasury and the IRS request that commenters also consider the extent to which a provision may become applicable in a future period, and the likelihood that the plan sponsor would fail to amend the plan when circumstances change.

3. *Conversion to pre-approved plans*. Treasury and the IRS understand that some plan sponsors are considering a transition from sponsoring an individually designed plan to using a pre-approved plan document (that is, a plan document pre-approved by the IRS as a master or prototype plan or a volume submitter plan) in light of the changes to the determination letter program for individually designed plans. Comments are requested on any impediments to that process, and how Treasury and the IRS could reduce or eliminate those impediments. For example, comments are welcome on difficulties encountered in the process of conversion, as well as on aspects of the pre-approved plan program that may cause the program to be unattractive to a plan sponsor.

4. *Additional ways to facilitate compliance*. Comments are requested on any additional guidance or other actions by Treasury and the IRS that would facilitate compliance with qualified plan document requirements, particularly in light of the changes to the determination letter program.

Comments may be submitted in writing on or before December 15, 2016. Comments should be mailed to Internal Revenue Service, CC:PA:LPD:PR (Announcement 2016–32), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044, or sent electronically to notice.comments@irscounsel.treas.gov. Please include "Announcement 2016–32" in the subject line of any electronic communications. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (Announcement 2016–32), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. All comments will be available for public inspection and copying.

In addition, Treasury and the IRS anticipate issuing a revenue procedure shortly that will modify Rev. Proc. 2013–12, 2013–4 I.R.B. 313, the existing consolidated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). The new EPCRS revenue procedure is expected to modify EPCRS to accommodate changes to the determination letter program made by Rev. Proc. 2016–37 and is expected to invite comments on the modifications.

DRAFTING INFORMATION

The principal author of this announcement is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
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Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

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