

Part III - Administrative, Procedural, and Miscellaneous

Request for Comments Regarding Election to Allocate and Apportion Interest on a Worldwide Basis under Section 864(f)

Notice 2008-54

The purpose of this notice is to request public comments regarding the elections under section 864(f)(6) of the Internal Revenue Code (Code) to allocate and apportion interest expense on a worldwide affiliated group basis and under section 864(f)(5) to expand a financial institution group of a worldwide affiliated group.

BACKGROUND

Section 864(f) was added to the Code by the American Jobs Creation Act of 2004, P.L. 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA). Section 864(f)(6) permits taxpayers to make a one-time election to allocate and apportion interest expense on a worldwide affiliated group basis. In general, if the election is made, the domestic members of the worldwide affiliated group determine their foreign source taxable income by allocating and apportioning their interest expense to such income in an amount equal to the excess (if any) of the worldwide affiliated group's total interest expense multiplied by a fraction with a numerator consisting of the worldwide affiliated group's foreign assets and a denominator consisting of the worldwide affiliated group's total assets, over the amount of interest expense of all foreign corporations that are

members of the worldwide affiliated group that would have been allocated and apportioned to foreign source income of such foreign members of the worldwide affiliated group if the rules of section 864(f) were applied to a group consisting solely of all such foreign members. Section 864(f)(5) permits a one-time election to expand the financial institution group of a worldwide affiliated group that has made the election under section 864(f) to allocate interest expense on a worldwide affiliated group basis. The elections under section 864(f) may be made only for the first taxable year beginning after December 31, 2008, in which the taxpayer is eligible to make the election, and are revocable only with the consent of the Secretary.

REQUEST FOR COMMENTS

The IRS and Treasury Department request comments on guidance needed regarding the elections to allocate and apportion interest expense on a worldwide affiliated group basis and to expand the financial institution group of a worldwide affiliated group. Specifically, comments are requested on any substantive issues that need to be addressed in advance of the date of making such elections, which is generally expected to be the due date (including extensions) of an eligible taxpayer's return for its first taxable year beginning after December 31, 2008. Further, comments are requested on whether it is necessary and appropriate to prescribe regulations providing for the direct allocation and apportionment of interest expense for purposes of section 864(f), preventing assets or interest expense from being taken into account more than once, and addressing changes in the status of members of a worldwide affiliated group or financial institution group (through acquisitions or otherwise). In

addition, comments are requested regarding the treatment of loans between members of the worldwide affiliated group or financial institution group (or from a member of one group to a member of the other group), as well as appropriate foreign currency translation conventions relating to asset bases or interest expense. Comments are also requested on the extent to which regulations should provide that bank holding companies, financial holding companies, and subsidiaries of a financial institution (described in section 581 or section 591) or of a bank or financial holding company, should be treated as includible corporations for purposes of section 1504 for purposes of applying section 864(f) separately to such corporations. Finally, comments are requested regarding the standards the IRS should apply to determine whether to grant taxpayers consent to revoke an election under section 864(f)(6) or section 864(f)(5).

Comments should be submitted on or before September 8, 2008, and should include a reference to Notice 2008-54. Send submissions to CC:PA:LPD:PR (Notice 2008-54), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered **Monday through Friday** between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2008-54), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the following e-mail address:

Notice.comments@irs.counsel.treas.gov. Please include "Notice 2008-54" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Jeffrey L. Parry at (202) 622-3850 (not a toll-free call).