

which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan is on or after the date on which there is a transfer of property to which section 83 applies. However, section 457(f) and paragraph (a) of this section apply if the date on which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan precedes the date on which there is a transfer of property to which section 83 applies. If deferred compensation payable in property is includible in gross income under section 457(f), then, as provided in section 72, the amount includible in gross income when that property is later transferred or made available to the service provider is the excess of the value of the property at that time over the amount previously included in gross income under section 457(f).

(2) *Examples.* The provisions of this paragraph (c) are illustrated in the following examples:

Example 1. (i) Facts. As part of an arrangement for the deferral of compensation, an eligible employer agrees on December 1, 2002, to pay an individual rendering services for the eligible employer a specified dollar amount on January 15, 2005. The arrangement provides for the payment to be made in the form of property having a fair market value equal to the specified dollar amount. The individual's rights to the payment are not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)).

(ii) *Conclusion.* In this example, because there is no substantial risk of forfeiture with respect to the agreement to transfer property in 2005, the present value (as of December 1, 2002) of the payment is includible in the individual's gross income for 2002. Under paragraph (a)(4) of this section, when the payment is made on January 15, 2005, the amount includible in the individual's gross income is equal to the excess of the fair market value of the property when paid, over the amount that was includible in gross income for 2002 (which is the basis allocable to that payment).

Example 2. (i) Facts. As part of an arrangement for the deferral of compensation, individuals A and B rendering services for a tax-exempt entity each receive in 2010 property that is subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and within the meaning of section 83(c)(1)). Individual A makes an election to include the fair market value of the property in gross income under section 83(b) and individual B does not make this election. The substantial risk of forfeiture for the property transferred to individual A lapses in 2012 and the substantial risk of forfeiture for the property transferred to individual B also lapses in 2012. Thus, the property transferred to individual A is included in A's gross income for 2010 when A

makes a section 83(b) election and the property transferred to individual B is included in B's gross income for 2012 when the substantial risk of forfeiture for the property lapses.

(ii) *Conclusion.* In this example 2, in each case, the compensation deferred is not subject to section 457(f) or this section because section 83 applies to the transfer of property on or before the date on which there is no substantial risk of forfeiture with respect to compensation deferred under the arrangement.

Example 3. (i) Facts. In 2010, X, a tax-exempt entity, agrees to pay deferred compensation to employee C. The amount payable is \$100,000 to be paid 10 years later in 2020. The commitment to make the \$100,000 payment is not subject to a substantial risk of forfeiture. In 2010, the present value of the \$100,000 is \$50,000. In 2018, X transfers to C property having a fair market value (for purposes of section 83) equal to \$70,000. The transfer is in partial settlement of the commitment made in 2010 and, at the time of the transfer in 2018, the present value of the commitment is \$80,000. In 2020, X pays C the \$12,500 that remains due.

(ii) *Conclusion.* In this example 3, C has income of \$50,000 in 2010. In 2018, C has income of \$30,000, which is the amount transferred in 2018, minus the allocable portion of the basis that results from the \$50,000 of income in 2010. (Under section 72(e)(2)(B), income is allocated first. The income is equal to \$30,000 (\$80,000 minus the \$50,000 basis), with the result that the allocable portion of the basis is equal to \$40,000 (\$70,000 minus the \$30,000 of income.) In 2020, C has income of \$2,500 (\$12,500 minus \$10,000, which is the excess of the original \$50,000 basis over the \$40,000 basis allocated to the transfer made in 2018).

§ 1.457-12 Effective dates.

Sections 1.457-1 through 1.457-11 apply for taxable years beginning after December 31, 2001, except that § 1.457-11(c) does not apply with respect to an option without a readily ascertainable fair market value (within the meaning of section 83(e)(3)) that was granted on or before May 8, 2002, and, § 1.457-10(c) (relating to qualified domestic relations orders) applies for transfers, distributions, and payments made after December 31, 2001.

Robert E. Wenzel,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on May 7, 2002, 8:45 a.m., and published in the issue of the Federal Register for May 8, 2002, 67 F.R. 30826)

Hedging Transactions; Corrections

Announcement 2002-55

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (T.D. 8985, 2002-14 I.R.B. 707) that were published in the **Federal Register** on Wednesday, March 20, 2002 (67 FR 12863), relating to the character of gain or loss from hedging transactions.

DATES: This correction is effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Handler (202) 622-3930 or Viva Hammer (202) 622-0869 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 1221 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1 — INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

§ 1.446-4 [Corrected]

2. Section 1.446-4, paragraph (d)(3) is amended by removing the language “§ 1.1221-2(a)(4)(i)” from the last sentence and adding the language “§ 1.1221-2(a)(4)” in its place.

§ 1.1256(e)-1 [Corrected]

3. Section 1.1256(e)-1, paragraph (c) is amended by removing the language “(f)(1)(ii)” from the second sentence and adding the language “(g)(1)(ii)” in its place.

New Revision of Publication
597, **Information on the U.S.
– Canada Income Tax Treaty**

Announcement 2002-56

Publication 597, revised May 2002, is now available from the Internal Revenue Service. It replaces the May 1998 revision.

This publication discusses a number of the treaty provisions that often apply to U.S. citizens or residents who may be liable for Canadian tax.

You can get a copy of this publication by calling 1-800-TAX-FORM (1-800-829-3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. The publication is also available on the IRS web site at www.irs.gov.

New Revision of Publication
1544, **Reporting Cash
Payments of Over \$10,000
(and Publication 1544SP,
Informe de Pagos en
Efectivo en Exceso de
\$10,000)**

Announcement 2002-57

Publication 1544, revised March 2002, is now available from the Internal Revenue Service. It replaces the August 1997 revision. The publication is also available in Spanish as Publication 1544SP.

The publication explains why, when, and how to report large cash payments. It also discusses the substantial penalties for not reporting them.

You can get either version of this publication by calling 1-800-TAX-FORM (1-800-829-3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. Both versions are also available on the IRS web site at www.irs.gov.