(2) Each Feeder Fund contributes only cash and/or a portfolio of diversified stocks and securities that satisfies the 25 and 50 percent tests of § 368(a)(2)(F)(ii) in exchange for beneficial interests in the Master Portfolio;

(3) Each partner in the Master Portfolio that is an investment advisor, principal underwriter, or manager, contributes only cash and/or services in exchange for beneficial interests in the Master Portfolio;

(4) The Master Portfolio is treated as a partnership for federal tax purposes and qualifies as a securities partnership under § 1.704–3(e)(3)(iii);

(5) Each Feeder Fund is a publicly offered regulated investment company, as defined in § 67(c)(2)(B) and § 1.67–2T (g)(3)(iii);

(6) The Master Portfolio is registered as an investment company under the 1940 Act.

(7) The Master Portfolio makes § 704(c) and reverse § 704(c) allocations under the partial netting approach or the full netting approach as described in § 1.704–3(e)(3)(iv) or § 1.704–3(e)(3)(v), respectively, and;

(8) The contributions to the Master Portfolio and the corresponding allocations of tax items with respect to the property contributed to the Master Portfolio are not made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

SECTION 5. INFORMATION REQUIRED FOR RULING REQUESTS BY SECURITIES PARTNERSHIPS THAT DO NOT QUALIFY FOR AUTOMATIC PERMISSION

.01 *In general.* This section describes the information and representations that a securities partnership not described in section 4 of this revenue procedure must submit when requesting a ruling permitting the aggregation of built-in gains and losses from contributed property for purposes of making § 704(c) and reverse § 704(c) allocations. Taxpayers should be aware that additional information may be required. See also section 8 of Rev. Proc. 2001–1, 2001–1 I.R.B. 1 (or its successor), which outlines the general requirements concerning the information to be submitted as part of a ruling request.

.02 *Representations*. The ruling request must include the following representations:

(1) The partnership qualifies as a "securities partnership" as defined in § 1.704–3(e)(3)(iii);

(2) The partnership will make revaluations at least annually in accordance with § 1.704–3(e)(3)(iii)(B)(2)(ii);

(3) The burden of making § 704(c) allocations separately from reverse § 704(c) allocations is substantial; and

(4) The partnership's contributions, revaluations, and the corresponding allocations of tax items are not made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that would substantially reduce the present value of the partners' aggregate tax liability.

.03 *Information*. The following information must be submitted with the ruling request:

(1) An explanation of the business and tax reasons for the formation of the partnership;

(2) A detailed description of each partner;

(3) A detailed description of each type of property to be contributed including its fair market value and adjusted basis;

(4) The aggregate fair market value and adjusted basis of the property to be contributed;

(5) The aggregate gross built-in gains and aggregate gross built-in losses in the property to be contributed;

(6) A representation that the partner is contributing all of its assets to the partnership or an explanation as to how the assets to be contributed to the partnership were chosen;

(7) A description of the aggregation method that the partnership will use;

(8) Copies of the partnership's organizational documents, if available; and

(9) Copies of any proxy statements, information statements, marketing materials, or prospectuses filed, distributed, or prepared by the partnership or any of its partners in connection with the formation of, or contribution of property to, the partnership.

SECTION 6. EFFECTIVE DATE

.01 *In general*. Section 4 of this revenue procedure applies to all contributions of property as part of a QMFS on or after June 4, 2001. Section 5 of this revenue procedure applies to all ruling requests pending in the National Office on June 4, 2001, and to requests received thereafter.

.02 *Transition rule for pending ruling requests*. If a QMFS has filed a request for a ruling allowing it to aggregate contributed securities for purposes of making § 704(c) and reverse § 704(c) allocations and that ruling request is pending in the national office on June 4, 2001, the QMFS may withdraw that ruling request and receive a refund of its user fee. However, the national office will process ruling requests pending on June 4, 2001, unless, prior to the earlier of July 19, 2001, or the issuance of the letter ruling, the QMFS notifies the national office that it will withdraw its ruling request.

DRAFTING INFORMATION

The principal author of this revenue procedure is Horace Howells of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Horace Howells at (202) 622-3050 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund; determination of correct tax liability.
(Also Part I, sections 942, 943.)

Rev. Proc. 2001–37

SECTION 1. PURPOSE

This revenue procedure provides guidance to taxpayers regarding certain elections made pursuant to the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (the "Act"). Pub. L. No. 106–519, 114 Stat. 2423 (Nov. 15, 2000). Specifically, this revenue procedure includes guidance with respect to the election to exclude gross receipts from foreign trading gross receipts under § 942(a)(3) of the Internal Revenue Code ("Code"), the election (and revocation of such election) by a foreign corporation to be treated as a domestic corporation under § 943(e)(1), and the election (and revocation of such election) by a taxpayer to apply the extraterritorial income exclu-

sion (the "ETI exclusion") in lieu of the foreign sales corporation ("FSC") provisions to certain transactions under § 5(c)(2) of the Act.

SEC. 2. BACKGROUND

.01 On November 15, 2000, the Act was signed into law, repealing the FSC provisions of §§ 921 through 927 effective October 1, 2000, and amending the definition of gross income to exclude certain extraterritorial income.

.02 The amendments to the Code made by the Act apply to all transactions entered into after September 30, 2000. Section 943(b)(1) defines the term "transaction" as "any sale, exchange, or other disposition . . . any lease or rental, and . . . any furnishing of services."

.03 Section 5(c)(1) of the Act provides a transition rule for FSCs in existence on September 30, 2000, whereby the FSC provisions remain applicable to FSC transactions for a limited transition period.

.04 The Act contains several taxpayer elections. First, a taxpayer may elect to exclude the gross receipts from a transaction or transactions from its "foreign trading gross receipts" in any taxable year under § 942(a)(3). Second, certain foreign corporations may elect to be treated as domestic corporations under § 943 (e)(1). Third, a taxpayer may elect under § 5(c)(2) of the Act to apply the ETI exclusion provisions in lieu of the FSC provisions to certain transactions otherwise covered by the transition rules.

SEC. 3. FORM 8873 ("EXTRATERRITORIAL INCOME EXCLUSION")

A taxpayer that reports extraterritorial income on its income tax return calculates its ETI exclusion with respect to that income on Form 8873 (*"Extraterritorial Income Exclusion"*). Such taxpayer must attach a completed Form 8873 to its income tax return.

SEC. 4. ELECTION TO EXCLUDE CERTAIN GROSS RECEIPTS FROM FOREIGN TRADING GROSS RECEIPT

A taxpayer may elect to exclude gross receipts from its "foreign trading gross receipts" in any taxable year under § 942(a)(3). A taxpayer makes a § 942 (a)(3) election on a transaction-by-transaction basis. A taxpayer makes such election by checking the box on line 1 in Part I of Form 8873 and attaching the completed form to its income tax return. In the case of a partnership, each partner may make this election with respect to any transaction for which the partnership maintains separate accounts. A taxpayer that excludes some, but not all, of its gross receipts from foreign trading gross receipts must attach to its Form 8873 a tabular schedule that identifies the gross receipts that are excluded from foreign trading gross receipts.

SEC. 5. ELECTION BY A FOREIGN CORPORATION TO BE TREATED AS A DOMESTIC CORPORATION

.01 *Generally*. Section 943(e)(1) allows an "applicable foreign corporation" to elect to be treated as a domestic corporation for all purposes of the Code if that corporation waives all benefits granted to it by the United States under any treaty. Making the election is a prerequisite to the ETI exclusion under § 943(a)(2) with respect to property manufactured, produced, grown, or extracted outside the United States by a foreign corporation. A corporation that makes a § 943(e)(1) election may not elect to be an S corporation under § 1362(a).

.02 *Who may elect*. Pursuant to § 943(e)(2), an applicable foreign corporation is any foreign corporation if either:

(1) it manufactures, produces, grows, or extracts property in the ordinary course of the corporation's trade or business, or

(2) substantially all of its gross receipts are foreign trading gross receipts.

03 *Period of election*. A § 943(e)(1) election applies to the taxable year for which made and to all subsequent years unless revoked by the taxpayer pursuant to § 943(e)(3)(A) or terminated pursuant to § 943(e)(3)(B). A § 943(e)(1) election may be filed after September 30, 2000, but cannot be effective for any taxable year beginning before October 1, 2000.

.04 *Method of election.* A corporation makes a § 943(e)(1) election by checking the box on line 3 in Part I of Form 8873 and attaching the completed form to a timely filed Form 1120 (*"U.S. Corporation Income Tax Return"*) (including extensions) for the first taxable year of the election.

.05 *Where return is filed*. A foreign corporation that makes a § 943(e)(1) election but does not become a member of a consolidated group under § 1501 as a result of such election shall file its Form 1120 at the applicable Service Center address listed in the "Where To File" section of the instructions for Form 1120. If a foreign corporation makes a § 943(e)(1) election and becomes a member of a consolidated group under § 1501 as a result of such election, the common parent of such group shall include the corporation that made the § 943(e)(1) election in its consolidated return (Form 1120) for the group.

.06 *Revocation of election.* A corporation may revoke a § 943(e)(1) election by filing a statement that the election is revoked. The revocation statement shall be entitled "Revocation of Election under Section 943(e)(1) to be Treated as a Domestic Corporation – Filed Pursuant to **[citation of this revenue procedure]**" and shall include the corporation's name, address, employer identification number, and contact phone number, and a statement that the taxpayer revokes its election under § 943(e)(1). The revocation statement shall be signed by any person authorized to sign a corporate return under § 6062. The corporation shall file such revocation statement with the same Service Center ("Attn: Entity Control") with which the corporation files its income tax return as determined under § 5.05 of this revenue procedure. Once properly filed, the revocation of a § 943(e)(1) election is automatic and applies to taxable years beginning on or after the date the revocation statement is filed.

.07 *Termination of election.* If a corporation that made a § 943(e)(1) election in any taxable year meets neither of the requirements described in § 5.02 of this revenue procedure for any subsequent taxable year, the election will not apply to taxable years beginning after such subsequent taxable year.

.08 *Effect of termination or revocation.* If a corporation that made a § 943(e)(1) election revokes the election or the election is terminated, that corporation (and any successor corporation) may not make another § 943(e)(1) election for five taxable years beginning with the first taxable

year for which the original election is not in effect as a result of the revocation or termination.

.09 *Effect of election by FSCs.* A FSC that elects to be treated as a domestic corporation under § 943(e)(1) is not treated as a FSC for any year for which such election applies and for all subsequent years.

.10 *Effect of election for purposes of section 367.*

(1) Except as provided in § 5.10(2) of this revenue procedure, a foreign corporation that makes a § 943(e)(1) election is treated, for purposes of § 367, as transferring, on the first day of the first taxable year to which the election applies, all of its assets to a domestic corporation in connection with an exchange described in § 354.

(2) In the case of a foreign corporation described in § 5(c)(3) of the Act that makes a § 943(e)(1) election, earnings and profits ("E&P") accumulated in taxable years ending before October 1, 2000, are not included in the gross income of its shareholders by reason of such election. This rule does not apply to E&P acquired by the foreign corporation in a transaction after September 30, 2000, that is subject to § 381, unless the E&P would have qualified for the exclusion under § 5(c)(3) of the Act in the hands of the transferor or distributor. Rules similar to rules under § 953(d)(4)(B)(ii) through (iv) shall apply to E&P not included in gross income under § 5(c)(3) of the Act.

.11 *Effect of revocation or termination for purpose of section 367.* If a corporation's § 943(e)(1) election ceases to apply because it is revoked or terminated, then, for purposes of § 367, such corporation shall be treated as a domestic corporation transferring all of its assets to a foreign corporation in connection with an exchange to which § 354 applies on the first day of the first taxable year to which the election ceases to apply.

SEC. 6. TRANSITION RULES; ELECTION TO APPLY EXTRATERRITORIAL INCOME EXCLUSION PROVISIONS IN LIEU OF FSC PROVISIONS

.01 *FSC elections.* After September 30, 2000, no corporation may elect to be a FSC under § 922(a)(2). For purposes of the transition rule, a FSC election is deemed to occur upon the formation of an otherwise eligible electing corporation, provided that the corporation makes the election within 90 days of formation pursuant to the requirements of § 1.921–1T (b)(1) of the Income Tax Regulations.

.02 *Termination of inactive FSCs.* If a FSC has no foreign trade income (as defined in former § 923(b)) for any period of five consecutive taxable years beginning after December 31, 2001, such FSC will no longer be treated as a FSC for any taxable year beginning after such five-year period.

.03 *Transition period for existing FSCs.* In general, the Act repeals the FSC provisions for transactions entered into after September 30, 2000. However, § 5(c)(1) of the Act provides that the FSC provisions continue to apply for a limited time period with respect to certain transactions entered into in the ordinary course of business involving a FSC in existence on September 30, 2000. Specifically, the FSC provisions continue to apply to transactions involving a FSC and occurring:

(1) before January 1, 2002, or

(2) after December 31, 2001, pursuant to a binding contract which is in effect on September 30, 2000, and thereafter, and which is between the FSC (or a person related to the FSC) and a person other than a related person.

.04 *Election to apply extraterritorial income provisions.* In the case of transactions occurring after September 30, 2000, for which the FSC provisions continue to apply pursuant to § 5(c)(1) of the Act, a taxpayer may elect under § 5(c)(2) of the Act to apply the ETI exclusion provisions in lieu of the FSC provisions. A taxpayer makes a § 5(c)(2) election on a transaction-by-transaction basis. Such election with respect to a transaction is effective for the taxable year for which made and all subsequent taxable years.

.05 *Method of election.* A § 5(c)(2) election is made by checking the box on line 2 in Part I of Form 8873 on which the taxpayer determines its ETI exclusion and attaching the completed form to the taxpayer's timely filed income tax return (including extensions) for the first taxable year of the election. As set forth in Form 8873 and the accompanying instructions, the taxpayer shall attach to Form 8873 a tabular schedule that identifies the transactions for which the taxpayer has elected ETI exclusion treatment pursuant to § 5(c)(2) of the Act.

.06 *Method of revocation.* A taxpayer may revoke a § 5(c)(2) election with respect to a transaction only with the consent of the Secretary of the Treasury. To request consent for a § 5(c)(2) revocation, the taxpayer shall file a statement entitled "Revocation of Election under Section 5(c)(2) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 – Filed Pursuant to **[citation of this revenue procedure]**" requesting revocation of the § 5(c)(2) election. Until regulations are issued, such statement shall include the name, address, taxpayer identification number, and contact phone number of the taxpayer, the Service Center with which the taxpayer filed its last income tax return, the first taxable year of the taxpayer for which the revocation is to be effective, and reasons justifying the granting of consent for the § 5(c)(2) revocation. In addition, the statement shall indicate the transactions to which the request for consent to revoke the § 5(c)(2) election applies. The statement shall be signed by, or on behalf of, the taxpayer requesting consent by an individual with authority to bind the taxpayer in such matters. The taxpayer shall file such statement with Internal Revenue Service, 1111 Constitution Ave. NW, LMSB Mint Bldg., Room M3-333 LM:PFT:I, Washington, DC 20224. A § 5(c)(2) revocation applies to taxable years beginning after the year in which such revocation is requested.

SEC. 7. EFFECTIVE DATE

This revenue procedure is effective October 1, 2000.

SEC. 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher J. Bello of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Mr. Bello at (202) 874-1490 (not a toll-free call).

SEC. 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Of-

fice of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1731.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in §§ 3, 4, 5, and 6. The collections in §§ 4, 5 and 6 are required for a taxpayer that elects to exclude some, but not all, of its gross receipts from foreign trading gross receipts for purposes of the ETI exclusion provisions; for a corporation subject to an election to be treated as a domestic corporation to revoke such election; for a taxpayer that elects to apply the ETI exclusion provisions to its transactions in lieu of the FSC provisions; and for a taxpayer subject to an election to apply the ETI exclusion provisions, in lieu of the FSC provisions, to revoke such election. The likely respondents are businesses.

The estimated total annual reporting burden in §§ 5.06 and 6.06 with respect to the revocation of the above elections is 19 hours. The estimated annual burden per respondent is 20 minutes. The estimated number of respondents is 56. The estimated annual frequency of responses is once.

The estimated average annual burden per respondent required in §§ 3, 4, 5.04, and 6.05 is reflected in the burden of Form 8873.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.