# Part III. Administrative, Procedural, and Miscellaneous

## Split-Dollar Life Insurance Arrangements

## Notice 2001–10

I. PURPOSE

The Treasury Department and Internal Revenue Service (IRS) are reviewing the Federal income tax treatment of so-called "split-dollar" arrangements for the purchase of life insurance contracts. This notice clarifies prior rulings issued by the IRS regarding the taxation of split-dollar arrangements, provides taxpayers with interim guidance on the tax treatment of split-dollar arrangements pending publication of further guidance, and requests taxpayer comments on the interim guidance and a number of unresolved issues.

This notice primarily addresses split-dollar arrangements between employers and employees. However, Treasury and the IRS believe the same principles generally govern the Federal tax treatment of split-dollar arrangements in other contexts, including arrangements that provide compensation to non-employees and economic benefits to corporate shareholders and arrangements involving gifts.

II. BACKGROUND

Rev. Rul. 64–328, 1964–2 C.B. 11, and Rev. Rul. 66–110, 1966–1 C.B. 12, addressed the Federal income tax treatment of split-dollar arrangements under which an employer and employee join in the purchase of a life insurance contract on the life of the employee subject to a contractual allocation of policy benefits between the employer and employee. The rulings described two contractual forms: (1) the endorsement method, under which the employer is formally designated as the owner of the contract, and the employer endorses the contract to specify the portion of the proceeds payable to the employee's beneficiary; and (2) the collateral assignment method, under which the employee is formally designated as the owner of the contract, the employer's premium payments are characterized as loans from the employer to the employee, and the employer's interest in the proceeds of the contract is designated as collateral security for its loans.

These rulings conclude that all economic benefits conferred on an employee under such an arrangement, excluding economic benefits attributable to the employee's own premium payments, constitute gross income to the employee. *See also Commissioner v. LoBue*, 351 U.S. 243 (1956); *Commissioner v. Smith*, 324 U.S. 177 (1945). Under the rationale of these rulings, the determination of an employee's gross income is unaffected by whether the endorsement method or the collateral assignment method is used.

Under the specific split-dollar arrangement addressed in Rev. Rul. 64–328, all amounts credited to the cash surrender value of the life insurance contract inured to the benefit of the employer. Thus, the only economic benefit inuring to the employee was the value of the insurance protection attributable to the portion of the contract's death benefit payable to the employee's beneficiary. Rev. Rul. 64–328 holds that, in such a case, the employee's gross income in any year includes the value of the life insurance protection provided to the employee in that year, less any amount actually paid by the employee.

Rev. Rul. 66–110 amplified Rev. Rul. 64–328 by holding that the value of any economic benefits in addition to current insurance protection that are provided to an employee under a split-dollar arrangement are also includible in the employee's gross income. More specifically, Rev. Rul. 66–110 held that an employee has additional gross income equal to the amount of any policyholder dividends distributed to the employee or applied to provide additional insurance for the exclusive benefit of the employee. Thus, where the employer has no interest in the dividend applied to provide paid-up additional insurance, the taxable economic benefit is the dividend itself, not the value of the insurance protection resulting from the dividend.

Rev. Rul. 64–328 and Rev. Rul. 66–110 each addressed a situation in which the employer possessed all beneficial interest in the cash surrender value of the life insurance contract (exclusive of any separate cash surrender value of paid-up additions attributable to dividends[1]), and the employee was entitled only to certain other economic benefits generated by the employer's investment in the contract, specifically, current insurance protection or dividends. Consistent with that, Rev. Rul. 64–328 revoked Rev. Rul. 55–713, 1955–2 C.B. 23, which had treated a split-dollar arrangement similar to that addressed in Rev. Rul. 64–328 as a secured loan from the employer to the employee. In rejecting the loan characterization, Rev. Rul. 64–328 stated that the substance of the split-dollar arrangement differed from that of a loan because the employee was not expected to make repayment except out of the cash surrender value or proceeds of the life insurance contract. *But see Commissioner v. Tufts*, 461 U.S. 300, 307 (1983)("we read *[Crane v. Commissioner*, 331 U.S. 1 (1947)] to have approved the Commissioner's decision to treat a nonrecourse loan in this context as a true loan.").

Rev. Rul. 64–328 held that the table of one-year premium rates set forth in Rev. Rul. 55–747, 1955–2 C.B. 228, commonly referred to as the "P.S. 58" rates, may be used to determine the value of the current life insurance protection provided to an employee under a split-dollar arrangement. Rev. Rul. 66–110 amplified Rev. Rul. 64–328 in this respect by holding that the insurer's published premium rates for one-year term insurance may be used to measure the value of the current insurance protection if those rates are lower than the P.S. 58 rates and available to all standard risks. Rev. Rul. 67–154, 1967–1 C.B. 11, modified Rev. Rul. 66–110 by holding that an insurer's published term rates must be available for initial issue insurance (as distinguished from rates for dividend options) in order to be substituted for the P.S. 58 rates set forth in Rev. Rul. 55–747.

Similarly, the IRS has ruled that the economic benefit inuring to a third-party donee under an employer-employee split-dollar arrangement or to a shareholder under a corporation-shareholder split-dol-

1 Under the type of life insurance contract involved in Rev. Rul. 66-110, the cash surrender value of paid-up additions purchased with dividends was separate and distinct from the cash surrender value of the life insurance contract under which the dividends were paid.

lar arrangement is to be determined under the principles and valuation methods set forth in Rev. Rul. 64–328, as amplified by Rev. Rul. 66–110. *See* Rev. Rul. 78–420, 1978–2 C.B. 67; Rev. Rul. 79–50, 1979–1 C.B. 138. Also, the same premium rate alternatives may be relied upon to measure the value of current life insurance protection provided to an employee under a qualified retirement plan. *See* Rev. Rul. 55–747, *supra*.

## III. NEED FOR UPDATED GUIDANCE

### A. Equity Split-Dollar

None of the published rulings relating to split-dollar life insurance has directly addressed the forms of equity split-dollar arrangements that have been widely used in recent years. In contrast with the split-dollar arrangements described in Rev. Rul. 64–328 and Rev. Rul. 66–110, an employee's economic interest in a life insurance contract purchased under an equity split-dollar arrangement includes an agreed upon portion of the cash surrender value. Under the most common form of equity split-dollar arrangement, the employer's interest in the cash surrender value of the contract is limited to the aggregate amount of its premium payments, exclusive of any earnings component. In such cases, the employee derives the entire economic benefit of any positive return on the employer's investment in the life insurance contract.

Under such an equity split-dollar arrangement, the employee derives a valuable economic benefit from the employer's premium payments beyond the current life insurance protection addressed in Rev. Rul. 64–328. As held in Rev. Rul. 66–110, an employee who receives economic benefits beyond the value of current life insurance protection is taxable on the value of those additional benefits. Therefore, under the general principles followed in Rev. Rul. 64–328 and Rev. Rul. 66–110, it is necessary to account for the employee's rights in the cash surrender value under an equity split-dollar arrangement in a manner consistent with the substance of the parties' contractual positions.

Under section 83, which was enacted in 1969 and generally governs the income tax treatment of property transferred in connection with the performance of services, a life insurance contract is considered to be property to the extent of its cash surrender value. *See* § 1.83–3(e) of the Income Tax Regulations. Therefore, if the substance of an equity split-dollar arrangement involves the transfer of a beneficial interest in the cash surrender value of a life insurance contract from an employer to an employee, that economic benefit is properly includible in the employee's gross income under section 83. For purposes of section 83, a split-dollar arrangement could, depending on the facts, involve a series of property transfers or a single transfer of property.[2]

However, whether an equity split-dollar arrangement involves a transfer of property within the meaning of section 83 depends on the substance of the arrangement. *See* § 1.83–3(a) of the regulations. If the employee is the beneficial owner of the life insurance contract from the inception of the arrangement, there is no transfer of property under section 83. For example, assuming there is a reasonable and *bona fide* expectation that the employer will receive repayment of its share of the premiums at a fixed or determinable future date, then the arrangement may in certain circumstances be properly treated as an acquisition of a life insurance contract by the employee with the proceeds of a loan or series of loans from the employer to the employee secured by the life insurance contract, rather than as an arrangement whereby the employer acquires ownership of the life insurance contract and provides economic benefits to the employee thereunder.

Section 7872 of the Code, which was enacted in 1984, sets forth rules for determining the tax treatment of certain direct and indirect below-market loans. In general, section 7872 recharacterizes a below-market loan (a loan in which the interest rate charged is less than the applicable Federal rate, or "AFR") as an arm's-length transaction in which the lender makes a loan to the borrower at the AFR, coupled with a payment or payments to the borrower sufficient to fund all or part of the interest that the borrower is treated as paying on that loan. The amount, timing, and characterization of the imputed payments to the borrower under a below-market loan depend on the relationship between the borrower and the lender and whether the loan is characterized as a demand loan or a term loan. In the case of a compensation-related below-market loan within the meaning of section 7872(c)(1)(B), the imputed payments to the borrower are treated as compensation income.

The legislative history of section 7872 states that the term "loan" is to be interpreted broadly for purposes of section 7872, potentially encompassing "any transfer of money that provides the transferor with a right to repayment." H.R. Rep. 98–861, 98th Cong., 2d Sess. 1018 (1984). Treasury and the IRS believe that Congress generally intended that section 7872 would govern the determination of compensation income resulting from an arrangement the substance of which is a loan from an employer to an employee, and that there was no congressional intent to make section 7872 inapplicable to split-dollar arrangements if such arrangements are, in substance, loans.

### B. Value of Current Life Insurance Protection

The P.S. 58 rates set forth in Rev. Rul. 55–747, which are based on mortality tables originally published in 1946, no longer bear an appropriate relationship to the fair market value of current life insurance protection. Since the published split-dollar rulings merely state that the P.S. 58 rates "may" be used to value the economic benefit that an employee receives in the form of current life insurance protection and allow that economic benefit to instead be valued using the insurer's lower published one-year term rates, the P.S. 58 rates have come to function more as an upper limit on the valuation of current life insurance protection for Federal income tax purposes than as the presumptive measure of the fair market value of that economic benefit. Nonetheless, because the P.S. 58 rates represent the only valuation standard sanctioned by existing published guidance other than the insurer's published term rates, some taxpayers (and plan administrators in the case of life insurance held for participants in qualified

2 For income or gift tax purposes outside of the compensation context, transfers of beneficial interests in the cash surrender value of life insurance contracts may similarly be treated as transfers of property interests in accordance with general tax principles.

plans) continue to use the P.S. 58 rates to value current life insurance protection and thereby report more gross income than is warranted under current conditions.

Treasury and the IRS are also concerned that the P.S. 58 rates have been used to understate the economic benefits provided to employees and other taxpayers under certain split-dollar arrangements. In particular, some taxpayers have used the P.S. 58 rates to determine the employer's share of the premiums under so-called "reverse" split-dollar arrangements, where the employer's interest in the life insurance contract is limited to a specified portion of the death benefit. The use of P.S. 58 rates in this manner significantly overstates the value of the policy benefits allocated to the employer, such that the employee's share of the premiums is significantly lower than the employee's actual share of the policy benefits. No published guidance has authorized reliance on the P.S. 58 rates for this purpose.

In addition, Treasury and the IRS question whether insurers' published term rates provide an appropriate alternative measure of the fair market value of current life insurance protection. Treasury and the IRS understand that, in some instances, the published premium rates used for this purpose may not be realistically available to all standard risks who apply for term insurance, as required by Rev. Rul. 66–110 and the other published authorities that have sanctioned that alternative valuation standard. Moreover, taxpayers and the IRS ordinarily have no practical means to confirm that the same premium rates are available to all standard risks who apply for one-year term insurance from the same life insurance company. It is also questionable whether the life insurance protection provided to a particular insured should be valued differently for Federal tax purposes from that provided to a similarly situated insured solely because of differences in the published premium rates of their respective insurers.

There are a number of variables other than age that affect the cost and value of current life insurance protection, including assumed mortality rates, the sex and health of the insured, and the extent of sales and other expense charges included or assumed to be included in premiums. However, valuation standards that allow some or all of such variables to be taken into account on an individual basis may not be administrable or provide taxpayers with sufficient certainty. Therefore, to ease administrative burdens, minimize disputes, and provide greater assurance that similarly situated taxpayers are treated the same, Treasury and the IRS believe it may be preferable, at least as a general rule, for the value of current life insurance protection provided under split-dollar arrangements and qualified retirement plans to be determined under one or more premium rate tables prescribed for those purposes.

## IV. INTERIM GUIDANCE

### A. Characterization of Split-Dollar Arrangements

In light of the rationale set forth in Rev. Rul. 64–328 and the fact that no published guidance has addressed the potential applicability of section 7872 to split-dollar arrangements, Treasury and the IRS recognize that taxpayers have not generally treated employer payments under equity split-dollar arrangements as loans, and that the below-market loan rules of section 7872 have not generally been applied to impute compensation income to employees from such arrangements. It is also recognized that, without further guidance, it may be difficult for taxpayers to determine whether an employer's payments under a split-dollar arrangement are properly characterized as loans for Federal tax purposes or whether the employer should instead be treated as having acquired a beneficial ownership interest in the life insurance contract through its premium payments and having provided economic benefits to the employee thereunder. Accordingly, pending consideration of public comments and the publication of further guidance, the characterization and income tax treatment of equity and other split-dollar arrangements will generally be determined under the following guidelines:

1. The IRS will generally accept the parties' characterization of the employer's payments under a split-dollar arrangement, provided that (i) such characterization is not clearly inconsistent with the substance of the arrangement, (ii) such characterization has been consistently followed by the parties from the inception of the arrangement, and (iii) the parties fully account for all economic benefits conferred on the employee in a manner consistent with that characterization.

2. The IRS will permit an employer's payments under a split-dollar arrangement to be characterized as loans for tax purposes, provided that all of the conditions set forth in paragraph 1 are satisfied. In such cases, the tax consequences of the payments treated as loans will be determined under section 7872, the employee will not have additional compensation income for the value of the insurance protection provided under the life insurance contract, and the cash surrender value of the contract will not represent property that has been transferred to the employee for purposes of section 83. However, the employee ordinarily would have additional gross income if the employer's advances were not repaid in accordance with the terms of the arrangement. Moreover, the employee could have gross income under section 72 for distributions actually received under the life insurance contract.

3. In any case in which an employer's payments under a split-dollar arrangement have not been consistently treated as loans in accordance with paragraph 1, the parties will be treated as having adopted a non-loan characterization of the arrangement, and the parties must fully account for all of the economic benefits that the employee derives from the arrangement in a manner consistent with that characterization and with Rev. Rul. 64–328, Rev. Rul. 66–110, and the general tax principles upon which those rulings are based. In general, this means that (i) the employer will be treated as having acquired beneficial ownership of the life insurance contract through its share of the premium payments, (ii) the employee will have compensation income under section 61 equal to the value of the life insurance protection provided to the employee each year that the arrangement remains in effect, reduced by any payments made by the employee for such life insurance protection, (iii) the employee will have compensation income under section 61 equal to any dividends or similar distributions made to the employee under the life insurance contract (including any dividends described in Rev. Rul. 66–110 applied to provide additional policy benefits), and

(iv) the employee will have compensation income under section 83(a) to the extent that the employee acquires a substantially vested interest in the cash surrender value of the life insurance contract, reduced under section 83(a)(2) by any consideration paid by the employee for such interest in the cash surrender value.

4. Pending the publication of further guidance, the IRS will not treat an employer as having made a transfer of a portion of the cash surrender value of a life insurance contract to an employee for purposes of section 83 solely because the interest or other earnings credited to the cash surrender value of the contract cause the cash surrender value to exceed the portion thereof payable to the employer on termination of the split-dollar arrangement. If future guidance provides that such earnings increments are to be treated as transfers of property for purposes of section 83, it will apply prospectively.

5. In any case in which the employer's payments under a split-dollar arrangement have not been consistently treated as loans, then for so long as the arrangement remains in effect, the IRS will treat the employee as continuing to have gross income under section 61 for any current life insurance protection provided to the employee under the arrangement, except to the extent allocable to premium payments made by the employee (or included in the employee's gross income under paragraph 6) or to any portion of the cash surrender value of the contract that has been treated as a substantially vested transfer of property to the employee under section 83. When such an allocation is required, the IRS will accept a *pro rata* or other reasonable method for determining that portion of the death benefit allocable to cash surrender value beneficially owned by the employer and that portion allocable to cash surrender value transferred to or purchased by the employee.

6. If an employer makes a premium or other payment for the benefit of an employee under a split-dollar arrangement, and the employer neither acquires a beneficial ownership interest in the life insurance contract through such payment nor has a reasonable expectation of receiving repayment of that amount through policy proceeds or otherwise, such payment will be treated as compensation income to the employee under section 61. *See* Reg. § 1.61–2(d)(2)(ii)(*a*); *Frost v. Commissioner*, 52 T.C. 89 (1969).

In sum, therefore, any payment made by an employer under a split-dollar arrangement must be accounted for as a loan (see paragraph 2), as an investment in the contract for the employer's own account (see paragraph 3), or as a payment of compensation (see paragraph 6).

B. Revised Standards for Valuing Current Life Insurance Protection

Pending the consideration of comments and publication of further guidance, the following interim guidance is provided on the valuation of current life insurance protection:

1. Rev. Rul. 55–747 is hereby revoked, and the IRS will no longer treat or accept the P.S. 58 rates set forth therein as a proper measure of the value of current life insurance protection for Federal tax purposes. Nonetheless, for taxable years ending on or before December 31, 2001, taxpayers may continue to use the P.S. 58 rates set forth in Rev. Rul. 55–747 for purposes of determining the value of current life insurance protection provided to an employee under a split-dollar arrangement or a qualified retirement plan.

2. Taxpayers may use the premium rate table set forth at the end of this notice, captioned as Table 2001, to determine the value of current life insurance protection on a single life provided under a split-dollar arrangement or qualified retirement plan for taxable years ending after the date of issuance of this notice. Table 2001 is based on the mortality experience reflected in the table of uniform premiums promulgated under section 79(c) of the Code (*see* § 1.79–3(d)(2) of the regulations), with extensions for ages below 25 and above 70, and the elimination of the five-year age brackets.[3] With the revocation of Rev. Rul. 55–747, the rates set forth in Table 2001 are provided as an interim substitute for the P.S. 58 rates that taxpayers may rely upon pending further consideration of how the value of current life insurance protection should be determined for these Federal tax purposes in the future. The premium rates set forth in Table 2001 are materially lower than the P.S. 58 rates at all ages.

3. Taxpayers may continue to determine the value of current life insurance protection by using the insurer's lower published premium rates that are available to all standard risks for initial issue one-year term insurance as set forth in Rev. Rul. 66–110, subject to the following additional limitations. First, for periods after December 31, 2003, the IRS will not consider an insurer's published premium rates to be available to all standard risks who apply for term insurance unless (i) the insurer generally makes the availability of such rates known to persons who apply for term insurance coverage from the insurer, (ii) the insurer regularly sells term insurance at such rates to individuals who apply for term insurance coverage through the insurer's normal distribution channels, and (iii) the insurer does not more commonly sell term insurance at higher premium rates to individuals that the insurer classifies as standard risks under the definition of standard risk most commonly used by that insurer for the issuance of term insurance. Second, with respect to a life insurance contract (or individual certificate) issued after February 28, 2001, no assurance is provided that such published premium rates may be used to determine the value of life insurance protection for periods after the later of December 31, 2003, or December 31 of the year in which further guidance relating to the valuation of current life insurance protection is published.

V. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 55–747 is revoked. Rev. Rul. 64–328 and Rev. Rul. 66–110 are modified to the extent that those rulings indicate that an employer's premium payments under a split-dollar arrangement should not be treated as loans where an employee is not expected to make repayment except out of the cash surrender value or proceeds of the life insurance contract.

VI. REQUEST FOR COMMENTS

Comments are requested on the issues discussed in this notice and on any other issues for which further guidance relating to the Federal tax treatment of split-dollar arrangements is needed. In particular, Treasury and the IRS request comments on (i) the circumstances in which employer payments under a split-dollar arrangement should be treated as loans; (ii) in cases where employer payments under a

3 The table is limited to insureds below age 100.

split-dollar arrangement are not treated as loans, the circumstances in which interests in the cash surrender value of a life insurance contract should be treated as transfers of property to the employee for purposes of section 83, including whether earnings credited to the cash surrender value of a life insurance contract should be treated as transfers of property for purposes of section 83 when such earnings cause the cash surrender value to exceed the portion thereof payable to the employer (or other transferor); and (iii) whether additional guidance is needed on the treatment of split-dollar arrangements for Federal gift tax purposes.

Comments are also invited on the standards that should be used to value life insurance protection. Comments are specifically invited on (i) whether one or more premium rate tables should be prescribed as the exclusive basis for valuing current life insurance protection for Federal tax purposes; (ii) if one or more premium rate tables are prescribed for these purposes, what assumptions should be used in constructing such table or tables; (iii) if one or more premium rate tables are prescribed for these purposes, whether the value of life insurance protection for a given insured should take account of variables other than the age of the insured; (iv) whether one or more premium rate tables should be prescribed for purposes of determining the value of current life insurance protection under a second-to-die policy and, if so, what assumptions should be used in constructing such table or tables; (v) whether there are reasonable and workable means to incorporate premium rates actually charged by life insurance companies into the valuation standards used for Federal tax purposes; and (vi) whether there are reasonable and workable means to allow the value of life insurance protection for a given insured to be determined by reference to the cost structure of the life insurance contract covering that insured.

Written comments are requested to be submitted no later than April 30, 2001, to CC:FIP (Notice 2001–10), room 4300, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:FIP (Notice 2001–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal authors of this notice are David B. Silber of the Office of Associate Chief Counsel (Financial Institutions and Products) and Erin Madden of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Silber at (202) 622-3930 or Ms. Madden at (202) 622-6060 (Not toll-free calls).

*TABLE 2001*
*INTERIM TABLE OF ONE-YEAR TERM PREMIUMS*
*FOR $1,000 OF LIFE INSURANCE PROTECTION*

| Attained Age | Section 79 Extended and Interpolated Annual Rates | Attained Age | Section 79 Extended and Interpolated Annual Rates | Attained Age | Section 79 Extended and Interpolated Annual Rates |
|---|---|---|---|---|---|
| 0 | $0.70 | 35 | $0.99 | 70 | $20.62 |
| 1 | $0.41 | 36 | $1.01 | 71 | $22.72 |
| 2 | $0.27 | 37 | $1.04 | 72 | $25.07 |
| 3 | $0.19 | 38 | $1.06 | 73 | $27.57 |
| 4 | $0.13 | 39 | $1.07 | 74 | $30.18 |
| 5 | $0.13 | 40 | $1.10 | 75 | $33.05 |
| 6 | $0.14 | 41 | $1.13 | 76 | $36.33 |
| 7 | $0.15 | 42 | $1.20 | 77 | $40.17 |
| 8 | $0.16 | 43 | $1.29 | 78 | $44.33 |
| 9 | $0.16 | 44 | $1.40 | 79 | $49.23 |
| 10 | $0.16 | 45 | $1.53 | 80 | $54.56 |
| 11 | $0.19 | 46 | $1.67 | 81 | $60.51 |
| 12 | $0.24 | 47 | $1.83 | 82 | $66.74 |
| 13 | $0.28 | 48 | $1.98 | 83 | $73.07 |
| 14 | $0.33 | 49 | $2.13 | 84 | $80.35 |
| 15 | $0.38 | 50 | $2.30 | 85 | $88.76 |
| 16 | $0.52 | 51 | $2.52 | 86 | $99.16 |
| 17 | $0.57 | 52 | $2.81 | 87 | $110.40 |
| 18 | $0.59 | 53 | $3.20 | 88 | $121.85 |
| 19 | $0.61 | 54 | $3.65 | 89 | $133.40 |
| 20 | $0.62 | 55 | $4.15 | 90 | $144.30 |
| 21 | $0.62 | 56 | $4.68 | 91 | $155.80 |
| 22 | $0.64 | 57 | $5.20 | 92 | $168.75 |
| 23 | $0.66 | 58 | $5.66 | 93 | $186.44 |

*TABLE 2001—Continued*
*INTERIM TABLE OF ONE-YEAR TERM PREMIUMS*
*FOR $1,000 OF LIFE INSURANCE PROTECTION*

| Attained Age | Section 79 Extended and Interpolated Annual Rates | Attained Age | Section 79 Extended and Interpolated Annual Rates | Attained Age | Section 79 Extended and Interpolated Annual Rates |
|---|---|---|---|---|---|
| 24 | $0.68 | 59 | $6.06 | 94 | $206.70 |
| 25 | $0.71 | 60 | $6.51 | 95 | $228.35 |
| 26 | $0.73 | 61 | $7.11 | 96 | $250.01 |
| 27 | $0.76 | 62 | $7.96 | 97 | $265.09 |
| 28 | $0.80 | 63 | $9.08 | 98 | $270.11 |
| 29 | $0.83 | 64 | $10.41 | 99 | $281.05 |
| 30 | $0.87 | 65 | $11.90 | | |
| 31 | $0.90 | 66 | $13.51 | | |
| 32 | $0.93 | 67 | $15.20 | | |
| 33 | $0.96 | 68 | $16.92 | | |
| 34 | $0.98 | 69 | $18.70 | | |

## Withholding and Information Reporting on Payments to Financial Institutions in U.S. Possessions

### Notice 2001-11

Corporations and partnerships that are organized under the laws of a possession of the United States are generally treated as foreign persons for purposes of section 1441 and the regulations thereunder (relating to the withholding of tax on payments to foreign persons). See section 881(b)(1) for exceptions to this general rule. Financial institutions organized under the laws of a U.S. possession ("possessions financial institutions") have noted that, to the extent they act as intermediaries (that is, as agents for others), the regulations under section 1441, as in effect on January 1, 2001 (the "new withholding regulations"), will require them to function as nonqualified intermediaries. Payments of U.S. source income made to nonqualified intermediaries are generally subject to 30-percent withholding (or 31-percent withholding in the case of deposit interest and certain payments on short-term obligations) unless the nonqualified intermediary provides documentation from, and other information relating to, customers on whose behalf the nonqualified intermediary acts that supports a reduced rate of withholding. See section 1.1441-1(b)(1) and 1.1441-1(e)(3)(iii) and (iv). Possessions financial institutions have commented that the requirement to provide a withholding agent with information relating to the possessions financial institution's customers should not apply to them because they are subject to all of the withholding and information reporting requirements that apply to U.S. withholding agents under Chapters 3 and 61 and section 3406 of the Internal Revenue Code and because they are subject to direct audit supervision by the Internal Revenue Service.

Treasury and IRS agree that, for the reasons described above, possessions financial institutions should not be required to act as nonqualified intermediaries under the new withholding regulations. Accordingly, until further notice, any possessions financial institution will be treated as a U.S. branch under section 1.1441-1(b)(2)(iv) of the new withholding regulations. As such, it may agree with a withholding agent from which it is receiving payments to be treated as a U.S. person. See section 1.1441-1(b)(2)(iv)(A) and (E). Under the general rule of section 1.1441-1(b)(1), payments of U.S. source income to a possessions financial institution that agrees to be treated as a U.S. person will be treated as made to a U.S. payee and therefore not subject to withholding under section 1441. The possessions financial institution shall be subject to all of the withholding and reporting obligations of a U.S. withholding agent under chapters 3 and 61 of the Code and section 3406. For purposes of this notice, the term financial institution has the same meaning as in section 1.1441-1(c)(5).

A possessions financial institution that agrees to be treated as a U.S. person must provide a withholding agent with a properly completed Form W-8IMY on which it evidences its agreement to be treated as a U.S. person. The possessions financial institution should not provide a Form W-9. See section 1.1441-1(b)(2)(iv). In addition, a withholding agent making a payment to a possessions financial institution that agrees to be treated as a U.S. person must report payments made to the institution on Form 1042-S. See section 1.1441-1(b)(2)(iv) and 1.1461-1(c)(4)(i)(C)(*1*).

Contact Information

The principal author of this Notice is Carl Cooper of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. For further information regarding this Notice contact Mr. Cooper at 202-622-3840 (not a toll-free call).