

accordance with paragraph C) of Bombardier Repair Drawing 8/4-32-0160, Issue 2, dated January 18, 2011; or Issue 3, dated February 15, 2011.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before March 25, 2011, in accordance with Bombardier 8/4-32-0160, Issue 1, dated January 14, 2011, are acceptable for compliance with the corresponding requirements of this AD.

New Requirements of This AD

(i) Within 50 flight hours or 10 days after the effective date of this AD, whichever occurs first, do a detailed inspection for proper operation of the MLG AES cam mechanism, in accordance with paragraph A) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011. Repeat the inspection thereafter at intervals not to exceed 50 flight hours or 10 days, whichever occurs first. Accomplishing this inspection terminates the requirements of paragraph (g) of this AD.

(1) If the cam mechanism is found to reset to the normal rested position without any sticking or binding, it is operating properly.

(2) If the cam mechanism has not reset to its normal rested position, or if any sticking or binding is observed, before further flight, remove the cam assembly, in accordance with paragraph A) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011, and do the actions in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) Repair the cam mechanism assembly, including doing detailed inspections for discrepancies (including an inspection to determine proper operation, an inspection for damage, an inspection for corrosion and cadmium coating degradation, and inspections to determine dimensions are within the limits specified in paragraph B) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011), in accordance with paragraph B) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011; and install the repaired cam assembly in accordance with paragraph C) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011.

(ii) Install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011.

(3) If the cam mechanism is found damaged or inoperative during the repair specified in paragraph (i)(2)(i) of this AD, or if any discrepancies are found and Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011, does not specify repairs for those discrepancies, or repairs specified in paragraph (i)(2)(i) of this AD cannot be accomplished: Before further flight, repair and reinstall using a method approved by the Manager, ANE-170, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent); or install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANE-170, New York ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF-2011-01R1, dated May 20, 2011; Bombardier Repair Drawing 8/4-32-0160, Issue 2, dated January 18, 2011; and Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011; for related information.

Material Incorporated by Reference

(l) You must use Bombardier Repair Drawing 8/4-32-0160, Issue 2, dated January 18, 2011; or Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The issue dates for Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011, are identified on only the first page of that document.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Repair Drawing 8/4-32-0160, Issue 3, dated February 15, 2011, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Repair Drawing 8/4-32-0160, Issue 2, dated January 18, 2011, on March 25, 2011 (76 FR 13080, March 10, 2011).

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539;

e-mail thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on July 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9536]

RIN 1545-BK40

Determining the Amount of Taxes Paid for Purposes of the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. These regulations address certain highly structured arrangements that produce inappropriate foreign tax credit results. The regulations affect individuals and corporations that claim direct and indirect foreign tax credits. The text of these temporary regulations also serves as the text of the proposed regulations (REG-126519-11) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 18, 2011.

Applicability Date: For dates of applicability, see § 1.901-2T(h)(3).

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, at (202) 622-3850.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2007, the **Federal Register** published proposed regulations

(72 FR 15081) under section 901 of the Internal Revenue Code relating to the amount of taxes paid for purposes of the foreign tax credit. The IRS and the Treasury Department received written comments on the 2007 proposed regulations and a public hearing was held on July 30, 2007. On July 16, 2008, a notice of proposed rulemaking by cross-reference to temporary regulations and temporary regulations (TD 9416) (the “2008 temporary regulations”) were published in the **Federal Register** at 73 FR 40792 and 73 FR 40727, respectively. Final regulations were published in the **Federal Register** in July 2011, and adopted the proposed regulations with the changes discussed in the preamble to the final regulations.

Explanation of Provision

Section 1.901–2(e)(5)(iv) of the final regulations provides that an amount paid to a foreign country is not a compulsory payment, and thus is not an amount of tax paid for purposes of the foreign tax credit, if such amount is attributable to a structured passive investment arrangement. An arrangement that satisfies the six conditions described in § 1.901–2(e)(5)(iv) is treated as a structured passive investment arrangement. One of the conditions is that the arrangement utilizes an entity that meets two requirements (the “SPV condition”). See § 1.901–2(e)(5)(iv)(B)(1).

The first requirement of the SPV condition is that substantially all of the entity’s gross income, as determined under U.S. tax principles, is attributable to passive investment income and substantially all of the entity’s assets are held to produce such passive investment income. The second requirement is that there is a putative foreign tax payment (a “foreign payment”) attributable to income of the entity, as determined under the laws of the foreign country to which such foreign payment is made. The foreign payment may be paid by the entity itself or by the owner(s) of the entity. Under the 2008 temporary regulations, a foreign payment attributable to income of the entity does not include a withholding tax imposed on a distribution or payment from the entity to a U.S. party. See § 1.901–2T(e)(5)(iv)(B)(1)(ii) of the 2008 temporary regulations.

The IRS and the Treasury Department have become aware that taxpayers can enter into arrangements that generate duplicative benefits involving foreign withholding taxes imposed on distributions made by an entity to a U.S. party. For example, if the parties undertake a transaction in which

interests in an SPV are transferred by the U.S. party to a counterparty subject to a repurchase obligation, withholding taxes imposed on distributions from the SPV may be claimed as creditable in both jurisdictions. Accordingly, the exception for withholding taxes imposed on distributions or payments to U.S. parties was eliminated in the 2011 final regulations. These temporary regulations clarify the provisions of § 1.901–2(e)(5)(iv)(B)(1) by providing in a new paragraph § 1.901–2(e)(5)(iv)(B)(1)(iii) that a foreign payment attributable to income of an entity includes a withholding tax imposed on a dividend or other distribution (including distributions made by a pass-through entity or an entity that is disregarded as an entity separate from its owner for U.S. tax purposes) with respect to the equity of the entity.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have foreign operations which tend to be larger businesses. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey P. Cowan, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.901–2 is amended by revising paragraphs (e)(5)(iii) and (iv) and adding paragraph (h)(3) to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iii) through (iv)(B)(1)(ii) [Reserved]
For further guidance, see § 1.901–2T(e)(5)(iii) through (e)(5)(iv)(B)(1)(ii).

(iii) [Reserved]. For further guidance, see § 1.901–2T(e)(5)(iv)(B)(1)(iii).

* * * * *

(h) * * *

(3) [Reserved]. For further guidance, see § 1.901–2T(h)(3).

■ **Par. 3.** Section 1.901–2T is revised to read as follows:

§ 1.901–2T Income, war profits, or excess profits tax paid or accrued.

(a) through (e)(5)(iv)(B)(1)(ii) [Reserved]. For further guidance, see § 1.901–2(a) through (e)(5)(iv)(B)(1)(ii).

(iii) A foreign payment attributable to income of the entity includes a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a dividend or other distribution (including distributions made by a pass-through entity or an entity that is disregarded as an entity separate from its owner for U.S. tax purposes) with respect to the equity of the entity.

(e)(5)(iv)(B)(1)(2) through (h)(2) [Reserved]. For further guidance, see § 1.901–2(e)(5)(iv)(B)(2) through (h)(2).

(h)(3) *Effective/applicability date.* This section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under § 1.901–2(f) on or after July 14, 2014.

(h)(4) *Expiration date.* The applicability of this section expires on July 14, 2014.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: July 11, 2011.

Emily S. McMahon,
Acting Assistant Secretary of the Treasury (Tax Policy).

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