



August 23, 2017

Mr. Scott Dinwiddie
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Revenue Procedure 2015-13, Changes in Methods of Accounting

Dear Mr. Dinwiddie:

The American Institute of CPAs (AICPA) is pleased to submit additional comments with respect to the accounting method change procedures set forth in Revenue Procedure 2015-13, Changes in Methods of Accounting (Rev. Proc. 2015-13). We previously submitted comments¹ on Rev. Proc 2015-13 in November 2016. In that letter, we provided suggestions which would enable the Internal Revenue Service (IRS) and the United States Department of the Treasury (“Treasury”) to better achieve their goal of encouraging voluntary compliance with proper tax accounting methods, while minimizing the administrative burdens of compliance.

Our suggestions in the November 2016 letter included:

- (a) Provide a single overall “issue under consideration” standard for taxpayers under examination;
- (b) Restore the 90-day window;
- (c) Provide back-year audit protection and a four-year spread of a positive Internal Revenue Code (IRC or “Code”) section 481(a)² adjustment when new guidance is issued;
- (d) Remove the additional conditions for the exceptions to audit protection for controlled foreign corporations (CFC);

¹ See [AICPA Comment Letter on Rev. Proc. 2015-13](#).

² All references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

- (e) Allow a longer period for automatic relief for filing the Covington, Kentucky copy of the Form 3115, *Application for Change in Accounting Method*, for automatic method changes; and
- (f) Include other filing procedures to minimize administrative compliance burdens.

In addition to our suggestions in the previous letter, we have identified three additional issues in Rev. Proc. 2015-13 that we recommend that the IRS address. Specifically, we ask that the IRS:

- (a) Revise the three-month window period to refer to the two months prior to and one month following the extended due date of the taxpayer's return;
- (b) Clarify that the special rule under section 8.02(5) of Rev. Proc. 2015-13, for a CFC or 10/50 corporation (referencing 150 percent of the average amount of foreign taxes deemed paid under sections 902 and 960 in the shareholder's three prior taxable years) refers to the three taxable years immediately prior to the tax year of change; and
- (c) Revise section 13.01(1) of Rev. Proc. 2015-13 to permit taxpayers to request to revise the year of change for a non-automatic Form 3115 on or after the first day of the third month following the month in which the taxpayer's federal income tax return is due (excluding extensions) for the original year of change requested on the taxpayer's Form 3115.

Three-Month Window

Recommendation

The AICPA recommends that the IRS revise the three-month window to reference the extended due date of the taxpayer's return to avoid issues when filing due dates are revised.

Analysis

In our letter dated July 9, 2013,³ we noted that the window periods were designed to allow a taxpayer under continuous IRS exam that discovered it was using an erroneous method of accounting to voluntarily change to a permissible accounting method. However, we expressed concern that the window periods available under Rev. Proc. 97-27 served as an impediment to voluntary compliance in cases where a taxpayer identifies impermissible methods when it is not in a window period and is therefore unable to change its method. We recommended that the IRS add an additional 90-day window period consisting of 60 days before the due date (including extensions) of a tax return and 30 days after the due date (including extensions) of a tax return. In Rev. Proc. 2015-13, the government included a new three-month window that begins on the 15th day of the 7th month and ends on the 15th day of the 10th month following the end of the taxpayer's taxable year.

³ See [AICPA Comments on Rev. Proc. 97-27 and 2011-14 Method Change Procedures](#).

As a result of amendments to section 6081⁴ and as provided for in administrative guidance issued by the IRS, the extended due date for certain C corporation returns was revised from the 15th day of the 9th month following the end of the tax year to the 15th day of the 10th month following the end of the tax year. Thus, the three-month window provided for in Rev. Proc. 2015-13 will end on the revised extended due date of the returns of rather than the intended short period (approximately one month) following the extended due date.

Revising the three-month window to reference the extended due date (whether or not the return is extended) is consistent with the intent of the three-month window. The revision also eliminates issues arising when the return filing due dates are revised, provides greater clarity on the application of the three-month window, and promotes voluntary compliance.

Special Audit Protection Rule for a CFC or 10/50 Corporation

Recommendation

The AICPA recommends that the IRS clarify that the reference to “three prior taxable years” in section 8.02(5) of Rev. Proc. 2015-13, is to the three taxable years prior to the tax year for which the change is effective (i.e., the tax year of the change).

Analysis

Under section 8.01 of Rev. Proc. 2015-13, a taxpayer that voluntarily changes its accounting method with consent of the Commissioner of the Internal Revenue Service receives audit protection with respect to that method. Therefore, the IRS will not require the taxpayer to change its method of accounting for the same item for a taxable year prior to the year of change. Sections 8.02(1) through 8.02(7) of Rev. Proc. 2015-13 provide exceptions to the general rule.

Section 8.02(5) of Rev. Proc. 2015-13 states that,

In the case of a change in accounting method being made on behalf of a CFC or 10/50 corporation, the IRS may change the method of accounting for the same item that is the subject of a Form 3115 filed under Rev. Proc. 2015-13 for taxable years prior to the requested year of change in which any of the CFC or 10/50 corporation’s domestic corporate shareholders computed an amount of foreign taxes deemed paid under sections 902 and 960 with respect to the CFC or 10/50 corporation that exceeds 150 percent of the average amount of foreign taxes deemed paid under sections 902 and 960 by the domestic corporate shareholder with respect to the CFC or 10/50 corporation in the shareholder’s *three prior taxable years*. [Emphasis added.]

⁴ See amendment under the [Surface Transportation and Veterans Health Care Choice Improvement Act of 2015](#).

The revenue procedure does not provide further details as to which “three prior taxable years” period it references. Taxpayers are uncertain if the reference is to the three taxable years prior to the tax year of change or the three prior taxable years prior to any taxable year under exam.

Assume, for example, that a domestic shareholder files a change in method of accounting under the automatic change procedures on behalf of a CFC effective for its 2015 taxable year during 2016 when it is not under examination by the IRS. In 2017, the IRS selects the shareholder’s 2012-2014 taxable years for examination.

If the “three prior taxable years” applies to any taxable year under examination, the IRS can test:

- Foreign taxes deemed paid in 2012 with respect to the average of such taxes in 2009-2011;
- Foreign taxes deemed paid in 2013 with respect to the average of such taxes in 2010-2012;
- Foreign taxes deemed paid in 2014 with respect to the average of such taxes in 2011-2013; and
- Foreign taxes deemed paid in 2015 with respect to the average of such taxes in 2012-2014.

If the foreign taxes deemed paid in any taxable year under examination with respect to the CFC exceed 150 percent of their three-year rolling average beginning in 2009 (i.e., going back six taxable years prior to the year of change in this example), the IRS may deny the taxpayer audit protection. If the IRS is able to extend the “three prior taxable years” test well beyond the year the taxpayer filed for a change in accounting method, the IRS could deny audit protection to a taxpayer not attempting to utilize accounting method changes as a tax planning tool. The taxpayer is denied audit protection in attempting to adopt a permissible method of accounting based upon the intent of Rev. Proc. 2015-13.

However, if the “three prior taxable years” is determined based upon the year in which the taxpayer files a change in method of accounting, the shareholder in the above example would determine the foreign taxes deemed paid as of the beginning of the year of change (i.e., 2015) with respect to the average of such taxes in 2012-2014.

If the “three prior taxable years” applies to any taxable year under examination, a change in method of accounting is denied audit protection. This denial applies whether or not the taxpayer was under examination when the Form 3115 was filed or as a result of decisions the taxpayer made with respect to distributions from the CFC or 10/50 corporation that do not relate to accounting method change tax planning. We do not believe that the IRS intended such a result.

The IRS should clarify that the reference to “three prior taxable years” is to the three taxable years prior to the tax year for which the change is effective (i.e., the tax year of the change). Clarifying the measurement period as the three prior taxable years from the year of change

provides taxpayers with certainty and greatly simplifies their administrative burden. However, permitting the application of the measurement period of “three prior taxable years” to apply to any taxable year under examination with the IRS:

- (a) Is overly broad in the context of Rev. Proc. 2015-13;
- (b) Will result in denying audit protection to a taxpayer *not* attempting to change its method of accounting to impact its foreign tax credits in a favorable manner; and
- (c) Erodes the intent of Rev. Proc. 2015-13 to incentivize taxpayers to voluntarily comply with respect to adopting permissible methods of accounting.

Requesting Permission to Revise the Year of an Accounting Method Change

Recommendation

The AICPA recommends that the IRS update the provisions of section 13.01(1) of Rev. Proc. 2015-13 to permit a taxpayer to request to revise the year of change for a non-automatic Form 3115 on or after the first day of the third month following the month in which the taxpayer’s federal income tax return is due (excluding extensions) for the original year of change requested on the taxpayer’s Form 3115.

Analysis

Section 13.01 of Rev. Proc. 2015-13 provides, in part, that a taxpayer with a pending non-automatic method change request as of a certain date may request to revise the year of change to a subsequent taxable year, provided that the taxpayer submits a timely written request to the IRS national office. For a taxpayer that filed a non-automatic Form 3115 after the last day of the sixth month of the year of change, the written request is submitted on or after, *but not before*, the first day of the fourth month following the month in which the taxpayer’s federal income tax return is due (excluding extensions) for the original year of change requested on the taxpayer’s Form 3115.

As noted above, the original due date for certain C corporation returns was revised from the 15th day of the 3rd month to the 15th day of the 4th month following the end of the tax year. As such, for example, a taxpayer cannot file the request to revise a year of change for a calendar year corporation earlier than August 1 (as opposed to July 1 prior to the revised due date). However, many corporate taxpayers plan to continue filing returns on or before the 15th day of the 9th month following the end of the tax year because some state tax authorities have not adopted a similar extension of time to file state tax returns. As a result, corporate taxpayers who have an accounting method change pending effectively have one month less than intended to request a revision to the year of change for the non-automatic Form 3115.

This delay in the determination of whether a taxpayer must incorporate a pending method change into a current tax return will add unnecessary uncertainty and complexity for taxpayers.

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To mitigate this unintended consequence of the change in return due dates, the IRS should update the provisions of section 13.01(1) of Rev. Proc. 2015-13.

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact me at (408) 924-3508 or annette.nellen@sjsu.edu; Jennifer Kennedy, Chair, AICPA Tax Methods and Periods Technical Resource Panel, at (703) 918-6951, or jennifer.kennedy@pwc.com; or Ogochukwu Eke-Okoro, Lead Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or ogo.eke-okoro@aicpa-cima.com.

Sincerely,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: Mr. Christopher Call, Attorney-Advisor, Office of Tax Legislative Counsel,
Department of the Treasury
Mr. Tom Moffit, Acting Deputy Associate Chief Counsel, Income Tax & Accounting,
Internal Revenue Service