

Part 1

Section 901.—Taxes of Foreign Countries and of Possessions of United States.

Rev. Rul. 2005-3

This ruling sets forth guidance regarding the application of section 901(j) of the Internal Revenue Code (Code) with respect to Libya and the application of section 911(d)(8) of the Code with respect to Iraq and Libya. This ruling modifies and supersedes Rev. Rul. 95-63, 1995-2 C.B. 85, which lists countries subject to special tax rules under sections 901(j) and 952(a)(5) of the Code, and also supersedes Rev. Rul. 2004-103, 2004-45 I.R.B. 783, which modified Rev. Rul. 95-63. This ruling also modifies and supersedes Rev. Rul. 92-63, 1992-2 C.B. 195, which lists countries subject to section 911(d)(8) of the Code.

SECTION 901(j)

LAW AND ANALYSIS

Sections 901, 902, and 960 of the Code generally allow U.S. taxpayers to claim a foreign tax credit for income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or to any possession of the United States. The foreign tax credit is subject to various limitations and restrictions under section 901.

Section 901(j)(1) imposes restrictions in the case of income and taxes attributable to certain countries. Section 901(j)(1)(A) denies the credit for taxes paid or accrued (or deemed paid or accrued under sections 902 or 960) to any country described in section 901(j)(2)(A) if the taxes are with respect to income attributable to a period during which section 901(j) applies. Section 901(j)(1)(B) requires taxpayers to apply subsections (a), (b), and (c) of section 904 and sections 902 and 960 separately with respect to income attributable to such a period from sources within such country. In addition, section 952(a)(5) provides that subpart F income includes income derived by a controlled foreign corporation from any foreign country during any period during which section 901(j) applies to that foreign country.

Pursuant to section 901(j)(5), the restrictions of section 901(j)(1) will not apply with respect to a country if the President determines that a waiver of the application of that paragraph is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in such country. This provision provides for the President, not less than 30 days before

the date on which a waiver is granted, to report to Congress the intention to grant such a waiver and the reason for the determination under section 901(j)(5)(A)(i).

The President issued Presidential Determination 2004-48 on September 20, 2004. In that Presidential Determination, the President determined that a waiver of the application of section 901(j)(1) with respect to Libya is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in Libya. The Presidential Determination directed the Secretary of the Treasury to report to Congress, in accordance with section 901(j)(5)(B), the President's intention to grant the waiver and the reasons for the determination. The Secretary of the Treasury submitted such report to Congress on October 7, 2004.

On December 10, 2004, the President issued Presidential Determination 2005-12 which waives the application of section 901(j)(1) with respect to Libya. Pursuant to Presidential Determination 2005-12, sections 901(j)(1) and 952(a)(5) no longer apply to Libya, effective December 10, 2004. Therefore, United States taxpayers may be entitled to claim a foreign tax credit for income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued under sections 902 and 960) to Libya, with respect to income attributable to the period beginning after December 9, 2004.

HOLDING AND EFFECTIVE DATES

Sections 901(j)(1) and 952(a)(5) apply to the following countries for the following periods:

Country	Starting Date	Ending Date
Afghanistan	January 1, 1987	August 4, 1994
Albania	January 1, 1987	March 15, 1991
Angola	January 1, 1987	June 18, 1993
Cambodia	January 1, 1987	August 4, 1994
Cuba	January 1, 1987	still in effect
Iran	January 1, 1987	still in effect
Iraq	February 1, 1991	June 27, 2004
Libya	January 1, 1987	December 9, 2004
North Korea	January 1, 1987	still in effect
South Africa	January 1, 1988	July 10, 1991
Sudan	February 12, 1994	still in effect
Syria	January 1, 1987	still in effect
Vietnam	January 1, 1987	July 21, 1995
People's Democratic Republic of Yemen	January 1, 1987	May 22, 1990

For guidance on issues arising in a taxable year when section 901(j) ceases to apply to a country, see Rev. Rul. 92-62, 1992-2 C.B. 193.

SECTION 911

LAW AND ANALYSIS

Section 911(a) of the Code allows a "qualified individual" to elect to exclude from gross income his or her "foreign earned income" (as defined in section 911(b)) and "housing cost amount" (as defined in section 911(c)). Section 911(d)(1) generally defines a "qualified individual" as a citizen or resident of the United States whose tax home is in a foreign country and who meets certain requirements of residence or presence in a foreign country.

Section 911(d)(8)(A) provides generally that if travel with respect to any foreign country (or any transaction in connection with such travel) is proscribed by certain regulations during any period, then: (1) foreign earned income does not include income from sources within that country attributable to services performed during that period; (2) housing expenses do not include any expenses allocable to such period for housing in that country, or for housing of the taxpayer's spouse or dependents in another country while the taxpayer is present in that country; and (3) an individual is not treated as a bona fide resident of, or as present in, a foreign country for any day during which the individual was present in that country.

Section 911(d)(8)(B) provides that the regulations described in section 911(d)(8) are those that have been adopted pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1 *et seq.*, or the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and that include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country. Section 911(d)(8)(C), however, provides that the limitations of section 911(d)(8)(A) do not apply to any individual during any period in which that individual's activities are not in violation of the regulations described in section 911(d)(8)(B).

Rev. Rul. 92-63, 1992-2 C.B. 195, identifies three countries subject to regulations described in section 911(d)(8)(B): Cuba (31 C.F.R. 515.560) (1989), Libya (31 C.F.R. 550.207) (1989), and Iraq (31 C.F.R. 575.207) (1991).

On July 29, 2004, the President issued Executive Order 13350 which effectively lifted the sanctions against Iraq effective July 30, 2004. On September 20, 2004, the President issued Executive Order 13357 which effectively lifted the sanctions against Libya, effective September 21, 2004.

HOLDING AND EFFECTIVE DATES

Section 911(d)(8) applies to the following countries for the following periods:

Country	Starting Date	Ending Date
Cuba	January 1, 1987	still in effect
Libya	January 1, 1987	September 20, 2004
Iraq	August 2, 1990	July 29, 2004

With respect to periods prior to (or ending on) the ending dates listed above for Libya and Iraq, individuals whose activities in Libya and Iraq were not in violation of the regulations described in section 911(d)(8)(B) are not subject to the limitations of section 911(d)(8). See, e.g., Notice 2003-52, 2003-2 C.B. 296, which states that pursuant to section 911(d)(8)(C), the limitations of section 911(d)(8)(A) do not apply to individuals engaged in activities in Iraq that are permitted by a specific or general license issued by the United States Department of Treasury Office of Foreign Assets Control.

EFFECT ON OTHER ADMINISTRATIVE GUIDANCE

This ruling modifies and supersedes Rev. Rul. 95-63, 1995-2 C.B. 85, and supersedes Rev. Rul. 2004-103, 2004-45 I.R.B. 783, with respect to the list of countries for which section 901(j) is applicable. This ruling modifies and supersedes Rev. Rul. 92-63, 1992-2 C.B. 195, with respect to the list of countries for which section 911(d)(8) is applicable.

DRAFTING INFORMATION

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