

MEMO# 31818

June 21, 2019

Treasury and IRS Propose Regulations Regarding Withholding on Certain Payments from Retirement Accounts (Including Payments Delivered Outside of US)

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June 21, 2019 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Treasury and IRS Propose Regulations Regarding Withholding on Certain Payments from Retirement Accounts (Including Payments Delivered Outside of US)

The IRS and Treasury Department published proposed regulations regarding income tax withholding on certain distributions from retirement plans and IRAs under Internal Revenue Code section 3405(a) and (b).[\[1\]](#) The proposed regulations would codify and clarify existing guidance provided in IRS Notice 87-7, which provides guidance under section 3405(e)(13)(A) to payors of “designated distributions” with respect to their income tax withholding obligations.[\[2\]](#)

Background

Section 3405(e)(1) defines a “designated distribution” generally as any distribution or payment from or under an employer deferred compensation plan,[\[3\]](#) an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. The general rule under section 3405(a) and (b) is that payors of designated distributions (periodic and non-periodic) are required to withhold income tax, unless the individual has elected not to have withholding apply. However, pursuant to section 3405(e)(13)(A), in the case of a distribution that is “to be delivered outside of the United States and any possession of the United States,” individuals may not elect to waive withholding (with certain exceptions for certain non-US citizens).

Proposed Regulation

Consistent with Notice 87-7, the proposed regulations generally provide that:

- If a payee has provided the payor with a residence address outside of the US, the

payor is required to withhold income tax from designated distributions to the payee.

- If a payee has provided the payor with a residence address within the US, the payor is required to withhold income tax unless the payee has elected no withholding in accordance with the applicable provisions of section 3405.
- If a payee has not provided the payor with a residence address, the payor is required to withhold income tax from designated distributions.

In addition to codifying the guidance from Notice 87-7, the proposed regulations also address situations where the payee provides an address that is an Army Post Office (APO), Fleet Post Office (FPO), or Diplomatic Post Office (DPO), and situations where the payee provides a residence address within the US but provides payment instructions requesting delivery outside of the US.

- In the first case, APO, FPO, and DPO addresses would be treated as located within the US.
- In the second case, the proposed regulations would impose new withholding requirements relating to payees with a residence address within the US but who provide instructions to deliver payments outside of the US. In other words, an election to waive withholding would not apply if the payee (with a US residence) instructs the payment to be sent to a financial institution or other person located outside of the US.

Applicability Date and Comment Deadline

Under the proposal, the regulation would apply with respect to distributions on or after the applicability date of the final regulation. Until a final regulation is published, taxpayers may continue to rely on Notice 87-7. Taxpayers also may rely on the section of the proposed regulation relating to APO, FPO and DPO addresses until the applicability date of the final regulation.

Comments on the proposed regulation are due August 29, 2019.

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endnotes

[1] The proposal is available here:

<https://www.federalregister.gov/documents/2019/05/31/2019-11292/withholding-on-certain-distributions-under-section-3405a-and-b>

[2] All section references are to the Internal Revenue Code.

[3] An employer deferred compensation plan is defined in section 3405(e)(5) as any pension, annuity, profit sharing, or stock bonus plan or other plan deferring the receipt of compensation.

should not be considered a substitute for, legal advice.