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Rev. Rul. 2016-16

ISSUE

Section 274(h) of the Internal Revenue Code (the “Code”) limits deductions for expenses incurred in connection with a convention, seminar, or similar meeting (collectively, a “convention”) held outside the “North American area.” This revenue ruling contains an updated list of all geographical areas currently included in the North American area for purposes of section 274(h).

LAW AND ANALYSIS

Section 274(h)(1) disallows deductions under section 162 for expenses allocable to attendance of an individual at a convention held outside the North American area unless the taxpayer demonstrates that the meeting is directly related to the active conduct of his or her trade or business and the location of the convention satisfies specified standards of reasonableness.

A geographical area may be included in the North American area for purposes of section 274(h) under one of the four provisions described in the paragraphs that follow.

Section 274(h)(3)(A)

Section 274(h)(3)(A) defines the term “North American area” as the United States, its possessions, the Trust Territory of the Pacific Islands, Canada, and Mexico. Under section 7701(a)(9), the United States consists of the fifty states and the District of Columbia. The Internal Revenue Service treats the following as the possessions of the United States for this purpose: American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia. The jurisdictions that formerly constituted the Trust Territory of the Pacific Islands — the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau — are now covered by the compacts with the United States as described in the following two paragraphs.

The Compact of Free Association Act of 1985

The Compact of Free Association Act of 1985, Pub. L. No. 99–239, 99 Stat. 1770 (1986), went into effect on October 21, 1986, with respect to the Republic of the Marshall Islands, and on November 3, 1986, with respect to the Federated States of Micronesia. Section 405 of Title IV of the Compact provides that, for purposes of section 274(h)(3)(A) of the Code, the Republic of the Marshall Islands and the Federated States of Micronesia are included in the North American area.

The Compact of Free Association between the United States and the Republic of Palau

The Compact of Free Association between the United States and the Republic of Palau, Pub. L. No. 99-658, 100 Stat. 3672 (1986), went into effect on October 1, 1994. Section 255(d) of Title II of the Compact with Palau provides that for purposes of section 274(h)(3)(A) of the Code, Palau is included in the North American area.

Section 274(h)(6)

Section 274(h)(6)(A) provides that the term “North American area” includes any beneficiary country if, as of the time a convention begins: (i) there is in effect an agreement described in section 274(h)(6)(C) providing for the exchange of information between the United States and the beneficiary country; and (ii) there is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States.

“Beneficiary country” for this purpose means, under section 274(h)(6)(B), a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983), and Bermuda.

An agreement is described in section 274(h)(6)(C) only if it provides for the exchange of information between the United States and the beneficiary country (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information that may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country, such as provisions respecting bank secrecy and bearer shares. The agreement must also be terminable by either country on reasonable notice and must contain certain disclosure and use restrictions with respect to the information exchanged.

Thus, for a country to be included in the North American area under section 274(h)(6), each of the following conditions must be met:

- (1) The country must be a “beneficiary country” as defined in section 274(h)(6)(B).
- (2) An agreement providing for the exchange of information must be in effect between the country and the United States.
- (3) Such agreement must provide for exchange of information of the breadth, and subject to the provisions, set forth in section 274(h)(6)(C).
- (4) There is not in effect a finding by the Secretary of the Treasury that the tax laws of the beneficiary country discriminate against conventions held in the United States.

Rev. Rul. 2011-26, 2011-48 I.R.B. 803, identified each of the following jurisdictions as a beneficiary country for which these conditions were met: Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Honduras, Jamaica, Netherlands Antilles, Panama, and Trinidad and Tobago.

The paragraphs that follow address special considerations with respect to certain jurisdictions, including changes in status since Rev. Rul. 2011–26.

The Netherlands Antilles

The Netherlands Antilles ceased to exist as part of the Kingdom of the Netherlands on October 10, 2010. Curaçao and Sint Maarten became autonomous territories within the Kingdom of the Netherlands, while the other islands of the Netherlands Antilles — Bonaire, Sint Eustatius, and Saba — became the Caribbean part of the Netherlands. The Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles for the Exchange of Information with Respect to Taxes, signed on April 17, 2002, continues to apply to Curaçao, Sint Maarten, and the Caribbean part of the Netherlands.

Curaçao was designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act on December 23, 2013, Presidential Proclamation No. 9072, 78 Fed. Reg. 80,417 (December 23, 2013), and therefore is a beneficiary country within the meaning of section 274(h)(6)(B). A tax information exchange agreement continues in force between the United States and Curaçao and is an agreement described in section 274(h)(6)(C). There is no finding in effect by the Secretary of the Treasury that the tax laws of Curaçao discriminate against conventions held in the United States. Therefore, Curaçao is included in the North American area under section 274(h)(6) as of December 23, 2013.

Recognizing that this revenue ruling is the first published guidance on the status of Curaçao under section 274(h)(6) following the dissolution of the Netherlands Antilles, the Treasury Department and the IRS have determined that administrative transition relief is appropriate. The IRS will not assert as a basis for disallowing deductions that Curaçao was not included in the North American area under section 274(h)(6) during the period from the dissolution of the Netherlands Antilles on October 10, 2010, through December 22, 2013.

Sint Maarten and the Caribbean part of the Netherlands have not been designated as beneficiary countries under section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act and therefore are not beneficiary countries within the meaning of section 274(h)(6)(B). Accordingly, following the dissolution of the Netherlands Antilles, Sint Maarten and the Caribbean part of the Netherlands are outside the North American area under section 274(h)(6).

Recognizing that this revenue ruling is the first published guidance on the status of Sint Maarten and the Caribbean part of the Netherlands under section 274(h)(6) following the dissolution of the Netherlands Antilles, the Treasury Department and the IRS have determined that administrative transition relief is appropriate. The IRS will not assert that Sint Maarten or the Caribbean part of the Netherlands was outside the North American area under section 274(h)(6) as a basis for disallowing deductions for expenses incurred in attending a convention in Sint Maarten or the Caribbean part of the Netherlands during the period (or with respect to which the taxpayer demonstrates that a nonrefundable contractual obligation existed during the period) from October 10, 2010, through June 27, 2016.

Saint Lucia

Since publication of Rev. Rul. 2011–26, Saint Lucia has enacted implementing legislation regarding the Agreement Between the Government of the United States and Saint Lucia for Tax Cooperation and the Exchange of Information with Respect to Taxes. International Tax Cooperation Act, No. 6 (2012); International Tax Cooperation (Amendment of Schedule) (No. 2) Order, No. 44 (May 5, 2014). With the passage of this implementing legislation, the agreement now is in effect within the meaning of section 274(h)(6)(A)(i) and is an agreement described in section 274(h)(6)(C). Saint Lucia is a beneficiary country within the meaning of section 274(h)(6)(B), and no finding is in effect by the Secretary of the Treasury that the tax laws of Saint Lucia discriminate against conventions held in the United States. Therefore, Saint Lucia is included in the North American area under section 274(h)(6) as of May 5, 2014.

Cayman Islands

Also since the publication of Rev. Rul. 2011–26, the Agreement between the Government of the United States of America and the Government of the Cayman Islands for the Exchange of Information Relating to Taxes entered into force on April 14, 2014. U.S. Department of State, Treaties and Other International Acts Series 14–414, available at <http://www.state.gov/documents/organization/227185.pdf>. This new agreement is an agreement described in section 274(h)(6)(C). However, the Cayman Islands has not been designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and therefore, it is not a beneficiary country within the meaning of section 274(h)(6)(B). Accordingly, the Cayman Islands remains outside the North American area under section 274(h)(6).

British Virgin Islands

The British Virgin Islands is a beneficiary country and has a tax information exchange agreement in effect with the United States, but the agreement is not of the type described in section 274(h)(6)(C) because of certain limitations in scope. Accordingly, the British Virgin Islands is outside the North American area under section 274(h)(6).

HOLDING

For purposes of determining whether deductions are allowed for expenses incurred in connection with a convention, the following areas are included in the North American area as of the effective date of section 274(h) except as otherwise indicated:

1. The fifty states of the United States and the District of Columbia;
2. The possessions of the United States, which for this purpose are American Samoa, Baker Island, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, Howland Island, Jarvis Island, Johnston Island, Kingman Reef, the Midway Islands, Palmyra Atoll, the United States Virgin Islands, Wake Island, and other United States islands, cays, and reefs not part of the fifty states or the District of Columbia;
3. Canada;
4. Mexico;
5. The Republic of the Marshall Islands;
6. The Federated States of Micronesia;
7. The Republic of Palau;

*For expenses incurred
in attending a
convention that began
on or after:*

8. Antigua and Barbuda

February 10, 2003

9. Aruba	September 13, 2004
10. Bahamas	January 1, 2006
11. Barbados	November 3, 1984
12. Bermuda	December 2, 1988
13. Costa Rica	February 12, 1991
14. Curaçao	December 23, 2013*
15. Dominica	May 9, 1988
16. Dominican Republic	October 12, 1989
17. Grenada	July 13, 1987
18. Guyana	August 27, 1992
19. Honduras	October 10, 1991
20. Jamaica	December 18, 1986
21. Panama	April 18, 2011
22. Saint Lucia	May 5, 2014
23. Trinidad and Tobago	February 9, 1990

* For conventions in Curaçao during the period from October 10, 2010, through December 22, 2013, see the transition relief described in this revenue ruling.

For conventions in Sint Maarten, Bonaire, Sint Eustatius, or Saba during the period (or with respect to which the taxpayer demonstrates a nonrefundable contractual obligation existed during the period) from October 10, 2010, through June 27, 2016, see the transition relief described in this revenue ruling.

This revenue ruling will be updated as future developments result in the inclusion of other areas in, or the exclusion of areas from, the North American area.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2011–26 is modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Nathaniel B. Parker of the Office of Associate Chief Counsel (International), Branch 7. For further information regarding this revenue ruling, contact the principal author at (202) 317-6941 (not a toll-free number).