

No. 2014-431  
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## **Notice 2014-45 - Clarification of the application of Notice 2014-44 to retroactive check-the-box elections**

July 29: The IRS today released an advance copy of Notice 2014-45 to clarify that to-be-issued regulations (as announced last week in Notice 2014-44) will apply to determine the tax consequences under section 901(m) of an entity classification election—i.e., a check-the-box election—made under Reg. section 301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, including whether a disposition results from the election for purposes of section 901(m) and the treatment of any “unallocated basis difference” that results from this election.

Read [Notice 2014-45](#) [PDF 12 KB]

### **Background**

Last week, the IRS issued Notice 2014-44 as guidance relating to certain dispositions of assets following a section 901(m) covered asset acquisition (CAA). Specifically, Notice 2014-44:

- Provides a definition of a “disposition” to which section 901(m)(3)(B)(ii) applies
- Provides successor rules under which the unallocated basis difference in relevant foreign assets carries over to the new owner upon a disposition of such assets
- States that Treasury and the IRS will issue future regulations reflecting this guidance

Notice 2014-44 states that the to-be-issued regulations generally will apply to dispositions that occur on or after, and any “unallocated basis difference” with respect to a relevant foreign asset as of, July 21, 2014.

### **Notice 2014-45**

The IRS today issued Notice 2014-45 in order “to prevent abuse” by providing that the future regulations, as announced in Notice 2014-44, will also apply to determine the tax consequences under section 901(m) of an entity classification election—i.e., a check-the-box election—made under Reg. section 301.7701-3:

- That is filed on or after July 29, 2014, and
- That is effective on or before July 21, 2014, including whether a disposition results from the election for purposes of section 901(m) and the treatment of any “unallocated basis difference” that results from this election

Notice 2014-45, therefore, provides that a retroactive check-the-box-election filed on or after July 29, 2014, and effective on or before July 21, 2014, will be subject to the forthcoming section 901(m) regulations, even though the transactions that are deemed to occur under Reg. section 301.7701-3 as a result of the election could occur for U.S. federal income tax purposes prior to effective dates provided by Notice 2014-44.

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