

## Report on recent US international tax developments - 22 November 2019

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The Internal Revenue Service (IRS) on 18 November 2019 issued final regulations ([T.D. 9883](#)) on the attribution of ownership of stock or other interests for purposes of determining whether a person is a related person with respect to a controlled foreign corporation (CFC) under Internal Revenue Code Section 954(d)(3). The final regulations also provide rules for determining whether a CFC is considered to derive rents in the active conduct of a trade or business for purposes of computing foreign personal holding company income (FPHCI). The final regulations adopt proposed regulations ([REG-125135-15](#)) issued in May 2019 without change. The final regulations are effective 19 November 2019.

The final regulations have important consequences for computing subpart F income and global intangible low-taxed income inclusions (as well as for other provisions). They could cause amounts that a taxpayer had not treated as subpart F income to qualify as subpart F income (and vice versa). The regulations generally finalize two major changes.

First, they modify how certain constructive ownership rules under Section 318(a) apply for purposes of characterizing a person as a "related person" with respect to a CFC under Section 954(d)(3). These modifications apply to an amount that a CFC receives or accrues on or after 17 May 2019, if the receipt or accrual is "accelerated" with a principal purpose of avoiding the modifications.

Second, the regulations modify the manner in which royalties paid or accrued by a CFC are treated for purposes of applying the “safe harbor” threshold of the “active marketing exception” to “foreign personal holding company income” (a component of subpart F income) for certain rents earned by the CFC.

The Office of Management and Budget's Office of Information and Regulatory Affairs on 20 November released its [fall 2019 unified agenda](#). One new project that was not included in the IRS's [2019-2020 priority guidance plan](#) concerns final regulations that would clarify the application of Reg. Section 1.964-1 relating to the rules for controlling domestic shareholders to adopt or change a method of accounting on behalf of foreign corporations. Proposed regulations date from November 2011.

The Organisation for Economic Co-operation and Development (OECD) held a public consultation in Paris on 21-22 November on the proposal from the OECD Secretariat for a “unified approach” under Pillar One of the ongoing project titled “Addressing the Tax Challenges of the Digitalisation of the Economy.” The OECD released the Pillar One consultation document on 9 October 2019.

Separate from the public consultation, an OECD official this week confirmed that digital taxation will be addressed through a multilateral solution agreed to through the OECD framework by the end of 2020. The official was quoted as saying that unilaterally-imposed digital services taxes (DSTs) are incompatible with a BEPS 2.0 Pillar solution. He indicated that a multilateral, consensus-based solution agreed to by the Inclusive Framework is the only way to address the issue.

One key issue to be resolved will be some form of dispute resolution, according to another OECD official this week. The official was quoted as saying that while “some countries will not agree to binding arbitration” – an idea that the United States Government has strongly supported – the OECD is exploring other ways to getting to binding dispute resolution without arbitration.

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## Endnote

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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