

## Report on recent US international tax developments - 10 July 2020

---

### **NEW!** EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

The United States (US) Treasury and the Internal Revenue Service (IRS) on 9 July released final regulations ([TD 9901](#)) under Internal Revenue Code<sup>1</sup> Section 250, which allows an annual deduction to a domestic corporation for its foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI) inclusion. The final regulations are scheduled for publication in the Federal Register on 15 July 2020.

The final regulations retain the basic approach and structure of the proposed regulations published in March 2019 but contain several significant, and mostly taxpayer-favorable, changes. For example, the final regulations:

- ▶ Modify the documentation requirements for establishing foreign use to no longer require taxpayers to obtain specific documentation to establish: (i) foreign person status; (ii) foreign use with respect to sales of certain property sold directly to end users; or (iii) the location of certain services provided to consumers
- ▶ Provide that the following are presumed made to a foreign person: (1) foreign retail sales; (2) sales of general property delivered to an address that is outside the United States; (3) other sales of general property to recipients whose billing address is outside the United States; and (4) sales of intangible property to recipients whose billing address is outside the United States

- ▶ Deem a sale of general property to be for a foreign use if: (i) the property is subject to manufacturing, assembly or other processing outside the United States; or (ii) the property is, in specified cases, delivered to an end user (e.g., a foreign retail sale, property delivered to a location outside the United States, or an electronic transfer of digital content outside the United States)
- ▶ Deem a sale of intangible property to be for a foreign use if the end user of the intangible is located outside the United States, including when the intangible is used to provide a service outside the United States
- ▶ Relax certain provisions that apply to limit a deduction for related-party sales that are followed by unrelated-party sales

The final regulations generally apply only to tax years beginning on or after 1 January 2021. For tax years beginning before 1 January 2021, taxpayers may apply the final regulations or rely on the proposed regulations (including the documentation transition rule whereby a transaction may be substantiated by any reasonable documentation maintained in the ordinary course).

In other *Tax Cuts and Jobs Act*-international guidance developments, the US Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) completed its review of final regulations on the GILTI high-tax exclusion under Sections 951(b) and 951A. Along with the final regulations, OIRA also completed its review of proposed regulations under Section 954(b)(4) on high-taxed subpart F income and proposed rules under Section 964 related to earnings and profits of a foreign corporation.

The Director of the IRS Advance Pricing and Mutual Agreement program this week was quoted as saying there has been an uptick in multilateral advance pricing agreement (APA) requests. The official also said that multilateral APAs are representing a broader range of transactions and not limited to specific global financial transactions as in the past. The APMA Director noted that the IRS is seeing more multilateral APA requests that include a "sandwiched" foreign-owned US entity involving related transactions with the foreign parent and other foreign subsidiaries.

The Organisation for Economic Co-operation and Development (OECD) on 3 July released [Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#) as approved by the OECD/G20 Inclusive Framework on BEPS on 29 June 2020. The Model Rules lay out a system for requiring digital platforms to collect information on the income realized by those offering accommodation, transport and personal services through platforms and to report the information to tax authorities.

The release by the OECD of the Model Rules for reporting by platform operators will have significant implications. As the Model Rules are implemented by individual countries, tax administrations will obtain new access to information on the platform sellers. The release of the Model Rules will make it easier for interested countries to put information reporting regimes for platforms in place. The Model Rules are also expected to support a more uniform approach to the adoption of reporting obligations for platforms by individual countries. Potentially affected companies should follow developments and assess what changes to their processes and technology might be needed to enable reporting of the type contemplated in these projects.

---

## Endnote

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

For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP, International Tax and Transaction Services, Washington, DC**

- ▶ Arlene Fitzpatrick      [arlene.fitzpatrick@ey.com](mailto:arlene.fitzpatrick@ey.com)
- ▶ Joshua Ruland          [joshua.ruland@ey.com](mailto:joshua.ruland@ey.com)

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

© 2020 EYGM Limited.  
All Rights Reserved.

EYG no. 004756-20Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](http://ey.com)**