14 August 2020

Global Tax Alert

Report on recent US international tax developments – 14 August 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) Senate adjourned on 13 August for the August recess and will formally reconvene on 8 September. The House has also adjourned and will return to Washington on 14 September. Both Senators and House members will be given at least 24 hours' notice to reconvene if the Trump Administration and congressional Democrats are able to negotiate a coronavirus aid deal.

The Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) on 7 August completed its review of final rules on the limitation on the dividends received deduction (DRD) for dividends received from certain foreign corporations and amounts eligible for the Internal Revenue Code[1] Section 954 look-through exception.

In June 2019, the Government released proposed and temporary regulations under Sections 245A and 954(c)(6). Those regulations deny, in whole or in part, the Section 245A DRD to dividends (or gain treated as dividends under Section 1248(a)) sourced from earnings and profits (E&P) generated from certain transactions occurring after 31 December 2017, but before the close of a tax year to which the provisions of Section 951A do not apply (the GILTI[2] gap period). They also deny, in whole or in part, the Section 245A DRD to dividends sourced from E&P generated from tested income or subpart F income that would have been included in a US shareholder's income under Sections 951(a) or 951A(a), but for the transfer or dilution of that shareholder's direct or indirect interest in a controlled foreign corporation (CFC). The regulations apply retroactively

Building a better working world

to dividends paid after 31 December 2017. The regulations provide rules that would also, in similar circumstances, deny the application of the Section 954(c)(6) deduction, in whole or in part, for dividends paid to CFCs.

OIRA also completed its review of proposed regulations coordinating the application of certain regulations under Section 245A and Section 951A. The OMB website describes the *Tax Cuts and Jobs Act*-related proposed rules as coordinating the disqualified basis rules of Reg. Section 1.951A-2(b) and the extraordinary disposition rules of Reg. Section 1.245A-5(c) and (d), generally to prevent excess taxation that could otherwise occur when the rules are applied to the same transaction.

Internal Revenue Service (IRS) officials this week reiterated that the recently released draft Schedules K-2 and K-3 for the 2021 tax year IRS Form 1065, *U.S. Return of Partnership Income* were guided by the need to standardize format, rather than to request additional information. One official was quoted as saying that the information was already being reported to partners in various formats and added that the changes were necessitated by amendments to the international tax regime by the *Tax Cuts and Jobs Act*.

Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Global Intangible Low-Taxed Income.

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
- Joshua Ruland joshua.ruland@ey.com

EY | Assurance | Tax | Transactions | Advisory

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.

EYG no. 005642-20Gbl

1508-1600216 NY
ED None

ey.com