

## Report on recent US international tax developments - 28 August 2020

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The United States (US) Treasury and the Internal Revenue Service (IRS) on 21 August released final regulations under Internal Revenue Code Section 245A ([TD 9909](#)) providing anti-abuse rules for "extraordinary dispositions" and "extraordinary reductions." These regulations finalize proposed regulations and replace temporary regulations that were issued in June 2019. The final regulations continue to deny the Section 245A dividends received deduction for 50% of the dividends paid by a specified 10%-owned foreign corporation to the extent attributable to earnings and profits from extraordinary dispositions.

The final regulations are substantially similar to the proposed and temporary regulations, with a limited number of generally taxpayer-favorable changes at the margin. While the substantive rules did not change much, taxpayers should pay close attention to new examples illustrating anti-abuse rules. Several new examples illustrate the anti-abuse rules, and one of them would extend the application of the extraordinary-disposition rules beyond "dispositions."

The final regulations apply to tax periods ending on or after 14 June 2019, while Temp. Reg. Section 1.245A-5T continues to apply to distributions made after 31 December 2017, to which the final regulations do not apply. Taxpayers may apply the final regulations retroactively, provided that they and all related parties apply them consistently.

At the same time, Treasury and the IRS released new proposed regulations ([REG-124737-19](#)) that would coordinate the final regulations with certain rules under Section 951A that effectively deny deductions arising from “disqualified basis” that is generated during the so-called GILTI<sup>2</sup> gap period.

The IRS in Announcement 2020-13 disclosed that the US and Swiss competent authorities entered into an agreement establishing a competent authority arrangement regarding implementation of the arbitration process in Article 25, paragraphs 6 and 7, of the US-Switzerland income tax treaty.

According to the treaty, arbitration will be available where, pursuant to the Article 25 mutual agreement procedure, the competent authorities are unable to reach a complete agreement. In addition, an unresolved competent authority request that originated in a bilateral Advance Pricing Agreement request will be subject to arbitration procedures. Certain cases described in the competent authority arrangement are not eligible for arbitration.

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## Endnotes

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

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