

Report on recent US international tax developments - 9 October 2020

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The United States (US) Treasury and the Internal Revenue Service (IRS) on 7 October published final partnership withholding regulations ([TD 9926](#)) under Internal Revenue Code¹ Section 1446 with regard to dispositions of certain partnerships engaged in a US trade or business. Section 1446(f), enacted by the *Tax Cuts and Jobs Act*, imposes a new withholding tax on transfers by non-US persons of interests in partnerships that are engaged in a US trade or business. Section 1446(f) is an enforcement mechanism for the substantive tax imposed by Section 864(c)(8), which imposes tax on non-US partners that sell interests in such partnerships to the extent the gain is allocable to the partnership's US business assets.

The final regulations retain the basic approach and structure of the proposed regulations ([REG-105476-18](#)) issued in May 2019, with certain revisions. They retain the general rule in proposed Reg. Section 1.1446(f)-2(a) that requires withholding on the transfer of a partnership interest unless an exception or adjustment to withholding applies. The final regulations add a rule, however, that provides that any person that is required to withhold under Section 1446(f) is not liable for failure to withhold if it can establish that the transferor had no gain under Section 864(c)(8) that is subject to tax on the transfer. The final rules also add a withholding exception if the partnership certifies to the transferee that it is not engaged in a US trade or business. The same exception is added for a publicly traded partnership that is not engaged in a US trade or business.

The final regulations are effective upon publication in the Federal Register.

The IRS Large Business and International Division (LB&I) has announced a new compliance campaign that takes aim at nonresident aliens that fail to report rental income from US property. According to the IRS's [5 October announcement](#), this campaign will address noncompliance through examinations, education, and outreach.

Angel Gurría, OECD² Secretary-General, launched a meeting of the Inclusive Framework on BEPS,³ on 8-9 October, to discuss final blueprints for Pillar 1 and Pillar 2 of the BEPS 2.0 project, telling members “key political decisions remain, and some further technical issues need to be resolved.” The OECD reportedly will publish final blueprints for Pillar 1 and Pillar 2, along with an impact assessment, on 12 October, according to an earlier statement by Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration. The blueprints are expected to be delivered to the G-20 finance ministers for their 14 October meeting. Public consultations on the pillar drafts are planned to begin in mid-October, according to the OECD tax director, with comments due before 25 December 2020.

In other OECD news, the organization reportedly plans to release practical guidance in the transfer pricing area this year that addresses issues specifically related to the COVID-19 pandemic. The guidance will be in response to a recent consultation that took place following a questionnaire that was issued to multinationals last summer, requesting information on pressing transfer pricing issues.

An OECD official this week was quoted as saying that the most important issue cited by both multinationals and governments is the allocation of government support that has taken place as a result of the pandemic. Governments are concerned that the aid they have provided not be transferred abroad through transfer pricing arrangements. Other issues that are likely to be covered in the coming guidance include benchmarking 2020 financial results, loss allocation to limited risk entities and the effects of the COVID-19 pandemic on advance pricing agreements.

Endnotes

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Organisation for Economic Co-operation and Development.
3. Base Erosion and Profit Shifting.

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