

## Report on recent US international tax developments - 20 November 2020

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A senior Internal Revenue Service (IRS) official this week said the Government hopes to release a revenue procedure by the end of the year on the interaction of the Global Intangible Low-taxed Income (GILTI) provision and a controlled foreign corporation's (CFC) change of accounting method. The United States (US) Treasury and the IRS had indicated in the final GILTI regulations (issued in June 2019) that they planned to issue a revenue procedure "further expanding the availability of automatic consent for depreciation changes and updating the terms and conditions in ... Rev. Proc. 2015-13 (related to the source, separate limitation classification, and character of Section 481(a) adjustments) to take into account Section 951A." Another IRS official was quoted as saying the future revenue procedure would also clarify that an Internal Revenue Code<sup>1</sup> Section 481(a) adjustment is an increase or decrease to tested income since it is an increase or decrease to CFC income.

The official also said final regulations on the aggregate treatment of partnerships for subpart f purposes are on the horizon, and that the final rules could be accompanied by proposed rules on related passive foreign investment company issues. The IRS is also reportedly working on a Section 367(d) project that would address issues regarding intangible property that previously was transferred overseas and now brought back to the US. A new international tax project on Section 864(f) on the election to allocate interest on a worldwide basis is also part of the IRS's 2021 priority guidance plan that was released this week.

The IRS and Mexico's Tax Administration Service (SAT) have agreed to renew the Qualified Maquiladora Approach Agreement (QMA), a coordination arrangement most recently agreed to between the US and Mexican competent authorities in 2016. The QMA allows a US taxpayer to avoid double taxation on the contract manufacturing and assembly functions performed by its maquiladora if the Mexican taxpayer enters into a unilateral Advance Pricing Agreement (APA) with the SAT's Large Taxpayer Division under terms negotiated in advance between the competent authorities. Mexican maquiladoras usually operate as contract manufacturers of foreign multinationals.

Over 700 US taxpayers with maquiladoras potentially qualify for the application of this agreement. In addition to providing certainty for tax years through 2019, the 2016 QMA also committed the competent authorities to commence work on another renewal of the QMA to cover tax year 2020 and beyond, and to take into account in those discussions the impact of current economic, commercial, and public health conditions affecting taxpayers and workstreams within the Organisation for Economic Co-operation and Development's (OECD) Working Party No. 6 and the Forum on Tax Administration.

A senior IRS official this week was quoted as saying that the Government is working on new guidance related to stock-based compensation in relation to cost sharing arrangements that will address the *Altera v. Commissioner* decision. The guidance reportedly will cover the effects of

sharing stock-based compensation on the calculation of the buy-in payment or platform contribution transaction, entity-level effects, the timing of an inclusion, and the impact of the *Tax Cut and Jobs Act's* Section 965 transition tax and GILTI provisions. The official indicated the guidance is a high priority and said that "hopefully we're able to get something out at some point relatively soon."

Although *Altera* is only effective in areas within the Ninth Circuit's purview, IRS officials believe the "case will help the Service and the government and availing in other circuits," with one goal being to avoid a split in the circuits.

An IRS official this week was quoted as saying that there is no overall policy against issuing private letter rulings in regard to the tax treatment of virtual currency transactions, noting that the IRS addresses issues on a case-by-case basis. The official added that while summary statistics for 2019 are not yet in, the Government has seen a "steady increase in income and gain reported for taxpayers' virtual currency transactions" for tax years 2013 through 2018.

The OECD on 18 November issued a [consultation document](#) on BEPS Action 14, Making Dispute Resolution More Effective, seeking stakeholder input on proposals for the 2020 review of the Action 14 minimum standard. Among the proposals to strengthen Action 14 is to increase the use of bilateral APAs and numerous suggestions surrounding the Mutual Agreement Procedure process. A public consultation meeting on the 2020 review of BEPS Action 14 will be held virtually in early 2021.

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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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