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Global Tax Alert

Report on recent US international tax developments - 3 May 2019

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United States (US) Internal Revenue Service (IRS) officials this week offered some insights into upcoming US international tax regulations.

First, the IRS expects soon to release proposed regulations under new Internal Revenue Code[1] Section 1446(f) on withholding for non-publicly traded partnerships. According to an IRS official, the proposed regulations will include certain rules from a previously issued notice, as well as further elaborations, clarifications and new provisions.

In April 2018, the IRS issued Notice 2018-29 providing interim guidance under the Section 1446(f) withholding rules for dispositions of interests in non-publicly traded partnerships that would generate gain treated as effectively connected with the conduct of a US trade or business under Section 864(c)(8). The Notice generally did not suspend or delay the new Section 1446(f) withholding rules, which apply to sales, exchanges or dispositions of partnership interests occurring after 31 December 2017. The Notice suspended, however, a partnership's obligation to withhold when the transferee fails to withhold, and includes rules designed to facilitate implementation of Section 1446(f) and minimize over-withholding. The suspension of withholding for sales of interests in publicly traded partnerships under Notice 2018-8 remained in place.

The IRS official was quoted as saying the proposed regulations will contain rules for withholding on dispositions of publicly traded partnership interests, and when implemented would remove the withholding suspension in Notice 2018-8.

Building a better working world

The IRS official also said that temporary regulations published in early January 2017 that implement the *Foreign Account Tax Compliance Act* and nonresident withholding (Chapter 4, Sections 1471-1474) will be finalized soon. Those regulations are scheduled to sunset at the end of 2019. Chapter 4 generally requires US withholding agents to withhold tax on certain payments to foreign financial institutions that do not agree to report certain information to the IRS regarding their US accounts. It also requires US withholding agents to withhold on certain payments to certain nonfinancial foreign entities that do not provide information on their substantial US owners to withholding agents.

Finally, another IRS official was quoted as saying the IRS will soon release proposed regulations on the repeal of Section 958(b)(4). The *Tax Cuts and Jobs Act* repealed Section 958(b)(4), which generally prevented stock owned by a foreign shareholder from being attributed downward to a domestic subsidiary. The official said the regulations would address "certain non-subpart F issues" that were affected by the repeal.

The Indian Government has announced that it ratified, on 25 April, the pending US-India agreement on the automatic exchange of country-by-country (CbC) reports. The new agreement, signed on 27 March 2019, will enable both countries to exchange CbC reports filed by ultimate parent entities of international groups in the respective jurisdictions, for financial years beginning on or after 1 January 2016. Therefore, Indian constituent entities of US headquartered international groups that have already filed CbC reports in the United States would not be required to file CbC reports locally in India. Consistent with this, the IRS website has been updated to indicate that local filing will not be required in India.

Endnote

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

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