Global Tax Alert

Report on recent US international tax developments 10 May 2019

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The United States (US) Internal Revenue Service (IRS) on 7 May released proposed regulations under new Internal Revenue Code Section 1446(f) on withholding for non-publicly traded partnerships. Section 1446(f), enacted by the Tax Cuts and Jobs Act, provides rules for withholding on the transfer of a partnership interest described in Section 864(c)(8). Section 1446(f) generally provides that if a portion of the gain (if any) on any disposition of an interest in a partnership would be treated under Section 864(c)(8) as effectively connected with the conduct of a US trade or business, the transferee is required to deduct and withhold a tax of 10% of the amount realized on the disposition.

The proposed regulations provide rules for withholding, reporting, and paying tax under Section 1446(f) upon the sale, exchange, or other disposition of an interest in a partnership described in Section 864(c)(8) and proposed Reg. Section 1.864(c)(8)-1. The proposed regulations contain many of the rules described in Notice 2018-29, with a number of modifications (several of which are taxpayer-favorable) made in response to public comments on the Notice.

The proposed regulations also contain reporting provisions relating to Section 864(c)(8), provisions implementing withholding under Section 1446(f)(4), and provisions clarifying the reporting rules applicable to transfers of partnership interests subject to Section 6050K. In addition, the proposed regulations include rules to implement withholding by brokers on transfers of certain interests in publicly traded partnerships subject to Section 1446(f)(1),



and make changes to the reporting rules and procedures for adjusting withholding under Sections 1461, 1463, and 1464.

The proposed regulations generally apply to distributions made on or after the date that is 60 days after the date the regulations are published as final regulations in the Federal Register. The US Government is expected soon to release proposed regulations affecting foreign pension funds investing in US real estate. The Office of Management and Budget's Office of Information and Regulatory Affairs this week reportedly completed its review of proposed rules that provide guidance on the Section 897(I) exception from the Foreign Investment in Real Property Tax Act (FIRPTA) for interests held by qualified foreign pension funds.

The European Commission this week sent a letter to the US Treasury Department commenting on the Section 250 proposed regulations, suggesting that the Foreign Derived

Intangible Income (FDII) deduction violates international trade law. According to the letter, "The design of the FDII deduction is incentivizing tax avoidance and aggressive tax planning by offering a possibility to undercut local tax rates in foreign economies." The Commission further described the FDII is an "incentive for foreign economies to lower corporate tax rates in a 'race to the bottom." The letter included a statement that the European Commission was "ready to protect the economic interest of the European Union in light of discriminatory rules and practices."

Treasury and the IRS issued proposed regulations under Section 250 in early March 2019, providing guidance for calculating the deduction allowed to a domestic corporation for its FDII and global intangible low-taxed income (GILTI). The proposed regulations primarily provide guidance for calculating a domestic corporation's FDII.

Endnote

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

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