

Report on recent US international tax developments - 7 June 2019

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

The United States (US) Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) on 6 June completed its review of eagerly-anticipated final Global Intangible Low-taxed Income (GILTI) regulations, with a senior US Treasury official this week quoted as saying they are on track for release before 22 June. OIRA also completed review of proposed regulations relating to GILTI and Internal Revenue Code¹ Section 951(b). The final and proposed regulations are meant to be seen as a package, but if the proposed rules are not ready for release by 22 June, the 300+ page final regulations will be released by themselves. The official disclosed that the proposed GILTI regulations will go beyond comments that were received on the proposed rules issued in September 2018, and said they should be "favorably received."

OMB 's OIRA also completed on 4 June its review of two packages of regulations under Section 245A, a package of proposed regulations and a separate package of interim final regulations, which also included regulations under Section 91, clearing the way for release of the participation exemption guidance by Treasury. Both provisions were enacted by the *Tax Cuts and Jobs Act*. Section 245A provides for a deduction for the foreign-source portion of dividends received by domestic corporations from a specified 10% owned foreign corporation.

The Internal Revenue Service (IRS) on 6 June issued proposed regulations ([REG-109826-17](#)) addressing (1) the qualification for the exception from taxation under Section 897 for gain or loss attributable to certain US real property interests (USRPIs) held by qualified foreign pension funds, and (2) withholding requirements under Sections 1445 and 1446 for foreign pension funds' dispositions of USRPIs.

The proposed regulations generally would apply with regard to dispositions of USRPIs and distributions described in Section 897(h) that occur on or after the date of publication as final regulations in the Federal Register. Taxpayers may rely on the proposed regulations regarding dispositions or distributions occurring on or after 18 December 2015, and before the applicability date of the final regulations, if the taxpayer consistently and accurately applies the rules in the proposed regulations. Comments on the proposed regulations must be submitted to the IRS no later than 5 September 2019 (i.e., 90 days after the proposed regulations are published in the Federal Register).

The IRS Large Business and International (LB&I) Division recently issued a directive withdrawing Directive LB&I-04-0118-004 (RAB Share Directive), dated January 2018, which provided instructions for IRS examiners on transfer pricing issue selection in regard to Reasonably Anticipated Benefits (RABs) in Cost Sharing Arrangements (CSAs). Directive LB&I-04-0118-004 directed examiners to cease developing adjustments to CSAs exclusively based on changing a taxpayer's multiple RAB shares to a single RAB share when subsequent platform contribution transactions are added to an existing CSA, until a Service-wide position was finalized.

The new directive, effective 21 May 2019, provides that examination of these CSA issues can now continue "with the application of the most reliable method depending on the facts and circumstances of each case to determine the appropriateness of using single or multiple RAB shares with respect to a single CSA."

Endnote

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

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax Services, Washington, DC

- ▶ Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- ▶ Joshua Ruland joshua.ruland@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 002784-19Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com