26 July 2019

Global Tax Alert

Report on recent US international tax developments – 26 July 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) Internal Revenue Service (IRS) published final regulations (T.D. 9871) under Internal Revenue Code[1] Section 704(b) relating to the allocation of creditable foreign tax expenditures (CFTEs) by a partnership. The final regulations adopt, with minor changes, the temporary (T.D. 9748) and proposed (REG-100861-15) regulations published on 4 February 2016.

CFTEs are foreign income taxes paid or accrued by a partnership that are eligible for a credit under Section 901(a) or a US income tax treaty. The IRS and Treasury determined that a partnership's allocation of CFTEs cannot have substantial economic effect within the meaning of Section 704(b) and the regulations. Thus, CFTEs must be allocated in accordance with the partners' interest in the partnership to be respected. The existing regulations under Section 704(b) provide a safe harbor rule for a partnership to allocate CFTEs in a manner deemed to be in accordance with the partners' interest in the partnership. To apply the safe harbor, a partnership must: (i) determine the partnership's CFTE categories, (ii) determine the partnership's net income in each CFTE category, and (iii) allocate the partnership's CFTEs to each category. To satisfy the safe harbor, a partnership's allocations of CFTEs in a category must be in proportion to the allocations of the partnership's net income in the CFTE category.

The 2019 final regulations, like the 2016 temporary and proposed regulations, address: (i) the effect of a transferee partner's Section 743(b) adjustment on a partnership's net income in a CTFE category, (ii) the effect of certain allocations

Building a better working world

and guaranteed payments in computing a partnership's net income in a CFTE category, and (iii) certain disregarded payments within a partnership. The final regulations are generally the same as the temporary and proposed regulations, except for a number of technical and clarifying changes. The 2019 final regulations are effective 24 July 2019.

On 22 July, Altera Corp. filed a petition for a rehearing *en banc* with the Ninth Circuit. The petition requests that the Ninth Circuit rehear its challenge of the 2003 cost-sharing regulations and reverse the Ninth Circuit's opinion of 7 June. The Ninth Circuit has 45 days to respond.

On 23 July, the United Kingdom (UK)'s Conservative party announced that Boris Johnson will succeed Theresa May on 24 July as the next UK Prime Minister. On 24 July, the European Parliament's Brexit steering group held a meeting with the European Commissioner's chief Brexit negotiator. One European Commission official commented that "We look forward to working constructively with [Prime Minister Boris Johnson] when he takes office to facilitate the ratification of the withdrawal agreement and achieve an orderly Brexit."

On a separate matter, the UK is continuing to move forward with adopting European Union (EU) legislation requiring promoters, intermediaries, and taxpayers to notify HM Revenue & Customs (HMRC) of cross-border arrangements that bear hallmarks of aggressive tax planning. HMRC on 22 July, published draft regulations and a consultation document requesting feedback on UK implementation of the sixth directive on administrative cooperation (2018/822), also known as DAC6. The directive, which the EU adopted in May 2018, also provides for mandatory automatic exchange of information between EU tax authorities on reportable cross-border arrangements.

The draft regulations not only compel promoters, intermediaries, and taxpayers to report potentially aggressive tax planning schemes to HMRC but also allow HMRC to share this information with other EU Member States, which will in turn share this information with the UK. EU Member States have until 31 December to transpose DAC6, but the regulations will not come into force until 1 July 2020.[2]

Eleven low- and no-tax jurisdictions have met the Organisation for Economic Co-operation and Development (OECD)'s new substance requirements, according to the OECD's Forum on Harmful Tax Practices (FHTP). In a 23 July report, the FHTP issued the results of its first review of domestic laws of "no or only nominal tax jurisdictions," which have either no corporate tax or only a nominal corporate tax. The review, was based on how well the domestic legal frameworks of 12 jurisdictions met the OECD's new substantial activities standards under Action 5 of the Base Erosion and Profit Shifting project. Anguilla, the Bahamas, Bahrain, Barbados, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey, Turks and Caicos Islands, and the United Arab Emirates (UAE) were under review. The FHTP concluded that all 12 jurisdictions, with the exception of the UAE, met the new standard. All jurisdictions were found to have introduced economic substance requirements that took effect from 1 January, according to the report. The UAE will address one technical issue as soon as possible. An annual monitoring process of the 12 jurisdictions will start to keep track of changes in their legal frameworks including implementation and monitoring.[3]

Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. See EY Global Tax Alert, *UK publishes draft legislation and consultation paper on EU Mandatory Disclosure Regime,* dated 24 July 2019 for details.
3. See EY Global Tax Alert, *OECD releases update on peer review of preferential tax regimes and no or only nominal tax jurisdictions*, dated 24 July 2019 for details.

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

EY | Assurance | Tax | Transactions | Advisory

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. 003512-19Gbl

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