

Report on recent US international tax developments - 4 October 2019

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The United States (US) Government on 1 October released [proposed regulations](#) that would limit the impact of the repeal of Internal Revenue Code¹ Section 958(b)(4) in determining the controlled foreign corporation (CFC) status of a foreign corporation when applying certain provisions of the Code. Before its repeal by the *Tax Cuts and Jobs Act*, Section 958(b)(4) prevented a US subsidiary from being treated as owning stock in a foreign-owned brother-sister subsidiary for purposes of determining whether the brother-sister foreign subsidiary was a CFC.

The proposed regulations do not provide broad relief from the repeal of Section 958(b)(4), but instead offer targeted relief by effectively causing select Code provisions to apply as if Section 958(b)(4) had not been repealed. The proposed regulations notably would:

- ▶ Modify Section 267(a)(3) to allow a taxpayer to deduct accrued but unpaid amounts (other than interest) owed to a CFC when (i) the payment is not subject to withholding tax under a treaty, and (ii) the CFC does not have any US shareholders (as defined in Section 951(b)) that own (within the meaning of Section 958(a)) stock of the CFC
- ▶ Determine CFC status without regard to the repeal of Section 958(b)(4) for purposes of the Section 1297(e) Passive Foreign Investment Company asset test

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