

## 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 Code<sup>1</sup> 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offer targeted relief by effectively causing select Code provisions to apply as if Section 958(b)(4) had not been repealed.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

- ▶ Determine CFC status without regard to the repeal of Section 958(b)(4) for purposes of the CFC foreign tax credit look-through rules under Section 904(d)(3)
- ▶ Provide additional rules, including narrowing the gain recognition agreement triggering event exception in Reg. Section 1.367(a)-8(k)(14) and determining CFC status for purposes of applying Section 332(d)(3) to the liquidation of an applicable holding company

The proposed regulations generally would apply on or after 1 October 2019. For taxable years before taxable years covered by the regulations, taxpayers generally may apply the rules in the final regulations to the last taxable year of a foreign corporation beginning before 1 January 2018, if certain conditions are met.

On the same day, the Internal Revenue Service (IRS) also issued Rev. Proc. 2019-40 related to the repeal of Section 958(b)(4). According to the IRS, the revenue procedure “limits the inquiries required by U.S. persons to determine whether certain foreign corporations are controlled foreign corporations” and “allows certain unrelated minority U.S. shareholders to rely on specified financial statement information to calculate their subpart F and GILTI inclusions and satisfy reporting requirements” for certain CFCs if more detailed tax information is unavailable.

The revenue procedure, which provides a series of safe harbors, would apply generally as of the last taxable year of a foreign corporation beginning before 1 January 2018.

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## Endnote

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

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