

## Report on recent US international tax developments - 25 October 2019

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The United States (US) Treasury and Internal Revenue Service (IRS) "pre-rule" on the treatment of certain interests in corporations as stock or indebtedness that has been under review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) since 8 October, returned to Treasury on 21 October for final review. Although there is speculation, there is no firm confirmation as to what aspect of the Internal Revenue Code (IRC)<sup>1</sup> Section 385 debt/equity regulations the pre-rule addresses.

A senior IRS official this week was quoted as saying that pending foreign tax credit regulations will include guidance on the apportionment of research and development expenses. The regulations will also cover damage awards, settlement payments and the assignment of foreign taxes to income groups. Final and temporary foreign tax credit regulations have been listed as pending review at OIRA since 3 October.

Besides the foreign tax credit regulations, the only international guidance currently listed as pending OIRA review on its website are the final and proposed Section 59A Base Erosion and Anti-abuse Tax (BEAT) regulations. Both BEAT regulatory packages have been with OIRA since 16 September 2019.

An IRS official this week warned taxpayers to expect more compliance letters on virtual currency transactions. The official was quoted as saying the 10,000 compliance letters sent to taxpayers that were announced in July 2019 were

not an anomaly. The initial group of letters was sent to taxpayers who potentially failed to report income and pay the resulting tax from virtual-currency transactions or did not report their transactions properly. Recall that earlier this month, the IRS issued guidance on the tax treatment of cryptocurrency transactions in the form of [43 FAQs](#) and [Rev. Rul. 2019-24](#).

The IRS also released an internal chief counsel notice (CC-2020-003) this week that provides procedures for coordinating virtual currency cases, including digital assets, digital currency, crypto-assets, and cryptocurrency.

A recent IRS Chief Counsel Advice ([AM 2019-001](#)) has concluded that the Section 952(c) election to include excludible insurance income in the subpart F income of controlled foreign corporations' (CFCs) US shareholder is obsolete. More specifically, the memorandum analyzes Section 952(c)(1)(B)(vii)(I), which would allow a US shareholder of a CFC to include in subpart F income certain insurance income that would otherwise be

excluded because it was attributable to the CFC's insurance activities in the same country in which the CFC was created or organized. The IRS concludes that the Section 952(c) election "has been inoperable since 1998" and was made obsolete in 2015, even though the election remains in the IRC.

The Section 952(c) election has implications for income inclusions under the Section 951A Global Intangible Low-taxed Income (GILTI) rules.<sup>2</sup>

The G20 issued a press release on 18 October following their Washington, DC meeting, expressing support for the Organisation for Economic Co-operation and Development's two-pillar approach and ongoing progress on the tax challenges arising from the digitalization of the economy. The group affirmed their support for a consensus-based solution and stressed the importance of the Inclusive Framework on Base Erosion and Profit Shifting agreeing to the outlines of the architecture by January 2020, with a final report to be delivered by the end of 2020.

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## Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. See EY Global Tax Alert, [US IRS Chief Counsel Advice concludes 952\(c\) election to include otherwise excludible insurance income in subpart F income of CFCs' US shareholders is obsolete](#), dated 24 October 2019.

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