

17 May 2019

Global Tax Alert

Report on recent US international tax developments - 17 May 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.

A senior United States (US) Treasury official again warned of the dangers of unilateral digital services taxes (DSTs) being enacted around the world, telling an American Bar Association Tax Section meeting this week that the US Government is in active discussions with various countries to dissuade them from taking further action. The official was quoted as saying there is particular concern over French and UK DST proposals that would be effective next year, with the US Government "arguing very strongly that any such taxes should be deferred until after 2020" to give the Organisation for Economic Co-operation and Development the opportunity to come up with a multilateral solution. He criticized DST proposals that impose tax on gross revenue rather than economic profit, and which he said disproportionately target US companies.

The official added that the United States supports increasing market countries' taxing authority by utilizing a marketing intangibles approach. According to a press report, he predicted that the scope of the changes will not be substantial considering the need for broad consensus.

Another Treasury official this week reaffirmed the Government's commitment to withdraw the 2006 proposed Internal Revenue Code¹ Section 959 regulations on previously taxed income (PTI), reportedly saying new proposed regulations would be released before the end of 2019. Government officials earlier had said the regulations package could be released in early fall. Internal Revenue Service (IRS) Notice 2019-1 previewed some of what can be expected in the

next iteration of PTI regulations, referred to in the notice as “previously taxed earnings and profits.” PTI has taken on added importance following the enactment of the Section 965 transition tax and the global intangible low-taxed income (GILTI) provisions in the *Tax Cuts and Jobs Act*.

The IRS issued final regulations ([T.D. 9857](#)), effective 13 May 2019, that address the recognition and deferral of foreign currency gain or loss with respect to qualified business units (QBUs) subject to Section 987 (Section 987 QBUs) in connection with certain QBU terminations and other transactions involving partnerships.

The IRS finalized, with certain clarifications, Reg. Sections 1.987-2T and -4T (related to combinations and separations of QBUs subject to Section 987) and Reg. Section 1.987-12T (addressing recognition and deferral of Section 987 gain and loss upon certain QBU terminations and certain other transactions involving partnerships). In addition, the Government withdrew Reg. Section 1.987-7T (regarding the allocation of assets and liabilities of certain partnerships for purposes of Section 987).

No changes were made to the applicability dates of the final Section 987 regulations (T.D. 9794) or certain other temporary (T.D. 9795) and proposed (REG-128276-12) Section 987 regulations. Those regulations were previously delayed by Notice 2018-57 to tax years beginning on or after three years after the first date of the first tax year following 7 December 2016 (i.e., 1 January 2020, for in-scope, calendar-year taxpayers).

Treasury and the IRS continue to study other provisions of the temporary regulations under Section 987 that were not specifically addressed by T.D. 9857.²

The IRS released, on 17 May, proposed regulations under Sections 954 and 958 on the attribution of ownership of stock or other interests for purposes of determining whether a person is a related person with respect to a controlled

foreign corporation (CFC) under Section 954(d)(3). The IRS also released proposed regulations that provide rules for determining whether a CFC is considered to derive rents in the active conduct of a trade or business in computing foreign personal holding company income. The regulations would affect US persons with direct or indirect ownership interests in certain foreign corporations. With certain exceptions, the proposed regulations generally would apply for taxable years of CFCs ending on or after the date they are published as final regulations in the Federal Register, and for the taxable years of US shareholders in which or with which such taxable years end.

Eagerly-anticipated final GILTI regulations moved closer to release this week, having been received for review by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) on 16 May. Proposed regulations under Sections 951(b) and Section 951A were also sent to OIRA for review on the same day. The proposed GILTI regulations, released in September, generally contained rules to implement the statute or clarify ambiguities.

In addition, interim final regulations under Sections 91 and 245A were received by OIRA on 15 May. No proposed regulations under this provision have been previously released, other than proposed regulations included in the proposed anti-hybrid regulations package under Sections 245A(e), 267A and 1503(d) that were released late last year.

In a lengthy internal legal memorandum ([ILM 201917007](#)), the IRS Office of Chief Counsel addressed the application of Section 367(d) to a particular set of facts. The facts at issue are completely redacted, however, which makes interpreting the ILM particularly challenging. Nonetheless, the ILM may offer insights regarding the IRS’s views on Section 367(d), the definition of “domestic partnership” in Section 7701(a)(4), and the partnership abuse-of-entity rule in Reg. Section 1.701-2(e).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, [US IRS finalizes certain temporary foreign currency regulations addressing recognition and deferral of Section 987 gain or loss](#), dated 16 May 2019.
- 3 See EY Global Tax Alert, [US Office of Chief Counsel legal memorandum addresses IP transfer to US partnership](#), dated 13 May 2019.

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. 002432-19Gbl

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