

## Report on recent US international tax developments - 20 January 2017

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On 20 January 2017, President Donald J. Trump was sworn in as the 45th President of the United States, ushering in a new Administration and joining a Republican controlled Congress. During the election campaign, President Trump promised to overhaul many areas of government including pushing for comprehensive US tax reform. The President's nominee for Treasury Secretary, Steven Mnuchin, who was the subject of Senate confirmation hearings this week, was earlier quoted as saying that tax reform would be a top priority for the new Administration.

Earlier, House Speaker Paul Ryan discussed what to expect in terms of the coming tax reform package. The Speaker continued the refrain that the Republican plan would reduce tax rates, include border adjustment and be revenue neutral. The House leader also indicated that a child care tax credit and six weeks of maternity leave were on the table, a nod to the new President's daughter and informal advisor, Ivanka Trump, who has championed those proposals.

The final week of the outgoing Obama Administration saw the release of several pieces of international tax guidance.

The Internal Revenue Service (IRS or Service) issued final anti-corporate inversion regulations ([TD 9812](#)), modifying the application of Internal Revenue Code<sup>1</sup> Sections 7874 and 367 to inversion transactions and limiting the US tax benefits of certain post-inversion planning. The final regulations adopt with some modifications the temporary and proposed regulations that were published on 8 April 2016. The final regulations are effective 18 January 2017.

The final regulations generally apply to domestic entity acquisitions that are completed on or after 17 September 2009, to the extent described in IRS Notice 2009-78. Notice 2009-78 essentially extended the public offering rule of Section 7874(c)(2)(B) to certain private placements. The final regulations generally apply with respect to the remainder of the proposed rules in the 2014 proposed regulations to domestic entity acquisitions completed on or after 16 January 2014. Similar to the 2014 temporary regulations, taxpayers may elect to apply all the rules contained in the final regulations to domestic entity acquisitions completed on or after 17 September 2009, and before 13 January 2017 (transition period), if the taxpayer applies all of the rules consistently to all domestic entity acquisitions completed during the transition period.

The Service on 18 January also issued long-awaited temporary regulations that deny nonrecognition treatment to contributions of appreciated property by US persons to certain partnerships with foreign partners.

The temporary regulations ([T.D. 9814](#)) under Section 721(c) deny nonrecognition treatment to contributions of appreciated property by US persons to a partnership with foreign partners related to the transferor unless the partnership adopts the remedial method under Section 704(c) with respect to the transferred property and other requirements are satisfied. The temporary regulations generally adopt the rules outlined in Notice 2015-54, with some modifications made in response to comments received. The temporary regulations serve as the text for simultaneously released proposed regulations ([REG-127203-15](#)).

The temporary regulations generally apply to contributions occurring on or after 6 August 2015, or before 6 August 2015 resulting from entity classification elections filed on or after 6 August 2015, consistent with the effective dates announced in Notice 2015-54. However, any new rules, including any substantive changes to the rules described in Notice 2015-54, apply to contributions occurring on or after 18 January 2017, or to contributions occurring before 18 January as a result of an entity classification election filed on or after 18 January 2017.

The IRS issued long-awaited final and temporary regulations on 19 January that address nonresident alien individuals and foreign corporations that hold certain financial products in which the payments are contingent upon or determined by reference to US source dividend payments. The regulations package also provides guidance to withholding agents that are responsible for US withholding tax with respect to a dividend equivalent, as well as certain other parties to Section 871(m) transactions and their agents.

The IRS also released Revenue Procedure 2017-23, which provides that ultimate parent entities of US multinational enterprise groups may file a Form 8975, Country-by-Country Report, for reporting periods that are earlier than the applicability date of Reg. Section 1.6038-4 and that begin on or after 1 January 2016 (so-called voluntary reporting). The revenue procedure discusses the timing and manner of these early filings.

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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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