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Global Tax Alert

Report on recent US international tax developments - 23 May 2019

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The United States (US) Treasury and Internal Revenue Service (IRS) on 22 May issued final regulations under Internal Revenue Code¹ Section 956 that generally would reduce an inclusion determined under Section 956 to corporate US shareholders of certain controlled foreign corporations (CFCs). The proposed regulations were issued on 31 October 2018.

The final regulations, consistent with the proposed regulations, reduce a corporate US shareholder's Section 956 amount to maintain symmetry between the taxation of actual repatriations and the taxation of effective repatriations of earnings of a CFC eligible for the Section 245A dividends received deduction (DRD). This is achieved by providing that the amount otherwise determined under Section 956 with respect to a corporate US shareholder for a taxable year of a CFC is reduced to the extent the US shareholder would be allowed a Section 245A DRD if the US shareholder had received a hypothetical distribution from the CFC in an amount equal to the tentative Section 956 amount. Importantly, the final regulations modify the hypothetical distribution rule in a favorable manner to reduce the Section 956 amount in certain instances that would not have been the case under the proposed regulations.

The final regulations apply to taxable years of a CFC beginning on or after 60 days after the final regulations are published in the Federal Register. However, consistent with the proposed regulations, taxpayers may apply the final regulations for taxable years of a CFC beginning after 31 December 2017, provided that the taxpayer and its related US persons consistently apply the final regulations to all of their CFCs.

A senior Treasury official this week confirmed that final Global Intangible Low-taxed Income (GILTI) regulations would be released by 22 June to ensure they are retroactive to the date of the provision's enactment by the *Tax Cuts and Jobs Act*. He also said final Base Erosion and Anti-Abuse (BEAT) regulations should be released by mid-to-late summer.

The Council of the European Union (the Council) on 17 May held a meeting where they discussed digital taxation and also updated the European Union (EU) list of non-cooperative jurisdictions for tax purposes. In relation to digital taxation, the Council discussed current international tax reforms with a view to preparing for the upcoming Organisation for Economic Co-operation and Development (OECD) and G20 leaders' meetings. The Council also clarified that if, by the end of 2020, it appears that OECD-level agreement is expected to take additional time, the Council could revert to discussing a possible EU approach to digital taxation. EU consensus on a community-wide approach to digital taxation has proved elusive.

Endnotes

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

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