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Tax Cuts and Jobs Act Signed Into Law

President Donald Trump signed the \$1.5 trillion tax reform bill known as the Tax Cuts and Jobs Act into law on Dec. 22. As we discussed in our summary of the Act last week (<http://www.stradley.com/insights/publications/2017/12/tax-insights-december-20-2017>), the law drops the corporate tax rate from 35 percent to 21 percent, establishes a territorial tax system for multinational companies, and eliminates many deductions and exemptions from the individual income tax provisions of the Internal Revenue Code while increasing the size of the standard deduction.

Proposed Centralized Partnership Audit Regulations Released

The IRS issued proposed regulations (<https://www.gpo.gov/fdsys/pkg/FR-2017-12-19/pdf/2017-27071.pdf>) regarding the centralized partnership audit regime that will be in effect for tax years beginning after Dec. 31. The regulations cover how pass-through partners (e.g., S corporations and other partnerships) in tiered partnerships take into account adjustments under the push-out rules in Section 6226 (section references are to the Internal Revenue Code of 1986, as amended) and under similar rules when a partnership files an administrative adjustment request under Section 6227. The regulations also cover assessment and collection, penalties and interest, periods of limitations, and judicial review under the new centralized partnership audit regime. In January, the IRS issued proposed regulations regarding the centralized partnership audit regime, but those regulations were withdrawn because the Trump administration instituted a “regulatory freeze” (see our prior coverage here (<http://www.stradley.com/insights/publications/2017/01/tax-insights-january-25-2017>)). The regulations were reissued in June (see our prior coverage here (<http://www.stradley.com/insights/publications/2017/06/tax-insights-june-14-2017>)) and were virtually identical to the withdrawn regulations. The proposed regulations described above generally cover subjects not contained in the proposed regulations issued in June.

IRS Extends Transitional Rules for Qualified Securities Lenders

The IRS issued Notice 2018-5, 2018-3 IRB (<https://www.irs.gov/pub/irs-drop/n-18-05.pdf>) permitting withholding agents to apply the transition rules in Notice 2010-46, which provides a solution to the problem of overwithholding on a chain of dividends and dividend equivalents, for calendar years 2018 and 2019. Notice 2010-46, 2010-24 IRB 757 (<https://www.irs.gov/pub/irs-irbs/irb10-24.pdf>), provides a two-part solution to the problem. It provides an exception from withholding for payments to a qualified securities lender (QSL) and a proposed framework to credit forward prior withholding on a chain of substitute dividends paid pursuant to a chain of securities loans or stock repurchase agreements. The QSL regime requires a person that agrees to act as a QSL to comply with certain withholding and documentation requirements. The IRS permitted withholding agents to rely on transition rules described in Notice 2010-46, Part III, until guidance was developed that would include documentation and substantiation of withholding. As part of transition relief announced in Notice 2016-76, 2016-51 IRB 834 (<https://www.irs.gov/pub/irs-irbs/irb16-51.pdf>), the IRS announced that taxpayers may continue to rely on Notice 2010-46 during 2017, and that Notice 2010-46 would be obsolete as of Jan. 1, 2018. On Jan. 24, final regulations containing rules for qualified derivatives dealers (QDDs) were published (the final QDD regulations). Consistent with Notice 2010-76, the “Effect on Other Documents” section of the preamble to the final QDD regulations obsoleted Notice 2010-46 as of Jan. 1, 2018. The IRS has now announced that notwithstanding the preamble to the final QDD regulations, withholding

agents may apply the transition rules described in Notice 2010-46, Part III, for payments made in calendar years 2018 and 2019. Since the publication of the final QDD regulations, comments have stated that securities lending does not pose a high risk for withholding tax avoidance. Market participants have requested that the qualified securities lender regime be extended for a longer transitional period and that IRS consider simplifying the rules for securities lenders. The IRS intends to consider whether additional guidance is appropriate to address the particular circumstances of foreign lenders of U.S. dividend-paying stocks.

US Tax Court Issues Opinion on UBTI of Hospital Trade Association

The United States Tax Court has held in *New Jersey Council of Teaching Hospitals*, 149 TC No. 22 (2017 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11521>)) that fees a hospital trade association received for endorsing certain vendors did not meet the unrelated business taxable income exceptions for royalties or for businesses carried on primarily for the convenience of an organization’s members. As a result, those fees were UBTI.

Pennsylvania Withholding on Non-employee Compensation and Lease Payments

The Pennsylvania Department of Revenue issued Personal Income Tax Informational Notice 2017-01 (http://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Documents/Informational%20Notices/info_notice_pit_2017-01.pdf) regarding withholding on non-employee compensation and lease payments. Commencing Jan. 1, 2018, anyone that pays Pennsylvania-source non-employee compensation or business income to a non-resident individual or disregarded entity that has a non-resident member and is required to file a federal Form 1099-MISC is required to withhold an amount equal to the tax rate specified at Pa. Stat. Ann. 72 Section 7302 (presently 3.07 percent) from such payments. Withholding is optional for payors

paying a payee less than \$5,000 annually, and government payors (with the exception of state-owned and state-affiliated universities) generally are exempt from the withholding requirements. Taxpayers unsure of the total amount of payments that will be made to a payee are encouraged to withhold and remit tax from all payments to the payee.

An individual, estate or trust leasing Pennsylvania real estate that in the course of their trade or business makes a lease payment to a non-resident lessor also is required to withhold an amount equal to the tax rate specified in Pa. Stat. Ann. 72 Section 7302 (presently 3.07 percent) from such payments. Lessees withholding tax are required to file a federal Form 1099-MISC with both the lessor and the Department of Revenue, showing the amount paid to them and the amount of the withholding. In addition, payors and lessees subject to the foregoing provisions are required to apply for a 1099-MISC withholding account by completing Form PA-100 (Business Enterprise Registration Form (<http://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/Documents/pa-100.pdf>)).



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