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## U.S. Tax Court Upholds Intercompany Loan/Repatriation Transaction

The U.S. Tax Court recently decided *IL Tool Works Inc. & Subsidiaries v. Commissioner*, TC Memo 2018-121 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11717>), a case involving a U.S. parent company that employed a repatriation transaction using a loan from a lower-tier controlled foreign corporation (CFC) to an upper-tier CFC/holding company, which had no current or accumulated earnings and profits and distributed proceeds to its U.S. sole shareholder, which then reported the distribution as a nontaxable return of capital. The Tax Court, after upholding the loan as valid, rejected the IRS' arguments to recharacterize the transaction under economic substance, step transaction and/or similar doctrines. The Tax Court found that since the loan qualified as such in both substance and form, neither the economic substance doctrine nor the substance versus form principle could be used to "metamorphose" the distribution into a dividend. The Tax Court also rejected the IRS' attempt to invoke subpart F, stating that issue was governed instead by general debt versus dividend principles and Section 301. Finally, record evidence of the U.S. shareholder's basis in the holding company supported its treatment of the resulting distribution as a nontaxable return of capital under Section 301(c)(2), so there was neither deficiency nor penalties in respect to same. (Section references are to the Internal Revenue Code of 1986, as amended.)

## IRS Withdraws and Reissues Proposed Regulations Regarding the Centralized Partnership Audit Regime

The IRS has withdrawn certain portions of proposed regulations implementing the centralized partnership audit regime that have not been finalized to reflect the changes made by the Technical Corrections Act of 2018; the changes were contained in Title II of the Consolidated Appropriations Act of 2018. The IRS also issued new proposed regulations (<https://www.federalregister.gov/documents/2018/08/17/2018-17614/centralized-partnership-audit-regime>) reflecting such changes.

## IRS Proposes Regulations Allowing Bonus Depreciation in Section 743 Adjustment

The IRS issued proposed regulations (<https://www.federalregister.gov/documents/2018/08/08/2018-16716/additional-first-year-depreciation-deduction>) on the additional ("bonus") Section 168(k) first-year depreciation deduction, which provide that, unlike under prior law, bonus depreciation may be allowable in the case of a partnership Section 743 adjustment.

## IRS Issues Guidance on Overpaid Section 965(h) Installments

The IRS, in Program Manager Technical Advice 2018-16 ([https://www.irs.gov/pub/irao/pmta\\_2018\\_16.pdf](https://www.irs.gov/pub/irao/pmta_2018_16.pdf)), clarified that when a taxpayer overpays an installment of the Section 965 mandatory repatriation transition tax but still has an overall balance due, the IRS cannot issue a credit or refund under Section 6402(a).

## IRS Rules on Investment Banker's Facilitative Costs

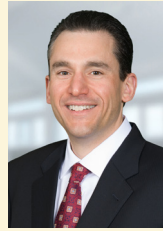
The IRS issued Chief Counsel Advice (CCA) 201830011 (<https://www.irs.gov/pub/irs-wd/201830011.pdf>), determining that a taxpayer that had engaged the services of an investment banker to facilitate its sale failed to establish that any portion of the

success-based fee that it paid to the investment banker was deductible. The CCA found that a letter from the investment banker, in which the banker estimated the time spent on facilitative versus nonfacilitative activities in connection with the sale transaction but which contained a caveat limiting its reliability, did not satisfy the Treasury Regulation Section 1.263(a)-5(f) documentation requirements. The regulation section provides, in part, that a taxpayer must capitalize an amount paid to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity and certain other transactions. An amount is viewed as paid to facilitate a transaction if the amount is paid in the process of investigating or otherwise pursuing the transaction.

**Minnesota Issues Guidance on the Treatment of Deferred Foreign Income Under the Tax Cuts and Jobs Act**

The Minnesota Department of Revenue has issued guidance ([http://www.revenue.state.mn.us/Documents/Law\\_Changes/](http://www.revenue.state.mn.us/Documents/Law_Changes/)

[deferred-foreign-income-factsheet.pdf](#)) on how individuals and businesses must treat deferred foreign income for Minnesota income tax and corporate franchise tax purposes for tax year 2017.



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