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IRS Issues Proposed Regulations on Withholding Requirements Under FATCA

The IRS issued proposed regulations (https://www.irs.gov/pub/fatca/NPRM%20re%20Sections%201441-1474%20Regulations%202018%201212.pdf) under the Foreign Account Tax Compliance Act (FATCA) regarding withholding on certain payments that was scheduled to begin after Dec. 31, 2018. Under prior FATCA regulations, a 30 percent withholding tax was required on payments of gross proceeds to certain foreign entities made after Dec. 31, 2018. However, the proposed regulations eliminate this requirement, which would have applied to, among other payments, certain capital gain and return of capital distributions paid by regulated investment companies, as well as withholding on certain insurance premiums. The proposed regulations also defer the withholding requirement on certain foreign pass-through payments. The revisions provided for in the proposed regulations are in response to President Donald Trump's request to eliminate or modify regulations in order to reduce unnecessary burdens on taxpayers.

IRS Issues Proposed Regulations on BEAT

The IRS issued proposed regulations (https://www.irs.gov/pub/irs-drop/reg-104259-18.pdf) on Section 59A (the base erosion and anti-abuse tax (BEAT)). Section 59A, which was enacted by the 2017 Tax Cut and Jobs Act (TCJA), generally requires that certain corporations, excluding RICs, REITs and S corporations, that have gross receipts of $500 million or more over the applicable three-year period pay a tax equal to such entity's "base erosion minimum tax." See our prior coverage here (https://www.stradley.com/insights/publications/2017/12/tax-insights-december-20-2017). The proposed regulations provide additional guidance on the applicability of the tax, rules for computing a taxpayer's liability and special rules for payments involving partnerships. (Section references are to the Internal Revenue Code of 1986, as amended (the Code).)

IRS Publishes Guidance on UBTI From Transportation Fringe Benefits

The IRS published Notices 2018-99 (https://www.irs.gov/pub/irs-drop/n-18-99.pdf) and 2018-100 (https://www.irs.gov/pub/irs-drop/n-18-100.pdf), which provide guidance on certain transportation fringe benefit changes under the TCJA. In Notice 2018-99, the IRS provides interim guidance to tax-exempt organizations for determining any unrelated business taxable income (UBTI) that results from certain qualified transportation fringe (QTF) benefits becoming nondeductible under the TCJA. QTFs include transit passes and qualified parking expenses. In Notice 2018-100, the IRS provides a waiver of the addition to tax for an underpayment made by certain tax-exempt organizations when such underpayment results from changes to the tax treatment of QTFs.

Notice 2018-99 permits tax-exempt organizations to use any reasonable method to calculate their UBTI. It also provides a safe harbor "reasonable method" that an organization can use until further guidance is issued. The reasonable method set forth in Notice 2018-99 requires an organization to calculate, and treat as UBTI, the expenses related to parking reserved for employees, whether it is on property the employer owns or leases, at or near an employer's business, or at a location from which the employee commutes to work, and the primary use of other spots is not explicitly reserved for employees. "Primary use" means, for this purpose, more than 50 percent of actual or estimated use of parking spots in the facility during typical business hours. The reasonable method further suggests an allocation of expenses for any remaining parking spots that are not clearly categorized, based on typical use by employees. Expenses allocable to parking spots that are reserved for nonemployees, or primarily used by the general public rather than employees are not included in the calculation of UBTI.

Notice 2018-99 further states that, notwithstanding that UBTI is generated under Section 512(a)(7), the provision of parking and transit benefits is not considered a separate unrelated trade or business for the purposes of Section 512(a)(6). This means that income and deductions from parking and transit UBTI are calculated in the same silo as the income and deductions from an existing unrelated trade or business. Tax-exempt organizations with revenue from one unrelated trade or business can offset their UBTI under Section 512(a)(7) with deductions attributable to that unrelated trade or business. Notice 2018-99 does not, however, provide guidance with respect to whether exempt organizations with multiple unrelated trades or businesses can offset their UBTI under Section 512(a)(7) with deductions related to one of their unrelated trades or businesses.

Notice 2018-99 further permits tax-exempt organizations retroactively to reduce their parking arrangements by reducing the number of reserved spots. Such a change can be made until March 31, 2019, and will be considered retroactive to Jan. 1, 2018, which could help reduce UBTI exposure for some organizations.

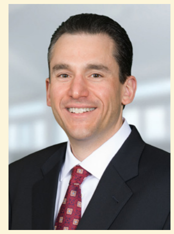
Finally, Notice 2018-99 states that the specific deduction of $1,000 allowed under Section 512(b)(12) applies to UBTI generated for QTFs. For tax-exempt organizations that do not have UBTI in excess of $1,000 from all sources, including QTFs, Form 990-T does not need to be filed and, accordingly, no tax on UBTI will be due.

IRS Provides Q&A on Repatriation Tax

The IRS posted Questions and Answers (https://www.irs.gov/newsroom/questions-and-answers-about-tax-year-2018-reporting-and-payments-arising-under-section-965) on its website in regard to guidance on the Section 965 repatriation tax for the 2018 tax year and any actions taken in 2017. In general, Section 965, enacted under the TCJA, imposes a tax on untaxed foreign earnings of U.S. companies' foreign subsidiaries by deeming those earnings repatriated, and applies to the last tax years of foreign corporations that begin before Jan. 1, 2018, and to U.S. shareholders for tax years in which or with which such foreign corporations' tax years end. Under the new law, foreign earnings held in cash and cash equivalents are taxed at a 15.5 percent rate. The remaining earnings are taxed at an 8 percent rate. Generally, the transition tax may be paid in installments over an eight-year period.

IRS Provides Guidance on Income Deferral for Certain Stock

The IRS issued Notice 2018-97 (https://www.irs.gov/pub/irs-drop/n-18-97.pdf), which provides initial guidance on Section 83(i). Section 83(i), which was added by the TCJA, allows qualified employees to elect to defer income from stock transferred by an eligible employer to the employee in connection with the performance of services for up to five years. The Notice provides guidance on certain defined terms in Section 83(j), the 80 percent requirement for eligible corporations, and the new income tax withholding requirements with respect to the deferral of stock.



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Virginia Publishes Guidance on REIT Subtraction

The Virginia Department of Taxation (Department) has published guidance (https://tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/18-198) on the Virginia real estate investment trust (REIT) subtraction that can be taken by an eligible individual or corporation for taxable years beginning on or after Jan. 1, 2019, and before Dec. 31, 2024. In general, an individual or corporate income tax subtraction is allowed for any income attributable to an investment in a Virginia REIT made during such time frame. A Virginia REIT is a REIT, as defined in Section 856 of the Code, that has been certified by the Department as having invested at least 90 percent of the trust funds in Virginia and at least 40 percent of the trust funds in localities that are distressed or double distressed.

New Jersey Publishes Guidance on Corporation Business Tax Changes

The New Jersey Division of Taxation issued a technical bulletin (https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb84.pdf) on changes to the New Jersey Corporation Business Tax, which include the repatriation of taxes under Section 965 of the Code and state-specific issues such as dividend exclusions, special allocations on dividends received and the surtax on a taxpayer's New Jersey-allocated taxable net income.