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IRS Issues Ruling on Use Fees as Qualifying Rents for REIT

The IRS issued Private Letter Ruling 201907001 (<https://www.irs.gov/pub/irs-wd/201907001.pdf>), in which it found that a corporation electing to be qualified and taxed as a real estate investment trust (REIT) that principally invests in U.S. energy infrastructure assets may treat use fees received by the REIT from its lease to third-party users of storage tank facilities and pipelines and rent from the lease to an unrelated partnership of an offshore oil and gas platform as rents from real property for purposes of the REIT qualifying income test under Section 856. (All section references are to the Internal Revenue Code of 1986, as amended.)

Shareholders Liable for Transferred Tax Liability in Stock Sale

The United States Supreme Court has declined to review the Ninth Circuit's holding in *Slone v. Commissioner* (<http://cdn.ca9.uscourts.gov/datastore/opinions/2018/07/24/16-73349.pdf>). In *Slone*, the Ninth Circuit overturned the Tax Court's holding and found the shareholders of *Slone* liable as transferees for tax liabilities arising from a sale of *Slone's* assets to one company followed by a sale of all of *Slone's* stock to another company (which also assumed *Slone's* income tax liability from the asset sale). In exchange for the sale of *Slone's* stock, the shareholders were paid from the proceeds of a loan obtained by the second company. The second company had no assets from which to pay the tax liability it absorbed in the stock sale. The Ninth Circuit found that the selling shareholders were liable as transferees because the stock sale was in substance a liquidating distribution and the sale was designed to avoid tax liability.

IRS Suspends Revenue Rulings Pending Study on Active Trade or Business Requirement

The IRS issued Revenue Ruling 2019-9 (<https://www.irs.gov/pub/irs-drop/rr-19-09.pdf>), in which it suspended the application of Revenue Rulings 57-464 and 57-492 pending completion of a study by the Department of the Treasury and the IRS regarding the active trade or business (ATB) requirement under Section 355. Section 355(a)(1) provides that, if certain requirements are met, a corporation may distribute stock and securities of a controlled corporation to its shareholders and security holders without recognition of gain or loss or income to the recipient shareholders or security holders. Among those requirements, both the distributing corporation and the controlled corporation must be engaged in an ATB immediately after the distribution. The Treasury Department and the IRS are conducting a study to determine, for purposes of Section 355, "whether a business can qualify as an ATB if entrepreneurial activities, as opposed to investment or other non-business activities, take place with the purpose of earning income in the future, but no income has yet been collected." The analysis underlying Revenue Rulings 57-464 and 57-492 focuses in significant part on the lack of income generated by the activities under consideration, so it is appropriate and necessary to suspend them, since the rulings must be interpreted as requiring income generation for a business to qualify as an ATB.

ABA Submits Comments on Proposed Foreign Tax Credit Regulations

The American Bar Association (ABA) has submitted a comment letter (<https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/031819comments.pdf>) to the IRS on the proposed regulations on the foreign tax credit. In part, the ABA's comments include revisions to and discussions on (1) carryover rules and other transition issues, (2) the expenses allocation and global intangible low-taxed income (GILTI), (3) tax-exempt assets and income, (4) the definition of current year taxes, (5) foreign branch income and (6) disallowance of deemed paid credits on Section 956 inclusion.

AIG Submits Comments on BEAT Regulations

AIG has submitted a comment letter (<https://www.stradley.com/-/media/files/publications/2019/03/aig-letter.pdf?la=en&hash=A0A9D2A570F870D6FAEC11DD5EAD0AF2>) to the IRS on the proposed base erosion and anti-abuse tax (BEAT) regulations under Section 59A. Section 59A generally requires that certain corporations, excluding regulated investment companies (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 entities' "base erosion minimum tax." (See our prior coverage here <https://www.stradley.com/insights/publications/2018/12/tax-insights-december-19-2018>). The letter specifically addresses commissions paid by a domestic reinsurance company to a foreign-related insurance company in exchange for such reinsurance. AIG recommends that "Section 59A exclude commissions paid to a foreign affiliate in exchange for the reinsurance of foreign risks by a U.S. reinsurer from the definition of a 'base erosion payment' in Prop. Treas. Reg. §§ 59A-2(e)(3)(ii) and 3(b)(3) in a similar manner as Section 988



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losses or MAC securities. In the alternative, Treasury should permit U.S. reinsurers to look-through licensed insurance affiliates in foreign jurisdictions to determine which portion of ceding commissions paid to such affiliates should be excluded from the definition of a base erosion payment."