STRADLEY RONON

Tax Insights

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House Ways and Means Committee to Hold Hearings on Tax Reform

The House Ways and Means Committee will hold two hearings on tax reform in July, committee chair Kevin Brady, R-TX, announced (http://thehill.com/policy/finance/339542-gop-chairman-more-tax-reform-hearings-coming-in-july) on June 26. One hearing will focus on the benefits of tax reform to small businesses, and the other on the benefits families and individuals would receive through simplifying the tax filing process and lowering rates. Brady said it has not yet been decided if the hearings will be full committee hearings, but that they could be Tax Policy Subcommittee hearings.

Supreme Court Refuses to Review Denial of Bank's Foreign Tax Credits

The Supreme Court has declined to review a decision of the Court of Appeals for the First Circuit, which reversed a district court, and held that the "trust" component of a Structured Trust Advantaged Repackaged Securities (STARS) transaction lacked economic substance. (*Santander Holdings USA, Inc. v. U.S.* (http://media.ca1.uscourts.gov/pdf.opinions/16-1282P-01A.pdf), No. 16-1282 (1st Cir. Dec. 16, 2016), cert. denied June 1, 2017.) The First Circuit had held that the trust transaction, which involved the participating bank transferring assets to a disregarded foreign trust and claiming credits for foreign taxes paid, had no legitimate business purpose and, absent the generation of foreign tax credits, provided no objective economic benefit.

Court Rules No Taxable IRA Distribution Despite Taxpayer Directing IRA Purchase That Never Got to IRA Account

The U.S. Court of Appeals for the Seventh Circuit, affirming the Tax Court, has ruled, in *McGaugh v. Commissioner* (http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D06-26/C:16-2987:J:DeGuilio:aut:T:fnOp:N:1985475:S:0), No. 16-2987 (7th Cir. June 26, 2017), that a taxable distribution to the owner of a self-directed individual retirement account did not occur where the owner directed the IRA custodian to wire cash to purchase shares of a private company, where the certificate for those shares was apparently delivered to the custodian after the 60-day rollover period specified in Section 408(d)(3), and the custodian did not deposit the shares into the IRA. (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Rules on 'Covered Employee' Definition in Light of SEC Requirements

The IRS issued Private Letter Ruling 201725024 (https://www.irs.gov/pub/irs-wd/201725024.pdf) concluding that a person who was the chief executive officer of a publicly held corporation for the beginning part of a tax year but not on the last day of that year was not a covered employee under the Section 162(m) limitation on deductible compensation, even though the Securities Exchange Act required that he be listed in a Securities and Exchange Commission filing. Section 162(m),

subject to certain exceptions, provides a deduction limit of $1 million for compensation paid by a publicly held corporation during any tax year to a covered employee. Applicable regulations generally provide that whether an individual is the CEO or one of the other type of covered employees for purposes of Section 162(m) is determined pursuant to the executive compensation disclosure rules under the Securities Exchange Act.

IRS Legal Memorandum Concludes Deferred Comp Plan Is Not Qualified

In a legal memorandum (ILM 201725027 (https://www.irs.gov/pub/irs-wd/201725027.pdf)), the IRS concluded that a deferred compensation plan failed to satisfy the requirements of Section 409A because (a) payments were triggered by a service provider's employees separating from service, (b) the plan did not satisfy the back-to-back arrangement exception and (c) the plan failed to make payments in accordance with plan requirements. The memorandum describes an entity, a U.S. taxpayer, which manages investment funds, including for a foreign corporation. The foreign corporation pays the entity management and performance fees for investment advisory services. The entity employs investment professionals who receive salaries and bonuses for management and investment advisory services. The entity and foreign corporation entered into a deferred compensation agreement that required the entity to defer some of its management and performance fees. The entity also sponsored a deferred compensation agreement for its employees. The two plans were intended to be back-to-back arrangements that coordinated the deferral elections and payments under the two plans.

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IRS Rules No Self-Dealing in Foundation's Matching Gift Program

The IRS issued Private Letter Ruling 201725008 (https://www.irs.gov/pub/irs-wd/201725008.pdf) concluding that donations made by a private foundation to match those made by employees of a corporation that is the foundation's sole contributor will not constitute self-dealing or taxable expenditures and will be qualified distributions.

IRS Finds Foreign Partner Needs IRS Consent to Be Named TMP

In emailed advice (ECC 201725028 (https://www.irs.gov/pub/irs-wd/201725028.pdf)), the IRS ruled that a foreign partner needs IRS consent to be named the tax matters partner (TMP) when there is a U.S. partner that is eligible to be the TMP.

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