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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
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IRS Aggregates Partners on Outbound Transfer of Intangible Property

The IRS, in CCA 201917007 (https://www.irs.gov/pub/irs-wd/201917007.pdf), addressed the Commissioner's authority under Treasury Regulation Section 1.701-2(e), the partnership anti-abuse rules or abuse-of-entity rules, to treat a partnership as an aggregate of its partners for purposes of taxing the outbound transfer of intangible property under Section 367(d). The abuse-of-entity rules allow the IRS to treat a partnership as an aggregate when appropriate in order to carry out the purpose of the Internal Revenue Code of 1986, as amended. Under Section 367(d), a U.S. transferor that transfers intangible property to a foreign corporation is treated as having sold the property in exchange for payments that are contingent upon the productivity, use or disposition of the property. Specifically, the U.S. transferor is treated as receiving amounts that reasonably reflect the amounts that would have been received annually in the form of such payments over the useful life of the intangible property, or in the case of a disposition of the intangible property following such transfer (whether direct or indirect) at the time of the disposition. The amounts taken into account under either rule must be commensurate with the income attributable to the IP. The CCA, which was heavily redacted and did not provide the facts at issue, concluded that (i) the Commissioner may assert his authority under Treasury Regulation Section 1.701-2(e) to treat the partnership as an aggregate of its partners, because treating the partnership as an aggregate is appropriate to carry out the purposes of Section 367(d), and (ii) treating a partnership as a related U.S. person and thus permitting it to succeed to the Section 367(d) annual inclusion is manifestly incompatible with the intent of Section 367(d).

IRS Clarifies SOLs for Certain Penalty Assessments Related to Reportable Transactions

The IRS, in CCA 201916006 (https://www.irs.gov/pub/irs-wd/201916006.pdf), has clarified certain statutes of limitations (SOLs) regarding penalty assessment for failure to report certain reportable transactions. Section 6501(a) provides that an assessment of tax must be made "within 3 years after the return was filed." "Return" means the return required to be filed by the taxpayer, which includes Form 8918, Material Advisor Disclosure Statement. When disclosure is required with a return, the assessment of the Section 6707A penalty for failure to timely or properly disclose a reportable transaction must be made within three years of the date of the filing of the underlying return. Disclosure is required with a return when the transaction is listed or otherwise reportable at the time the return is filed. If disclosure is not made, Section 6501 provides additional time to assess the tax with respect to a listed transaction.

IRS Issues Instructions for Computing QBI of Tax-Exempt Trusts

The IRS has issued instructions (https://www.irs.gov/forms-pubs/trust-qualified-business-income-qbi-deduction-under-section-199a) for computing the qualified business income deduction under Section 199A, enacted as part of the 2017 Tax Cuts and Jobs Act, for tax-exempt trusts that have unrelated business income.

IRS Releases OPR's 2018 Annual Report

The IRS has released the Office of Professional Responsibility's (OPR's) Annual Report (https://www.irs.gov/pub/irs-utl/fy_2018_opr_annual_report.pdf) for the 2018 fiscal year. The report outlines the progress the IRS has made toward its goals, which it lays out in its Strategic Plan. The goals that the OPR focused on in the report include (i) empower

and enable all taxpayers to meet their tax obligations; (ii) collaborate with external partners proactively to improve tax administration; (iii) protect the integrity of the tax system by encouraging compliance through administering and enforcing the law; (iv) advance data access, usability and analytics to inform decision-making and improve operational outcomes; and (v) drive increased agility, efficiency, effectiveness and security in IRS operations.

Pennsylvania DOR Issues Guidance on CNIT Treatment of Section 163(j) Limitations

The Pennsylvania Department of Revenue (DOR) has issued guidance (https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2019-03.pdf) on how the business interest expense deduction limitation imposed by the amended Section 163(j), enacted as part of the 2017 Tax Cuts and Jobs Act, is treated for purposes of the Pennsylvania Corporate Net Income Tax (CNIT). The guidance addresses (i) interest expense associated with the add-back provision of the CNIT, (ii) the interest expense associated with nonbusiness income and (iii) the treatment of interest expense amounts for partnerships with corporate partners.

Christopher C. Scarpa

Jacquelyn Gordon

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Jacquelyn Gordon at 215.564.8176 or jgordon@stradley.com.

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