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IRS Issues Final Regulations on Corporate Transfers of Property to RICs and REITs

The IRS issued final regulations (T.D. 9862, <https://www.federalregister.gov/documents/2019/06/07/2019-11753/certain-transfers-of-property-to-regulated-investment-companies-rics-and-real-estate-investment>) that impose corporate-level tax on some transactions, including those involving real estate investment trusts (REITs) in which property of a C corporation becomes the property of a REIT. Proposed Regulation Section 1.337(d)-7(f)(1) generally would have provided that the automatic deemed sale rule applies to a C corporation if (1) the C corporation engages in a conversion transaction involving a REIT during the 20-year period beginning on the date that is 10 years before the date of a related Section 355 distribution and (2) the C corporation engaging in the related Section 355 distribution is either the distributing corporation or the controlled corporation, as those terms are defined in Section 355(a)(1), or a member of the separate affiliated group, as defined in Section 355(b)(3)(B), of the distributing corporation or the controlled corporation. (Section references are to the Internal Revenue Code of 1986, as amended.) A conversion transaction occurs through (1) the qualification of a C corporation as a regulated investment company (RIC) or a REIT or (2) the transfer of property owned by a C corporation to a RIC or a REIT.

Under proposed regulations, gain immediately recognized by a C corporation engaging in a Section 355 distribution and a later conversion transaction was proposed to be limited to gain on property traceable to the Section 355 distribution. The final regulations adopt the proposed regulations with limited modifications. The proposed regulations would have defined the term “converted property” as “property owned by a C corporation that becomes the property of a RIC or a REIT and any other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of the property owned by a C corporation that becomes the property of a RIC or a REIT.” A commenter requested that the definition be clarified to confirm the commenter’s interpretation that the phrase “any other property” refers only to property of a RIC or a REIT. The IRS agreed with the commenter’s interpretation and clarified the definition accordingly. A commenter inquired whether the IRS intended the regulations to override Section 856(c)(8). The preamble to the final regulations states that the regulations do not override Section 856(c)(8). Accordingly, if Section 856(c)(8) would prevent a distributing corporation or a controlled corporation from electing REIT status, no gain would be recognized absent further action (e.g., a merger of the distributing corporation or the conversion of the controlled corporation into a REIT).

IRS Issues Proposed Regulations on Exception for U.S. Real Property Interests Held by Foreign Pension Funds

The IRS has issued proposed regulations (REG-109826-17, <https://www.govinfo.gov/content/pkg/FR-2019-06-07/pdf/2019-11291.pdf>) regarding the exception from taxation with respect to gain or loss of a qualified foreign pension fund attributable to certain interests in U.S. real property. The proposed regulations also include rules for certifying

that a qualified foreign pension fund is not subject to withholding on certain dispositions of and distributions with respect to certain interests in U.S. real property. Taxpayers may rely on the proposed regulations with respect to dispositions or distributions occurring on or after Dec. 18, 2015.

IRS Issues Draft 2020 Form W-4

The IRS issued a draft of its redesign of Form W-4, Employee's Withholding Allowance Certificate (<https://www.irs.gov/pub/irs-dft/fw4--dft.pdf>). The revised Form W-4 implements the changes affecting taxpayer withholding made by the 2017 Tax Cuts and Jobs Act. The IRS also released FAQs (<https://www.irs.gov/newsroom/faqs-on-the-early-release-of-the-2020-form-w-4>) and a news release (<https://www.irs.gov/newsroom/irs-treasury-unveil-proposed-w-4-design-for-2020>) about the redesign.

JCT Summarizes GILTI and FDII Rules

The Joint Committee on Taxation (JCT) released a summary of global intangible low-taxed income (GILTI)



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and foreign-derived intangible income (FDII) (<https://www.jct.gov/publications.html?func=startdown&id=5190>). The summary describes how such amounts are determined and includes examples and related definitions.