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IRS Issues Proposed Regulations Under PFIC Regime

The IRS issued proposed regulations (REG-105474-18, <https://www.federalregister.gov/documents/2019/07/11/2019-12030/guidance-on-passive-foreign-investment-companies>) regarding the determination of ownership in a passive foreign investment company (PFIC) as defined in Section 1297 of the Internal Revenue Code of 1986, as amended (the Code). (All section references are to the Code, unless otherwise provided herein.) Generally, U.S. persons owning PFIC stock are subject to tax under the PFIC regime. In general, a foreign company is classified as a PFIC if at least one-half of its assets constitute passive income (the “Asset Test”) or 75% or more of its gross income is passive income (the “Income Test”). Generally, passive income is investment-type income like dividends, interest and royalties. The 2017 Tax Cuts and Jobs Act (TCJA) modified the definition of passive income to include certain income of a foreign corporation that is attributable to an insurance business. Proposed regulations were originally issued in 2015, but given the amendments enacted under the TCJA, the IRS withdrew those regulations and instead proposed new regulations.

In addition to addressing the new insurance exception rules enacted under the TCJA, the proposed regulations generally discuss and provide guidance on (1) the determination of ownership and attribution through partnerships, (2) inclusion of certain income under the Income Test, (3) methodology used for the Asset Test, (4) the treatment of stapled entities (as defined in Section 269B(c)(2)), (5) the look-through Rule for 25-Percent-Owned Subsidiaries, (6) the change-of-business exception and (7) the domestic subsidiary stock rule.

IRS Issues Final Regulations Removing Advance Payments Regulation

The IRS issued final regulations (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-14947.pdf>), adopting in full proposed regulations from October 2018, that remove Regulation §1.451-5, which related to the treatment of advance payments for goods and long-term contracts under Section 451. The regulation was withdrawn because it was overridden by the TCJA.

IRS Publishes Q&As on Section 965 Repatriation Tax

The IRS has published (<https://www.irs.gov/newsroom/general-section-965-questions-and-answers-including-transfer-and-consent-agreements>) questions and answers regarding the Section 965 repatriation tax. The questions and answers include general information about payment obligations under Section 965 and also address filing Transfer and Consent Agreements under Section 965.

IRS Will Allow FTC Claims Regarding Certain French Taxes

The IRS has issued a statement (<https://www.irs.gov/individuals/international-taxpayers/foreign-tax-credit>) saying that it will no longer challenge foreign tax credit (FTC) claims for the French Contribution Sociale Generalisee (CSG) and Contribution au Remboursement de la Dette Societe (CRDS) taxes. Historically, the CSG and CRDS were considered social taxes. Social taxes, or taxes covered under the social security system of a foreign country, are not eligible to be deducted or credited against the U.S. income tax of an individual that paid such taxes. However, the U.S. and French Republic recently memorialized an understanding that the CSG and CRDS are not social taxes and therefore, the IRS will no longer challenge foreign tax credits for CSG and CRDS payments.

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