Tax Insights

A Publication of the Stradley Ronon Tax Practice Group

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MAY 9, 2018

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IRS Concludes that Parent Cannot Amortize Brand Purchased from Subsidiary

In field attorney advice (FAA 20181701F) (https://www.irs.gov/pub/irs-lafa/20181701f.pdf), the IRS concluded that the anti-churning rules of Section 197(f)(9) and Treas. Reg. Section 1.197-2(h) apply to a brand purchased by a domestic parent from a foreign subsidiary. (Section references are to the Internal Revenue Code of 1986, as amended.) The brand was created by the domestic parent, but it did not amortize amounts capitalized to the brand because it was a self-created intangible. After selling the brand to a foreign subsidiary, the brand was split into a second and third brand and the domestic parent purchased the second brand. The domestic parent took a cost basis in the second brand and began amortizing it under Section 197(a) ratably over a 15-year amortization period. The IRS concluded that since the domestic parent and foreign subsidiary are related persons as defined in Section 197(f)(9)(C), the anti-churning rules of Section 197(f)(9) and Treas. Reg. Section 1.197-2(h) apply to the second brand. Consequently, a domestic parent cannot amortize the lump-sum payment to a foreign subsidiary under Section 197(a).

IRS Releases Practice Units on Energy Project Credit and Losses Claimed in Excess of Basis

The IRS released a practice unit (https://www.irs.gov/pub/irs-utl/erc_p_278_04_01_01.pdf) that provides guidance to IRS examiners for determining whether a taxpayer's qualifying advanced energy project credit (i.e., Section 48C credit) complies with Section 48C, including a discussion on the 15-step examination process. The IRS also released a practice unit (https://www.irs.gov/pub/irs-utl/sco_p_53_05_01_03_06.pdf) that addresses whether a shareholder has sufficient basis to claim losses and deductions passed through from the S corporation.

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