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IRS Issues Final Regulations Addressing Foreign Corporation DRD and Exception to Subpart F Income Rules

The IRS has issued final regulations (TD 9909) under Section 245A that limit the deduction for certain dividends received from foreign corporations. (Section references are to the Internal Revenue Code of 1986, as amended (the Code).) The final regulations also address the exception to subpart F income under Section 954(c)(6) for certain dividends received by controlled foreign corporations (CFCs). The final regulations adopt temporary regulations issued by the IRS in 2019 as they relate to the Section 954(c)(6) exception. (Section 954(c)(6) provides that a dividend received by a CFC from a related CFC is not included in the recipient CFC's income subject to current tax under Sections 951(a) and 954(c) if certain requirements are satisfied.) With respect to the Section 245A deduction, the final regulations adopt the 2019 proposed regulations with certain modifications and additions.

IRS Issues Proposed Regulations Providing Relief From Excess Taxation of CFC Dividends

The IRS issued proposed regulations (REG-124737-19) that provide relief in cases where the extraordinary disposition rule for controlled foreign corporation (CFC) dividends and the disqualified basis rule in Section 951A when applied together, give rise to excess taxation of a Section 245A shareholder or a Section 245A shareholder and related party. The proposed regulations would adopt a coordination mechanism that involves two operative rules, one that reduces disqualified basis in certain cases (the DQB reduction rule), and another that reduces an extraordinary disposition account in certain cases (the EDA reduction rule). The proposed regulations provide two versions of both the DQB reduction rule and the EDA reduction rule. The first version would apply to simple cases, and the second version would apply to complex cases. The proposed regulations would apply to the tax years of foreign corporations beginning on or after the date a Treasury Decision adopting the proposed rules as final regulations is published in the Federal Register (the finalization date), and to the tax years of a U.S. person in which or with which such tax years of foreign corporations end. For tax years beginning before the finalization date, taxpayers may apply certain portions of the proposed rules provided that the taxpayer and all related persons apply the proposed rules in their entirety.

Section 245A, which was added to the Code by the 2017 Tax Cuts and Jobs Act (TCJA), generally allows a domestic corporation that is a U.S. shareholder (a section 245A shareholder) a 100% dividends received deduction (a Section 245A Deduction) for the foreign-source portion of a dividend received after Dec. 31, 2017, from a specified 10%-owned foreign corporation (SFC). Section 945(c)(6) generally provides that, for certain tax years, dividends received or accrued by a CFC from another CFC that is a related person are excluded from the foreign personal holding company income (FPHCI) of the distributee CFC (section 954(c)(6) exception). Section 954(c)(6) currently applies to tax years of foreign corporations beginning before Jan. 1, 2021, and to tax years of U.S. shareholders with or within which those foreign corporations' tax years end.

In June 2019, the IRS issued temporary and proposed regulations (TD 9865) that include rules limiting the amount eligible for the Section 245A Deduction and the amount eligible for the Section 954(c)(6) exception by 50% of the extraordinary disposition amount

or tiered extraordinary disposition amount (together, the extraordinary disposition rule). Such regulations have now been finalized. Section 951A, which was also added to the Code by the TCJA, requires a U.S. shareholder of any CFC for any tax year to include in gross income the U.S. shareholder's global intangible low-taxed income (GILTI inclusion amount) for that year. In June 2019, the IRS also issued final regulations (GILTI final regs) (TD 9866) implementing Section 951A. The GILTI final regs provide that a deduction or loss attributable to basis created by reason of a transfer of property from a CFC to a related person during the disqualified period (disqualified basis) is allocated and apportioned solely to residual CFC gross income (the disqualified basis rule). According to the IRS, the purpose of the disqualified basis rule is to prevent taxpayers from obtaining the benefits of the tax basis in the transferred asset that was created through related-party transactions effectuated at no U.S. tax cost solely because they occurred during the disqualified period. The rule, therefore, creates symmetry between the categorization of non-taxed income created in the transaction generating disqualified basis during the disqualified period and the categorization of deductions generated after the disqualified period attributable to that disqualified basis. Further, recently proposed regulations under Section 951A (REG-106013-19) treat a deduction related to certain payments by a CFC to a related recipient CFC during the disqualified period in a manner similar to the treatment of disqualified basis under the GILTI final regulations (the disqualified payment rule).

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IRS Releases Guidance on Requests for Extension to Furnish Recipient Statements

The IRS, on its website, released guidance stating that effective immediately, requests for an extension of time to furnish statements to recipients (for example, Forms 1098 (relating to mortgage interest), 1099-B (relating to brokers) and 1099-DIV (relating to dividends)) should be faxed to the IRS. The IRS must receive a request no later than the date on which the statements are due to the recipients. If the IRS approves the extension request, payers will generally be granted a maximum 30-day extension of time to furnish recipient statements (15 days for Forms W-2) to furnish the recipient statements.

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