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IRS Issues Final Foreign Tax Credit Regulations

The IRS has issued final regulations (TD 9959) relating to the foreign tax credit, including the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction; the allocation and apportionment of interest expense, foreign income tax expense and certain deductions of life insurance companies; the definition of a foreign income tax and a tax in lieu of an income tax; the definition of foreign branch category income and the time at which foreign taxes accrue and can be claimed as a credit. The final regulations also clarify rules relating to foreign-derived intangible income. The final regulations generally are effective March 5, 2022.

Competent Authority Agreement Issued on Retirement Arrangements

Competent Authorities of the U.S. and Republic of Malta entered into a Competent Authority Arrangement (CAA) under paragraph 3 of Article 25 (Mutual Agreement Procedure) of the U.S. Malta Tax Treaty confirming that certain pension or other retirement arrangements, including Maltese personal retirement schemes, are not treated as "pension funds" for purposes of the treaty and that distributions from these schemes are not "pensions or other similar remuneration" for purposes of the treaty; therefore, treaty benefits cannot be obtained with respect to these schemes. Note that the CAA shuts down a U.S. Malta Tax Treaty-based pension tax shelter pursuant to which a U.S. taxpayer would contribute appreciated assets to a personal Maltese pension fund. The assets in the fund would be sold without tax in a tax-exempt pension fund and the proceeds distributed to the U.S. taxpayer tax-free to the extent the distribution would be tax-free if the person were a resident of Malta. The IRS news release on the CAA can be found here and the CAA can be found here.

IRS Explains Worker Classification Factors

The IRS Office of Federal, State, and Local Government hosted a webinar addressing which workers are or are not considered employees for classification purposes under Section 3121(d)(2) using the application of common law standards and factoring the circumstances surrounding the work performed. (Section references are to the Internal Revenue Code of 1986, as amended.) Under common law rules, whether an individual is an employee or an independent contractor is determined by the relationship of the worker and the business, and if the business can direct or control how the worker performs a task. The IRS considers several aspects of the relationship between parties that can inform how a worker is classified, such as:

- the substance of the relationship, rather than its label;
- whether a worker receives benefits (insurance, pension plan, vacation/sick pay);
- the permanency of the relationship; and
- the extent to which a worker's services are a key aspect of the regular business of the company.

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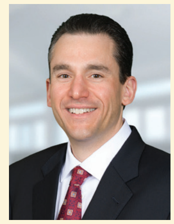
A business has what the IRS calls "behavioral control" of an employee if it can place restrictions on what equipment can be used, where supplies can be purchased or which protocols to follow. Formal training is also indicative of an employee relationship.

JCT Publishes Report on Federal Taxation of Domestic Trusts

The Joint Committee on Taxation (JCT) recently published a report titled "Present Law and Background on the Federal Taxation of Domestic Trusts" (JCX-49-21). The document was provided as source material for members of the Oversight Subcommittee of the House Ways and Means Committee at a hearing dubbed "The Pandora Papers and Hidden Wealth."



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