

Tax Insights

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Tax Practice Group

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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

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IRS Issues Guidance Regarding Earnings Calculation Under Transition Tax

The IRS has issued Notice 2018-13 (<https://www.irs.gov/pub/irs-drop/n-18-13.pdf>) describing additional regulations that it intends to issue for determining amounts included in gross income by a U.S. shareholder under Section 951(a)(1) as a result of Section 965 (enacted as part of the Tax Cuts and Jobs Act) that imposes a transition tax, including rules addressing the calculation of earnings under the tax. Notice 2018-13 also describes a modification to regulations described in Notice 2018-7 (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/01/tax-insights-january-10-2018>)) regarding the repatriation of earnings subject to the transition tax and provides guidance under Sections 863 and 6038 in connection with the repeal of Section 958(b)(4). (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Rules on Whether Foreign Currency Arrangement Constitutes Insurance

The IRS issued Chief Counsel Advice 201802014 (<https://www.irs.gov/pub/irs-wd/201802014.pdf>), in which it found that an arrangement between affiliated operating entities and a captive insurance affiliate concerning fluctuation in value of specified foreign currencies was not insurance for federal income tax purposes where, although an economic risk of loss arising from fluctuation could be an insurable risk, certain terms of arrangement did not comport with a commonly accepted sense of insurance.

IRS Suspends Exams on Stock-based Compensation as Intangible Development Costs

The IRS's Large Business & International (LB&I) division has issued a directive (<https://www.irs.gov/businesses/corporations/instructions-for-examiners-on-transfer-pricing-selection-cost-sharing-arrangement-stock-based-compensation>) to its examiners to stop opening issues related to stock-based compensation (SBC) included in cost-sharing arrangements' (CSA) intangible development costs until the Ninth Circuit issues an opinion in *Altera*. In *Altera Corp. v. Comm'r*, 145 T.C. 91 (2015), the Tax Court invalidated Treasury's final cost-sharing regulations (T.D. 9088), which require taxpayers to include SBC when determining operating expenses under a qualified CSA. (See our prior coverage of *Altera* here (<https://www.stradley.com/insights/publications/2015/08/tax-advisor-august-2015>).)

US Tax Court Upholds Regulation on US Property as Part of CFC Income Calculation

The U.S. Tax Court, in *SIH Partners, LLLP* (2018) 150 T.C. No. 3 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11532>), upheld the validity of Treasury Regulation Section 1.956-2(c)(1), which provides that any obligation of a U.S. person with respect to which a controlled foreign corporation (CFC) is a pledgor or guarantor is considered to be U.S. property held by the CFC. The court also upheld the finding in an earlier case that amounts included in income under the regulation are not qualified dividends.

NYSBA Tax Section Submits Report on Proposed Registered Form Regulations

The New York State Bar Association Tax Section has submitted comments on the recently proposed regulations on the definitions of registration-required obligation and registered form, including guidance on the issuance of pass-through certificates and participation interests in registered form.



Christopher C. Scarpa



Kristin M. McKenna

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Kristin M. McKenna at 215.564.8145 or kmckenna@stradley.com.

Stradley Ronon's Tax Practice Group

Todd C. Vanett, Chair.....	215.564.8070	tvanett@stradley.com
Zachary P. Alexander	215.564.8043	zalexander@stradley.com
Jacquelyn Gordon	215.564.8176	jgordon@stradley.com
Kristin M. McKenna	215.564.8145	kmckenna@stradley.com
William R. Sasso	215.564.8045	wsasso@stradley.com
Christopher C. Scarpa	215.564.8106	cscarpa@stradley.com