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IRS Finalizes Regulations That Address Tax Avoidance Inversion Transactions

The IRS has published final regulations (<https://www.federalregister.gov/documents/2018/07/12/2018-14693/inversions-and-related-transactions>) that address tax avoidance transactions involving the acquisition by certain foreign entities of the stock of or interest in certain domestic entities under Sections 7874 and 367. (Section references are to the Internal Revenue Code of 1986, as amended.)

Tax Court Disallows Partnership Loss and Expenses Deductions Due to Lack of Economic Substance

The U.S. Tax Court, in *Endeavor Partners Fund, LLC v. Commissioner*, 2018-96 TC Memo (2018) (<https://www.ustaxcourt.gov/USTCInOP/OpinionViewer.aspx?ID=11687>), disallowed for lack of economic substance certain loss and expense deductions related to foreign currency option transactions involving tiered structures, straddle transactions and transient partners. The court found that lack of economic substance was shown by evidence that the options, which appeared complicated but were simple when stripped to their essentials, had no reasonable possibility of generating economic profit in an objective sense. Similarly, overall evidence, including that paper entities designed to preserve tax shelter losses were involved and trades were structured using precise offsetting option payout terms and settlement exchange rates fixed in advance, intentionally eliminating any profit potential, showed lack of subjective business purpose. Although appearing in form to generate hundreds of millions of dollars in losses, the transactions in substance merely circulated cash in a series of prearranged steps.

Disallowance of Dividends-Received Deduction Caused by Substantially Similar or Related Property Under Section 246

The IRS found, in Chief Counsel Advice 201827011 (<https://www.irs.gov/pub/irs-wd/201827011.pdf>), that short positions in swaps on an index were “substantially similar or related property,” as defined in Section 246, with respect to shares in an exchange-traded fund (ETF) that tracks the same index, which results in a reduction in the holding period of the ETF shares and the disallowance of the dividends-received deduction with respect to dividends on the ETF shares.

AICPA Submits Comments on the Business Interest Deduction Rules for Consolidated Groups

The American Institute of Certified Public Accountants submitted comments (<https://www.aicpa.org/press/pressreleases/2018/comments-on-initial-guidance-for-deduction-of-business-int-exp-under-tcja.html>) to the IRS responding to proposed guidance (<https://www.irs.gov/pub/irs-drop/n-18-28.pdf>) on the application to consolidated groups of the business interest deduction under Section 163(j).

Commonwealth Court of Pennsylvania Denies Property Tax Exemption to Charity

The Commonwealth Court of Pennsylvania held, in *Helping Enjoying and Loving People 2 Salvation Ministries, Inc. v. Delaware County Board of Assessment Appeals*. (http://www.pacourts.us/assets/opinions/Commonwealth/out/558CD17_7-9-18.pdf?cb=1),

that the taxpayer failed to satisfy the requirements to be a purely public charity under *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985) in order to qualify for a property tax exemption. The taxpayer, which owns a community center that provides, among other services, access to free computers and free computer classes, failed to prove that it benefits a substantial and indefinite class of persons who are legitimate subjects of charity.



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