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Tax Insights

A Publication of the Stradley Ronon
Tax Practice Group

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OCTOBER 23, 2019

IRS Clarifies that Taxpayers May Rely on 2016 Proposed Regulations

The IRS has released Notice 2019-58 (https://www.irs.gov/pub/irs-drop/n-19-58.pdf), which provides that taxpayers may rely on 2016 proposed regulations under Section 385, relating to the treatment of certain interests in corporations as stock or indebtedness, even though the temporary regulations (which were issued contemporaneously) expired on Oct. 13. Section 385(a) authorizes the Treasury Secretary to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated as stock or debt, or part stock and part debt for purposes of the Internal Revenue Code. A taxpayer may rely on the proposed regulations for periods following the expiration of the temporary regulations until further notice is given by the IRS, provided that the taxpayer consistently applies the rules in the proposed regulations in their entirety.

New IRS FATCA FAQ Addresses TIN Requirement

A new explanation (https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal) has been added to the "Reporting" section of the IRS Frequently Asked Questions (FAQs) page for the Foreign Account Tax Compliance Act (FATCA) requirements. The FAQ indicates that the transition relief under Notice 2017-46 for FFIs to obtain taxpayer identification numbers (TINs) that extended over a period ending on Dec. 31, will expire at the of the 2019 calendar year. The first year a U.S. TIN will be required to be reported concerning a U.S. reportable account is with respect to the 2020 tax year, which is due to be exchanged by a FATCA partner by Sept. 30, 2021. However, a reporting Model 1 foreign financial institution is not required to immediately close or withhold on accounts that do not contain a TIN beginning Jan. 1, 2020. An error notice will generate in scenarios where the TIN is missing, and users will have 120 days to correct the issue. If the TIN is not provided within that 120 day period, the IRS will evaluate the data received and determine through a consideration of the facts and circumstances if there is significant noncompliance. If the IRS determines that there is significant noncompliance, the financial institution would have at least 18 months from the date of notification to correct the TIN error before the RIS took further action.

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