

Tax Insights

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IRS Issues Proposed Reliance Regulations on Ownership Attribution Rules

The IRS has issued proposed reliance regulations (<https://www.federalregister.gov/documents/2019/10/02/2019-20567/ownership-attribution-under-section-958-including-for-purposes-of-determining-status-as-controlled>) relating to the ownership attribution rules under Section 958(b). (Section references are to the Internal Revenue Code of 1986, as amended.) Section 958 (rules for determining stock ownership) references Section 318 (constructive ownership of stock) for determining ownership attribution as it applies to rules under Sections 951(b), 954(d)(3), 956(c)(2) and 957. The 2017 Tax Cuts and Jobs Act repealed Section 958(b)(4), regarding the application of certain parts of Section 318 in determining stock ownership. As in effect before repeal, Section 958(b)(4) provided that subparagraphs (A), (B) and (C) of Section 318(a)(3) (providing for downward attribution) were not to be applied so as to consider a United States person as owning stock owned by a foreign person. However, as a result of the repeal, Section 958(b) now provides for downward attribution from a foreign person to a United States person in circumstances in which Section 958(b), before the repeal, did not so provide.

Generally, the changes made by the proposed regulations are intended to ensure that the operation of certain rules is consistent with their application before the repeal of Section 958(b)(4). As such, the proposed regulations make changes related to certain sections and their corresponding regulations: (i) the deduction for certain payments to foreign-related persons under Section 267, (ii) the liquidation of applicable holding company under Section 332, (iii) the triggering events exception under Section 367(A), (iv) a controlled foreign corporation's (CFC) ownership of a trust under Section 672, (v) the taxable year of a partnership under Section 706, (vi) space and ocean income and international communications income of a CFC under Section 863, (vii) look-through rules and active rents and royalties exception to categorization as passive category income under Section 904, (viii) rules for determining stock ownership under Section 958, (ix) passive foreign investment company asset test under Section 1297 and (x) reporting provisions under Section 6049.

Generally, these regulations are proposed to apply on or after Oct. 1, 2019.

IRS Issues Safe Harbor Guidance Related to Repeal of Section 958(b)(4)

The IRS has issued Revenue Procedure 2019-40 (<https://www.irs.gov/pub/irs-drop/rp-19-40.pdf>), which provides guidance related to the appeal of Section 958(b)(4), discussed above. The revenue procedure is meant to address certain situations where taxpayers may have limited ability to determine whether foreign corporations are CFCs and to obtain the information necessary to accurately determine Subpart F income or GILTI inclusions under Section 951A. The revenue procedure provides certain safe harbors for determining (i) whether a foreign corporation is a CFC within the meaning of Section 957, (ii) certain items, including taxable income and earnings and profits (E&P), of a CFC based on alternative information, and (iii) certain items of a specified foreign corporation within the meaning of Section 965(e) and §1.965-1(f)(45) (SFC) based on alternative information.

Delaware Offers Penalty Relief to Corporate Income Taxpayers Who File Late

The Delaware Division of Revenue has announced (<https://news.delaware.gov/2019/09/26/revenue-offers-assistance-to-corporate-tax-filers/>) that it will provide penalty relief for certain corporate taxpayers who file their 2018 Delaware income tax return after the deadline, but on or before Nov. 15, 2019.

Pennsylvania Issues Guidance on Corporate Income Tax Nexus

The Pennsylvania Department of Revenue has issued Corporate Income Tax Bulletin 2019-04 (https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2019-04.pdf), which adopts new economic nexus requirements for purposes of the Pennsylvania corporate income tax. The guidance provides that the Department will deem there to be a rebuttable presumption that corporations without physical presence in the state, but having \$500,000 or more of direct or indirect gross receipts from any combination of the following, sourced to Pennsylvania per year pursuant to the sales factor rules contained in 72 P.S.

§ 7401, have a filing requirement with the Commonwealth for purposes of the Corporate Net Income Tax:

1. gross receipts from the sale, rental, lease, or licensing of tangible personal property;
2. gross receipts from the sale of services; and/or
3. gross receipts from the sale or licensing of intangibles, including franchise agreements.



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