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IRS Releases Final Regulations on Deductions for Business Meals and Entertainment

The IRS released final regulations [T.D. 9925](#) related to the elimination of the deduction under Section 274 for expenditures regarding entertainment, amusement, or recreation activities and provide guidance to determine whether an activity is generally considered to be entertainment. (See our prior coverage [here](#)). The 2017 Tax Cuts and Jobs Act (TCJA) amended Section 274 to revise the rules for deducting expenditures for meals and entertainment, effective for amounts paid or incurred after Dec. 31, 2017. (Section references are to the Internal Revenue Code of 1986, as amended.) The TCJA repealed the directly related and business deduction exceptions to the general prohibition on deducting entertainment expenditures in Section 274(a)(1)(A). The TCJA also amended the 50% limitation in Section 274(n)(1) to remove the reference to entertainment expenditures. As a result, entertainment expenditures are no longer deductible unless one of the nine exceptions in Section 274(e) applies. Specifically, the final regulations address the elimination of the deduction under Section 274 for expenditures related to entertainment, amusement, or recreation activities, and provide guidance to determine whether an activity is of a type generally considered to be entertainment. The final regulations also address the limitation on the deduction of food and beverage expenses under Section 274(k) and (n), including the applicability of the nine exceptions. The final regulations do not affect the application of the special rules in Treasury Regulation Section 1.274-10 to expenses related to aircraft used for entertainment.

IRS Releases Final Regulations on the Foreign Tax Credit and Hybrid Deduction Arrangements

The IRS released final regulations [T.D. 9922](#) related to the foreign tax credit and hybrid deduction arrangements. The regulations finalize [proposed regulations](#) with regard to the foreign tax credit that were issued on Dec. 17, 2019, and [proposed regulations](#) with regard to hybrid deduction arrangements on April 8, 2020. The regulations finalize the respective proposed regulations without substantive changes.

With regard to the foreign tax credit, the final regulations address: (1) the allocation and apportionment of deductions under Sections 861 through 865, including rules on the allocation and apportionment of expenditures for research and experimentation, stewardship, legal damages, and certain deductions of life insurance companies; (2) the allocation and apportionment of foreign income taxes; (3) the interaction of the branch loss and dual consolidated loss recapture rules with Section 904(f) and (g); (4) the effect of foreign tax redeterminations of foreign corporations and required notifications to the IRS of foreign tax redeterminations and related penalty provisions; (5) the definition of foreign personal holding company income under Section 954; (6) the application of the foreign tax credit disallowance under Section 965(g); and (7) the application of the foreign tax credit limitation to consolidated groups.

With regard to hybrid deduction arrangements, the final regulations address: (1) the reduction to a hybrid deduction account under Section 245A(e) by reason of an amount included in the gross income of a domestic corporation under Section 951(a) or 951A(a) with respect to a controlled foreign corporation (CFC); (2) the treatment of a hybrid instrument as a financing transaction for purposes of the conduit financing rules under

Section 881; and (3) the treatment under Section 951A of certain prepayments made to a related CFC after Dec. 31, 2017, and before the CFC's first taxable year beginning after Dec. 31, 2017.

IRS Releases Additional Proposed Regulations on the Foreign Tax Credit

The IRS released [proposed regulations](#) on the foreign tax credit, providing guidance on a variety of aspects of the credit. The proposed regulations reference rules set forth in the final regulations mentioned above and regulations finalized under Section 250 (see our prior coverage here). The proposed regulations address: (1) the determination of foreign income taxes subject to the credit and deduction disallowance provision of Section 245A(d); (2) the determination of oil and gas extraction income; (3) the impact of the repeal of Section 902 on certain regulations issued under section 367(b); (4) the sourcing of inclusions under Sections 951, 951A, and 1293; (5) allocation and apportionment of expenses under Section 861; (6) the allocation and apportionment of Section 818(f) expenses of life insurance companies that are members of consolidated groups; (7) the allocation and apportionment of foreign income taxes, including taxes imposed with respect to disregarded payments; (8) creditability of foreign taxes under Sections 901 and 903; (9) the allocation of the liability for foreign income taxes in connection with certain mid-year transfers or reorganizations; (10) transition rules to account for the effect on loss accounts of net operating loss carrybacks to pre-2018 taxable years that are allowed under the 2020 CARES Act; (11) the foreign branch category rules in Treasury Regulation Section 1.904-4(f) and the definition of a financial services entity for purposes of Section 904; and (12) the time at which credits for foreign income taxes can be claimed pursuant to Sections 901(a) and 905(a).

IRS Releases Final Regulations on Withholding Rules for Certain Retirement and Annuity Payments

The IRS released final regulations [T.D. 9920](#) on withholding rules for certain periodic retirement and annuity payments. The final regulations adopt the proposed regulations, issued May 27, 2020, without any modifications. Changes made to Section 3405 by the TCJA eliminated the default rule that, in the case of any periodic payment made where a withholding certificate is not in effect, the amount withheld from the periodic payment is determined by treating the payee as a married individual claiming three withholding exemptions. The regulations do not set forth a specific default rate of withholding on periodic payments. Instead, the regulations provide that the default rate of withholding on periodic payments made after Dec. 31, 2020,



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is determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.

IRS Releases Final Regulations on Source of Income from the Sale of Property

The IRS released final regulations [T.D. 9921](#) on the source of income rules from the sale of property under Section 863. The final regulations retain the overall approach of the proposed regulations, with certain revisions. The TCJA amended Section 863 to provide that the source of income from the sale or exchange of inventory property produced in the U.S. and sold outside of the U.S. and inventory property produced outside of the U.S. and sold within the U.S., in whole or in part, should be determined solely on the basis of production activities with respect to that inventory. Specifically, the regulations address: (1) income attributable to sales activity, (2) the definition of production activities, (3) measuring adjusted basis of production assets, (4) sale by a nonresident attributable to an office in the U.S., (5) the rules for determining the location or existence of production activity, and (6) income tax treaties.

NJ Announces 30-Day Penalty Relief for Corporations for 2019

The New Jersey Division of Taxation [announced](#) that it is waiving the late filing penalty for 2019 Corporation Business Tax calendar year returns due Oct. 15, 2020 pursuant to an extension. The announcement states that no late filing penalty will apply if such returns are filed no later than Nov. 16, 2020. The same courtesy extends to 2019 fiscal year filers who have an extended fiscal year federal return.