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Qualified Derivative Payment Reporting to be Delayed

The U.S. Department of the Treasury (Treasury) and the IRS have announced, in Notice 2021-36, that they intend to amend the regulations under Sections 59A and 6038A to defer the applicability date of certain provisions of the regulations relating to the reporting of qualified derivative payments ("QDP") until taxable years beginning on or after Jan. 1, 2023. Section 59A, as added by the 2017 Tax Cuts and Jobs Act, generally requires that certain corporations, excluding RICs, REITs and S corporations, that have gross receipts of $500 million or more over the applicable three-year period pay a tax equal to such entities' "base erosion minimum tax." In 2019, final regulations under Section 59A were issued, which implemented the base erosion and anti-abuse tax (BEAT) and provided reporting requirements related thereto. (See our prior coverage here.) The 2019 final regulations included rules under sections 59A and 6038A addressing the reporting of QDPs, which are not base erosion payments subject to the tax. The IRS concurrently issued proposed regulations, which were finalized in 2020. The preamble to the final 2020 regulations noted that there was a comment with regard to the interaction of the QDP exception, reporting requirements and the BEAT netting rule (see Treas. Reg. Section 1.59-2(e)(3)(vi)). Treasury and the IRS decided it was necessary to continue to study this to determine if future guidance was necessary and have determined it is appropriate to extend the transition period. Therefore, Treasury and the IRS intend to amend Treas. Reg. Section 1.6038A-2(g) to provide that Treas. Reg. Section 1.6038A-2(b)(7)(ix) will apply to taxable years beginning on or after Jan. 1, 2023. Until Treas. Reg. Section 1.6038A-2(b)(7)(ix) applies, the rules described in Treas. Reg. Section 1.59A6(b)(2)(iv) that apply during the transition period will continue to apply. (Unless otherwise noted, Section references are to the Internal Revenue Code of 1986, as amended and the Treasury Regulations promulgated thereunder.)

U.S. Enters into Competent Authority Agreement with Switzerland

The IRS, in Announcement 2021-11, announced that the United States of America and Switzerland entered into a Competent Authority Arrangement (Arrangement), which provides that U.S. and Swiss pension and retirement arrangements, including individual retirement plans, may be eligible for an exemption from withholding on dividends under the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at Washington on Oct. 2, 1996, as amended by the Protocol, signed on Sept. 23, 2009. This Arrangement supersedes the competent authority arrangement entered into on Dec. 10, 2004.

Members of Congress Request That IRS Update Guidance for Donated Cryptocurrency

Several members of Congress, who are part of the Blockchain Caucus, sent a letter to IRS Commissioner Rettig regarding guidance for taxpayers making cryptocurrency donations. Specifically, the members of Congress request that the IRS amend Form 8283, Noncash Charitable Contributions, to reflect recently updated IRS FAQs on virtual currencies. The FAQs permit a taxpayer to use the fair market value at the time of sale-based price on the exchange or worldwide index, whereas Form 8283 requires the taxpayer to get the donated property appraised to determine the value.

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