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IRS Issues Guidance on Return Filing and Tax Payment for Deemed Repatriation

The IRS issued IR 2018-53 (<https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns>), providing guidance in a frequently asked questions format that addresses basic information for taxpayers affected by Section 965, as added by the Tax Cuts and Jobs Act, including how to report such income and how to pay the associated tax liability. (See our prior coverage here (https://www.stradley.com/insights/publications/2018/01/tax_insights_january_24_2018) and here (<https://www.stradley.com/insights/publications/2017/12/tax-insights-december-20-2017>)). (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Issues Ruling on Testing Investment Company Status Under 351

The IRS ruled, in Private Letter Ruling 201810005 (<https://www.irs.gov/pub/irs-wd/201810005.pdf>), that immediately after a publicly traded limited partnership restructuring, the partnership's direct ownership in a new REIT would represent 50 percent or more of the total value of all the new REIT's equity interests, allowing the partnership's new REIT equity interests to be disregarded, so that it would be deemed to own its ratable share of the new REIT's assets for purposes of determining whether the partnership is an investment company under Section 351(e).

IRS Adds New Issues to LB&I's Campaign Audit Strategy

On March 13, the IRS's Large Business and International (LB&I) division announced the identification and selection of five additional issues (<https://www.irs.gov/businesses/irs-announces-rollout-of-five-large-business-and-international-compliance-campaigns>) that it will be targeting in its "compliance campaign" audit strategy. In January 2017, the IRS announced a new audit strategy for its LB&I division known as "campaigns" (shifting its strategy to issue-based examinations based on compliance issues that LB&I determines present greater levels of compliance risk, and thereby improving return selection). The IRS initially selected 13 compliance issues (<https://www.irs.gov/businesses/large-business-and-international-launches-compliance-campaigns>) when it introduced this strategy. In November 2017, the IRS announced the identification and selection of 11 additional issues (<https://www.irs.gov/businesses/large-business-and-international-launches-compliance-campaigns-0>).

The new issues identified by the IRS are:

- **Costs that facilitate a Section 355 transaction.** Costs to facilitate a tax-free corporate distribution under Section 355, such as a spin-off, split-off or split-up, must be capitalized and are not currently deductible. However, some taxpayers execute a corporate distribution and improperly deduct the costs that facilitated the transaction in the year the distribution was completed.
- **Self-Employment Contributions Act (SECA) tax.** Partners report income passed through from their partnerships. If the partner is an individual who renders services, the partner's distributive share of income is subject to self-employment tax under SECA. However, some limited partners and limited liability company (LLC) members who render services to clients on behalf of the partnership or LLC do not report flow-

through income as earnings from self-employment, and do not pay SECA tax.

- **Partnership “stop filer.”** Partners report income, losses and other items passed through from their partnership. Some partnerships stop filing tax returns for various reasons, yet still have economic transactions that are not being reported to their partners.
- **Sale of partnership interest.** A partner must report the sale of a partnership interest on the partner’s tax return. However, some taxpayers do not report the sale, or report the gain or loss incorrectly. Incorrect reporting may include the amount and character of the gain or loss, such as taxpayers reporting the entire gain as long-term capital gain when a portion of the gain may be ordinary gain or subject to a higher long-term capital gain rate.
- **Partial disposition election for buildings.** The Section 168 disposition regulations, issued in August 2014, provide rules for recognizing gain or loss on the disposition of MACRS property and allow taxpayers to elect to recognize partial dispositions of property. To comply with the Section 168 disposition regulations and make a partial disposition election, a taxpayer must be able to substantiate that it:
 - (i) disposed of a portion of a MACRS asset owned by the taxpayer;
 - (ii) identified the asset that was partially disposed;
 - (iii) determined the placed-in-service date of the partially disposed asset;
 - (iv) determined the adjusted basis of the disposed portion; and
 - (v) reduced the adjusted basis of the asset by the disposed portion.The IRS is concerned that taxpayers are not accurately recognizing the gain or loss on the partial disposition of a building, including its structural components.

IRS Announces Offshore Voluntary Disclosure Program Ending in September

The IRS issued IR 2018-52 (<https://www.irs.gov/newsroom/irs-to-end-offshore-voluntary-disclosure-program-taxpayers-with-undisclosed-foreign-assets-urged-to-come-forward-now>), announcing that it will be closing the offshore voluntary disclosure program on Sept. 28.

March Deadline Extended for Some Dividend Equivalent Payments

The IRS has updated a prior list of frequently asked questions (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>) on Foreign Account Tax Compliance Act requirements to provide that for the 2017 calendar year, a withholding agent won’t be subject to interest, penalties or additions to tax for a dividend equivalent payment made for a derivative referencing a partnership if the agent withholds tax on and reports the payment by Sept. 17.



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JCT Issues Report on Federal Tax Provisions That Expired in 2017

The Joint Committee on Taxation issued a report (<https://www.jct.gov/publications.html?func=startdown&id=5062>), prepared for a March 14 House Ways and Means Tax Policy Subcommittee hearing, listing federal tax provisions that expired in 2017 and staff revenue estimates of making these provisions permanent.

Texas Issues Reminder Regarding Tax Amnesty Reminder

The Texas Comptroller of Public Accounts issued Texas Tax Policy News No. 3 (<https://comptroller.texas.gov/taxes/tax-policy-news/2018-march.php>), reminding taxpayers of the tax amnesty program that will run from May 1, 2018, through June 29, 2018. The program can provide delinquent taxpayers with relief from penalty and interest on tax due. Tax amnesty applies to periods before Jan. 1, and only includes penalty and interest on liabilities that have not been previously reported to the Comptroller’s Office. If a taxpayer has been notified that a period or periods are scheduled for an audit review or if the taxpayer is already under audit review, then those periods are not eligible for amnesty. Additionally, the amnesty does not apply to IFTA (fuel) taxes, PUC gross receipts assessments, local motor vehicle tax and unclaimed property payments.

Vermont Issues Guidance on Corporate Income Tax Nexus

The Vermont Department of Taxes has issued Vermont Technical Bulletin No. TB-70 (<http://tax.vermont.gov/sites/tax/files/documents/TB-70.pdf>), discussing the circumstances under which a foreign business entity has nexus with Vermont as well as related income tax filing and minimum payment requirements.