

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2017
Stradley Ronon Stevens & Young, LLP
All rights reserved.

IRS Delays Application of Debt Equity Regs Documentation Rules by One Year

In Notice 2017-36, 2017-33 IRB 1 (<https://www.irs.gov/pub/irs-drop/rp-17-36.pdf>), the IRS announced a delay in the application of the regulations set forth in Treasury Regulations Section 1.385-2 related to the documentation necessary to determine whether an interest in a corporation is treated as stock or indebtedness for all purposes under the Internal Revenue Code of 1986, as amended (Code). See our prior coverage here (<http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-october-19-2016>). The IRS added that in response to the concern that taxpayers have continued to raise with the application of the regulations to interests issued on or after Jan. 1, 2018, and in light of further actions concerning the final and temporary regulations under Section 385 in connection with the review of those regulations (see Notice 2017-38 and our prior coverage here (<http://www.stradley.com/insights/publications/2017/07/tax-insights-july-12-2017>)), the Treasury Department and the IRS have determined that these concerns warrant a delay in the application of the regulations by 12 months. (Section references are to the Code.) Accordingly, the Treasury Department and the IRS intend to amend the regulations to apply only to interests issued or deemed issued on or after Jan. 1, 2019.

Deduction Allowed on Unamortized Debt Issuance Costs on Exchange

In partially redacted field attorney advice (FAA 20172901F (<https://www.irs.gov/pub/irs-lafa/20172901f.pdf>)), the IRS advised that a corporate taxpayer generally is entitled to deduct the unamortized debt issuance costs of its debt upon the exchange of the debt for new debt. The IRS and the taxpayer agreed that a change in terms from the original loans to the new loans created a change in yield that constitutes a significant modification under Treasury Regulation Section 1.1001-3(e)(2). The taxpayer incurred debt issuance costs for the original loans and filed a tax return stating it intended to amortize such costs. Later, the taxpayer filed an amended return for the year of the modification to the original loans, stating that it determined that the costs were fully deductible as a result of the modification. Relying on Treasury Regulation Section 1.163-7(c), the IRS concluded that the unamortized debt issuance costs allocable to the original loans repurchased for money would be deductible in the year of repurchase. Further, it concluded that the unamortized debt issuance costs allocable to the original loans repurchased in the debt-for-debt exchange would be deductible in the year of the exchange.

Tax Court Holds That Parent Must Include CFCs' Investments in Income

In *Crestek Inc. et al. v. Commissioner*; No. 8285-13; 149 T.C. No. 5 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=11363>), the Tax Court held that the parent of several controlled foreign corporations (CFC) had to include certain income of the CFCs in the parent's gross income under Section 951. As a result of an intercompany loan from a CFC to the parent's domestic subsidiary,

the outstanding intercompany loan balance constituted “United States property” held by the CFC within the meaning of Section 956(c)(1)(C) during the years that the loan was outstanding. Further, the court held that a CFC’s guarantee of a certain loan by a domestic subsidiary of the parent (and direct or indirect pledge of assets as security for that loan) constituted “United States property” held by the CFC within the meaning of Section 956(c)(1)(C) and (d) during the time such guarantee was in place. Third, a large trade receivable balance owed to a CFC by a domestic subsidiary of the parent, which had been outstanding for at least three years and bore no interest, was in excess of the amount that “would be ordinary and necessary” in a transaction between unrelated parties, within the meaning of Section 956(c)(2)(C), to carry on their respective trades or businesses. That trade receivable thus constituted “United States property” held by the CFC within the meaning of Section 956(c)(1)(C) during the time that the receivable was outstanding. Finally, the court held that there remains a material dispute of fact as to whether the trade receivable balances owed by a domestic subsidiary to a CFC, which were incurred in an ongoing trade or business between those entities, were “ordinary and necessary,” within the meaning of Section 956(c)(2)(C), to carry on their respective trades or businesses.

IRS Issues Final Regulations on Health Insurance Premium Tax Credit

The IRS has issued final regulations (T.D. 9822 (<https://www.gpo.gov/fdsys/pkg/FR-2017-07-26/pdf/2017-15642.pdf>)) that amend the Treasury Regulations under Section 36B relating to the health insurance premium tax credit and under Section 162(l) relating to the deduction for health insurance costs for self-employed individuals.



Christopher C. Scarpa



Kristin M. McKenna

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Kristin M. McKenna at 215.564.8145 or kmckenna@stradley.com.

Stradley Ronon’s Tax Practice Group

Todd C. Vanett, Chair.....	215.564.8070	tvanett@stradley.com
Zachary P. Alexander	215.564.8043	zalexander@stradley.com
Jacquelyn Gordon	215.564.8176	jgordon@stradley.com
Kristin M. McKenna	215.564.8145	kmckenna@stradley.com
William R. Sasso.....	215.564.8045	wsasso@stradley.com
Christopher C. Scarpa	215.564.8106	cscarpa@stradley.com
Roger Wise.....	202.419.8436	rwise@stradley.com