STRADLEY RONON

Tax Insights

A Publication of the Stradley Ronon
Tax Practice Group

WWW.STRADLEY.COM

SEPTEMBER 26, 2018

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

IRS Extends the Effective Date of Certain Dividend Equivalent Transition Rules

The IRS, in Notice 2018-72 (https://www.irs.gov/pub/irs-drop/n-18-72.pdf), stated that it intends to modify the effective date of certain rules in Treasury regulations under Sections 871(m), 1441, 1461 and 1473. (Section references are to the Internal Revenue Code of 1986, as amended). Specifically, the Notice provides the following: (i) the phase-in period provided in Notice 2016-76 (https://www.irs.gov/pub/irs-drop/n-16-76.pdf) is extended, meaning that the IRS will take into account the extent to which a good faith effort was made to comply with the regulations for certain transactions through 2020 or 2021; (ii) the simplified standard for determining whether transactions are combined transactions under Notice 2016-76 (https://www.irs.gov/pub/irs-drop/n-16-76.pdf) and Notice 2017-42 (https://www.irs.gov/pub/irs-drop/n-17-42.pdf) is extended through 2020; (iii) a qualified derivatives dealer, in its equity derivatives dealer capacity, will not be subject to tax on dividends and dividend equivalents received in 2019 and 2020; and (iv) withholding agents may apply the transition rules in Notice 2010-46 (https://www.irs.gov/pub/irs-utl/notice_2010_46.pdf) for payments made in 2020. See our prior coverage here (https://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-december-7-2016) and here (https://www.stradley.com/insights/publications/2017/08/tax-insights-august-9-2017).

IRS Issues Proposed Treasury Regulations Under GILTI Regime

The IRS has issued proposed Treasury regulations (https://www.irs.gov/pub/irs-drop/reg-104390-18.pdf) on the new global intangible low-taxed income (GILTI) regime under Section 951A, which was enacted as part of the 2017 Tax Cuts and Jobs ACT (TCJA). Under the GILTI regime, a U.S. shareholder of a controlled foreign corporation (CFC) is required to include in its gross income its GILTI for such taxable year. (See our prior coverage here (https://www.stradley.com/insights/publications/2017/12/tax-insights-december-20-2017).) The proposed regulations generally provide guidance to such U.S. shareholders for calculating items of income determined at the CFC level, the shareholder's pro rata share of such items, and the amount of such items included in GILTI and the shareholder's gross income for the taxable year.

IRS Issues Proposed Treasury Regulations for CFCs

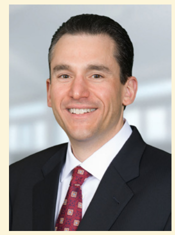
The IRS has issued proposed Treasury regulations (https://www.irs.gov/pub/irs-drop/reg-104390-18.pdf) under Section 951 that aim to close certain planning opportunities under the CFC regulations. A U.S. person must include in gross income its pro rata share of a CFC's subpart F income. Currently, earnings and profits are allocated between classes of stock, with discretionary distribution rights based on the fair market value of the stock. However, the proposed regulations require the allocation of earnings and profits between such stock first based on the distribution rights of each class of stock and then further distributed pro rata with respect to each share in the class of stock. The distribution rights of a class of stock are determined taking into account all facts and circumstances related to the economic rights and interest in the current earnings and profits of the corporation of each class, including the terms of the class of stock, any agreement among the shareholders and, where appropriate, the relative fair market value of shares of stock. The proposed regulations, if adopted in their current form, will close the "partnership blocker loophole" by treating certain controlled domestic partnerships as foreign partnerships in order to identify U.S. shareholders. Additionally, the proposed regulations conform the regulations with changes made by the TCJA.

IRS Confirms Early Adoption of New Financial Accounting Standards

The IRS confirms in Rev. Proc. 2018-49 (https://www.irs.gov/pub/irs-drop/rp-18-49.pdf) that the early adopters of the new financial accounting standards for revenue recognition issued by the Financial Accounting Standards Board and International Accounting Standards Board can use the automatic accounting method change outlined in Rev. Proc. 2018-29 (https://www.irs.gov/pub/irs-drop/rp-18-29.pdf) and Rev. Proc. 2018-31 (https://www.irs.gov/pub/irs-drop/rp-18-31.pdf).

AICPA Issues Letters to IRS Requesting Guidance Under Section 965

The American Institute of CPAs (AICPA) issued two letters (https://www.aicpa.org/advocacy/tax/2018taxadvocacycommentletters.html) to the U.S. Department of the Treasury and the IRS requesting guidance under Section 965. In a letter dated Sept. 13, 2018 (https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180913-aicpa-comments-on-trust-and-estate-comment-letter-on-2017-tcja-965.pdf), the AICPA requested that guidance be issued on the application of the Section 965 transition tax to trusts and estates. The letter requested penalty relief for trusts and estates for reliance on (i) incomplete information from pass-through entities and (ii) FAQs that have been frequently updated. Additionally, in a letter dated Sept. 17, 2018 (https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20180917-aicpa-comments-on-965-overpayments.pdf), the AICPA requested guidance regarding the application of overpayment of taxes to installment payments under Section 965.



Christopher C. Scarpa

Jacquelyn Gordon

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Jacquelyn Gordon at 215.564.8176 or jgordon@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
William R. Sasso	215.564.8045	wsasso@stradley.com
Christopher C. Scarpa	215.564.8106	cscarpa@stradley.com