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IRS Issues Final Regulations on Dividend Equivalents From Sources Within the U.S.

The IRS has issued final regulations (TD 9887) (<https://www.federalregister.gov/documents/2019/12/17/2019-26977/dividend-equivalents-from-sources-within-the-united-states>) regarding dividend equivalents from sources within the U.S. The final regulations adopt the 2017 proposed regulations without any substantive change. The final regulations (1) define the term “broker” for purposes of Section 871(m) (Treasury Regulation Section 1.871-15(a)(1)); (2) provide guidance on when the delta of an option that is listed on a foreign regulated exchange may be calculated based on the delta of that option at the close of business on the business day before the date of issuance (Treasury Regulation Section 1.871-15(g)(4)); and (3) provide guidance identifying which party to a potential 871(m) transaction is responsible for determining whether a transaction is an 871(m) transaction when multiple brokers or dealers are involved in the transaction (Treasury Regulation Section 1.871-15(p)(1)). (Section references are to the Internal Revenue Code of 1986, as amended.) The IRS contemporaneously issued Notice 2020-2 (Notice) (<https://www.irs.gov/pub/irs-drop/n-20-02.pdf>) announcing a delay in the effective/applicability date of certain rules in the final regulations and extending the phase-in period provided in Notice 2018-72 for certain provisions of the Section 871(m) regime. In general, the Notice (1) extends the phase-in year for delta-one and non-delta-one transactions; (2) extends the simplified standard for determining whether transactions are combined transactions; (3) extends the phase-in relief for qualified derivatives dealers; and (4) extends other transition rules set forth in Notice 2010-46.

IRS Issues Final Regulations on Foreign Tax Credits

The IRS has issued final regulations (TD 9882) (<https://www.irs.gov/pub/irs-drop/td-9882.pdf>) that provide guidance relating to the determination of the foreign tax credit (FTC). The final regulations finalize proposed regulations published on Dec. 7, 2018 (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/12/tax-insights-december-5-2018>)). The final regulations also finalize proposed regulations on overall foreign losses that were published on June 25, 2012, and finalize certain portions of proposed regulations published on Nov. 7, 2007, relating to a U.S. taxpayer’s obligation to notify the IRS of a foreign tax redetermination.

IRS Issues Final Regulations on Taxable Spinoffs

The IRS has released final regulations (TD 9888) (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-27110.pdf>) that provide guidance for determining whether a corporation is a predecessor or successor of a distributing or controlled corporation for purposes of the exception under Section 355(e) to the nonrecognition treatment afforded qualifying distributions. The final regulations adopt the 2016 proposed regulations (see our prior coverage here (<https://www.stradley.com/insights/publications/2016/tax-insights-2016-tax-insights-december-28-2016>)) with limited modifications.

IRS Releases Proposed Reliance Regulations on SALT Limitation Workarounds

The IRS has released proposed regulations (REG-107431-19) (<https://www.federalregister.gov/documents/2019/12/17/2019-26969/treatment-of-payments-to-charitable-entities-in-return-for-consideration>) on how to treat contributions made to a charity in return for state and local tax (SALT) credits. The proposed regulations include guidance on (1) the treatment of business entity payments to charitable entities; (2) the treatment of payments by individuals

with total state and local tax liabilities less than or equal to the \$10,000 limitation; and (3) the application of the “quid pro quo” principle to benefits received or expected to be received by the donor from a party other than the donee. With respect to the treatment of business entity payments to charitable entities, if the taxpayer’s payment or transfer bears a direct relationship to its trade or business, and the payment is made with reasonable expectation of commensurate financial return, the payment or transfer may constitute an allowable deduction as a trade or business expense rather than as a charitable contribution.

IRS Issues Proposed Regulations on Executive Compensation Deduction Limit

The IRS has issued proposed regulations (REG-122180-18) (<https://www.federalregister.gov/documents/2019/12/20/2019-26116/certain-employee-remuneration-in-excess-of-1000000-under-internal-revenue-code-section-162m>) under Section 162(m), which limits the deduction for certain employee remuneration in excess of \$1,000,000 (often referred to as executive compensation) for federal income tax purposes. The proposed regs implement the amendments made to Section 162(m) by the 2017 Tax Cuts and Jobs Act.

Congress Passes Extenders Legislation

On Dec. 19, the Senate passed the “Taxpayer Certainty and Disaster Tax Relief Act of 2019” (the Disaster Act) as part of an omnibus spending package, the “Further Consolidated Appropriations Act, 2020” (H.R. 1865) (<https://www.congress.gov/bill/116th-congress/house-bill/1865/text>). The measure was previously passed by the House on Dec. 17, and was signed by the president on Dec. 20. The Disaster Act extends over 30 Code provisions, generally through 2020, and includes provisions that:

1. repeal the “parking tax” that was added to the Internal Revenue Code as part of the 2017 Tax Cuts and Jobs Act. The parking tax was imposed at a rate of 21% on parking and transit benefits made available to an exempt organization’s employees regardless of whether the employees paid for those benefits themselves through pretax salary reduction or if local law required an employer to provide the benefits. The Disaster Act repeals the parking tax retroactively (i.e., as if it were never enacted);
2. provide for a \$5 billion New Markets Tax Credit allocation for 2020; and
3. enhance 529 plans by permitting savers to use account assets to satisfy up to \$10,000 in student loans for themselves or beneficiaries and expanding qualified expenses to include books, classes and supplies for apprenticeship programs registered with the Department of Labor.



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IRS Releases Interim Guidance Memorandum on Centralized Partnership Audit Regime Field Audits

The IRS released an Interim Guidance Memorandum (LB&I-04-1019-010) (<https://www.irs.gov/pub/foia/ig/spder/lbi-04-1019-010.pdf>), which provides procedures to IRS examiners for conducting field audits of partnerships under the centralized partnership audit regime. The centralized partnership audit regime field exam procedures will be incorporated into Internal Revenue Manual (IRM) Chapter 4.31.9. The field exam procedures address a number of topics, including how the examiner should designate a partnership representative if the partnership has not designated one, how to spot a partner’s inconsistent treatment of partnership items and the statute of limitations on making adjustments, and how and when to ask a partnership to extend the limitations period.

Philadelphia Department of Revenue Releases Economic Nexus Policy

The Philadelphia Department of Revenue has published a policy statement (<https://www.phila.gov/media/20191210155123/Philadelphia-economic-nexus-policy-wayfair.pdf>) regarding the city’s treatment of economic nexus for purposes of Philadelphia business income and receipts tax (BIRT) in light of the U.S. Supreme Court decision in *South Dakota v. Wayfair*. The city has amended its BIRT regulations to adopt a “bright-line” economic nexus standard for tax years beginning on and after Jan. 1, 2019. The “bright line” standard generally is an economic nexus standard, under which a business with no physical presence in Philadelphia is considered to have sufficient nexus to subject the business to Philadelphia BIRT if the business has generated at least \$100,000 in Philadelphia gross receipts during any 12-month period ending in the current year, and has sufficient connection with Philadelphia to establish nexus under the U.S. Constitution. The city has published a list of answers to frequently asked questions (<https://www.phila.gov/media/20191210155618/Philadelphia-economic-nexus-frequently-asked-questions-FAQ-wayfair.pdf>) to clarify application of the new standard.