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IRS Publishes Final Regs on LIBOR Transition

The IRS has published final regulations (TD 9961) on the transition away from the London Interbank Offered Rate (LIBOR) and other interbank offered rates (IBOR) to alternative reference rates. (See our prior coverage here and here.) The IRS released these final regulations to address the possibility that a modification of the terms of a contract (e.g., debt instruments, derivative contracts and others) to replace such an IBOR with a new reference rate could result in the realization of income, deduction, gain or loss for federal income tax purposes. Generally, the final regulations are consistent with the proposed regulations and prior IRS guidance, Rev. Proc. 2020-44, in such that a modification to a contract to account for the change in an IBOR-based rate will not be treated as an exchange of property and thus would not result in the realization of capital gain or loss. The main difference is that the final regulations provide a single set of rules for all contracts and do not separate them out (debt and non-debt) as the proposed regulations did. Additionally, a contract is defined broadly to include debt instruments, derivative contracts, insurance contracts, stock, leases and other contractual relationships. The final regulations also cover the treatment of covered and noncovered modifications, qualified one-time payments, fair market value requirement and excluded modifications, integrated transactions and hedging transactions, fast-pay stocks, investments trusts and REMICs, as well as various definitions and other related items.

IRS Releases Practice Unit on the Section 245A Dividends Received Deduction

The IRS has released a practice unit on Section 245A, and the dividends received deduction. (Section references are to the Internal Revenue Code of 1986, as amended.) Section 245A, which was added by the 2017 Tax Cuts and Jobs Act, generally allows a domestic corporation that is a U.S. shareholder (a section 245A shareholder) a 100% dividends received deduction (a Section 245A Deduction) for the foreign-source portion of a dividend received after Dec. 31, 2017, from a specified 10%-owned foreign corporation. (See our prior coverage here and here.) The Section 245A Deduction is only available to domestic C-corporations that are neither real estate investment trusts nor regulated investment companies. The practice unit notes that the Section 245A Deduction is generally intended to be available only with respect to distributions of residual untaxed foreign-source earnings and profits remaining after application of Section 951 (subpart F income) and Section 951A (Global Intangible Low-Taxed Income (GILTI)). The practice unit provides a general overview of Section 245A and the related Treasury Regulations and the interactions with Sections 951 and 951A.

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