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**BANK & CAPITAL MARKETS
TAX INSTITUTE**

VIRTUAL CONFERENCE & WORKSHOPS

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 **ALM** Events

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NOTICE:

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Agenda

- BEAT Update
- Regulatory Capital Tax Update
- Anti-Hybrid Rules
- GILTI Update
 - High Tax Exception
- FTC Regulations
- PPP Loans
- Federal Bonus Depreciation Update
- Section 1446(f) Regulations



Polling Question:

Do you think Corporate tax rate will increase in the next 4 years?

- a. Yes
- b. No
- c. Not sure



BEAT Update



BEAT Update



Overview

- The BEAT is imposed to the extent that 10% of the taxpayer's modified taxable income (MTI) exceeds the taxpayer's regular tax liability, reduced by certain credits. MTI is taxable income determined without regard to any base erosion tax benefits – generally, the amount of allowable deductions attributable to base erosion payments – plus the base erosion percentage of any net operating loss (NOL) deduction for the tax year.
- On December 2, 2019, Treasury and the IRS released final regulations under Section 59A (the 2019 Final Regulations)
- The 2019 Final Regulations provide that Section 988 losses that are recognized with respect to transactions with unrelated parties are included in the denominator.
- On September 1 Treasury released Final Regulations (the 2020 Final Regulations) under Section 59A.
- The 2020 Final Regulations incorporate with modifications the rules set forth in prior proposed regulations issued on December 2, 2019 (the 2019 Proposed Regulations) and provide additional guidance on determining the aggregate group, allow taxpayers an election to waive deductions for purposes of calculating their base erosion percentage, and provide certain rules applicable to partnerships.

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Regulatory Capital Tax Updates

Regulatory Capital Tax Updates



2020 Timeline

- On February 14, 2020, the U.S. Department of the Treasury, Office of Comptroller of Currency, Federal Reserve System, and Federal Deposit Insurance Corporation (collectively referred to as the “Federal Agencies”) issued final CECL transition rules which provided for a three-year phase-in for regulatory capital purposes
- On March 27, 2020, in response to the economic uncertainty caused by COVID-19, the Federal Agencies issues an interim final rule (IFR) that delayed estimated impact on regulatory capital stemming from the implementation of CECL for a transition period up to five-years
- On April 22, 2020, the federal agencies issued a Final Rule delaying the impact of CECL for a transition period up to five-years
- On June 4, 2020, the Office of the Comptroller of the Currency (“OCC”) released a notice of proposed rulemaking that would revise and reorganize its regulations relating to the activities and operations of national banks and Federal savings associations (“banks”). The proposed rules included, among other things, additional requirements for banks who are engaged in tax equity finance transactions (“TEF”). A TEF is is defined as a transaction in which a bank provides equity financing to fund a project that generates tax credits and other tax benefits, and the use of an equity-based structure to transfer of those credits to the bank
- On September 15, 2020, the U.S. Treasury issued a report as requested by Congress in the Consolidated Appropriations Act, 2020 to study the need for further changes to the regulatory capital requirements necessitated by CECL. The report indicates that the Treasury will continue to actively monitor CECL implementation, but a definitive assessment of the impact of CECL on regulatory capital is not currently feasible.

Polling Question 2:

Have you considered the impact of the discussed changes on your company's regulatory capital calculation?

- a. Yes
- b. No
- c. Not sure



Anti-Hybrid Rules

Final Section 267A regulations



- The Final Regulations retain the architecture of the 2018 Proposed Regulations, but make a number of changes based on comments Treasury and the IRS had received.
- Section 267A, disallows a tax deduction for payments of interest or royalties that are made to a foreign related party where such related party does not include the item in income for purposes of foreign tax laws (a 'deduction/no-inclusion' or 'D/NI' outcome) and the payment is made pursuant to a hybrid transaction or by or to a hybrid entity.
- The Final Regulations make a number of changes that either clarify, expand, or narrow the reach of the 2018 Proposed Regulations and, thus, may impact how taxpayers are affected by these rules.



GILTI Update



Section 958 Regulations

- Treasury and the IRS, on September 21, 2020, released final regulations and proposed regulations regarding the downward attribution rules under Section 958 in light of the repeal of Sec. 958(b)(4).
- The final regulations finalize previously proposed regulations affect US persons that have ownership interests in, or that make or receive payments to or from, certain foreign corporations.
- The 2020 Proposed Regulations modify the ownership attribution rules for outbound transfers of stock or securities of a domestic corporation under Section 367(a), and narrow the scope of foreign corporations that are treated as controlled foreign corporations (CFCs) for purposes of the look-through rule under Section 954(c)(6).
- The 2020 Proposed Regulations generally apply
 - (i) with respect to Section 367(a), to transfers occurring on or after September 21, 2020, and
 - (ii) with respect to Section 954(c)(6), to payments or accruals made during tax years of foreign corporations ending on or after September 21, 2020.



High Tax Exception

Highlights of the 2020 Final Regulations



Overview

- The GILTI HTE is now an annual election
- Can now be applied retroactively
- Consistency required amongst all members of CFC group
- Tested unit determination rather than QBU
- Certain tested units in the same country are aggregated
- Disregarded payments are taken into account (applying principles of TR 1.904-4(f))

Highlights of the 2020 Final Regulations



- Books and records are adjusted to conform with USFITP and also adjusted to take into account disregarded transactions
- Income subject to HTE is assigned to Section 245A subgroup
- No relief for foreign NOL carryforwards
- Foreign taxes are only taken into account if paid/accrued during the year.
- The Proposed Regulations unify the HTE for subpart F and GILTI
- Creates three categories of income to test for high tax

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FTC Regulations



FTC Regulations

Overview

- On September 29, Treasury and the IRS released Final and Proposed Regulations under the FTC regime.
- The Final Regulations provide additional guidance with respect to the FTC regime, and clarify and finalize certain aspects of the new FTC regime including:
 - The allocation and apportionment of deductions and creditable foreign taxes
 - Foreign tax redeterminations
 - Adjustments to hybrid deduction accounts to take into account certain inclusions in income by a US shareholder
 - Conduit financing arrangements involving hybrid instruments, and
 - The treatment of certain payments under the GILTI provisions.



FTC Regulations (continued)

Overview

- On September 29, Treasury and the IRS released Final and Proposed Regulations under the FTC regime.
- The Proposed Regulations propose both new rules relevant to the new FTC regime and significant changes to the basic FTC architecture, including:
 - Definitions of creditable foreign income taxes and taxes in lieu of income taxes
 - Timing rules on the foreign income tax credit claims and the period of limitations for refunds
 - Allocation of foreign taxes in connection with certain ownership changes
 - Source of certain inclusions on the stock of foreign corporations
 - The allocation and apportionment of deductions and creditable foreign taxes
 - Transition rules relating to the carryback of post-TCJA NOLs to pre-TCJA years, and
 - Definitions of financial services and foreign branch category income.



Final Regulations – Effective dates

Tax years beginning after December 31, 2019

- §1.704-1(b)(4)(viii)(d)(1). Allocation and apportionment of CFTes
- §1.861-8. Allocation and apportionment of certain expenses
 - Exempt income/asset rules re: Section 243 and 245 DRDs: (d)(2)(ii)(B).
 - Exempt income/asset rules for insurance companies: (d)(2)(v).
 - Stewardship expenses: (e)(4).
 - Legal & accounting fees, including damages and settlements: (e)(5)
 - Foreign tax deductions: (e)(6)(i),
 - NOL deductions: (e)(8),
 - Life insurance company reserve expenses: (e)(16),
 - Related examples: (g)(15) through (g)(18)
- §1.861-14. Special rules for allocating & apportioning affiliated group expenses
 - Expenses to be allocated under this Section: (e).
 - Life insurance company reserve expenses: (h),
- §1.861-17. Allocation and apportionment of research and experimental expense
- §1.861-20. Allocation and apportionment of foreign income taxes
- §1.904-6. Allocation and apportionment of foreign income taxes
- §1.960-1. Foreign taxes deemed paid under Section 960
 - Treatment of Section 952(c) recapture income: (c)(2)
 - Coordination with §1.861-20: (d)(3)(ii)
- §1.960-2(b)(3)(iii). Treatment of Section 952(c) recapture income

Tax years ending on or after December 16, 2019

- §1.861-9 Allocation and apportionment of interest expense
 - Interest equivalents: (b)(1)(i) and (b)(8).
 - Upstream partnership loans: (e)(9).
- §1.861-12(f) Characterizing assets connected with capitalized, deferred, or disallowed interest
- §1.904-4(c)(7)(i), (iii), (8)(v) - (viii). High tax kickout treatment of foreign taxes reduced on distributions
- §1.904(b)-3(d)(2). Section 904(b)(4) treatment of NOLs
- §1.905-3(b)(2) and (3). Foreign tax redeterminations
 - Foreign income taxes paid or accrued by foreign corporations: (b)(2).
 - Successors and transferees: (b)(3).
- §1.905-4. Notification of foreign tax redetermination
- §1.954-1(d)(3). High tax exception treatment of foreign taxes that are contingent on a future distribution
- §1.954-2(h)(2)(i)(I). Treatment of guaranteed payments for the use of capital as income equivalent to interest
- §1.965-5(b)(2). Attribution foreign taxes to distributions of Section 965 PTEP

Other

- Tax years ending on or after the date the Final Regulations are filed in the federal register**
- §1.245A(e)-1(d)(4)(i)(B) and (ii). Decrease of hybrid deduction accounts for adjusted subpart F and GILTI inclusions
- §1.904(g)-3(j). Ordering rules for branch loss recapture and DCL recapture
- §1.905-5. Foreign tax redeterminations of foreign corporations that relate to tax years beginning before 1/1/2018
- Tax years that end on or after April 7, 2020**
- §1.951A-2(c)(6) Allocation of deductions related to disqualified payments

Effective Dates



The Proposed Regs generally apply to tax years beginning on or after the filing date of the Final Regs in the federal register, with the following exceptions:

NOLs incurred in tax years beginning on or after January 1, 2018

§ 1.904(f)-12(j)(5) FTC transition rules for NOL carrybacks

Tax years that begin on or after filing of Proposed Regs in the federal register

§ 1.861-3(d) sourcing of Sections 951, 951A, and 1293 inclusions and 78 gross-ups

§ 1.861-10(g) Allocation of interest expense incurred by foreign banking branches

Tax years ending on or after the filing of the Proposed Regs in the federal register

§ 1.367(b)-2, -3, 4(b)(2), -7(g), -10 Revisions to account for the repeal of Section 902

§ 1.861-10(e)(8) Withdrawal of CFC netting 'haven' rule

Tax years that begin after December 31, 2019 and end on or after filing of Proposed Regs in the federal register

§ 1.245A(d)-1 Disallowance of foreign tax credit or deduction in connection with Section 245A DRD

§ 1.861-20(d)(3)(ii) and (v) Allocation and apportionment of foreign taxes on partnerships and disregarded payments
§ 1.904-4(f) US activities excluded from foreign branch, and other revisions to coordinate with §1.861-20

§ 1.904-6(b)(2) allocation and apportionment of foreign income taxes on disregarded payments



PPP Loans

Select Tax Considerations for PPP Lenders



Overview

- Are the PPP loans treated as debt for tax purposes?
- What is the character of the income earned by PPP lenders?
- What is the timing of the income earned by PPP lenders
- What are the information reporting requirements when a loan is forgiven?

Polling Question 3:

Did your bank participate as a lender in the PPP program?

- a. Yes
- b. No
- c. Not sure

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Federal Bonus Depreciation Update

Federal Tax Depreciation Update



Overview

- The Tax Cut and Jobs Act (“TCJA”), increased the deduction for bonus depreciation from 50 percent to 100 percent and expanded the type of property that qualifies. The depreciable property must have been acquired and placed in service after September 27, 2017, by the taxpayer during its tax years ending on or after September 28, 2017, and before the taxpayer’s first tax year that begins on or after January 1, 2021. Since that expansion, several rounds of guidance have been released over the past few years explaining how the changes operate.
- On November 5, the IRS provided relief in Rev. Proc 2020-50. 2020, to allow those who followed the first proposed regs to switch to the more favorable second proposal and final regulations.
- As a result, the revenue procedure allows some taxpayers to file an amended return, administrative adjustment request (AAR), or a Form 3115, “Application for Change in Accounting Method,” to make specific changes allowed by the guidance. The guidance also permits some taxpayers to make late elections or revoke earlier ones.

Federal Tax Depreciation Update



Overview

- On November 10, 2020, the Treasury Department and the IRS published final regulations in the federal registrar on adopting the 2019 proposed regulations with modifications in response to comments
- The 2020 final regulations also made a few modifications to the 2019 final regulations. For example, the 2020 final regulations:
 - (a) clarified the application of the 5-year safe harbor for determining if the taxpayer or a predecessor previously had a depreciable interest in used property;
 - (b) clarified the definitions of predecessor and class of property for basis adjustments under § 743; and
 - (c) modified the definition of qualified improvement property to reflect the amendments made to § 168(e)(6) by § 2307 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (March 27, 2020) (CARES Act).

Polling Question 4:

Do you want one of the PwC speakers to reach out to you to discuss any of the topics discussed today?

a. Yes

b. No

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Section 1446(f) Final Regulations

Background – 1446(f)



- Section 864(c)(8)(A) provides generally, that if a nonresident alien individual or foreign corporation owns, directly or indirectly, an interest in a partnership that is engaged in any trade or business within the United States, gain on the sale or exchange of all (or any portion of) such interest is treated as effectively connected with the conduct of such trade or business to the extent such gain does not exceed the portion of the partner's distributive share of the amount of gain which would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the sale or exchange.
- Section 1446(f) provides that if any portion of the gain on the disposition of a partnership interest would be ECI under section 864(c)(8), then the transferee is required to deduct and withhold 10 percent of the amount realized by the transferor, unless the transferee obtains an affidavit that certifies that no withholding is required (i.e. non-foreign affidavit, among others).
- Additionally, in the event a transferee fails to obtain an affidavit that eliminates the requirement to withhold and fails to withhold, section 1446(f) requires the partnership to withhold from distributions to the transferee an amount equal to the tax (i.e., 10 percent of the amount realized by the transferor) and interest that should have been withheld.