

Luxembourg Tax Alert

US Tax Reform – new tax rule applying to the sale of interest in partnerships by foreign persons

2 January 2018

A few days ago, some tax measures were approved by both the US House and Senate and signed by President Trump. The US tax reform includes a new tax rule relating to the sale of interests in partnerships by foreign persons in certain circumstances.

On 29 December 2017, the Internal Revenue Service (IRS) issued Notice 2018-08 "Revised Timeline and Other Guidance Regarding the Implementation of New Section 1446(f)." Under this notice, the IRS suspends the effectively connected income withholding requirements on sales of publicly traded partnership interest.

Please find some details below relating to tax treatment of the interests in partnerships.

The US tax reform, added a new section 864(c)(8), which treats gain or loss realized by a foreign person from the sale or exchange of an interest in a partnership engaged in a U.S. trade or business as effectively connected income to the extent that the sale of all the partnership assets will have produced effectively connected income, notwithstanding any other provision of the law (Subtitle A).

The Act requires the transferee of a partnership interest to withhold 10% of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident foreign individual or foreign corporation. If the transferee fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the transferee partner an amount equal to the amount the transferee failed to withhold. The Secretary may provide guidance permitting a broker, as agent of the transferee, to deduct and withhold the 10% tax.

For example, such guidance may provide that if an interest in a publicly traded partnership is sold by a foreign partner through a broker, the broker may deduct and withhold the 10% tax on behalf of the transferee.

*The portion of the provision treating gain or loss on sale of a partnership interest as effectively connected income is effective for sales, exchanges, and dispositions on or after November 27, 2017. The portion of the provision requiring withholding on sales or exchanges of partnership interests is effective for **sales, exchanges, and dispositions after December 31, 2017.***

For more details please refer to the [Deloitte Global tax alert](#).

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