



## Tax News and Views Health Care Edition

### **Tax Court Finds Payments to Researcher to be Compensation not Grants**

In the recent Tax Court decision in *Klubo-Gwiedzinska v. Commissioner*, T.C. Summary Opinion 2017-45, the IRS assessed deficiencies and accuracy related penalties on income characterized as wages as opposed to grants from a government, religious, charitable, scientific, literary or educational organization. The petitioner, Joanna Klubo-Gwiedzinska, resided in the Commonwealth of Virginia at the time the petition was filed. Petitioner was born in Poland and is a Polish citizen. Petitioner is highly educated having earned both a medical degree and a Ph. D. degree in Poland. Petitioner's area of expertise is related to thyroid cancer. Petitioner was a member of an international organization, the Endocrine Society and well respected among medical doctors, researchers and educators in her field.

In February 2009, Washington Hospital Center Corp, a nonprofit U.S. Corporation ("Hospital") provided Petitioner a position as a Research Fellow in Endocrinology in their Division of Endocrinology and Metabolism of the Department of Medicine. The fellowship was a fully salaried and supported position which Petitioner accepted on March 1, 2009. Petitioner entered the U.S. on a J-1 visa under the Exchange

### Find it Fast

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**Did you know?**

Visitor Program. Petitioner was provided a salary of \$51,000 plus benefits. Petitioner and the Hospital renewed her Fellowship for 2010 and 2011 providing salaries of \$53,500 and \$56,200 respectively. The Hospital provided a Form W-2 for each of the years 2009, 2010 and 2011 reflecting the salary paid each year.

Petitioner filed Form 1040NR-EZ for all tax years and on page two of the forms exempted her wages from federal income tax under Article 18 of the United States – Poland Income Tax Convention. In March of 2015, the IRS sent Petitioner a notice of deficiency related to taxable wages received in 2010 and 2011. The Tax Court provided a summary judgement in favor of the IRS holding that Article 18 of the convention exempts income related to a “grant, allowance, or award” from a government, religious, charitable, scientific, literary or educational organization but does not exempt wages.

This Tax Court decision highlights the complexity that tax exempt clients face when entering into research and fellowship agreements with nonresident aliens. The tax consequences of payments are contingent upon the residency or citizenship of each individual and the relevant provisions under the respective Convention. Organizations should review each convention and apply the provisions to their specific facts. In addition, the required compliance for exemption from withholding (e.g. Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual) and the FICA treatment for Visa holders present a significant challenge. If you have questions related to these types of agreements, please reach out to your Deloitte contacts.

## IRS issues final Country-by-Country Report, Schedule, and Instructions

The Internal Revenue Service has issued final versions of [Form 8975, Country-by-Country Report, Schedule A of Form 8975, Tax Jurisdiction](#) and [Constituent Entity Information, and Instructions to Form 8975 and Schedule A](#). The Form 8975, Country-by-Country Report (“CBCR”) will be filed by the ultimate parent of the multinational corporation (“MNC”), or a surrogate parent entity, should the ultimate parent not be in a country requiring reporting, and will immediately become available to tax authorities in the various jurisdictions where the MNC operates and where CBCR rules have been implemented pursuant to multilateral or bilateral tax agreements, including information exchange agreements. The large majority of taxing jurisdictions that have implemented a transfer pricing regime also have implemented some form of CBCR requirement. Most MNCs will face the need to prepare a CBCR.

The Internal Revenue Service (IRS) has exempted not-for-profit organizations with unrelated business taxable income below \$850 million from the obligation to submit a CBCR in the United States; however, other entities within the group may still be required to have a CBCR available to their tax authorities locally. Managers of US headquartered MNCs that are exempt from CBCR should examine the CBCR rules they are subject to outside of the United States to determine how the lack of a CBCR requirement in the United States would impact them.

### Did you know?

#### Treasury identifies tax regulations under review for burden reduction

The Treasury Department has released Notice 2017-38, which identifies the regulations that are under review for burden reduction as specified by Executive Order 13789. For additional information, please see [Tax News & Views, Capitol Hill Briefing from July 10, 2017](#).

#### IRS Seeking Comments on Form 8940

The Internal Revenue Service is currently accepting comments related to Form 8940, Request for Miscellaneous Determination. Written comments should be received on or before August 25, 2017. Additional information including the mailing address for comments can be accessed [here](#).

#### Revised Form I-9 Released

On July 17, 2017, the U.S. Citizenship and Immigration Services (“USCIS”) published a revised version of [Form I-9, Employment Eligibility Verification](#) and instructions. Revisions were made to the Form I-9 instructions and to the list of acceptable documents on Form I-9. For a detailed list of changes, click [here](#). Employers may continue to use the Form I-9 with a revision date of November 14, 2016 through September 17, 2017. As of September 18, 2017, employers must begin using the Form I-9 with a revision date of July 17, 2017.

### Deloitte Dbriefs

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#### **Emerging technologies: Is your tax department keeping pace?**

*August 9 | 2 p.m. ET | 18:00 GMT*

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