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Anti-Inversion Guidance: Treasury Releases Temporary and Proposed Regulations

On April 4, 2016, the United States Treasury and the IRS issued temporary regulations under Internal Revenue Code sections 304, 367, 956, 7701(l) and 7874 to address certain inversion and post-inversion transactions (collectively the "temporary regulations").[1]

Overview

The temporary regulations include rules previously described in Notice 2014-52 (the "2014 Notice"), issued on September 22, 2014 (see US International Tax Alert, September 23, 2014) and Notice 2015-79 (the "2015 Notice"), issued on November 19, 2015 (see US International Tax Alert, November 20, 2015). The temporary regulations also provide:
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-230914.pdf
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-20-november-2015.pdf

[1] Unless otherwise indicated, all "section" references are to the Internal Revenue Code of 1986, as amended, and all "Treas. Reg. §" references are to the Treasury Regulations promulgated thereunder. On April 4, 2016, the United States Treasury and the IRS also issued proposed regulations under section 385 to address a broader range of transactions, which include certain financing transactions arising in the context of inversion and post-inversion transactions (the "proposed regulations").

1. Rules for identifying a foreign acquiring corporation when a domestic entity acquisition involves multiple steps;
2. Rules that disregard stock of the foreign acquiring corporation that is attributable to certain prior domestic entity acquisitions;
3. Rules that require a controlled foreign corporation (CFC) to recognize all realized gain upon certain transfers of assets described in section 351 that shift the ownership of those assets to a related foreign person that is not a CFC; and
4. Rules clarifying the definition of group income for purposes of the substantial business activities test.

In particular, the temporary regulations:

- Clarify the definition of "non-qualified property" as announced in the 2015 Notice at Temp. Reg. §1.7874-4T;
- Add the "Passive Assets Rule" announced in the 2014 Notice at Temp. Reg. §1.7874-7T;
- Add a "Multiple Domestic Entity Acquisitions Rule" at Temp. Reg. §1.7874-8T;
- Add the "Third-Country Rule" announced in the 2015 Notice at Temp. Reg. §1.7874-9T;
- Add the "Non-Ordinary Course Distribution Rule" announced in the 2014 Notice and modified in the 2015 Notice at Temp. Reg. §1.7874-10T and Temp. Reg. §1.367(a)-3T;
- Add the "Carve-Back of the Internal Restructuring Exception" announced in the 2014 Notice at Temp. Reg. §§1.7874-1T and -6T;
- Add the "Foreign Parent Tax Residency Requirement" announced in the 2015 Notice at Temp. Reg. §1.7874-3T;
- Clarify the definition of Group Income for purposes of the substantial business activities test at Temp. Reg. §1.7874-3T;
- Add a "Multi-Step Transactions Rule" at Temp. Reg. §1.7874-2T
- Add the "Expanded Inversion Gain Rule" announced in the 2015 Notice at Temp. Reg. §1.7874-11T
- Add the "Deemed US Property Rule" announced in the 2014 Notice at Temp. Reg. §1.956-2T
- Add the "Specified Transactions Recharacterization Rule" announced in the 2014 Notice at Temp. Reg. §1.7701(l)-4T;
- Add the "Stock Dilution Rule" announced in the 2014 Notice and modified in the 2015 Notice at Temp. Reg. §1.367(b)-4T; and
- Clarify the application of section 304(b)(5)(B) as announced in the 2014 Notice at Temp. Reg. §1.304-7T.

Please note that the temporary regulations exceed 200 pages and should be studied carefully to assess their impact on particular transactions and taxpayers.

Inversion transactions

Section 7874: Section 7874 provides an exception to the generally applicable rule that a corporation is considered to be tax resident in the jurisdiction of its organization or incorporation (i.e. its home country). More specifically, under section 7874, a foreign corporation (or, in certain cases, a publicly-traded foreign partnership)2 will be treated as a US corporation if:

1. The foreign corporation, directly or indirectly, acquires substantially all of the properties held directly or indirectly by a US corporation or partnership ("US target");
2. The foreign corporation's expanded affiliated group (EAG) does not have substantial business activities in its home country relative to the group's worldwide activities; and
3. After the acquisition, the former owners of the US target hold at least 80% (by vote or value) of the foreign acquiring corporation's shares by reason of holding an equity interest in the US target ("80% ownership continuity test").

If the 80% ownership continuity test is not met, but the former owners of the US target hold at least 60% (by vote or value) of the shares of the foreign acquiring corporation by reason of holding an equity interest in the US target corporation, the foreign corporation will be respected as foreign for US tax purposes, *provided however*, that section 7874 will apply to limit the ability of the US target and its US affiliates to use certain US tax attributes, such as net operating losses (NOLs) and tax credits, to offset US taxable income resulting from certain transactions ("60% ownership continuity test"). In such case, the foreign acquiring corporation is treated as a "surrogate foreign corporation," and the taxable income of the US target (and any US person related to the US target, each of which, including the US target, is an "expatriated entity") for any given year, within a period beginning on the first date the US target's properties were acquired directly or indirectly by the foreign acquiring corporation and ending 10 years after the last date the US target's properties were acquired, will be no less than the expatriated entity's "inversion gain" for that taxable year. An expatriated entity's inversion gain includes, among other items, gain from the transfer of shares or any other property (other than property held for sale to customers) and income from the license of any property that is either transferred or licensed as part of the acquisition or after the acquisition to a non-US related person.

Calculating ownership continuity

Disqualified stock – generally: Under section 7874(c)(2)(B) (statutory public offering rule), stock of a foreign acquiring corporation that is sold in a public offering related to the acquisition of a US target is excluded from the denominator of the ownership fraction. Temp. Reg. §1.7874-4T modifies the statutory public offering rule to further exclude certain "disqualified stock" from the denominator of the ownership fraction. Disqualified stock generally includes stock of the foreign acquiring corporation that is transferred to a person (other than the US target) in exchange for "nonqualified property." Prior to the clarification set forth below, the term "nonqualified property" generally meant:

1. Cash or cash equivalents,
2. Marketable securities,
3. Certain obligations, or
4. Any other property acquired in a transaction (or series of transactions) related to the acquisition of the US target with a principal purpose of avoiding the purposes of section 7874.

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[2] For convenience, this Alert refers to the acquirer as a corporation.

The preamble to the temporary regulations, the 2014 Notice, and the 2015 Notice refer to property described in clauses (1), (2), and (3) as “specified nonqualified property” and to the property described in (4) as “avoidance property.”

Clarification of “nonqualified property” definition: Consistent with previously announced guidance in the 2015 Notice, Temp. Reg. §1.7874-4T now provides that “avoidance property” means any property (other than specified nonqualified property) acquired with a principal purpose of avoiding the purposes of section 7874, regardless of whether the transaction involves an indirect transfer of specified nonqualified property.

Effective date: The clarification of the definition of avoidance property applies to acquisitions of US targets completed on or after November 19, 2015.

Passive assets rule: Temp. Reg. §1.7874-7T disregards stock of a foreign acquiring corporation for purposes of calculating ownership continuity if such stock is attributable to certain passive assets (the “passive assets rule”). This rule generally incorporates guidance announced in the 2014 Notice and the 2015 Notice, with modifications, and includes an exception in the case of *de minimis* ownership continuity. More specifically, if more than 50% of the gross value of all “foreign group property constitutes “foreign group nonqualified property,” stock of the foreign acquiring corporation is excluded from the denominator of the ownership fraction in an amount equal to the product of:

1. The value of the stock of the foreign acquiring corporation, other than stock that is:
    a. Received by former shareholders of the US target by reason of ownership stock in the US target,
    b. Excluded from the denominator of the ownership fraction by reason of being held by a member of the foreign acquiring corporation’s EAG, or
    c. Excluded from the denominator by reason of being disqualified stock, and
2. The “foreign group nonqualified property fraction.”

In applying this rule:

- The term “foreign group nonqualified property” means foreign group property that is specified nonqualified property and avoidance property (as such terms are defined above), other than certain financial assets of companies engaged in financing, banking and insurance activities, including specifically: (i) certain property that gives rise to income described in 954(h), (ii) certain property that gives rise to income described in section 954(i), (iii) property that gives rise to income described in section 1297(b)(2)(A) or (B), and (iv) certain property held by a domestic corporation that is subject to tax as an insurance company under subchapter L.
- The term “foreign group property” means any property held on the date the US target is acquired, other than:
    - Property that is directly or indirectly acquired in the US target,
    - Stock or a partnership interest in a member of the modified EAG, and
    - An obligation of a member of the modified EAG.
- The term “foreign group nonqualified property fraction” means a fraction, the numerator of which is the gross value of all foreign group nonqualified property, other than property received by the EAG that gives rise to disqualified stock, and the denominator of which

is the gross value of all foreign group property, other than property received by the EAG that gives rise to disqualified stock.

- The term “modified expanded affiliated group” (or “modified EAG”) means an EAG determined as if the foreign acquiring corporation were the common parent corporation.

For purposes of the passive assets rule, if one or more members of the modified EAG own, in the aggregate, more than 50% (by value) of the interest in a partnership, the partnership is treated as a corporation that is a member of the EAG.

As noted above, a *de minimis* exception applies when:

1. The ownership percentage – determined without regard to the application of the passive assets rule, disqualified stock and the non-ordinary course distribution rule (described below) – is less than 5% (by vote and value), and
2. On the date that the acquisition of the US target and all related transaction are complete, former owners of the US target own (applying the attribution rules of section 318(a) with the modifications described in section 304(c)(3)(B)) less than 5% (by vote and value) of the stock of (or a partnership interest in) each member of the EAG.

Effective date: The passive assets rule generally applies to acquisitions of a US target completed on or after September 22, 2014. Certain aspects, such as the *de minimis* exception, the modified EAG rule, and the treatment of partnerships as a corporation that is a member of the EAG, apply to acquisitions completed on or after April 4, 2016. Further, the rule excluding certain financial assets of companies engaged in financing, banking and insurance activities from the definition of foreign group nonqualified property applies to acquisitions completed on or after November 19, 2015. For acquisitions completed before April 4, 2016, a taxpayer may elect to retroactively apply all the rules of Temp. Reg. §1.7874-7T.

Multiple domestic entity acquisitions rule: While not addressed in either the 2014 Notice or 2015 Notice, Temp. Reg. §1.7874-8T disregards stock of a foreign acquiring corporation for purposes of calculating ownership continuity if such stock is attributable to certain prior domestic entity acquisitions (the “multiple domestic entity acquisitions rule”). The rule effectively deflates the size of a foreign acquiring corporation in the context of serial acquisitions of US targets.

More specifically, the rule applies to a domestic entity acquisition (“relevant domestic entity acquisition”) when the foreign acquiring corporation (including a predecessor) has completed one or more prior domestic entity acquisitions. Subject to a *de minimis* exception, a “prior domestic entity acquisition” generally means a domestic entity acquisition that occurred within the 36-month period ending on the first date on which the contract to effect the relevant domestic entity acquisition is a binding contract. In such a situation, stock of the foreign acquiring corporation is excluded from the denominator of the ownership fraction in an amount equal to the sum of the “excluded amounts” computed separately with respect to each prior domestic entity acquisition and each relevant share class. For this purpose, an “excluded amount” is the product of:

1. The total number of shares issued to former owners of a US target by reason of their ownership of such US target ("prior acquisition shares"), adjusted to account for share splits (and similar transactions) and redemptions; and
2. The fair market value of a single share of stock of the relevant share class on the completion date of the relevant domestic entity acquisition.

A "relevant share class" means, with respect to a domestic entity acquisition, each separate legal class of shares in the foreign acquiring corporation from which prior acquisition shares were issued.

Effective date: The multiple domestic entity acquisitions rule applies to domestic entity acquisitions completed on or after April 4, 2016, regardless of when a prior domestic entity acquisition was completed.

Third-country rule: For purposes of section 7874, ownership continuity generally is determined without regard to the country in which the foreign acquiring corporation is created or organized. Accordingly, if a US target and a foreign corporation (acquired foreign target) are combining business operations, ownership continuity generally is the same whether:

1. The acquired foreign target directly acquires the US target, or
2. The acquired foreign target and the US target are acquired by a newly-formed foreign corporation that is tax resident in a third jurisdiction (i.e. a jurisdiction other than the jurisdiction of formation or tax residency of the acquired foreign target).

If an acquisition of a US target occurs in the context of a "third-country transaction," as announced in the 2015 Notice, Temp. Reg. §1.7874-9T disregards stock of the foreign acquiring corporation for purposes of calculating ownership continuity if the stock is held by former shareholders of an acquired foreign corporation by reason of holding certain stock in that foreign corporation. As compared to guidance previously announced in the 2015 Notice, the "third country rule" now operates when stock held by former shareholders of the acquired foreign corporation exceeds a certain ownership percentage, rather than when gross value of the properties of the foreign acquiring corporation acquired from the acquired foreign corporation exceeds a certain percentage. More specifically, an acquisition of a US target occurs in the context of a third-country transaction if:

- The foreign acquiring corporation completes a covered foreign acquisition pursuant to a plan (or series of related transactions that includes the US target acquisition);
- After the covered foreign acquisition and all related transactions are complete, the foreign acquiring corporation is not subject to tax as a resident in the foreign country in which the acquired foreign corporation was subject to tax as a resident before the covered foreign acquisition and all related transactions; and
- The ownership percentage, determined without regard to the third-country rule, is at least 60.

The term "covered foreign acquisition" means a transaction in which:

1. A foreign acquiring corporation directly or indirectly acquires substantially all of the properties held directly or indirectly by an acquired foreign corporation, and

2. After the acquisition and all related transactions are complete, the foreign ownership percentage is at least 60%.

For purposes of determining whether a covered foreign acquisition occurs, the principles of section 7874 generally apply, modified to take into account that the acquisition is of a foreign corporation rather than a US target. Although not so treated in the 2015 Notice, it appears that a foreign corporation's migration of tax residency prior to the acquisition of a US target is treated as a covered foreign acquisition for all purposes of the provision.

By excluding stock of the foreign acquiring corporation held by the former owners of the acquired foreign target from the denominator of the ownership continuity fraction, it is highly likely that in such business combinations involving a third country foreign acquirer the ownership continuity fraction would be 80% or more, rendering the foreign acquirer a US corporation for all purposes of the Code in accordance with section 7874(b).

Effective date: The third-country rule generally applies to acquisitions of US targets completed on or after November 19, 2015. For acquisitions completed between November 19, 2015 and April 4, 2016, taxpayers may elect to apply a rule that generally reflects the rule articulated in the 2015 Notice.

Non-ordinary course distribution rule: Temp. Reg. §1.7874-10T treats former owners of the US target as receiving additional stock of the foreign acquiring corporation when the US target has made non-ordinary course distributions (NOCDs). In other words, the regulations generally change the calculation of the ownership percentage by increasing the numerator and denominator of the ownership fraction. This NOCD rule expands on and clarifies guidance previously announced in the 2014 Notice and the 2015 Notice.

More specifically, for purposes of calculating the ownership percentage by value (but not vote), former owners of the US target are treated as receiving, by reason of owning an interest in such US target, stock with a fair market value equal to the amount of the NOCDs, determined as of the date of the distributions, made by the US target during the 36-month period ending on the date of acquisition of the US target (completion date) or, if shorter, the entire period starting with the formation date of the US target (or a predecessor) and ending on the completion date (the "look-back period"). The temporary regulations set forth five steps for determining the amount of NOCDs:

1. Identify the look-back period.
2. Divide the look-back period into look-back years. Although the 2014 Notice contemplated using a taxable-year convention to determine a look-back year, the temporary regulations generally provide that a look-back year means any of the three consecutive 12-month periods that comprise the look-back period.
3. Identify the distribution history period for each look-back year. The distribution history period for a look-back year generally means the 36 month period preceding the start of the look-back year. When a look-back year is preceded by less than 12 months of history, then the look-back year is considered to not have a distribution history period.
4. Calculate the NOCD threshold for each look-back year. Generally, the NOCD threshold means 110% of the sum of the distributions made during the distribution history period for that look-back year, multiplied by a fraction the numerator of which is the number of

days in the look-back year at issue, and the denominator of which is the number of days in the distribution history period for that look-back year.

5. Calculate, for each look-back year, the excess, if any, of all distributions made during the look-back year over the NOCD threshold for the look-back year. Such excess amounts constitute NOCDs.

To facilitate application of these rules, the temporary regulations include a “predecessor rule” by which a US target inherits distributions made by a predecessor (and such predecessor could also inherit distributions made by a predecessor to it). In addition, pursuant to a *de minimis* exception, the NOCD rule does not apply if (i) the ownership percentage determined without regard to application of the NOCD rule, the disqualified stock rules under Temp. Reg. §1.7874-4T, and the passive assets rule, is less than 5% (by vote and value), and (ii) after acquisition of the US target, former owners of the US target own (applying the attribution rules of section 318(a) with the modifications described in section 304(c)(3)(B)) less than 5% (by vote and value) of the stock of (or a partnership interest in) each member of the EAG.

To prevent perceived abuse, Temp. Reg. §1.7874-10T also provides that if a domestic corporation (distributing corporation) distributes stock of another domestic corporation (controlled corporation) pursuant to a transaction described in section 355 and, immediately before the distribution the fair market value of the stock of the controlled corporation represents more than 50% of the fair market value of the stock of the distributing corporation, the controlled corporation is deemed, on the date of the distribution, to have distributed the stock of the distributing corporation. This rule generally prevents taxpayers from avoiding application of the NOCD rule by causing a foreign acquiring corporation to acquire the controlled corporation (which, without this rule, would not have a distribution history).

Further, Temp. Reg. §1.7874-10T explicitly provides that if only a portion of a distribution is a NOCD, section 7874(c)(4) (disregarding the transfer of properties or liabilities (including by contribution or distribution) that are part of a plan a principal purpose of which is to avoid the purposes of section 7874) may apply to the remainder, but does not create a presumption that section 7874(c)(4) applies. For distributions that do not fall within the scope of the NOCD rule, this provision authorizes a “second bite at the apple” to re-inflate the US target for purposes of determining ownership continuity under section 7874(c)(4), but provides no guidance as to when such re-inflation would be appropriate or inappropriate.

Note: See below under “Section 367 – Substantiality Test” for similar changes to the substantiality test of Treas. Reg. §1.367(a)-3(c).

Effective date: The NOCD rule generally applies to acquisitions of a US target occurring on or after September 22, 2014. The *de minimis* exception applies to acquisitions occurring on or after November 19, 2015, and the rules applicable to section 355 distributions apply to acquisitions occurring on or after April 4, 2016. For acquisitions completed prior to November 19, 2015, taxpayers may elect to apply the *de minimis* exception, and for acquisitions completed prior to April 4, 2016, taxpayers may elect to determine NOCDs on the basis of taxable years in lieu of 12-month periods, in a manner consistent with the principles of the temporary regulation.

Carve-back of the internal restructuring exception: Generally, section 7874(c)(2)(A) and Treas. Reg. §1.7874-1 apply the ownership continuity test by disregarding shares of the foreign acquiring corporation held by members of the EAG (the EAG rule), subject to two exceptions created by Treasury and the IRS. Shares of the foreign acquiring corporation held by an EAG member generally are included in the denominator but not the numerator (i.e. diluting the testing fraction to facilitate business combinations without application of section 7874) in:

1. Internal group restructurings where the common parent of the EAG owns at least 80% of the US target before the acquisition and at least 80% of the foreign acquiring corporation afterward (the internal restructuring exception); and
2. Transactions where there is a loss of control (i.e. where the former owners of the US target do not hold in the aggregate directly or indirectly more than 50% of any member of the foreign acquiring corporation's EAG).

Temp. Reg. §§1.7874-1T and -6T carve back the internal restructuring exception, providing that if stock of the foreign acquiring corporation received by a former owner of the US target by reason of such person's ownership of the US target is re-transferred in a transaction related to the acquisition of the US target ("transferred stock"), such stock is not treated as held by members of the EAG and, accordingly, is included in the numerator and the denominator of the ownership fraction. This carve-back of the internal restructuring exception rule loosens the US-parented group exception (described below) previously articulated in the 2014 Notice and otherwise generally is consistent with the guidance previously announced in such Notice.

The carve-back does not apply in the case of a US-parented group if:

1. Before and after the acquisition the transferring shareholder is a member of the EAG; and
2. After the acquisition each of the transferring shareholder (or its successor), any person that holds transferred stock, and the foreign acquiring corporation are members of a US-parented group the common parent of which:
    a. Before the acquisition of the US target was a member (including the parent) of the US parented group described in the first requirement, or
    b. Is a corporation that was formed in a transaction related to the acquisition of the US target, provided that, immediately after the corporation was formed (and without regard to any related transactions), the corporation was a member of the US-parented group described in the first requirement.

The carve-back does not apply in the case of a foreign parented group if:

1. Before the acquisition the target and transferor of the re-transferred stock are members of the same EAG; and
2. After the acquisition the re-transferor is a member of the EAG or would be absent the transfer of stock in the foreign acquirer by a member of the EAG in a transaction related to the acquisition.

The carve-back is subject to a special "fungible stock" rule, which provides that if the transferring shareholder receives stock by reason of the acquisition of the US target that has the same terms as other stock of the foreign acquiring corporation held by such transferring shareholder (fungible stock), and if the transferring shareholder re-transfers less than all of such fungible stock, a pro rata portion of the stock re-transferred is treated as consisting of the stock of the foreign acquiring corporation acquired by reason of the acquisition of the US target. Further, similar to the passive assets rule, if one or more members of an affiliated group own, in the aggregate, more than 50% (by value) of the interest in a partnership, the partnership is treated as a corporation that is a member of the affiliated group.

The carve-back has the effect of denying use of the EAG rule and internal group restructuring exception in situations where a US subsidiary of a US multinational transfers substantially all its assets to a new foreign subsidiary and the shares of the new foreign subsidiary are distributed to the public in a section 368(a)(1)(D) reorganization and section 355 spin-off (i.e. a so-called “spinversion” transaction). As a result, the new foreign acquirer could be treated as a US corporation by application of the general rules of section 7874.

Effective date: The carve-back of the internal restructuring exception rule is generally applicable to acquisitions of a US target occurring on or after September 22, 2014. The fungible stock rule and the treatment of partnerships as a corporation that is a member of the affiliated group are generally applicable to acquisitions occurring on or after April 4, 2016. Taxpayers may elect either to apply the foreign-parented group exception to acquisitions completed before September 22, 2014 or to consistently apply the foreign-parented group exception, the fungible stock rule and the treatment of partnerships as a corporation that is a member of the affiliated group to acquisitions completed before April 4, 2016.

Substantial business activities

Under Treas. Reg. §1.7874-3, an EAG is considered to have substantial business activities in the country of organization or incorporation of the foreign acquiring corporation (the “relevant foreign country”) only if at least 25% of its group employees, group assets and group income are located or derived in the relevant foreign country.

Foreign parent tax residency requirement: In applying the substantial business activities test, Treas. Reg. §1.7874-3 generally looks to the country in which the foreign acquiring corporation is created or organized, even if the foreign acquiring corporation is not a tax resident of such country (e.g. because it is treated as fiscally transparent under the laws of such country or is managed and controlled in a third country). Temp. Reg. §1.7874-3T provides that an EAG cannot satisfy the substantial business activities exception unless the foreign acquiring corporation is also tax resident in the foreign country of its creation or organization. This foreign parent tax residency requirement rule is consistent with guidance previously announced in the 2015 Notice.

Effective date: The foreign parent tax residency requirement rule generally is applicable to acquisitions of a US target occurring on or after November 15, 2015.

Clarification of group income: Treas. Reg. §1.7874-3 currently provides that group income is gross income from transactions occurring in the ordinary course of business with unrelated customers as determined consistently under either federal tax principles or as reflected in the EAG’s financial statements. With respect to group income determined using the EAG’s financial statements, Temp. Reg. §1.7874-3T clarifies that financial reporting principles are relevant only for determining the amount of items of income that are taken into account, as an EAG must take into account all items that its members recognized for financial accounting purposes.

Effective date: The clarification of group income rule generally is applicable to acquisitions of a US target occurring on or after April 4, 2016. Taxpayers may elect to apply the rule to acquisitions completed on or after June 3, 2015 and before April 4, 2016.

Multi-step transactions rule

Treas. Reg. §1.7874-2(c)(2) provides that when a foreign corporation acquires stock of another foreign corporation, which in turn directly or indirectly owns stock of a US entity, the acquisition by the foreign corporation does not constitute an indirect acquisition of any properties held by the domestic entity. The Treasury Department and the IRS expressed concern that application of the rule may facilitate transactions that are contrary to the purposes of section 7874. For example, Treas. Reg. §1.7874-2(c)(2) may allow taxpayers to avoid application of the third-country rule or to inappropriately take advantage of the substantial activities exception by causing a foreign acquiring corporation (the “initial acquiring corporation”) that meets the substantial business activities exception or third-country rule to acquire a US target, followed by an acquisition of the initial acquiring corporation by a foreign acquiring corporation (the “subsequent acquiring corporation”) that would not meet such exception or test.

Temp. Reg. §1.7874-2T treats the subsequent acquisition of the initial acquiring corporation as an acquisition of a US target and the subsequent acquiring corporation as a foreign acquiring corporation. For this rule, a “subsequent acquisition” means, with respect to an initial acquisition, a transaction occurring, pursuant to a plan that includes the initial acquisition (or series of related transactions), after the initial acquisition in which a foreign corporation directly or indirectly acquires substantially all of the properties of the initial acquiring corporation. In contrast with the multiple domestic entity acquisitions rule, this multi-step transactions rule does not include a deemed plan period. This rule applies solely for purposes of section 7874 and does not modify general tax principles (such as the step-transaction doctrine) or other rules of guidance that may apply to related transactions.

Effective date: The multi-step transactions rule generally applies to acquisitions of an initial acquiring corporation occurring on or after April 4, 2016.

Section 367: Substantiality test

For purposes of determining whether a foreign acquiring corporation is substantial in relation to a US target corporation, Temp. Reg. §1.367(a)-3T provides that the value of the US target company includes the aggregate amount of NOCDs made by the US target company, subject to application of a *de minimis* rule. In this regard, NOCDs and the *de minimis* exception are calculated in the same manner as provided under Temp. Reg. §1.7874-10T. (See the discussion of the “NOCD rule” above.)

Effective date: The section 367 – substantiality test rules generally apply for transfers completed on or after September 22, 2014. The *de minimis* exception applies on or after November 19, 2015, subject to an election to apply retroactively to September 22, 2014.

Post-inversion transactions

Expanded inversion gain rule: As noted above, if the ownership continuity test is satisfied at the 60% level, section 7874 generally denies the use of tax attributes to reduce tax attributable to sales, licenses or other transfers of property by the US target and other US members of the EAG to related foreign persons. Under section 7874(a)(1) and (d)(2), this includes tax attributable to any income or gain from the transfer or license of property:

1. As part of the acquisition of the US target, or
2. To a related foreign person during the 10-year period beginning on the date the US target is acquired by the foreign acquirer.

Temp. Reg. §1.7874-11T expands the application of the inversion gain rule to include tax attributable to *indirect* transfers of assets, for example, tax on subpart F income resulting from a transfer of assets by a CFC of the US target. This rule generally is consistent with guidance previously announced in the 2015 Notice, but also includes amounts treated as a dividend under section 78 in inversion gain.

More specifically, Temp. Reg. §1.7874-11T denies the use of tax attributes to reduce tax attributable to such *indirect* transfers of property (other than inventory) by the target to related foreign persons. With respect to transfers or licenses of property by a partnership that is a foreign related person with respect to the US target, the regulations apply an aggregate theory of partnerships to such transfers. It is noted that such indirect inversion gains may not be limited to subpart F income inclusions by a US target arising from transfers or license of property by a CFC, but also might include subsequent distributions received by a US target (or other US members of the EAG) of non-subpart F income derived from the transfer or license of property to related foreign persons by any non-US member of the EAG.

Effective date: In general, the expanded inversion gain rule generally applies to transfers and licenses of property completed on or after November 19, 2015, but only if the inversion transaction was completed on or after September 22, 2014.

Section 956: Deemed US property rule: Generally, section 951(a)(1)(B), together with section 956, causes a US shareholder of a CFC to have taxable income akin to a deemed dividend in respect of the US shareholder's pro rata share of the CFC's investment in US property. Over time, Congress has passed various rules to define what constitutes US property to prevent repatriation of US earnings without US tax.

Temp. Reg. §1.956-2T modifies the statutory definition of "US property" to include investments in stock or obligations of foreign related persons within the meaning of section 7874(d)(3) (or pledges or guarantees in respect of obligations of such persons), but only for CFCs for which an expatriated entity is a US shareholder (i.e. an "expatriated foreign subsidiary"), and then only for stock, obligations, pledges, or guarantees acquired or entered into during the 10-year inversion gain period of section 7874 or in a transaction related to the acquisition of the US target. Temp. Reg. §1.956-2T clarifies and expands upon rules previously articulated in the 2014 Notice.

For this purpose, a foreign related person is a foreign person that is related to or under common control with a US target in an acquisition to which section 7874 applies (or a US person related to the target), excluding expatriated foreign subsidiaries. Further, "US property" does not include certain obligations of a non-CFC foreign related party arising in the ordinary course of business.

Section 956(e) authorizes regulations to prevent avoidance of section 956; however, as noted, section 956 also contains a specific list of investments decided over time by Congress to represent investments in US property. Thus, these regulations represent an expansive reading of Congress' intent for anti-abuse regulations, so as to treat an investment in non-US property as "US property" without the need to trace a CFC's investment in such non-US property back to a US person (such as under a conduit arrangement).

The temporary regulations also incorporate the principles of Notice 88-108, Notice 2008-91, Notice 2009-10 and Notice 2010-12 (generally allowing short-term quarter-end loans provided each loan does not exceed 30 (or 60) days, and the CFC does not hold such obligations for 60 (or 180) days in total during the calendar year), but do not extend such principles to obligations of a non-CFC foreign related party.

Effective date: The deemed US property rule generally applies to obligations, stock, guarantees, and pledges acquired or entered into, as appropriate, on or after September 22, 2014, but only if the acquisition of the US target was completed on or after that date; *provided however*, that specific aspects of the rules are only applicable to such property acquired after April 4, 2016.

Decontrolling transactions

Generally, sections 367 and 1248 operate to allow for taxation of a CFC's untaxed earnings on various dispositions of shares in the CFC by a US shareholder. The temporary regulations protect, and in certain cases significantly modify, the application of these principles.

Specified transaction recharacterization rule: Temp. Reg. §1.7701(l)-4T recharacterizes certain specified transactions for all purposes of the Code. This specified transaction recharacterization rule generally is consistent with guidance previously announced in the 2014 Notice and the 2015 Notice. More particularly, a specified transaction is, with respect to an expatriated foreign subsidiary, a transaction in which stock of the expatriated foreign subsidiary is issued or transferred to a person that immediately before the issuance or transfer is a specified related person, provided the transaction occurs during the 10-year inversion gain period of section 7874(d). A specified related person generally is a non-CFC foreign related person, a US partnership that has one or more partners that is such a foreign person or a US trust that has one or more beneficiaries that is such a foreign person.

A specified transaction in which the specified stock is *issued* by an expatriated foreign subsidiary to a specified related person is recharacterized such that:

1. The transferred property is treated as having been proportionately transferred by the specified related person to each person that was a section 958(a) US shareholder of the expatriated foreign subsidiary immediately before the specified transaction in exchange for deemed instruments in such section 958(a) US shareholders, and
2. The transferred property that is treated as transferred to such section 958(a) US shareholder is treated as having been contributed by such person (through intermediated entities, if any, in exchange for equity in the intermediate entities) to the expatriated foreign subsidiary in exchange for deemed issued stock in the expatriated foreign subsidiary.

A specified transaction in which the specified stock is *transferred* by a shareholder of the expatriated foreign subsidiary to a specified related person is recharacterized such that:

1. The transferred property is treated as having been proportionately transferred by the specified related person to each person that was a section 958(a) US shareholder of the expatriated foreign subsidiary immediately before the specified transaction in exchange for deemed instruments in the section 958(a) US shareholder, and
2. To the extent a section 958(a) shareholder is not a transferring shareholder, the transferred property treated as transferred to such section 958(a) US shareholder is treated as having been contributed by such person (through intermediate entities, if any, in exchange for equity in the intermediate entities) to the transferring shareholder in exchange for equity in the transferring shareholder.

For the purpose of these rules, the “deemed instruments” have the same terms as the specified stock issue or transferred (and, likely, therefore treated as equity for US tax purposes). When a distribution is made with respect to the disregarded specified stock, matching seriatim distributions with respect to the deemed issued stock are treated as made by the expatriated foreign subsidiary, through intermediate entities, if any.

Pursuant to a *de minimis* exception, the specified transaction recharacterization rule does not apply to a specified transaction in which:

1. Immediately after the specified transaction and any related transaction, the expatriated foreign subsidiary is a CFC,
2. The post-transaction ownership percentage with respect to the expatriated foreign subsidiary is at least 90% of the pre-transaction ownership percentage with respect to the expatriated foreign subsidiary, and
3. The post-transaction ownership percentage with respect to any lower-tier expatriated foreign subsidiary is at least 90% of the pre-transaction ownership percentage with respect to the lower-tier expatriated foreign subsidiary.

The rule also does not apply to a transaction otherwise recharacterized under the fast-pay stock rules or pursuant to which income and/or gain, as appropriate, was recognized under principles of Temp. Reg. §1.367(b)-4T (see discussion of the stock dilution rule, below).

Temp. Reg. §1.7701(l)-4T also includes rules that take into account changes in the status of the parties to the deemed arrangements, which may result in an unwinding of the deemed arrangement.

Congress enacted section 7701(l) in the wake of arrangements where three parties engaged in a chain of financing transactions (e.g., back to back loans from a Cayman company to a company resident in a country with a tax treaty with the US and then in turn to a US company, in hopes of obtaining treaty benefits for payments from the US company). Congress specified that it intended to prevent tax avoidance by intermediate or conduit entities (even if not involving back to back loans). Thus, these regulations represent an expansive reading of Congress' intent for section 7701(l), given their impact on the integration of business assets of a US target with a foreign acquirer (as opposed to shell intermediate companies), even when such arrangements do not include financing transactions.

Effective date: The specified transaction recharacterization rule generally applies to specified transactions completed on or after September 22, 2014, but only if the inversion transaction was completed on or after such date.

Stock dilution rule: In general, Treas. Reg. §1.367(b)-4(b) requires a shareholder that exchanges stock of a foreign corporation in an exchange subject to section 367(b) to include in income as a deemed dividend the section 1248 amount (as defined in Treas. Reg. §1.367(b)-2(c)(1)) with respect to the stock exchanged if the exchange results in either a loss of CFC status of the foreign corporation whose stock is exchanged or a loss of section 1248 shareholder status of the exchanging shareholder (or of a shareholder of the exchanging shareholder when there is an exchange of stock of a lower-tier CFC). In the context of certain foreign-to-foreign transfers of stock or assets following an inversion transaction that would otherwise be governed by section 351 or 361, Temp. Reg. §1.367(b)-4T greatly expands the scope of Treas. Reg. §1.367(b)-4, generally requiring full gain recognition, including recharacterization of the section 1248 amount as a dividend if applicable.

First, pursuant to Temp. Reg. §1.367(b)-4T, if a foreign corporation (the transferee foreign corporation) acquires stock of a foreign corporation in an exchange described in section 351 or stock or assets of a foreign corporation in a reorganization described in section 368(a)(1) (in either case, the foreign acquired corporation), an exchanging shareholder must, if the exchange is a specified exchange:

1. Include in income as a deemed dividend the section 1248 amount attributable to the stock that it exchanges, and
2. After taking into account the increase in basis resulting from the deemed dividend (if any), recognize all realized gain with respect to the stock that would not otherwise be recognized.

For this purpose, an exchange is a "specified exchange" if:

1. Immediately before the exchange the foreign acquired corporation is an expatriated foreign subsidiary and the exchanging shareholder is either an expatriated entity or an expatriated foreign subsidiary;
2. The stock received in the exchange is stock of a foreign corporation; and
3. The exchange occurs during the 10-year inversion gain period under section 7874(d).

An income inclusion under this rule does not qualify for the same country exception or section 954(c)(6) look-through treatment. Application of the rule is subject to a *de minimis* exception similar to the *de minimis* exception applicable under the specified transaction recharacterization rule.

Second, if an expatriated foreign subsidiary transfers specified property to a foreign corporation (the transferee foreign corporation) in an exchange described in section 351, the expatriated foreign subsidiary must recognize all realized gain with respect to the specified property transferred that would otherwise would not be recognized. As above, a *de minimis* exception similar to the *de minimis* exception applicable under the specified transaction recharacterization rule applies.

Effective date: The stock dilution rule generally applies to exchanges completed on or after September 22, 2014, but only if the inversion transaction was completed on or after that date. The requirement to fully recognize gain (rather than just the section 1248 amount) applies to exchanges completed on or after November 19, 2015, but only if the inversion was completed on or after September 22, 2014. The rule applicable to transfers of specified property by an expatriated foreign subsidiary in a section 351 exchange applies to transfers completed on or after April 4, 2016. Further, certain aspects of the foregoing rules apply only to exchanges or transfer completed on or after April 4, 2016, provided that taxpayers may elect to apply such aspect retroactively.

Section 304(b)(5)(B)

Generally, section 304(b)(5)(B) prevents the acquisition of stock in a section 304 transaction from resulting in a deemed dividend from the foreign acquiring corporation's earnings and profits unless more than 50% of the deemed dividend resulting from the acquisition is subject to US tax or is includible in the earnings of a CFC. Consistent with guidance announced in the 2014 Notice, Temp. Reg. §1.304-7T expands the scope of section 304(b)(5)(B). More specifically, Temp. Reg. §1.304-7T(b) provides that only the earnings and profits of a foreign acquiring corporation (and none of the earnings and profits of a domestic issuing corporation) are taken into account in determining whether more than 50% of the dividends arising from the acquisition (determined without regard to section 304(b)(5)(B)) would neither be subject to US federal income tax nor be includible in the earnings and profits of a controlled foreign corporation.

As an anti-abuse rule, Temp. Reg. §1.304-7T(c) disregards a partnership, option (or similar interest), or other arrangement that is used with a principal purpose of avoiding the application of Temp. Reg. §1.304-7T (e.g., by causing the selling shareholder to be treated as a controlled foreign corporation).

Effective date: Temp. Reg. §1.304-7T applies to acquisition that are completed on or after September 22, 2014.

Request for comments

The Treasury Department and the IRS request comments as to whether it is appropriate to treat other amounts included by a CFC in gross income as a dividend under section 964(e) as dividends from a related person to which section 954(c)(6) may apply.

Effect on other documents

The temporary regulations obsolete the following prior guidance: Notice 88-108, Notice 2008-91, Notice 2009-10, Notice 2010-12, Notice 2014-52, and Notice 2015-79.

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Proposed regulations addressing treatment of certain interests in corporations as stock or indebtedness

On April 4, 2016, the United States Treasury and the IRS published broadly applicable proposed regulations under section 385 of the Internal Revenue Code (REG-108060-15, the "Proposed Regulations") that would:

1. Authorize the IRS to treat certain related-party interests as part stock and part debt for federal tax purposes;
2. Establish contemporaneous documentation requirements that must be satisfied for certain related-party debt to be respected for federal tax purposes; and
3. Treat certain related-party debt as stock for all purposes of the Code when issued in connection with certain distributions and acquisitions.

The Proposed Regulations have complex effective date provisions. Specifically, the contemporaneous documentation requirements are proposed to be effective prospectively when finalized. By contrast, the Proposed Regulations state that the rules treating as equity certain related-party instruments issued in connection with certain distributions apply to instruments issued on or after April 4, 2016. However, these instruments will not be subject to such automatic characterization until 90 days after the Proposed Regulations are finalized. Until such time, these instruments would be entitled to debt treatment if they would qualify as such under current law. Treasury has stated that it intends to "move swiftly" to finalize the Proposed Regulations.

While ostensibly intended to limit the earnings stripping benefits of corporate inversion transactions, the Proposed Regulations, if adopted in their present form, apply well beyond inversions, and are also intended to apply to a broad range of related-party transactions; consequently, they would significantly impact many ordinary business transactions and restructurings of domestic and foreign corporations. In general, the Proposed Regulations do not apply to instruments issued between members of an affiliated group that files a consolidated return. In general, and subject to the contemporaneous documentation requirement and the bifurcation of instruments as part-debt and part-equity provisions, cash-funded, related-party debt generally would not be subject to the Proposed Regulations, provided that the cash is not used for certain specified distributions or acquisitions (unless such cash-funded, related-party debt is a funding, as described below). On the other hand, related-party debt issued in a distribution (such as a section 301 distribution or a section 302 redemption); in exchange for related party stock (such as a section 304 transaction or debt issued for stock in triangular reorganizations); or in certain asset reorganizations (such as debt issued to a target shareholder in a cash-D reorganization) would be treated as “stock” under the Proposed Regulations.

Cash-funded, related-party debt may nonetheless be subject to the Proposed Regulations under a “funding rule” and so treated as stock if such cash is used in one of the foregoing distributions or acquisitions to which the Proposed Regulations apply. Under this funding rule, discussed below, a refinancing of existing debt might be treated as stock, depending on the circumstances. Moreover, the refinancing of existing debt, i.e. debt in place prior to April 4, 2016, would initially be treated as “good” debt, even if the existing debt had funded such a distribution or acquisition, because the new debt would not itself have been issued to fund such a distribution or acquisition. However, any new related-party debt (including debt “deemed” reissued under Treas. Reg. §1.1001-3) would need to be tested under the funding rule, which adopts a non-rebuttable presumption that if the debtor made such a distribution or acquisition during the 36-month period prior to the issuance of the new related-party debt or the 36 month period subsequent to its issuance, that new debt runs afoul of the Proposed Regulations and would be characterized as stock. There is no need for the IRS to actually trace the proceeds of the debt to such a distribution or acquisition. Accordingly, prior to undertaking any refinancing or significant modifications of existing related-party debt, an analysis of the impact of such actions under the Proposed Regulations should be undertaken.

Background

Historically, the determination of whether an interest in a corporation is debt or equity for federal tax purposes has been based on all the relevant facts and circumstances. Courts have developed multi-factor tests to determine whether an instrument is debt or equity in its entirety. In 1969, Congress enacted section 385, authorizing Treasury to issue regulations to determine whether an instrument should be classified as debt or equity for federal tax purposes. No such regulations are currently in effect. Recently, related-party debt has come under increased scrutiny in the context of inversions and other cross-border situations.

In response to inversion transactions, Treasury and the IRS issued Notice 2014-52 and Notice 2015-79. These notices provide that Treasury and the IRS expect to issue guidance that limits the benefits of post-inversion transactions. The notices state, in particular, that Treasury and the IRS are considering guidance to address strategies that avoid US tax on US operations by shifting or “stripping” US source earnings to lower-tax jurisdictions, including through intercompany debt. For a discussion of the temporary regulations implementing the notices, also issued on April 4, 2016, see the US International Tax Alert dated April 6, 2016.

Proposed regulations

The Proposed Regulations would permit the IRS to bifurcate certain related party debt into part stock and part debt. They also would establish new contemporaneous documentation requirements that must be satisfied in order for the related party debt to be treated as debt for federal tax purposes. Finally, and most significantly, the Proposed Regulations would automatically reclassify certain related party debt as stock for all federal tax purposes. While the Proposed Regulations contain a broad exception for debt between members of a consolidated group, we are also considering the extent to which these new rules would apply from a state tax perspective.

Permit commissioner to bifurcate related party debt

Under current law, an instrument is debt or equity in its entirety. The Proposed Regulations would provide that the Commissioner may treat a debt instrument between members of a "modified expanded group," a so-called "expanded group instrument" (EGI), as part debt and part stock to the extent that an analysis of the relevant facts and circumstances concerning the EGI results in a determination that it is properly treated for federal tax purposes as part debt and part stock. For this purpose, a modified expanded group means an affiliated group (as defined in section 1504(a)) determined without regard to the exclusions set forth in section 1504(b), and by modifying the ownership requirement to be ownership of 50% of the vote *or* value and taking into account direct and indirect ownership (including through attribution under section 304(c)(3)). The modified expanded group also includes certain partnerships that are wholly owned by members of the modified expanded group. Notwithstanding the ability of the Commissioner to bifurcate an EGI, the issuer and any other person relying on the characterization of the EGI as debt for federal tax purposes must treat the EGI consistently with the issuer's initial characterization (i.e. the ability to bifurcate cannot be used affirmatively by a taxpayer). No specific standard or criteria is provided to elucidate how the IRS will make the determination to bifurcate.

Contemporaneous documentation and information requirement for certain interests issued between members of an expanded group

The Proposed Regulations provide that with respect to an EGI between two members of an "expanded group," the EGI is treated as stock for federal tax purposes unless the taxpayer satisfies certain documentation and information requirements in respect of the EGI, subject to a reasonable cause exception. For this purpose, an expanded group has the same meaning as for the modified expanded group, except that only corporations that are owned 80% by vote *or* value are included in an expanded group. These requirements are intended to permit the IRS to determine whether an EGI is appropriately treated as stock or debt for federal tax purposes. Satisfying the documentation and maintenance requirement does not establish that an EGI is debt; it merely serves as a minimum standard that enables the determination of the proper characterization of the instrument under general federal tax principles. If the documentation requirements are satisfied, general federal tax principles apply to determine the proper characterization of the EGI as debt for federal tax purposes. Taxpayers, however, cannot apply the rules affirmatively, i.e. the rules do not apply if the failure to satisfy the documentation requirements has a principal purpose of reducing the federal tax liability of any member of the expanded group or any other person relying on the characterization of the EGI for federal tax purposes.

To satisfy the documentation and information requirements, the taxpayer must document and maintain information in respect of the EGI, including executed copies of all instruments, agreements and other documents evidencing the material rights and obligations of the parties relating to the EGI, and any associated rights and obligations of other parties such as guarantees and subordination agreements. The documentation and information must include written documentation establishing that:

1. The issuer has an unconditional and legally binding obligation to pay a sum certain on demand or at one or more fixed dates;
2. The holder has the rights of a creditor to enforce the obligation; and
3. The issuer's financial position supports a reasonable expectation that the issuer intended to, and would be able to, meet its obligations under the terms of the EGI.

This documentation generally must be prepared no later than 30 days after the date on which a member of the expanded group becomes an issuer of a new or existing EGI. In respect of (3), if a disregarded entity is the issuer of an EGI, and the owner of such entity has limited liability, only the assets and the financial position of the disregarded entity would be taken into account. In the event that subsequent actions evidence the debtor-creditor relationship of the issuer and holder of an EGI, such as the payment of interest or an event of default, the taxpayer must prepare, generally within 120 days, evidence of such actions, e.g. a wire transfer for a payment or evidence supporting the holder's reasonable exercise of the diligence and judgment of a creditor. Special documentation requirements apply with respect to revolving credit agreements and cash pool arrangements. It appears that these new rules would apply to every intercompany account between members of an expanded group. Taxpayers must maintain the required documentation for all taxable years that the EGI is outstanding and until the applicable statute of limitations expires for any return with respect to which the treatment of the EGI is relevant.

The documentation and information requirements apply to an EGI only if:

1. The stock of an expanded group member is publicly traded on an established financial market;
2. The expanded group's total assets exceed $100 million on certain applicable financial statements, as of the date the instrument first becomes an EGI; or
3. The expanded group's annual total revenue exceeds $50 million on certain applicable financial statements, as of the date the instrument first becomes an EGI.

Treatment of instruments becoming or ceasing to be an EGI

The Proposed Regulations generally provide that when an EGI treated as stock due to the failure to meet the documentation requirements ceases to be an EGI, e.g. it is transferred to a person outside the expanded group, the instrument is characterized at that time under general federal tax principles. If, under such principles, the instrument is properly characterized as debt, the issuer is treated as issuing a new instrument to the holder in exchange for the EGI immediately before the transaction that causes the instrument to cease to be an EGI. Similar rules apply when an EGI originally characterized as debt is recharacterized as stock based on the actions of the issuer or holder after issuance. More generally, the Proposed Regulations provide that if an EGI is deemed to be exchanged, in whole or in part, for stock, the holder is treated as having a realization event in respect of the portion of the instrument subject to the deemed exchange into stock, and the issuer is treated as having retired such portion of the instrument for federal tax purposes. The amount realized in the deemed exchange to the holder generally is the holder's basis, and the amount paid by the issuer is the adjusted issue price of the debt.

Treatment of certain distributions and stock acquisitions with debt instruments: The Proposed Regulations provide that, subject to certain exceptions, an EGI otherwise treated as debt for federal tax purposes and held by a member of the issuer's expanded group will be treated as stock for all federal tax purposes in certain circumstances described below. Whether the stock is "preferred" stock (including nonqualified preferred stock or section 306 stock) or "common" stock will be based on the terms and conditions of the debt instrument (e.g. participation or conversion rights, term, voting, etc.).

General rule

Under the "general rule," an EGI is treated as stock to the extent that the debt instrument is issued by a corporation to a member of its expanded group:

1. In a distribution, defined as any distribution made with respect to stock;
2. In exchange for expanded group stock (other than an exempt exchange); and
3. In exchange for property in an asset reorganization, but only to the extent that, pursuant to the plan of reorganization, a shareholder that is a member of the issuer's expanded group immediately before the reorganization receives the debt instrument with respect to its stock in the transferor corporation.

An example of (1) would be a simple distribution of a note as a dividend. An example of (2) would be a section 304 purchase of a controlled corporation for a note or the purchase of a parent corporation's stock for a note to be used in a "triangular" B reorganization. An example of (3) would be the issuance of a note by the acquiring corporation as consideration in whole or in part for the assets of the transferor corporation in a cash-D reorganization.

The Proposed Regulations provide two exceptions to the general rule (as well as the funding rule described below). First, the aggregate amount of a distribution or acquisition subject to the general rule is reduced to the extent of the relevant member's current year earnings and profits. This exception also applies in respect of the funding rule, described below. Second, an EGI is not treated as stock under the general rule if, immediately after the debt instrument is issued, the aggregate adjusted issue price of debt instruments held by expanded group members otherwise subject to the general rule or the funding rule does not exceed $50 million.

Special rules for "principal purpose debt instruments"

The Proposed Regulations provide that a debt instrument not otherwise subject to the general rule is treated as stock to the extent that it is a "principal purpose debt instrument" (the "funding rule"). For this purpose, a principal purpose debt instrument is an EGI issued by a member of the expanded group (the “funded member”) to another member of its group, in exchange for property, with a principal purpose of permitting the funded member to undertake a distribution or an acquisition otherwise described in items (1) – (3) of the general rule above. An example of this rule would be a loan of cash by one member of the expanded group to the funded member of the expanded group, which then distributes the cash to a shareholder that is also a member of the expanded group. However, if the expanded group member that holds the loan distributes the loan to its shareholder that is also a member of the expanded group, then that loan would not appear to be subject to the general rule or the funding rule.

The Proposed Regulations provide that an EGI shall be treated as issued with a principal purpose of funding a distribution or acquisition if it is issued during the 72-month period beginning 36 months before the date of the distribution or acquisition, and ending 36 months after the date of the distribution or acquisition.[3] This per se rule does not apply, however, to the extent that the EGI either:

1. Meets one of the exceptions described under the general rule, or
2. Arises in the ordinary course of the issuer’s trade or business in connection with the purchase of property or receipt of services, e.g. generally trade payables, provided that the outstanding amount does not exceed the amount that would be ordinary and necessary to carry on the trade or business if the issuer were unrelated to the lender.

A third exception applies to an acquisition of expanded group stock if the acquiring member acquires stock of the issuer for property and holds, directly or indirectly, more than 50% of the total voting stock and value of the issuer for the 36-month period immediately following the issuance of the stock.

The Proposed Regulations provide several examples discussing the application of the funding rule.

Anti-abuse rules

The Proposed Regulations also provide that an EGI is treated as stock if it is issued with a principal purpose of avoiding the application of the rules, including the rules applicable to consolidated groups. For example, the anti-abuse rule may apply if a debt instrument is issued to, and later acquired from, a person that is not a member of the issuer’s expanded group when such issuance and acquisition has a principal purpose of avoiding the application of the rules. In addition, certain instruments that are not debt for federal tax purposes, such as nonperiodic swap payments, also are treated as stock if issued with a principal purpose of avoiding the application of the rules.

The Proposed Regulations also include a rule that permits the IRS to treat an EGI as debt even if used for an otherwise prohibited distribution or acquisition, if a principal purpose for issuing the EGI was to reduce US federal income tax.

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[3] It should be noted that for the 36-month look-back period, the rule would not appear to look back to distributions or prohibited acquisitions completed prior to April 4, 2016, the effective date for the proposed rules (see below).

Treatment of consolidated groups

The Proposed Regulations treat members of a consolidated group as one corporation for purposes of applying the operative rules. Generally, the Proposed Regulations do not apply to issuances of interests and related transactions among members of a consolidated group, because the concerns addressed therein generally are not present when the issuer's deduction for interest expense and the holder's corresponding interest income offset each other in the group's consolidated federal income tax return. Special rules apply, however, when a debt instrument becomes, or ceases to be, a consolidated group debt instrument, or a consolidated group member that is a party to a debt instrument becomes, or ceases to be, a consolidated group member.

Effective date: In general, the Proposed Regulations have grandfathered from their application all related-party debt instruments issued prior to April 4, 2016, regardless of the purpose of those debt instruments or the use of their proceeds. However, exchanges, or deemed exchanges, of such grandfathered instruments under Treas. Reg. §1.1001-3 could cause the Proposed Regulations to apply.

The Proposed Regulations contain several effective dates for their operative provisions. For the IRS's ability to bifurcate related-party debt and the contemporaneous documentation and information requirements, the Proposed Regulations generally are proposed to be effective for any EGI issued or deemed issued on or after the date the regulations are published as final (except to the extent the instrument was deemed issued as a result of an entity classification election that is filed on or after the date the regulations are issued in final form). The Proposed Regulations treating as stock certain EGI issued in certain distributions (including distributions of notes) or stock acquisitions (including section 304 exchanges or triangular B reorganizations involving debt) are proposed to be effective for any debt instrument issued on or after April 4, 2016 (and for any debt instrument issued before April 4, 2016 as a result of an entity classification election filed on or after April 4, 2016). However, where the Proposed Regulations otherwise would treat an EGI as stock in such transactions prior to the date the Proposed Regulations are issued in final form, the EGI would be treated as debt (and would not be recharacterized as stock) until the date that is 90 days after the date the Proposed Regulations are issued in final form.

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US estate and gift tax rules for resident and nonresident aliens

Non-US citizens may be subject to US estate and gift taxation. If you fit into this category, do you understand the potential tax implications? This article answers the questions we hear most often from non-US citizens who live, work, or own property in the United States.

Resident and nonresident aliens may be in the US indefinitely, for a long-term stay, or for a short-term assignment. Upon their death, however, their estates may face adverse US estate tax consequences without careful planning. Likewise, lifetime transfers by non-US citizens may be subject to US gift tax

Residency and domicile considerations

Since 2013, US citizens and US domiciliaries have been subject to estate and gift taxation at a maximum tax rate of 40% with an exemption amount of $5 million, indexed for inflation. The indexed exemption amount for 2016 is $5,450,000. In contrast, non-US domiciliaries are subject to US estate and gift taxation with respect to certain types of US assets, also at a maximum tax rate of 40% but with an exemption of $60,000, which is only available for transfers at death.

Green card status

Obtaining a green card is one way to establish US residency. Having a green card may allow for easier travel into and out of the country and may allow you to remain in the US indefinitely. However, holding a green card subjects you to US income tax on your worldwide income during the entire time that you hold the green card (even if you are living outside the US), and it is one factor considered when determining whether you are a US domiciliary. An individual who is considered domiciled in the US for estate and gift tax purposes is subject to US estate and gift tax on worldwide assets.

Surrendering your green card will cause you to be considered a nonresident alien for US income tax purposes. This status assignment is based upon the assumption that you do not spend substantial time in the US after surrendering your green card, in which case you may become a US resident under the “substantial presence” test. Upon surrendering your green card, you will need to consider whether you are subject to the US expatriation tax or “exit tax.”

The substantial presence test

It is recommended that you retain records regarding your days inside and outside the US to support whether or not you meet the substantial presence test. The IRS defines substantial presence as being physically present in the United States on at least:

- 31 days during the current year, and
- 183 days during the 3-year period that includes the current year and the 2 years immediately preceding the current year, by adding together the following:

- All the days you were present in the US in the current year, and
- 1/3 of the days you were present in the US in the first year before the current year, and
- 1/6 of the days you were present in the US in the second year before the current year.

Qualifying as a US domiciliary

A person is considered to be domiciled in the US for estate and gift tax purposes if he or she lives in the US and has no present intention of leaving. Determining domicile for US estate and gift tax purposes is different than determining US income tax residence (see page 2). Thus, you may be a resident for income tax purposes, but not US domiciled for estate and gift tax purposes.

Determining domicile for US estate and gift tax purposes is different than determining US income tax residence.

Facts and circumstances test

To determine whether you are a US domiciliary, the following factors are considered:

- Statement of intent (in visa applications, tax returns, will, etc.);
- Length of US residence;
- Green card status;
- Style of living in the US and abroad;
- Ties to former country;
- Country of citizenship;
- Location of business interests; and
- Places where club and church affiliations, voting registration, and driver licenses are maintained.

A person is considered a non-US domiciliary for estate and gift tax purposes if he or she is not considered a domiciliary under the facts and circumstances test described above. It is possible that two or more countries will consider the same person a domiciliary, and/or that certain assets may be subject to estate or gift tax in more than one country. Consult with a tax professional regarding your US domicile status. It is important to consult with an international estate planning professional to determine your potential US estate tax exposure, to eliminate or reduce double taxation, and to plan appropriately.

Countries with estate and gift tax treaties

As of January 2016, the US has entered into estate and/or gift tax treaties with 16 jurisdictions. Tax treaties may define domicile, resolve issues of dual-domicile, reduce or eliminate double taxation and provide additional deductions and other tax relief.

Countries with whom the US currently has gift and/or estate tax treaties:

Australia	Austria	Canada*	Denmark
Finland	France	Germany	Greece
Ireland	Italy	Japan	Netherlands
Norway	South Africa	Switzerland	United Kingdom
*Through the income tax treaty			

Estate tax facts

Assets subject to US estate tax: US domiciliaries are taxed on the value of their worldwide assets at death in the same manner as US citizens. Non-US domiciliaries are taxed only on the value of their US "situs" assets. US situs assets generally include real and tangible personal property located in the US, business assets located in the US, and stock of US corporations. The definition of US situs assets may be modified by an applicable estate and gift tax treaty.

Tax rates and credits: Estate and gift tax rates currently range from 18% – 40%. The rates are the same whether you are a US citizen, US domiciliary, or non-US domiciliary. Applicable credit amounts are available against gift tax and estate tax for US citizens and domiciliaries, equivalent to $5,450,000 of value in 2016. An exemption of $60,000 is available against the value of assets includable in the US taxable estate of an individual who was not US domiciled. In addition to the Federal estate and gift tax, there may be additional state estate and gift taxes.

Jointly owned property: If the surviving spouse is not a US citizen, in general, the portion of jointly owned property that is taxed in the estate of the first spouse to die is based upon who provided the "consideration" to purchase the property (i.e. whose assets were used to purchase the property). If the surviving spouse is a US citizen, then in general one-half the value of the jointly owned property will be included in the estate of the first spouse to die.

Marital deduction: If the surviving spouse is a US citizen, there is an unlimited marital deduction – in other words, an unlimited amount of assets can pass to your spouse without being subject to US estate tax. An election can also be made on a timely-filed estate tax return to pass any exemption amount not utilized to the surviving spouse for use in addition to his or her own exemption. If your surviving spouse is not a US citizen, the marital deduction is generally not allowed. However, a deferral of US estate tax for assets passing to a non-US citizen surviving spouse may be obtained if US property passes through a qualified domestic trust. Some estate and gift tax treaties also allow for some form of a marital deduction in cases where such a deduction would not normally be available.

US citizens and domiciliaries are subject to gift tax on all lifetime gifts, regardless of where the property is located. Non-US domiciliaries are subject to US gift tax only on transfers of tangible personal property located in the US and real property located in the US.

Exclusions and credits: There is an annual exclusion from US gift tax for "present interest" gifts. In 2016, the annual exclusion amount is $14,000 per donee per year (indexed for inflation in $1,000 increments). US citizens and domiciliaries can also “gift split,” allowing married donors to exclude up to $28,000 per donee per year. Gift splitting is not permitted if either spouse is a non-US domiciliary. An unlimited amount can be gifted to a spouse who is a US citizen, whereas gifts to a non-US citizen spouse are offset by an increased annual exclusion. This annual exclusion for gifts to non-US citizen spouses is $148,000 for 2016 (indexed annually).

An individual who owns intangible property should consult with an international estate planning professional to determine whether it would be advantageous to gift such property before becoming a US domiciliary.

Computing US estate and gift tax

Once any available annual exclusions or marital or other deductions are utilized, the available exemption will offset taxable gifts or bequests. As mentioned earlier, the exemption amount is $5,450,000 in 2016 for US citizens and domiciliaries.

Any part of the exemption used during life will not be available as an exemption at the time of death. There is no exemption amount available for lifetime transfers by non-US domiciliaries, and the exemption amount for transfers at death by non-US domiciliaries is $60,000.

Generation-skipping transfer tax facts

Generation-skipping transfer tax (GST tax), if applicable, is imposed in addition to estate or gift taxes. It is imposed on US taxable gifts and bequests made to or for the benefit of persons who are two or more generations below that of the donor, such as a grandchild. It is also imposed on gifts made to donees who are not related to the donor and who are more than 37.5 years younger than the donor.

Exclusions

In limited circumstances, a GST annual exclusion is available. In addition, there is a GST exemption which exempts $5,450,000 (the same amount as the estate and gift tax exemption; indexed for inflation) of assets from GST tax. If you are considering making gifts or bequests to grandchildren or other “skip persons,” consult an estate planning professional. GST issues are often complex, especially when gifts are made through trusts.

Thinking ahead

Non-US citizens who live, work, or own property in the US need to have a clear understanding of the potential implications of the US estate and gift tax rules. As described in this article, residency and domicile choices can have major tax implications. An international estate planning professional should be consulted to help you determine any potential impact and develop an approach based on your specific circumstances.

As companies and individuals increasingly become globally mobile, more and more people will be affected by multinational tax rules. We hope the information provided here will help you start thinking about steps to take to confirm you are properly prepared for potential US estate and gift tax implications of a move to the US or the purchase of US property.

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12 Mistakes to avoid in site selection

Site selection, the concept that applies both analytical and qualitative techniques to determine the most favorable location for a business operation, has been around for a long time. Manufacturers have historically taken widely different approaches to location analysis and asset deployment, with varying degrees of success. Some prefer an abbreviated methodology, while others examine every detail, utilizing outside consultants and experts to maximize returns, minimize risk, and use location as a competitive advantage.

Few corporate decisions have as many immediate and long-term implications on tax structure, cost of goods sold, supply chain, labor force, and overall operating success as the choice of location. Furthermore, several factors have emerged to make site selection increasingly complex. These include fast-track expectations, globalization, strict environmental legislation, tightening labor availability, scarcity of certain labor skills, and utility consolidation. With each degree of complexity comes a new set of considerations requiring a higher degree of analysis to avoid risk and make the right location decision.

The accessibility of location information on the internet may give the appearance that the site selection process can be simplified and accelerated. Unfortunately, applying data without context and experience can lead the search for the most optimal facility location down a path lined with risks, delays, hidden costs, and even fatal flaws. At every step in the process, a host of errors can be made that will compromise the final location selection. Here are a few of the critical mistakes that can undermine the analysis and lead to risk, higher cost, and unfavorable operating conditions:

1. **Unprepared site selection team:** Successful companies are able to bring multi-disciplinary teams together to enable and implement an effective location strategy. They have found that to limit risk and avoid surprises, it is critical to address certain technical, analytical, and financial elements early in the site selection study. An effective team will possess core competencies in the areas of human resources, cost accounting, logistics, tax, engineering, construction, and in some cases, environmental issues. Neglecting to assemble the right mix of stakeholders and experts early in the process increases the risks of project delays and poor location selection.
2. **Lack of executive consensus:** In most organizations, the critical effect that location has on an operating unit's success places the results of the site selection process under a "C-level" (CEO, CFO, etc.) microscope. The executive management group has more at stake than most of the day-to-day members of the site selection team, and therefore is likely to have strong opinions on the analysis and solution. Many teams make the

mistake of sharing the only the final results of the analysis with their executive leadership, risking challenges of the original assumptions, rationale, methodology, and solution. Including corporate leadership early on and throughout the process helps promote buy-in and understanding of the long and highly analytical process of most site searches.

3. **Incorrect search area:** Manufacturing site selection usually begins with a general region of interest due to transportation issues, human capital needs, or other market dynamics. Problems will arise and valuable time will be lost if this geography is not carefully validated with the new facility's overall operating objectives and criteria. For example, a manufacturer may consider a six-state region as the initial search area for a new plant to minimize inbound transportation costs from vendors. However, a more cost-effective search area may emerge some 750 miles to the west after a more comprehensive study of all inbound and outbound freight costs. The lost time and wasted effort in analyzing the original search area is unrecoverable.
4. **Narrowing the search area too rapidly:** After the search area is determined, companies are often tempted to quickly eliminate large chunks of geography to accelerate the process. Whole states or countries might be eliminated that, with some analytical consideration, could have been favorable alternatives. This can be avoided by correctly prioritizing the project's critical location factors – those aspects of the desired solution that can be quantified and measured. These can include transportation, demographic, labor, tax, and in some cases, utility infrastructure requirements. With an agreed-upon methodology for elimination, the critical location factors should be used to reduce the areas of consideration thoughtfully and objectively. If areas exhibit borderline characteristics, it is generally wise to retain them, not eliminate them, for the next round of analysis.
5. **Failure to consider all the issues:** No two location searches are identical: each has its own unique set of critical location factors, specifications, needs, timing and risks. A common error during the site selection process is to consider only easily quantified aspects such as labor costs, real estate, or taxes. In reality, each location will present a host of variable tradeoffs, opportunities, strengths, and weaknesses. Some will be financial (cost-based) while others will be qualitative (risk-oriented). Knowing which issues will most contribute to the project's ultimate success and evaluating them completely in each candidate area is critical to uncovering the best location solution.
6. **Incomplete labor market analysis:** Unemployment and average hourly earnings statistics, the "usual suspects" in any labor study, are only general indicators of workforce availability and cost. However, the market for employees in any area is affected by dozens of other factors that should be quantified and interpreted during the site selection process. These include population demographics, union characteristics, turnover, absenteeism, average fringe benefits, commuting patterns, recent plant openings and closing, and others. Labor market studies are often complex, and very detail-oriented exercises that address two objectives: to limit the location risks inherent with human capital, and to provide a solid basis for human resources strategy and implementation once the final selection is made. For manufacturers looking outside the US, be aware that published labor market data is often outdated and inconsistently collected in different countries.
7. **Failure to consider community trends:** No location exists in a vacuum; towns, counties, states, and regions are in a dynamic state of evolution that affects most aspects of business operations. Labor and real estate markets, utility services, political

factors, community image, and demographic characteristics can and do change from year to year. Evaluation of statistics is important, but datasets do not capture the dynamics and context behind the numbers. Making the right long-term location decision is generally more difficult than understanding today's costs and conditions.

8. **Poor or absent technical site review:** When considering candidate sites for a new manufacturing operation, it is critical to conduct a technical site study of several of the finalists to limit construction risk and quantify hidden development costs. Every year, projects experience unforeseen circumstances such as adverse geo-technical conditions, floodplain issues, and various permitting hurdles that could have been avoided. It is crucial to understand and measure environmental risk, timing, obstacles to development, and geographically variable construction costs. At a minimum, obtain recent Phase 1 and other available environmental studies, soil borings, zoning regulations, development codes and covenants, wetlands studies, floodplain information, and utility maps for each site under consideration.
9. **Breach of confidentiality:** Why is project confidentiality important during the site selection process? It protects owners from unwanted attention and distractions, both external and internal, that can influence the outcome of the study. Management may be sensitive to premature, out-of-context leaks that can reach Wall Street, competitors, land speculators, and employees. This means that the site selection team must take precautions to not reveal the corporate identity or nature of the business to third parties who may not have the firm's best interests in mind. When the location analysis is complete, a carefully planned and executed announcement strategy will help ensure that the project is properly communicated and accepted from political, financial, and human resources perspectives.
10. **Failure to capture negotiable incentives:** The state and local economic development community is in the business of attracting and retaining jobs and investment. Nearly every jurisdiction has some variation of legislated incentives that are available to any qualified business locating in the area. Often overlooked or under-achieved are discretionary incentives that can be available. Through a carefully planned process, manufacturers can receive inducements to help offset cost differences (or mitigate risks) between location finalists. These incentives can be an important component of the overall cost analysis and may influence the final decision.
11. **Acceptance of overvalued incentives:** The negotiation strategy must account for the specific needs of both the operation and the corporation itself. A common mistake is to negotiate and accept state corporate income tax credits that appear to offer annual savings of millions of dollars while later analysis reveals that the firm will owe no such tax in the first place. According to a recent Deloitte survey of corporate executives, the most desirable incentives include infrastructure improvements and property tax abatement, both tangible contributors to the bottom line. The site selection team should maintain consistent emphasis on both short and long-term incentive programs that will benefit the operation in material and measurable ways.
12. **Poor implementation of incentives:** Once the deal is signed and the announcement is made, there is still work to be done. The implementation and transition team must not forget the effort expended and agreements struck during negotiations. Many state and local incentives will require "care and feeding" to ensure that all available benefits are captured. Implementation can include monitoring and reporting of new job creation, training documentation, and credit/abatement filings.

Successful manufacturers have discovered that using location as a competitive advantage can enable the facility network to yield additional financial gains. However, the analytical process of site selection should not be short-circuited by a few statistics, an available property, or hastily accepted incentives. The internet is a source, not a solution, for the hundreds of pieces of information required to measure the costs, conditions, and risks associated with site selection.

Leading a corporate site selection effort requires a unique set of capabilities. The team must have the ability to logically analyze a myriad of factors, the savvy to negotiate and build consensus with management, and the judgment to remain unbiased throughout the process. Knowledge of logistics, human resources, real estate, tax, financing, infrastructure, construction, incentives, and environmental considerations has become more important as the complexity of location strategy increases. If, while armed with these competencies, the site selection team is able to avoid the mistakes highlighted above, they will be better able to deliver a location outcome that can position the manufacturer for many years of success.

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Private Wealth: The 2016 Essential Tax and Wealth Planning Guide

Deloitte Private Wealth focuses on the specialized needs of the ultra-affluent, including families with multigenerational wealth, entrepreneurs, and closely held business owners. More and more individuals and companies conduct business across borders around the world. Globalization, increased global regulation, social transformation, and technological transformation are several trends increasing the complexity of tax issues.

The *2016 Essential Tax and Wealth Planning Guide* offers many valuable considerations to assist in your tax planning as these trends unfold. Review the full report and contact Julia Cloud for more information about Deloitte Private Wealth.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/tax-and-wealth-planning-guide.html
URL: jucloud@deloitte.com

Calendars to watch

Each edition, be sure to mark your calendars for some of the more important events (recent and upcoming) as well as tax developments making in impact on businesses investing into the United States.

Recent and upcoming activities

May 26 **Dbriefs webcast:** BEPS update: Potential impacts on people, technology, and business models
Register
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/may/2016/dbriefs-beps-update-potential-impacts-on-people-technology-and-business-models.html?id=us:2em:3na:usic:awa:tax:021516

May 19 **Dbriefs webcast:** Global tax compliance and reporting: The evolution of operating models
Register
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/may/2016/dbriefs-global-tax-compliance-and-reporting-the-evolution-of-operating-models.html?id=us:2em:3na:usic:awa:tax:021516

April 28 **Dbriefs webcast:** BEPS update: Continued focus on global supply chains and intellectual property structures
Register
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/april/2016/dbriefs-beps-update-continued-focus-on-global-supply-chains-and-intellectual-property-structures.html?id=us:2em:3na:usic:awa:tax:021516

April 21 **Dbriefs webcast:** Tax provision process assessment and redesign: Strategies for continuous improvement
Register
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/april/2016/dbriefs-tax-provision-process-assessment-and-redesign-strategies-for-continuous-improvement.html?id=us:2em:3na:usic:awa:tax:021516

February 24 **Dbriefs webcast archive:** BEPS Update: Navigating a new global tax landscape
Watch
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/february/2016/dbriefs-beps-update-navigating-new-global-tax-landscape.html?id=us:2em:3na:usic:awa:tax:021516

February 11 **Dbriefs webcast archive:** PATH Act of 2015: What does it mean for multinational investors?
Watch
URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/february/2016/dbriefs-path-act-of-2015-what-does-it-mean-for-multinational-investors.html?id=us:2em:3na:usic:awa:tax:021516

Recent tax developments

March 26 **Global Transfer Pricing Alert:** IRS issues three transfer pricing International Practice Units
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-009-16-march-2016.pdf

February 11 **United States Tax Alert:** Temporary and Proposed Regulations Issued Addressing Allocation of Creditable Foreign Tax Expenditures by a Partnership to its Partners

URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-united-states-11-february-2016.pdf