Treasury issues temporary regulations under Section 245A

June 28, 2019

In brief

Treasury and the IRS on June 14, released 105-page temporary regulations (the Temporary Regulations) under Section 245A as enacted by the 2017 tax reform legislation (the Act). The regulations seek to limit the benefits of Section 245A where, according to the preamble, "the literal effect of Section 245A would reverse the intended effect of the subpart F and GILTI regimes."

In particular, the Temporary Regulations limit the otherwise available dividends received deduction (DRD) under Section 245A for certain dividends received from current or former controlled foreign corporations (CFCs) where (1) a related-party extraordinary transaction was executed by the CFC on or after January 1, 2018, in a tax year to which Section 951A did not apply to such CFC (an 'Extraordinary Disposition' or 'ED'), or (2) a transfer or issuance of stock on or after January 1, 2018, resulted in a reduction in a US shareholder's pro rata share of the CFC's subpart F or tested income (an 'Extraordinary Reduction' or 'ER'). The Temporary Regulations also limit the applicability of the look-through exception to foreign personal holding company income (FPHCI) under Section 954(c)(6) for certain dividends received by upper-tier CFCs from lower-tier CFCs where there is an ED or an ER.

Taxpayers that have executed transactions similar to those described should immediately review the Temporary Regulations and determine the impact, if any, on distributions made after December 31, 2017.

PwC will discuss the Temporary Regulations on a webcast on July 11 from 2pm - 3pm EST. Please see the following link to register: Tax Readiness: The dividend received deduction regulations.

In detail

Background

Section 245A generally provides a 100% DRD for the foreign-source portion of dividends received by a US corporation from a foreign corporation with respect to which the US corporation is a 10% shareholder (a '245A shareholder').

Section 954(c)(6) generally provides an exception to FPHCI for dividends, interest, rents, and royalties received by a CFC from a related CFC that are not attributable to either subpart F income or income effectively connected with a US trade or business of the payor.

The Temporary Regulations were issued by Treasury and the IRS to prevent a perceived abuse (specifically, in cases where there is an ED or an ER) of the Section 245A provisions where either the subpart F regime or global intangible

low-taxed income (GILTI) regime would not apply, based on Treasury and the IRS's interpretation of Section 245A's role as part of the broader 'comprehensive framework' of international tax provisions after the 2017 tax legislation.

The limitations with respect to the application of Section 954(c)(6) were generally applied to prevent avoidance of the ED and ER provisions by executing transactions at the level of a lower-tier CFC.

Overview of the Temporary Regulations

The Temporary Regulations include rules that apply to limit the application of Sections 245A and 954(c)(6) for distributions received by current or former CFCs.

In general, a 245A shareholder is allowed a DRD for the foreign-source portion of a dividend from a specified 10% owned foreign corporation (a 'SFC') under Section 245A(a).

The following is a high-level summary of key provisions in the Temporary Regulations.

Overview of the ED rules

The Temporary Regulations include provisions to disallow 50% of the Section 245A deduction related to earnings generated in transactions that are perceived, by Treasury and the IRS, to be executed for the avoidance of the GILTI regime during the period where earnings of fiscal-year taxpayers are subject to neither the 'toll charge' under Section 965(a) nor the GILTI regime (see illustration of the relevant items). This limitation is intended to align with the deduction that would have been allowed either under Section 250 (if the earnings were subject to the GILTI regime) or Section 965(c) (if the earnings were subject to the toll charge under Section 965(a)). The ED provisions are not expected to apply to SFCs that utilize a calendar tax year or, in the case of a fiscal-year SFC, SFCs that did not execute certain transactions prior to the end of their respective 2018 tax year.

***Observation**:* The Temporary Regulations were issued pursuant to Treasury's authority under Section 245A(g) to provide rules for the application of the provisions of Section 245A. Treasury and the IRS view that authority as allowing for the provision of the ED Rules (and the ER rules as well) in order to align the amount of the deduction allowed under Section 245A to those earnings not captured under the subpart F regime or the GILTI regime. Treasury and the IRS's view is that the subpart F regime, the GILTI regime, and Section 245A comprise a 'comprehensive framework' for the taxation of foreign earnings and that the amount of the deduction under Section 245A should reflect this intended framework.

Image

Extraordinary disposition amount - In general

The Temporary Regulations provide that the Section 245A DRD is disallowed for 50% of the ED Amount (*i.e.*, the amount which is disallowed when a dividend is paid to the US shareholder). Specifically, the ED Amount is the portion of a dividend received, including deemed dividends under Sections 1248 and 964(e)(4) (as discussed in more detail below), by a 245A shareholder from a SFC paid out of the 245A shareholder's ED Account (*i.e.*, the item to be tracked at the SFC level that represents the US shareholder's share of earnings generated by a SFC as a result of an ED).

The ED Account relates to transactions executed during the 'disqualified period,' which begins on January 1, 2018, and ends on the last day of the SFC's tax year (if the SFC's tax year begins before January 1, 2018, and ends after December 31, 2017) (see the illustration above for the relevant timeline).

In general, the ED Account represents the shareholder's share of the SFC's ED E&P (generally, the earnings deemed by Treasury and the IRS to be generated pursuant to the 'abusive' ED transaction). The shareholder's share generally reflects its ownership interest in the SFC (by value) at the beginning of the disqualified period.

The Temporary Regulations provide that an SFC's ED E&P is the total net gains from transfers of specified property during the disqualified period to related persons outside the ordinary course of the SFC's activities. This includes the SFC's share of any gains from transfers executed by specified entities (*i.e.*, any partnership, flow-through, etc. in which the SFC directly or indirectly owns an interest) that otherwise would have been treated as an ED if it were a foreign corporation.

To the extent that the net gains do not exceed the lesser of $50 million or 5% of the gross value of all the SFC's property immediately before the beginning of the disqualified period, no ED Account is created with respect to such SFC.

For this purpose, specified property is any property that does not produce income excluded from tested income or a portion thereof (*e.g.*, dividends received from related persons, gross subpart F income, gross income excluded from subpart F under the Section 954(b)(4) high tax exception, etc.).

***Observation**:* As the Temporary Regulations provide that ED E&P relates to net gains on transfers of

specified property, other transactions giving rise to E&P during the disqualified period (e.g., service payments, royalties, etc.) appear to be outside the scope of the Temporary Regulations.

The determination of whether a transfer is outside the ordinary course of an SFC's activities is based on a facts and circumstances analysis. However, certain transactions are considered to be *per se* outside the ordinary course of business: (1) transactions executed with a principal purpose of generating E&P during the disqualified period; or (2) dispositions of intangible property (IP), as defined under Section 367(d)(4). Treasury and IRS state that any disposition of IP is inherently outside the ordinary course of business (as compared to routine sales of raw materials and other similar operations) and so include this separate *per se* provision.

The ED Account is reduced by the Prior ED Amount, which is intended to reflect earnings that have had the Section 245A DRD previously disallowed. Specifically, the Prior ED Amount includes:

(1) prior dividends received by 245A shareholders that were ED Amounts

(2) prior dividends that otherwise would have been ED Amounts but were not eligible for a DRD by reason of Section 245A(e) (*i.e.*, the hybrid dividend rules) or failing one or more requirements under Section 246 (for example, failing to meet the 12-month holding period requirement)

(3) the portions of dividends that were included by an upper-tier CFC as FPHCI by reason of Section 245A(e) (*i.e.*, earnings that were disallowed the Section 245A DRD as a result of the tiered hybrid dividend rules, which apply prior to the ED rules as discussed below), and

(4) 200% of prior dividends received by an upper-tier CFC that gave rise to a subpart F inclusion (as discussed below, this is intended to capture amounts where 50% of a dividend was treated as subpart F income due to the limitation on Section 954(c)(6)).

Dividends paid from Section 959(c)(3) E&P are first sourced from earnings that did not give rise to an ED (allowing taxpayers to pay dividends on earnings generated in future years first). Specifically, dividends of Section 959(c)(3) E&P in excess of the ED Account are deemed to be paid before the portion of a dividend that is from the 245A shareholder's ED Account. Thus, dividends related to the 245A shareholder's ED Account are ordered last.

***Observation**:* Taxpayers that entered into, or that are considering entering into, a transaction subject to Section 956 with the expectation of reducing any inclusion by the amount of the deduction that would be allowed under Section 245A under a hypothetical distribution (consistent with the Final Section 956 Regulations) should analyze the application of the Temporary Regulations and a possible reduction in the amount of the deduction under Section 245A with respect to the hypothetical distribution.

Extraordinary Disposition amount - Successor rules

The Temporary Regulation provides 'successor' provisions with respect to ED Accounts so that taxpayers cannot avoid the application of the ED rules by entering into certain types of transactions (as described below).

(1) *Another 245A shareholder succeeds to the account.* This rule is intended to ensure that ED Accounts are maintained and, more broadly, that the ED rules are not avoided where the SFC's stock is transferred in a tax-free restructuring to another US shareholder. Specifically, the successor rules include a transaction not otherwise described in Treas. Reg. sec. 1.1248-8(a)(1) (*i.e.*, a restructuring transaction not resulting in gain or loss that is described in Section 351, 354, 356, or 361) whereby a 245A shareholder transfers SFC stock and another person is a 245A shareholder with respect to the SFC. In general, the acquiring 245A shareholder's ED Account is increased by the transferor's ED Account with respect to the SFC stock received and the transferor's ED Account is correspondingly reduced. However, if a principal purpose of the transaction is to shift the ED Account, the transaction may be disregarded or other adjustments may be made.

(2) *Certain 381 transactions.* In addition to the rule above and to ensure that the ED rules are not avoided, the successor rules include transactions where an SFC's assets are transferred (instead of stock transfers as described above) in a tax-free manner. In the case where SFC assets (acquired SFC) are acquired by another SFC (acquiring SFC) pursuant to a transaction described in Section 381(a), ED Accounts with respect to the acquiring SFC increase by the amount of the ED Accounts with respect to the acquired SFC.

(3) *Certain distributions involving Sections 355 or 356*. Further, to ensure that an ED Account is not 'split' from the underlying earnings in certain reorganizations, the successor rules also provide for allocation provisions. Specifically, in the case of a D reorganization involving a distribution under Section 355 (or, to the extent applicable, Section 356) of SFC stock (controlled SFC) by another SFC (distributing SFC), the ED Account with respect to the distributing SFC is allocated between the distributing SFC and controlled SFC in a similar manner as the E&P of the distributing SFC.

(4) *Certain transfers of lower-tier CFC stock by upper-tier CFCs.* If a 245A shareholder of a lower-tier CFC ceases to be a 245A shareholder as a result of a transfer of lower-tier CFC stock by an upper-tier CFC, the ED Account with respect to the upper-tier CFC is increased by the ED Account with respect to the lower-tier CFC (reduced by any amount included as an ED amount from the transfer). In the case of multiple upper-tier CFCs owning a single lower-tier CFC, the ED Account is allocated between the upper-tier CFCs based on their proportionate share (by value) of the lower-tier CFC stock.

***Observation**:* Given the potential impacts on future transactions, ED Accounts and Tiered-ED Accounts (as discussed below) should be evaluated by taxpayers as part of the due diligence process when acquiring SFC stock. ED Accounts effectively represent another 'attribute' of a SFC's stock and potentially will impact the treatment of deemed dividends on the sale or the buyer's future repatriation of earnings from the SFC.

Extraordinary disposition amount - Tiered ED Accounts and the limitation on Section 954(c)(6)

In order to prevent avoidance of the ED rules, Treasury and the IRS also provide a corresponding limitation on the application of Section 954(c)(6) to dividends received by upper-tier CFCs from lower-tier CFCs.

In general, Section 954(c)(6) does not apply to 50% of the sum of 245A shareholders' 'Tiered ED Amounts' with respect to the lower-tier CFC (grossed up to account for non-US shareholders by dividing such sum of the Tiered ED Amounts by the percentage of stock in the upper-tier CFC held by US shareholders that include in gross income such entity's subpart F income under Section 951(a)).

The 50% limitation is intended, similarly, to align with the deduction that would have been allowed under either Section 250 (if the earnings were subject to the GILTI regime) or Section 965(c) (if the earnings were subject to the toll charge under Section 965(a)).

This limitation does not apply to deemed dividends under Section 964(e)(4) (see the discussion on Section 964(e)(4) below).

This amount of the limitation under Section 954(c)(6) as a result of the Tiered ED Amount is the 'disqualified amount' with respect to the dividend from the lower-tier CFC to the upper-tier CFC.

The Tiered ED Amount with respect to the lower-tier CFC is the amount that would have been an ED Amount if the 245A shareholder held its pro rata share in such lower-tier CFC directly.

***Observation**:* Taxpayers should consider the ancillary impacts of the upper-tier CFC's incremental FPHCI (i.e., impact on Section 960 FTCs, etc.).

Overview of the ER rules

Treasury and the IRS also provide in the Temporary Regulations rules attempting to resolve a perceived reduction in the overall income subject to tax under the subpart F or GILTI regimes resulting from the operation of the pro rata share rules under Section 951(a)(2)(B) or the repeal of Section 958(b)(4) (*i.e.*, prior rule restricting attribution of a foreign person's stock in a foreign corporation to a US person) when dividends are paid.

Treasury and the IRS view the allowance of a DRD for a dividend paid in the same year as certain transactions as 'inconsistent' with Congress's intent for Section 245A to provide a DRD only for earnings that otherwise are not captured under the subpart F or GILTI regimes (as discussed above).

Transactions implicated by these rules include a US shareholder's transfer of CFC stock where a Section 1248 deemed dividend (that otherwise would qualify for the DRD) would reduce a US buyer's share of subpart F income or tested income of the CFC. This also can include a transaction where a US shareholder's interest in a CFC is reduced as a result of a transaction by a related person (for example, a contribution of property by the ultimate foreign parent of a group of companies to a CFC also held by the US shareholder).

The Temporary Regulations disallow 100% of the DRD with respect to dividends paid by a CFC where earnings were not otherwise included in subpart F income or GILTI by a US shareholder.

Given the significant disallowance of the DRD (*i.e.*, 100% of any dividend in the same year as the ER), Treasury and the IRS have provided an election to close a CFC's tax year-end for all purposes of the Code. This election effectively would require the US shareholder of the CFC to include in its gross income its pro rata share of the CFC's subpart F income or include the tested income in the calculation of its GILTI inclusion as of the date of the ER (thus eliminating the 'inconsistent' result cited by Treasury and the IRS).

Extraordinary reduction amount - In general

The Temporary Regulations disallow 100% of the available DRD with respect to the ER Amount in order to subject to tax amounts that would, absent the change in the US shareholder's ownership in the CFC stock, be captured under the subpart F or GILTI regimes. The ER Amount with respect to a dividend received by a controlling 245A shareholder (*i.e.*, a

245A shareholder owning directly or indirectly more than 50% of the stock of a CFC) from a CFC after December 31, 2017, is the lesser of (1) the dividend or (2) the controlling 245A shareholder's pre-reduction pro rata share of the CFC's subpart F income and tested income (*i.e.*, the amount of subpart F income or tested income that would have been included by the US shareholder as if the CFC's tax year closed on the date of the transaction), reduced by amounts for which a DRD previously was disallowed.

The pre-reduction pro rata share of the CFC's subpart F income and tested income is the amount of such items that would have been included by the controlling 245A shareholder immediately before the extraordinary reduction, reduced by the amount of subpart F income and tested income actually included in gross income by US persons with respect to the CFC for the CFC's taxable year. This amount generally is intended to capture the earnings that would have been taken into account by the US shareholder as subpart F or tested income if the CFC's tax year closed as a result of the transaction (*i.e.*, eliminating the impact of dividends paid under Section 951(a)(2)(B) and the repeal of Section 958(b)(4)).

For purposes of determining whether a given 245A shareholder is a controlling 245A shareholder, all CFC stock owned by a related party, within the meaning of Sections 267(b) or 707(b), and all stock owned by other persons acting in concert with the 245A shareholder, are taken into account. Further, in the case where lower-tier CFC stock of a controlling 245A shareholder is transferred and Section 964(e) applies, any other US shareholder transferring stock in the CFC is considered to act in concert with respect to that sale or exchange.

An ER is either:

(1) a transfer, either directly or indirectly, of more than 10% of the value of a controlling 245A shareholder's interest in a CFC at the beginning of the CFC's tax year (other than in an F or E reorganization), provided the transfer represents at least 5% of the value of all CFC stock at the beginning of the CFC's tax year. These transactions result, from Treasury's perspective, in the reduction of the total amount of income subject to tax under the subpart F or GILTI regimes as a result of the application of Section 951(a)(2)(B) (providing for a US shareholder acquiring the stock to reduce its pro rata share by dividends paid to other persons during the tax year), or

(2) one or more transactions that result in the percentage of stock owned by the controlling 245A shareholder as of the close of the last day of the CFC's tax year being less than 90% of its ownership on either the day it held its highest ownership (by value) in the CFC during the tax year or the day immediately before the transfer, provided that the change is at least five percentage points. These transactions, in Treasury's view, effectively result in a reduction of a US shareholder's pro rata share of subpart F or tested income due to the dilution of the US shareholder's interest.

An ER does not include a transaction that results in the close of a CFC's tax year where the controlling 245A shareholder includes its pro rata share of subpart F and tested income. A transaction that results in a close of a CFC's tax year generally provides for the inclusion of such amounts by the US shareholder (and thus avoids the same concerns for Treasury as transactions where there is no such inclusion).

***Observation**:* Certain relatively common transactions may be captured by these provisions. For example, a US shareholder's sale of a wholly owned CFC to a third-party US person is expected to constitute an ER and can result in a taxable dividend. Accordingly, taxpayers should review any transactions resulting in the movement or dilution of the value of CFC stock to assess potential application of these provisions.

As with the ED rules, the ER Amount is reduced by Prior ER Amounts (which likewise is intended to reflect earnings for which the Section 245A DRD was previously disallowed). The Prior ER Amount generally includes:

(1) prior dividends received by 245A shareholders that were ER Amounts

(2) prior dividends that otherwise would have been ER amounts but were not eligible for DRD by reason of Section 245A(e) (*i.e.*, did not qualify for DRD due to the hybrid dividend rules) or failing one or more requirements under Section 246 (for example, failing the 12-month holding period requirement)

(3) portions of dividends that were included by an upper-tier CFC as FPHCI by reason of Section 245A(e) that would otherwise would have been a Tiered ER Amount (*i.e.*, amounts that did not qualify for DRD as a result of the tiered hybrid dividend rules), and

(4) prior dividends received by an upper-tier CFC that gave rise to a subpart F inclusion (as discussed below, this is intended to capture amounts where a dividend was treated as subpart F income due to the limitation on Section 954(c)(6)).

Extraordinary reduction amount - Exceptions

As discussed above, the Temporary Regulations provide an election for

controlling 245A shareholders to close the CFC's tax year for all US federal income tax purposes as of the end of the date on which the ER occurs. By providing this election, Treasury and the IRS are providing taxpayers with an option to resolve the perceived 'inconsistent' application of Section 245A by US shareholders including their pro rata share of subpart F income and tested income on the date of the ER.

***Observation**:* Considering that the ER amount generally would result in the disallowance of a DRD with respect to 100% of the controlling 245A shareholder's pre-reduction share of tested income (and thus subject that amount to tax at a rate of 21%, with the CFC's foreign tax credits disallowed), taxpayers should consider electing to close the CFC's year-end in order to take into account their pro rata share of Subpart F income and the CFC's tested income under the general rules of Section 951A.

This election must be made by all controlling 245A shareholders and requires such shareholders to include a statement with the US tax return for the year of the transaction. A binding agreement must be entered into by all controlling 245A shareholders to respect such tax year-end. The election must be made consistently for all CFCs of the controlling 245A shareholder and for each transfer of a given CFC's stock by controlling 245A shareholders.

A controlling 245A shareholder's election is considered to be timely filed for ERs prior to the effective date of the Temporary Regulations if the election is attached by each controlling 245A shareholder to an original or amended tax return for the tax year in which the ER occurred.

***Observation**:* When a transaction falling within the ER rules is being considered, taxpayers should evaluate the need to enter into a written, binding agreement between all controlling 245A shareholders to meet the requirements of the Temporary Regulations. For example, this may be relevant in cases where unrelated US shareholders of a joint venture (where one shareholder owns more than 50%) intend to transfer the interests to an unrelated US shareholder and an election is desired.

Where an election is made and the local country tax year does not end, foreign income taxes are allocated between the US tax years that comprise the foreign tax year based on the respective portions of taxable income of the CFC (as determined under foreign law) attributable to the periods during the foreign tax year.

Additionally, to the extent that the sum of the CFC's subpart F income and tested income for the taxable year does not exceed the lesser of $50 million or 5% of the CFC's total income for the year, no amount is considered an ER amount.

Extraordinary reduction amount - Tiered ER Accounts and limitation on Section 954(c)(6)

In order to prevent avoidance of the ER rules, Treasury and the IRS also provide a corresponding limitation on the application of Section 954(c)(6) to dividends received by upper-tier CFCs from lower-tier CFCs. Accordingly, 100% of a dividend from a lower-tier CFC does not qualify for the exception under Section 954(c)(6) to the extent of a transaction that provides the perceived 'inconsistent' result noted above.

In general, Section 954(c)(6) does not apply to the extent of an upper-tier CFC's pre-ER ownership (by value) in the lower-tier CFC multiplied by the lower-tier CFC's subpart F and tested income for the year. This amount is intended to reflect the amount of the dividend related to the transactions that would have resulted in an 'inconsistent' application of Section 245A if the CFC had been first-tier. This amount, reduced in a similar manner as the reductions for Prior ER Amounts, is the Tiered ER Amount.

This limitation does not apply to deemed dividends under Section 964(e)(4) (see the discussion on Section 964(e)(4) below).

The Temporary Regulations provide a transition rule solely for purposes of computing the Tiered ER Amount. For tax years of a lower-tier CFC beginning on or after January 1, 2018, and ending before June 14, 2019, a Tiered ER Amount excludes the lower-tier CFC's subpart F income.

'Anti-abuse' rules

The Temporary Regulations include broad anti-abuse language, allowing for adjustments to any transaction undertaken with a principal purpose of avoiding the purposes of the regulations.

Special rules to ED and ER amounts

For purposes of applying the Temporary Regulations, dividends received by any person are considered received directly from the foreign corporation whose E&P gave rise to the dividend (*e.g.*, a deemed dividend under Section 1248(a) received by a 245A shareholder on the sale of an upper-tier CFC attributable to the E&P of a lower-tier CFC is considered to be paid directly from the lower-tier CFC to the 245A shareholder).

In general, the Temporary Regulations provide that provisions related to Section 245A are expected to apply in the following order:

(1) rules pertaining to Section 245A(e) (*i.e.*, hybrid dividend rules)

(2) ER Amount rules under Treas. Reg. sec. 1.245A-5T(e) (*i.e.*, ER rules applicable to first-tier CFCs)

(3) Tiered ER Amount rules under Treas. Reg. sec. 1.245A-5T(f) (*i.e.*, ER rules applicable to dividends from lower-tier CFCs to upper-tier CFCs)

(4) ED Amount rules under Treas. Reg. sec. 1.245A-5T(c) (*i.e.*, ED rules applicable to first tier SFCs), and

(5) Tiered ED Amount rules under Treas. Reg. sec. 1.245A-5T(d) (*i.e.*, ER rules applicable to dividends from lower-tier CFCs to upper-tier CFCs).

***Observation**:* Treasury and the IRS do not clarify the reasoning for this ordering. However, it appears that, given the express language in the statute covering hybrid dividends, the rules under Section 245A(e) are intended to apply first. The ER rules may take precedence over the ED rules in this context given that ERs can occur at any point after December 31, 2017. It also appears that the tiered rules for the respective provisions generally defer to the first-tier ED and ER rules given that the limitation on Section 954(c)(6) was included to prevent the avoidance of the rules applicable to first-tier SFCs.

Further, for purposes of applying the provisions with respect to deemed dividends under Section 964(e)(4) from lower-tier CFCs included in the US shareholder's income under Section 951(a), both the ED amounts and ER amounts are determined as if the lower-tier CFC paid a dividend directly to the 245A shareholder.

Effective date

The Temporary Regulations generally apply retroactively to distributions occurring after December 31, 2017 (but see above regarding the transition rule with respect to Tiered ER Amounts).

Reporting of Ineligible Amounts

For any corporation that distributes or receives a dividend that gives rise to an Ineligible Amount (*i.e.*, 50% of the ED Amount or 100% of the ER Amount), Tiered ER Amount, or Tiered ED Amount, the Form 5471 of the corporation must provide information about the Ineligible Amount, Tiered ER Amount, or Tiered ED Amount. To date, the Form 5471 has not been updated to reflect these changes.

In the case of a corporation that distributed or received a dividend in an accounting period for which a Form 5471 was filed prior to the publication date, that corporation must provide information regarding such amounts on its first Form 5471 after the issuance of guidance setting forth the form and manner of reporting the information.

Tax accounting considerations

Tax law changes or interpretations are accounted for in the period in which the law is enacted or the guidance is issued, and these changes generally would be included in income from continuing operations from an intraperiod allocation perspective. Final and temporary regulations have the weight of law and, therefore, should be accounted for in the period in which they are issued. Companies will have to make a technical assessment of the sustainability of their tax positions and apply the guidance under ASC 740 to determine the impact on financial reporting.

The takeaway

The Temporary Regulations limit the application of Sections 245A and 954(c)(6) for distributions received from current or former CFCs as a result of the execution of certain transactions.

Taxpayers should immediately review the Temporary Regulations to determine whether transactions executed on or after January 1, 2018, could impact application of Sections 245A or 954(c)(6).

The above is not an exhaustive list of the provisions in the Temporary Regulations.

See also:

Highlights of the temporary regulations under Section 245A

Final Section 956 regulations: Changes to proposed rules, impact of later guidance

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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