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Proposed regulations: Foreign tax credit provision under new U.S. tax law (text of regulations)

The U.S. Treasury Department and IRS today released proposed regulations as guidance under the foreign tax credit provision enacted as part of the new U.S. tax law (Pub. L. No. 115-97, enacted December 22, 2017).

Read text of the **proposed regulations** [PDF 1.8 MB] (312 pages)

A statement on this version of the proposed regulations provides that these have been submitted to the Federal Register for publication and are currently pending placement and publication in the Federal Register. "The version of the proposed rule released today may vary slightly from the published document if minor editorial changes are made during the [Federal Register] review process. The document published in the Federal Register will be the official document."

The purpose of this report is to provide text of the regulations. Initial impressions on these proposed regulations will be provided in a future edition of *TaxNewsFlash*.

Background

The new law repealed the deemed-paid foreign tax credit under prior Code section 902 and retained but modified the deemed-paid foreign tax credit under section 960 of the Code. Prior-law section 902 deemed a U.S. corporate shareholder of a 10%-owned foreign corporation to have paid a portion of the foreign corporation's foreign income taxes when it received or was deemed to receive a dividend from that foreign corporation. Section 960 provided a similar deemed-paid credit for subpart F inclusions.

Under the new law, the allowable credit under section 960 is based on current-year taxes attributable to subpart F income rather than the "pooling" approach that applied under sections 902 and 960. The new law also provides rules applicable to foreign

taxes attributable to distributions of previously taxed income (PTI), including from a lower-tier to an upper-tier CFC. These rules were not explained in any further detail, but appear to allow foreign taxes as credits under section 960 in the year the PTI is distributed.

The new law grants the Treasury Secretary authority to promulgate regulations and guidance such that the amended section 960 credit would, as under pre-enactment law, be computed separately for each category or "basket" of income under Code section 904(d). The new law makes conforming amendments to other Code provisions to reflect the repeal of Code section 902, including amending Code section 78 to treat the "gross-up" for deemed paid taxes as a dividend.

The repeal of prior-law section 902 may have significant consequences for domestic corporations eligible to claim section 902 deemed-paid credits with respect to dividends from 10%-owned foreign corporations that are not CFCs because foreign income taxes paid or accrued by such corporations can no longer be claimed as foreign tax credits. Moreover, the change from the pooling regime to a current-year foreign tax regime may also significantly affect the foreign tax credit calculation, as the pooling regime serves to blend effective foreign tax rates that may differ from year to year due to U.S. and foreign timing differences and rate changes.

Read a related IRS release: **IR-2018-235**

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.