

## UPDATES & OTHER TIDBITS

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### Tags

Foreign Ownership  
Ireland  
Real Estate  
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### 2016-2017 PRIORITY GUIDANCE PLAN RELEASED

On August 15, the Department of Treasury issued its 2016-2017 Priority Guidance Plan.<sup>1</sup> The plan contains 281 projects to which resource allocations will be prioritized. The plan will be republished during the year to reflect the addition of new priorities and guidance. Comments and suggestions from taxpayers and tax practitioners are welcome.

In the international tax area, the 2016-2017 Priority Guidance Plan focuses on various areas, including Subpart F, Code §367 transactions, inversions, foreign tax credits, sourcing rules, and transfer pricing.

Several topics have been added or modified since the issuance of the 2015-2016 Priority Guidance Plan. In a number of areas, final, temporary, or proposed regulations were issued, such as

- final, temporary, and proposed regulations under Code §871(m), relating to dividend equivalent payments;
- proposed regulations regarding the transfer of property under Code §367(d), including foreign goodwill and going concern value;
- temporary and proposed regulations published regarding inversions and related transactions; and
- temporary and proposed regulations relating to transfer pricing matters.

Various projects were also added or revised in the 2016-2017 Priority Guidance Plan:

- F.I.R.P.T.A.-related regulations pursuant to the changes in the Protecting Americans from Tax Hikes Act of 2015
- Guidance on transfers of property to partnerships with related foreign partners and controlled transactions involving partnerships
- Guidance relating to country-by-country reporting requirements
- Regulations under §1256(g)(2) defining the definition of a foreign currency contract and likely excluding foreign currency options from that definition pursuant to the recent *Wright* case

<sup>1</sup> U.S. Department of the Treasury, *2016-2017 Priority Guidance Plan*, (Aug. 15, 2016).

Finally, certain projects are not on the Treasury Department's priority list anymore, such as the issuance of proposed regulations under Code §6038C on information with respect to foreign corporations engaged in a U.S. trade or business. Other projects, like guidance under Chapter 3 and Chapter 4 withholdings, were expanded.

## U.S. AND IRELAND NEGOTIATE NEW INCOME TAX TREATY

In a press release dated August 25,<sup>2</sup> the Irish Department of Finance announced that discussions are ongoing between the U.S. Treasury and Ireland to update certain aspects of the U.S.-Ireland Income Tax Treaty. The current treaty was signed in 1997 and the subsequent protocol in 1999.

These discussions take place in the general context of the B.E.P.S. (Base Erosion and Profit Shifting) Project reports and the recently published 2016 U.S. Model Income Tax Treaty. It is expected that the revised U.S.-Ireland treaty will address

- a reduction of treaty tax benefits in the case of an inversion (*i.e.*, where a U.S. corporation expatriates and certain other conditions are present),
- a reduction or denial of treaty benefits in the case of “special tax regimes,” and
- treaty-shopping and changes to the treaty's “limitation of benefits” article.

The public consultation is led by Ireland's Department of Finance and Revenue Commissioners and is open until October 14, 2016. It calls for comments on the 2016 U.S. Model Income Tax Treaty from an Irish perspective. It also welcomes comments on the existing treaty between the U.S. and Ireland.

It should be noted that the U.S. Senate has not approved a tax treaty or protocol since 2010.

## REMINDER TO FOREIGN OWNERS OF U.S. REAL PROPERTY: DISREGARDED ENTITIES ARE NOT “TRANSFERORS”

Single-member L.L.C.'s are often used to separate, as a corporate matter, an owner of an L.L.C. from a liability related to the underlying assets without creating the burden of an additional taxpaying entity. Beyond this accepted function, the I.R.S. believes that some foreign owners of U.S. real property may be using this tool as a way to avoid 15% F.I.R.P.T.A. withholding on sales of real property, by treating the sellers as domestic persons.

U.S. buyers of real property are generally required to withhold 15% of the purchase price for payments made to a foreign seller (absent the presence of an I.R.S.-issued

<sup>2</sup> [“Consultation on Double Tax Treaty with the United States of America,”](#) Department of Finance, last modified Aug. 25, 2016.

*“It should be noted that the U.S. Senate has not approved a tax treaty or protocol since 2010.”*

withholding certificate that allows for a lower or zero withholding rate). This amount must be remitted to the I.R.S. within 21 days of the closing.

In late August, the Large Business & International (“LB&I”) Division of the I.R.S. issued an International Practice Unit entitled “Taxation on Disposition of USPRI by Foreign Persons.”<sup>3</sup> The document, which offers internal guidance for I.R.S. examiners, reminded auditors that a U.S. disregarded entity cannot certify that it is a U.S. transferor; the entity’s owner must be treated as the transferor for F.I.R.P.T.A. withholding purposes. Buyer be warned.



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<sup>3</sup> I.R.S., *Taxation on Disposition of USPRI by Foreign Persons*, DCN: RPW/ CU/P\_08.4\_05 (2016).

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