



TaxNewsFlash

United States



No. 2019-553
November 18, 2019

Final regulations: Ownership-attribution rules for persons related to CFC; rents derived in active conduct of trade or business

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9833) regarding the attribution of ownership of stock or other interests for purposes of determining whether a person is a related person with respect to a controlled foreign corporation (CFC) under section 954(d)(3).

The [final regulations](#) [PDF 285 KB] also include certain revisions to the rules for that determine whether a CFC derives rents in the active conduct of a trade or business for purposes of applying the active rent exception to foreign personal holding company income (FPHCI).

The final regulations adopt proposed regulations (May 2019) without any changes. Read [TaxNewsFlash](#) for a report of initial impressions about the proposed regulations.

The preamble to the final regulations explains that comments received in response to the proposed regulations agreed with Treasury and the IRS that limiting the application of the downward attribution rules of section 318(a)(3)(A) (incorporated by section 958(b)) for purposes of section 954(d)(3) avoids inappropriate results. One comment urged Treasury and the IRS to provide a similar limitation on the application of the downward attribution rules for purposes of determining whether a foreign corporation is a CFC. According to the preamble, Treasury and the IRS “are separately studying the application of section 958(b) following the repeal of section 958(b)(4)” by the 2017 U.S. tax law, and that “the final regulations do not address the application of the constructive ownership rules of section 958(b) for purposes other than section 954(d)(3).”

The final rules that limit the downward attribution rules for purposes of determining related person status under section 954(d), and the revisions to the active rent exception, apply to tax years of CFCs that end on or after the date the final regulations are published, which is expected to be November 19, 2019. The rules in the final regulations related to options have special applicability dates: one rule applies to tax years of CFCs that began after December 31, 2006, and end before the publication date

of the final regulations (expected to be November 19, 2019), and a separate rule applies to tax years of CFCs that end on or after May 17, 2019, with respect to certain amounts received or accrued by CFCs.

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