KPMG

TaxNewsFlash

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Corrections to final regulations, transfers to partnerships with related foreign partners

The U.S. Treasury and IRS today released for publication in the Federal Register two notices of corrections to final regulations (T.D. 9891), released in January 2020, that concern transfers of appreciated property by U.S. persons to partnerships with foreign partners related to the transferor.

The final regulations were published in the Federal Register in January 2020. Read ***TaxNewsFlash***

Reason for correction

One **correction** [PDF 296 KB] to the final regulations corrects an example that appears in the preamble to the final regulations.

In the final regulations, Treasury and the IRS had altered the attribution of rules of section 267(b) to provide that section 267(c)(3) would not apply in determining whether a person is treated as a related person to a partner in a partnership. Section 267(c)(3) provides that in determining the ownership of stock under the related-party rules of section 267(b), an individual owning any stock in a corporation is considered as owning the stock owned, directly or indirectly, by or for the individual partner.

In the original fact pattern described in the preamble to the final section 721(c) regulations, a foreign individual owned 4% of a partnership (UTP) that owned 100% of the stock of a domestic corporation (UST). UST contributed section 721(c) property to a newly formed partnership (LTP) with an unrelated domestic partner, in exchange for a 90% interest. If section 267(c)(3) applied, the foreign individual would constructively own 100% of the stock of UST and, thus, would be related to UST. The example implied that the foreign individual could be considered indirect partner of LTP through its ownership in UST, a corporation.

Today's release corrects the example and provides that foreign individual owns an interest in LTP through a middle-tier partnership (MTP), not UST. Thus, foreign individual would be considered an indirect partner in LTP.

In applying the modification to section 267(c)(3) to either fact pattern, the foreign individual would only have an ownership interest of 4% in UST—and thus would not be considered "related" to UST. The correction makes clear a person cannot be considered an indirect partner as a result of its that ownership through a corporation.

Reason for correction

The second **correction** [PDF 285 KB] reflects that Treasury and the IRS have extended application of relief from certain reporting requirements under the final regulations.

The final regulations require reporting of gain deferral contributions and annual reporting requirements with respect to section 721(c) property to which the gain deferral method applies. The correction extends relief from the reporting requirements for tax returns filed before July 17, 2020 (originally, for tax returns filed before March 17, 2020).

Specifically, the final regulations include reporting requirements for statements to be attached to returns. New schedules added to Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, are intended to facilitate compliance with these reporting requirements. The IRS also issued new Form 8838-P, *Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)*). The purpose of these changes was to include the information that previously was reported on the statements. Relief from these requirements is now made available for tax returns filed before July 17, 2020.

KPMG observation

With this correction, the IRS and Treasury have taken a taxpayer-friendly approach and will allow partnerships that file their returns before July 17, 2020, to apply the reporting requirements from the proposed regulations. If a return is filed after July 17, 2020, then the new forms and schedules that have been updated for section 721(c)-related disclosures will be required to be used.