



Proposed Treasury Regulations Permit Foreign Subsidiary Credit Support for U.S. Multinational Financings

The proposed regulations, released October 31, 2018, generally provide tax-free treatment to a U.S. corporate parent of a controlled foreign corporate subsidiary ("CFC") for deemed dividends triggered when the CFC provides credit support for the U.S. corporate parent's debt.

These regulations under Code section 956 will become applicable in taxable years beginning on or after the date the regulations are finalized, and they may be relied upon in proposed form in taxable years beginning after December 31, 2017.

U.S. multinational borrowers potentially can expand their borrowing capacity and gain flexibility on investments in foreign subsidiaries. Lenders potentially can expand their collateral and guarantee packages by including guarantees by, and full pledges over the stock and assets of, CFCs or by incurring joint and several liability.

Critical Questions to Ask

Did the CFC's taxable year begin after December 31, 2017? The proposed regulations may not be relied upon for earlier taxable years.

Is the U.S. shareholder a corporation? Tax-free dividend treatment is not available to U.S. individuals owning CFC stock directly or indirectly through flow-through entities (such as funds), nor to real estate investment trusts or regulated investment companies.

Will the U.S. corporate shareholder meet the one-year holding period requirement? Generally U.S. multinationals with wholly owned CFCs will qualify, but beware of short-term holdings.

Does the U.S. corporate shareholder own multiple tiers of CFCs? Special look-through rules apply for U.S. corporate parents with multiple tiers of CFCs.

Do existing financing documents require CFC guarantees and pledges upon a change in law? Existing financing documents should be reviewed to determine whether the borrower is or may be required to add CFC guarantees and pledges once there is no longer a material tax consequence to doing so.

Have the parties consulted non-U.S. laws governing CFC guarantees and pledges? Local law obstacles to implementing CFC guarantees and pledges need to be overcome.



Colleen E. Laduzinski
New York



Brett P. Barragate
New York



Candace A. Ridgway
Washington



Edward T. Kennedy
New York

Kelly Rubin, an associate in the Dallas Office, assisted in the preparation of this Alert.

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2018 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113