# KPMG report: Initial impressions of proposed regulations addressing repeal of section 958(b)(4); relief provided by Rev. Proc. 2019-40

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# Introduction

The Internal Revenue Service ("IRS") and the Department of the Treasury (collectively, "Treasury") on October 1, 2019, released Revenue Procedure 2019-40 (the "Revenue Procedure") and proposed regulations (REG-104223-18) (the "proposed regulations") relating to the repeal of section 958(b)(4).

Read the text of the **Revenue Procedure** [PDF 109 KB] (22 pages) and the **proposed regulations** [PDF 351 KB] (13 pages) as published in the Federal Register.

This report provides initial impressions and observations about the Revenue Procedure and the proposed regulations.

# Contents

# Background

The 2017 U.S. tax law (Pub. L. No. 115-97, enacted December 22, 2017, and often referred to as the "Tax Cuts and Jobs Act") modified the stock attribution rules under section 958(b) that apply for subpart F purposes, including determining whether a person is a U.S. Shareholder under section 951(b) ("U.S. Shareholder") of a controlled foreign corporation ("CFC"), and whether a foreign corporation is a CFC. Specifically, the Tax Cuts and Jobs Act repealed the statutory rule under section 958(b)(4) that had prevented "downward attribution" of stock from a foreign person to a U.S. person under section 318(a)(3), effective beginning with the last tax year of foreign corporations that began before January 1, 2018.

The repeal of section 958(b)(4) in the Tax Cuts and Jobs Act increased the number of U.S. persons that are U.S. Shareholders and, therefore, the number of foreign corporations that are CFCs. U.S. Shareholders are required to include amounts in income under the provisions of subpart F, including the global intangible low-taxed income ("GILTI") rules, based on the CFC's income, but only if they own stock in the CFC directly or indirectly under section 958(a), which, unlike constructive ownership under section 958(b), is determined without regard to downward attribution. In addition, the change in law significantly increased compliance burdens due to the information reporting provisions that are triggered by U.S. Shareholder or CFC status, including the requirement for U.S. Shareholders to file a Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations*. Further, the repeal of section 958(b)(4) also affected a number of rules outside of subpart F, including rules that apply based in part on the CFC status of a foreign corporation or cross-reference ownership under section 958.

# Revenue Procedure

## Overview of the Revenue Procedure

The Revenue Procedure provides three safe harbor rules, addresses the applicability of certain penalties, and revises the requirements for certain U.S. Shareholders to file or report certain information on Form 5471 as a Category 5 filer. The safe harbors in the Revenue Procedure are generally limited to U.S. Shareholders of "foreign-controlled CFCs," which are foreign corporations that would not be CFCs without downward attribution from a foreign entity under section 318(a)(3) ("downward attribution") (that is, foreign corporations that would not be CFCs but for the repeal of section 958(b)(4)). U.S. shareholders of "U.S.-controlled CFCs," which are defined as foreign corporations that are CFCs other than foreign-controlled CFCs (that is, foreign corporation that would be CFCs even absent the repeal of section 958(b)(4)) are not afforded relief under the Revenue Procedure.

### KPMG observation

U.S. Shareholders of U.S.-controlled CFCs are not afforded any relief under the Revenue Procedure, even though the shareholders may face information reporting challenges that are similar to the challenges faced by U.S. Shareholders of foreign-controlled CFCs, which the various safe harbor rules are intended to address. For instance, in the case of a foreign corporation with a U.S.

shareholder and another shareholder that is a foreign entity, the Revenue Procedure does not relieve the U.S. shareholder from determining whether the foreign corporation is a CFC by reason of ultimate U.S. ownership (under section 958(a)) of the foreign entity (that is, a "U.S.-controlled CFC"). However, if the foreign entity is ultimately owned (under section 958(a)) by foreign persons, the Revenue Procedure does, under certain circumstances, relieve the U.S. Shareholder from determining whether the foreign corporation is a CFC by reason of the repeal of section 958(b)(4) (that is, a "foreign-controlled CFC").

### KPMG observation

Although the guidance in the Revenue Procedure is largely elective, there is no requirement for a taxpayer to notify the IRS that it is choosing to apply the Revenue Procedure. A taxpayer presumably would make a choice to apply the guidance by reporting in accordance with the Revenue Procedure, where relevant. In all cases, taxpayers would need to maintain internal records that document that they satisfy the relevant conditions set forth in the Revenue Procedure.

## Safe Harbor for Determining CFC Status

The Revenue Procedure provides a safe harbor to a U.S. person that owns an interest in a foreign-controlled CFC. If the conditions of the safe harbor are satisfied with respect to a foreign-controlled CFC, the IRS will accept a U.S. person's determination that the foreign corporation is not a CFC with respect to the U.S. person. The conditions for the safe harbor are satisfied only if the U.S. person does not have: (i) actual knowledge that the entity is a CFC; (ii) a statement that the entity is a CFC; or (iii) reliable publicly available information that the entity is a CFC. For this purpose, an entity is a CFC if it meets the CFC definition on any day during the year.

In addition, if the U.S. person directly owns an interest in a foreign entity ("top-tier entity"), the safe harbor applies only if the U.S. person makes the following inquiries of the top-tier entity: (i) whether the top-tier entity is a CFC; (ii) whether, how, and to what extent the top-tier entity owns under section 958(a) stock in any foreign corporations; and (iii) whether, how, and to what extent the top-tier entity owns under the principles of section 958(a)(2) an interest in any domestic entities.

Thus, under the safe harbor, a foreign-controlled CFC will not be treated as a CFC with respect to a U.S. person, provided the U.S. person satisfies the knowledge, statement, and publicly available information conditions, and, if applicable, makes the necessary inquiries of any top-tier entities. There is no requirement for the U.S. person to otherwise make any inquiries in order for the safe harbor to apply, including inquiries of unrelated persons that own interests in the top-tier entity.

### KPMG observation

The IRS "will accept" a U.S. person's determination that a foreign-controlled CFC is not a CFC if the U.S. person satisfies the conditions in the Revenue Procedure. The consequences of the IRS's acceptance of the determination is not entirely clear. In particular, the Revenue Procedure does not

explicitly preclude the IRS from adjusting the U.S. person's income if the IRS determines that the corporation is a CFC. Nonetheless and although not free from doubt, the Revenue Procedure seems intended to apply for substantive tax purposes as well as information reporting purposes. This is particularly welcome relief for U.S. owners of foreign entities that were unable to obtain sufficient information to determine the CFC status of their foreign investments.

### KPMG observation

As a condition to applying the safe harbor rule, the Revenue Procedure imposes an affirmative obligation on a U.S. person to request certain information from top-tier entities. The condition is satisfied by a genuine request for the information; it does not also require, for example, the top-tier entity to respond to the request with an appropriate response. Although the Revenue Procedure does not provide a deadline for requesting the information from the top-tier entity, it may be a best practice for a U.S. person to request the information prior to the filing deadline of its return.

### KPMG observation

The Revenue Procedure sets forth useful parameters for the due diligence that taxpayers should engage in to determine whether they own a CFC. The lack of any obligation to request information from other owners of a top-tier entity will be well received by U.S. persons that invest in foreign corporations through co-investment structures involving third parties.

## General Safe Harbor for Using Alternative Information to Determine Subpart F and GILTI Inclusions and for Reporting Information on Form 5471

In general, in order for a U.S. Shareholder to determine the amount of its subpart F inclusion or GILTI inclusion with respect to a CFC, the U.S. Shareholder must determine the CFC's gross and taxable income, as well as its qualified business asset investment and specified interest expense, as if the CFC were a domestic corporation. In general, under the current regulations, income as well as earnings and profits are determined by adjusting the books of the CFC first to U.S. generally accepted accounting principles, and then by making further adjustments to conform to U.S. tax principles.

The Revenue Procedure acknowledges the difficulty that U.S. Shareholders of foreign-controlled CFCs may have in obtaining the necessary information from the CFC in order to properly calculate and report its subpart F and GILTI inclusions or comply with its information reporting requirements. For example, a non-controlling U.S. Shareholder generally would not be able to compel a CFC to provide it with the information, and the information may not be publicly available.

The Revenue Procedure sets forth a safe harbor that allows U.S. Shareholders of foreign-controlled CFCs to determine their subpart F and GILTI inclusions and comply with their information reporting requirements based on alternative information (rather than U.S. tax principles) when certain conditions

are satisfied. The alternative information can be used only if the foreign-controlled CFC does not have any U.S. Shareholders that own an interest in the CFC under section 958(a) that are related to the CFC (under a "more than 50%" standard in section 954(d)) ("Related Section 958(a) U.S. Shareholder"), and the information otherwise required under the existing regulations is not "readily available" as defined in the Revenue Procedure. Nonetheless, the alternative information **cannot** be relied on for purposes of determining deemed paid foreign tax credits ("FTCs") for subpart F or GILTI inclusions. Also, separate rules apply for purposes of determining section 965 amounts (as discussed in the next section).

The Revenue Procedure sets forth a hierarchal list of "available information"; a taxpayer may rely on a particular type of information on the list only if it cannot reasonably obtain any types of information previously listed. In general, the list consists of various types of separate entity audited financial statements, followed by types of separate entity unaudited financial statements, and then certain separate entity internal records. See Appendix for the list of available information.

If different types of information are used in different years because different types of information are "readily available" in different years, then taxpayers must use their reasonable efforts to ensure no material items are duplicated or not included in any year.

### KPMG observation

The types of "alternative information" do not include consolidated financial statements. This may not be surprising because the subpart F provisions require certain determinations to be made on a CFC by CFC basis.

### KPMG observation

The IRS "will accept" a U.S. Shareholder's use of alternative information if the shareholder satisfies the conditions in the Revenue Procedure. As with the CFC safe harbor, the consequences of the IRS's acceptance of the determination is not entirely clear, although it seems likely that the IRS would not adjust subpart F or GILTI inclusions properly determined based on alternative information if the U.S. Shareholder complies with the safe harbor requirements, and, similarly, would accept the related information reported on the Form 5471 as accurate.

## Safe Harbor for Using Alternative Information for Determining Section 965 Amounts and Reporting Information on Form 5471

The Revenue Procedure sets forth a separate safe harbor that allows the use of "alternative information" to determine the amount included in income under section 965(a) as well as the deduction under section 965(c) (each a "section 965 amount") if the information required under the regulations is not "readily available" (within the meaning of the Revenue Procedure). The safe harbor applies with respect to any "specified foreign corporation" (as defined in section 965, "SFC"), other than an SFC that is either a foreign-controlled CFC with a Related Section 958(a) U.S. Shareholder or a U.S.-controlled CFC. The

amounts calculated under this safe harbor must be reported on a return "both due and filed" before October 1, 2019, or "due and filed" after October 1.

The Revenue Procedure also provides that if the safe harbor is relied on for an SFC, then the amounts reported on Form 5471 for the SFC can be determined using the alterative information.

Similar to the general safe harbor rules, the alternative information cannot be used for FTC purposes.

### KPMG observation

The section 965 safe harbor may have limited applicability because the filing deadline for timely filing a return with a section 965 amount has passed.

## Inapplicability of Penalties

The Revenue Procedure also provides penalty relief for failure to file a Form 5471 as a Category 4 or 5 filer (section 6038) and accuracy related penalties (section 6662). Each of those penalties has a reasonable cause exception, and the accuracy-related reasonable cause exception applies only if the taxpayer acted in good faith.

Under the Revenue Procedure, penalties under section 6038 and 6662 will not be applied to the extent attributable to a U.S. person properly applying a safe harbor in the Revenue Procedure to determine that a foreign corporation is not a CFC, or to calculate a subpart F or GILTI inclusion or section 965 amount on the basis of alternative information.

### KPMG observation

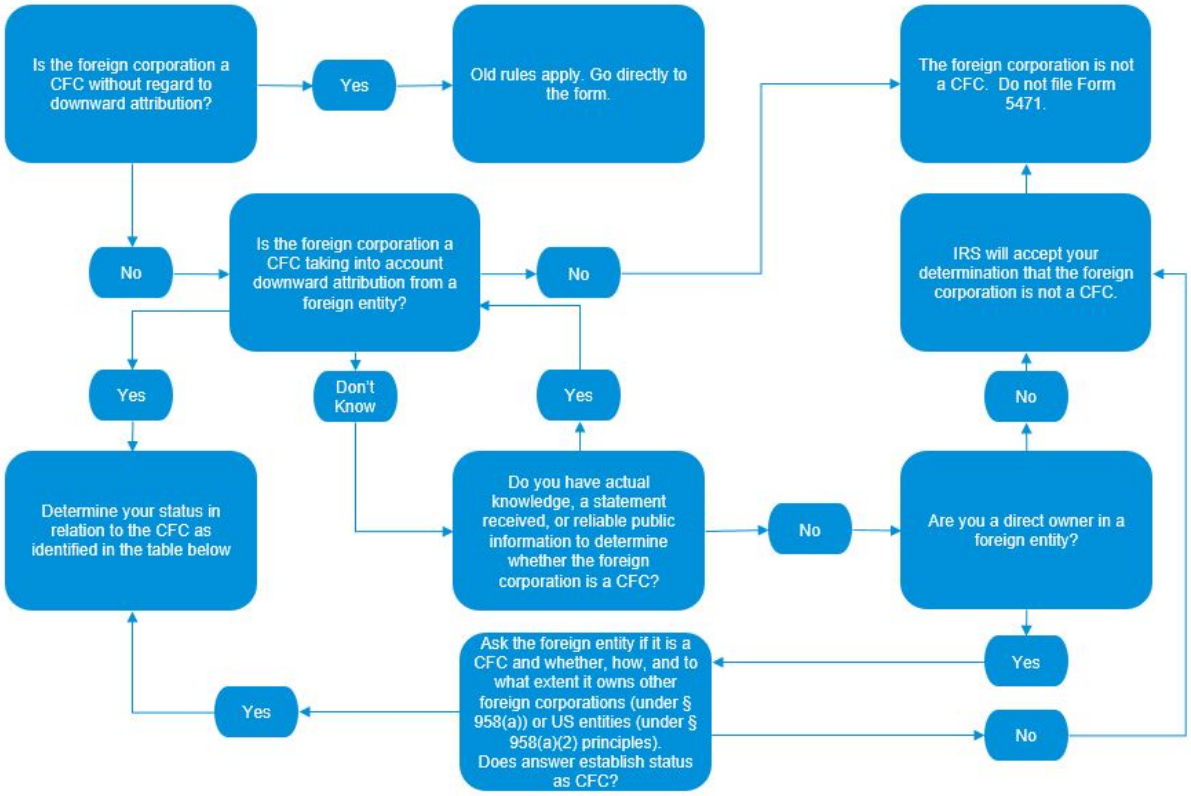
The Revenue Procedure does not explicitly provide relief from the extended statute of limitation that applies under section 6501(c)(8) when a taxpayer fails to report the information required to be reported under section 6038. Although taxpayers may not be subject to section 6038 penalties under the Revenue Procedure, it is not clear whether this penalty relief also precludes the IRS from applying section 6501(c)(8). Hopefully the IRS will treat a taxpayer that is penalty-proof under the Revenue Procedure as satisfying its requirement to provide information under section 6038, which would reasonably preclude an extended statute.

## Modifications to Form 5471 Filing Obligations for Category 5 Filers

The Revenue Procedure provides additional relief from filing Form 5471 as a Category 5 filer for certain U.S. Shareholders of foreign-controlled CFCs. Under current law, downward attribution is not taken into account for purposes of determining Category 4 filing obligations. Nonetheless, downward attribution is taken into account for purposes of determining Category 1 and 5 filing obligations, which generally apply based on U.S. Shareholder status determined under the section 958 constructive ownership rules.

Under an exception in the Instructions to Form 5471, Category 1 or 5 filing is not required if: (i) there are no U.S. Shareholders that own stock in the CFC under section 958(a); and (ii) the foreign corporation is a CFC solely because one or more U.S. persons are considered to own the stock as a result of downward attribution. The Revenue Procedure adds an additional exception to the Category 5 filing requirement, and reduces the number of schedules required to be filed by Category 5 filers in two circumstances.

The flowchart below identifies certain key questions to consider in determining whether or not a U.S. Shareholder has a Category 5 filing obligation taking into account the additional guidance provided in the Revenue Procedure.




The extent of the relief depends in part on whether the U.S. Shareholder owns stock in the foreign-controlled CFC under section 958(a), or is solely a constructive owner under section 958(b). In addition, different filing obligations are imposed under the Revenue Procedure based in part on whether the U.S. Shareholder is "related" to the CFC, generally determined under the section 954(d) rules, which apply a "more than 50%" standard to determine relatedness. The relief provided in the Revenue Procedure is limited to Category 5 filing and does not apply for Category 1 filing. Thus, U.S. Shareholders also would need to file as Category 1 filers unless an exception applies. The chart below summarizes the modified Category 5 filing obligations under the Revenue Procedure, as well as potential Category 1 filing obligations.

| Status in relation to CFC | Section 958(a) Ownership | Related (more than 50%) | CFC has section 958(a) USSH | Category 5 Filing Obligation | Category 1 Filing Obligation |
|---|---|---|---|---|---|
| **Unrelated Constructive US Shareholder** | No | No | No | Not required to file as a Category 5 filer | No |
| | No | No | Yes | | Yes |
| **Related Constructive US Shareholder** | No | Yes | No | Not required to file as a Category 5 filer | No |
| | No | Yes | Yes | Limited Category 5 filing obligation: identifying information on page 1 of F.5471 above Schedule A, part II of Schedule B, Schedules E, G, and I-1 | Yes |
| **Unrelated Section 958(a) US Shareholder** | Yes | No | Yes | Limited Category 5 filing obligation: identifying information on page 1 of F.5471 above Schedule A, Schedules I, I-1, and P. If claiming FTCs, then Schedules E and E-1 as well | Yes |
| **Related Section 958(a) US Shareholder** | Yes | Yes | Yes | Category 5 filer: identifying information on page 1 of | Yes |

| | | | | | |
|---|---|---|---|---|---|
| | | | | F.5471 above Schedule A, Schedule B Part II; Schedules E, E-1, G, H, I, I-1, J, and P | |

### KPMG observation

Under the Revenue Procedure, a "related constructive U.S. Shareholder" and an "unrelated section 958(a) U.S. Shareholder" is required to report different information. As a result, it does not appear that one could file on behalf of the other under the joint filer exception, which applies only when U.S. persons have the same filing requirements.

### KPMG observation

U.S. persons also may be required to file Form 5471 as a result of acquiring or disposing of certain interests in a foreign corporation (even if the foreign corporation is not a CFC) under the Category 3 filing requirements.

## Applicability Dates and Reliance

Unless otherwise provided in future guidance, taxpayers are allowed to apply the safe harbor rules beginning with the last tax year of a foreign corporation beginning before January 1, 2018, and tax years of U.S. Shareholders in which or with which such tax year ends.

Similarly, unless otherwise provided in future guidance, taxpayers may rely on the rules relating to filing and reporting information on Form 5471 for the last tax year of a foreign corporation beginning before January 1, 2018, and tax years of U.S. Shareholders in which or with which such tax year ends.

The Revenue Procedure notes that the "alternative information" list and the meaning of "readily available" may be revised in future guidance, and provides that that any revisions would be prospectively applicable.

### KPMG observation

The applicability dates for the guidance in the Revenue Procedure are based on the applicability date of the repeal of section 958(b)(4).

# Overview of the Proposed Regulations

## General Overview

A number of rules outside of subpart F cross-reference the subpart F definition of CFC, which is determined under the section 958 constructive ownership rules, or directly reference the section 958(b) constructive ownership rules. The change to the section 958(b) constructive ownership rules impacted these rules, by expanding or contracting their applicability in a manner not contemplated when the underlying rules were enacted. The proposed regulations revise 10 regulations outside of subpart F that were affected by the section 958(b)(4) repeal, generally by providing that the downward attribution rules are not taken into account for a particular provision, or otherwise revising the rule to more closely align with its application prior to the repeal of section 958(b)(4).

In addition, the proposed regulations modify the section 958(b) regulations to be consistent with the repeal of section 958(b)(4).

### KPMG observation

The Revenue Procedure and the proposed regulations each refer to Treasury issuing additional guidance on the section 958(b)(4) repeal. Although not free from doubt, it seems very likely that each of these documents is referring to the guidance provided in the other document, rather than additional forthcoming guidance from Treasury.

### KPMG observation

Other than the revision to the section 958(b) regulation, the proposed regulations do not modify any rules in subpart F, including the section 954(c)(6) look-through rule, which is based in part on the CFC status of a payor. In addition, the proposed regulations do not revise the rules under section 898, which apply to determine the tax year of a CFC.

### KPMG observation

The rule in the current section 958 final regulation that prevents downward attribution from foreign persons is superseded by the repeal of section 958(b)(4), and cannot be relied on even though it is a final regulation.

## Provisions Addressed in the Proposed Regulations

The proposed regulations revise 10 regulations under nine Code sections.

- **Section 267(a)(3)(B) (Deduction of Amounts Owed to Related Foreign Persons).** In general, accrual basis taxpayers are allowed a deduction with respect to accrued but unpaid amounts owed to a CFC only to the extent the amount is included in a U.S. Shareholder's income. Although the statutory rule was revised in 2004, the current final regulations reflect the previous version of the statute. The proposed regulations replace existing rules promulgated under the earlier version of the statute, and provide a new rule that takes into account the repeal of section 958(b)(4), which expanded the application of the section 267(a)(3) timing rule by expanding the number of entities treated as CFCs. Under the proposed regulation, amounts (other than interest) that are exempt from tax under a treaty and owed to a CFC are not subject to the special timing rule if the CFC does not have any U.S. Shareholders that own stock in the CFC under section 958(a).

### KPMG observation

Although the proposed regulation is helpful, it is relatively narrow because it is limited to amounts that are exempt from tax under a treaty. Amounts owed to a CFC that are not exempt from tax under a treaty, but nonetheless are not subject to U.S. withholding when paid (for instance, foreign source non-effectively connected amounts) will continue to be subject to the timing rule, even if the CFC does not have any U.S. Shareholders that owns stock in the CFC under section 958(a). It is unclear why the IRS felt that entitlement to treaty protection was a necessary condition to the application of relief in these circumstances where the deduction would have been freely allowed under the law in effect prior to the Tax Cuts and Jobs Act.

- **Section 367 (Gain Recognition Agreements).** In general, a U.S. transferor can avoid the application of the section 367(a) rules for certain transfers of foreign stock or securities if it enters into a gain recognition agreement ("GRA"). In that case, the U.S. transferor recognizes gain under the GRA upon a "triggering event", as determined under the regulations. In determining whether a disposition of the foreign stock or securities is a triggering event, certain dispositions are not treated as triggering events if they meet certain requirements including qualification as a nonrecognition transaction and the satisfaction of certain ownership requirements. In particular, the "catch-all" triggering event exception in §1.367(a)-8(k)(14) generally provides an exception for a nonrecognition transaction if, immediately after the transaction, the U.S. transferor owns at least 5% of the foreign corporation, applying the constructive ownership rules of section 958(b). For this purpose, the proposed regulations provide that the U.S. transferor's ownership is determined without regard to the downward attribution rules.

- **Section 706 (Tax Year of Partnership).** Under the rules for determining a partnership's tax year, a foreign partner's interest generally is disregarded unless the partner is allocated a share of the partnership's effectively connected income. For this purpose, the current regulations exclude a CFC from the definition of foreign partner. The proposed regulations exclude from the definition of foreign partner only CFCs that have a U.S. Shareholder that owns stock in the CFC under section 958(a).

The proposed regulations revise the definition of CFC in seven rules to be consistent with the definition prior to the repeal of section 958(b)(4).

- **Section 332 (Recognition of Gain on Liquidation of Certain Holding Companies)**. The general rule in section 332 that allows nonrecognition treatment for gain derived in connection with property received in a complete liquidation of a corporation is subject to an exception for certain distributions to foreign corporations. This exception is itself subject to a special rule that applies when the corporation receiving the property in the liquidation is a CFC. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

- **Section 672 (Definitions Relating to Trusts).** Certain trust rules apply only to the extent that amounts are included in income of certain U.S. persons or a CFC. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

- **Section 863 (Source of Income: Space and Ocean Activities).** The determination of the source of income from space and ocean activities generally depends in part on whether the income is derived by a U.S. person or a foreign person. Under a special rule, income derived by a CFC may not be treated as foreign source income. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

- **Section 863 (Source of Income: International Communication Income)**. International communication income derived by a foreign person generally is foreign source income. Nonetheless, a CFC's international communication income generally is treated as 50% U.S. source and 50% foreign source. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

- **Section 904 (FTC Look-Through Rules and Affiliated Group Rules).** Under the FTC rules, a U.S. person's foreign source income is assigned to a separate limitation category. Under a special FTC look-through rule, an item of income received by a U.S. Shareholder from a CFC is assigned to the passive category only to the extent that the item is allocable to income of the CFC that is passive. Under a separate rule, rents and royalties received from a CFC are excluded from the passive category under an active rents and royalties exception, which depends in part on the activities of an affiliated group, which includes CFCs. Further, a rule that applies to determine whether financial services income is treated as general category depends on the activities of an affiliated group, which includes CFCs. For all of these purposes, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules. In addition, the proposed regulations provide that the U.S. Shareholder determination is made without taking into account the downward attribution rules.

- **Section 1297 (Definition of Passive Foreign Investment Company).** The asset test for purposes of determining whether a foreign corporation is a passive foreign investment company ("PFIC") is applied based on the adjusted basis of the corporation's assets if the corporation is a CFC that is not publicly traded. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

### KPMG observation

The PFIC proposed regulation is a helpful rule that generally allows U.S. persons that own minority interests in foreign corporations that are CFCs to apply the PFIC asset test based on the fair market value of the corporation's assets, which allows self-created assets and other assets in which the corporation may not have basis to be taken into account in determining PFIC status.

- **Section 6049 (Form 1099).** CFCs that make payments to certain U.S. persons are required to report information to the recipient using a Form 1099. For this purpose, the proposed regulations provide that CFC status is determined without taking into account the downward attribution rules.

### KPMG observation

The revisions made to the various regulations are a mix of rules that are favorable to taxpayers, unfavorable to taxpayers, or neutral. On balance, the revisions are reasonable and fairly narrow. The changes under a particular provision are often based on a specific grant of regulatory authority in that provision, rather than any general authority under section 958 to revise the rules.

## Applicability Dates and Reliance

As relevant, the proposed regulations apply to tax years of foreign corporations or shareholders ending on or after October 1, 2019, or to relevant transactions (payments accrued, distributions in complete liquidation, transfers, or payments made) that occur on or after October 1, 2019. In addition, a particular proposed regulation can be applied to certain earlier tax years, generally determined by reference to the last tax year of a foreign corporation that begins before January 1, 2018, provided that the taxpayer and related persons consistently apply that particular proposed regulation. Moreover, taxpayers can rely on the proposed regulations for any period before the final regulations are published.

## Comment Period and Hearing

Comments or requests for a public hearing on the proposed regulations must be submitted by December 2, 2019.

## Appendix: Alternative Information

Information described on a particular line number can be relied on only if the information in the previous line is not "readily available" within the meaning of the Revenue Procedure.

1. Audited separate-entity financial statements of the foreign corporation that are prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP").
2. Audited separate-entity financial statements of the foreign corporation that are prepared on the basis of international financial reporting standards ("IFRS").
3. Audited separate-entity financial statements of the foreign corporation that are prepared on the basis of the generally accepted accounting principles of the jurisdiction in which the foreign corporation is organized ("local-country GAAP").
4. Unaudited separate-entity financial statements of the foreign corporation that are prepared in accordance with U.S. GAAP.
5. Unaudited separate-entity financial statements of the foreign corporation that are prepared on the basis of IFRS.
6. Unaudited separate-entity financial statements of the foreign corporation that are prepared on the basis of local-country GAAP.
7. Separate-entity records used by the foreign corporation for tax reporting.
8. Separate-entity records used by the foreign corporation for internal management controls or regulatory or other similar purposes.

# Contact us

**For more information, contact a tax professional with KPMG's Washington National Tax office:**


**Barbara Rasch**
**T:** +1 213 533 3382
**E:** brasch@kpmg.com

**Seth Green**
**T:** +1 202 533 3022
**E:** sethgreen@kpmg.com

**Gary Scanlon**
**T:** +1 202 533 4651
**E:** gscanlon@kpmg.com

**Gloria LaBerge**
**T:** +1 713 319 2000
**E:** glaberge@kpmg.com


**kpmg.com/socialmedia**