

New Deloitte Tax resources look at guidance on Pillar Two issues, corporate AMT, research expenditures

New tax alerts from Deloitte Tax LLP discuss recent administrative guidance on a host of issues including the Pillar Two global minimum tax rules, the application of the corporate alternative minimum tax enacted in the Inflation Reduction Act of 2022, the mandatory capitalization of research expenditures under section 174 enacted in the Tax Cuts and Jobs Act of 2017, the scope of the Internal Revenue Service's letter ruling program for corporate transactions, and currency rules under section 987, as well as a recent federal court ruling on reporting requirements for foreign bank and financial accounts for dual residents with foreign treaty residency.

OECD guidance on Pillar Two compliance

The OECD/G20 Inclusive Framework last month released Tax Challenges Arising from the Digitilisation of the Economy—Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023.

[URL: https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf](https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf)

A new alert from Deloitte Tax discusses the highlights of the latest OECD release, which provides guidance both with respect to certain aspects of the full GloBE Rules set forth in the Model Rules and related Commentary and Administrative Guidance, as well as the transitional country-by-country (CbC) reporting introduced in the OECD's December 2022 "Safe Harbors and Penalty Relief" document. The new Administrative Guidance will be incorporated into a revised version of the Commentary that is expected to be released in the future.

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-21-december-2023.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-21-december-2023.pdf)

A Tax News & Views webcast on the OECD guidance scheduled for January 23 at 2:00 p.m. (eastern time) will explore (1) the highlights of the new rules as they relate to the CbC reporting safe harbor, (2) the rules for pushing down GILTI taxes when controlled foreign corporations qualify for the CbC safe harbor, and (3) newly introduced anti-avoidance rules.

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/tax-news-and-views-webcast.html](https://www2.deloitte.com/us/en/pages/tax/articles/tax-news-and-views-webcast.html)

Notice 2023-80 on Pillar Two and foreign tax credits

In the US, meanwhile, the Treasury Department and the IRS last month released Notice 2023-80 announcing their intention to issue proposed regulations to address the application of the foreign tax credit rules to certain top-up taxes, including income inclusion rules, qualified domestic minimum top-up taxes, and undertaxed profits rules described in Pillar Two, along with guidance that taxpayers may rely on until proposed regulations are issued.

[URL: https://www.irs.gov/pub/irs-drop/n-23-80.pdf](https://www.irs.gov/pub/irs-drop/n-23-80.pdf)

In addition, Notice 2023-80 announces that proposed regulations will address the interaction of the GloBE Model Rules and the dual consolidated loss rules. It also extends and modifies the temporary relief granted by Notice 2023-55 for determining whether a foreign tax is creditable under sections 901 and 903.

URL: <https://www.irs.gov/pub/irs-drop/n-23-55.pdf>

This new alert from Deloitte Tax provides a high-level summary of the foreign tax credit rules set out in the notice.

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-22-december-2023.pdf>

Additional guidance on corporate AMT

Treasury and the IRS released Notice 2024-10, which provides additional interim guidance to further clarify the application of the 15 percent alternative minimum tax on “adjusted financial statement income” of applicable corporations that was included as a revenue offset in the Inflation Reduction Act of 2022 (P.L. 117-169), the roughly \$740 billion tax, spending, and deficit-reduction package that moved through a Democratic-controlled House and Senate under fast-track budget reconciliation rules in the 117th Congress.

URL: <https://www.irs.gov/pub/irs-drop/n-24-10.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_supplD.pdf

A new alert from Deloitte Tax provides an overview of the notice.

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_supplD.pdf

Notice 2024-10 supplements several other guidance items on the corporate AMT from Treasury and the IRS in the past year, including interim guidance in Notice 2023-7 announcing the government’s intention to issue proposed regulations and addressing several time-sensitive issues related to the application of the tax (see previous Deloitte Tax alert), interim guidance in Notice 2023-20 focused on the application of the tax to the insurance industry (previous alert), temporary penalty relief in Notice 2023-42 for corporations that do not pay estimated tax related to their corporate AMT liability (previous alert), and additional interim guidance in Notice 2023-64 that is intended to help corporations determine whether they are subject to the tax and how to compute their liability (previous alert).

URL: <https://www.irs.gov/pub/irs-drop/n-23-07.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230106_3_supplA.pdf

URL: <https://www.irs.gov/pub/irs-drop/n-23-20.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230303_4_supplA.pdf

URL: <https://www.irs.gov/pub/irs-drop/n-23-42.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230609_3_supplA.pdf

URL: <https://www.irs.gov/pub/irs-drop/n-23-64.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230922_3_supplA.pdf

Mandatory amortization of research expenditures

Treasury and the IRS also recently issued additional guidance on a provision in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) that generally requires specified research and experimental expenditures under

section 174 to be amortized over five years (15 years in the case of foreign expenditures) rather than deducted immediately as under prior law. The provision, which was one of the revenue offsets in the roughly \$1.3 trillion Trump-era budget reconciliation tax package, took effect beginning in 2022.

URL: <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>

Rev. Proc. 2024-9 offers procedural guidance for taxpayers to make accounting method changes to apply the provisions of prior interim guidance (Notice 2023-63, released this past September) on the amortization requirement.

URL: <https://www.taxnotes.com/research/federal/irs-guidance/revenue-procedures/irs-issues-accounting-method-changes-guidance-research-costs/7hq4d>

URL: <https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-announces-pending-proposed-regs-re-expenditures/7h8n1>

In conjunction with the revenue procedure, the government also released Notice 2024-12, which modifies certain provisions of Notice 2023-63.

URL: <https://www.taxnotes.com/research/federal/irs-guidance/notices/irs-clarifies-guidance-research-expenditures/7hq4h>

A new alert from Deloitte Tax offers an overview of Rev. Proc. 2024-9 and Notice 2024-12. A previous alert discusses Notice 2023-63. (See separate coverage in this issue for details on congressional efforts to temporarily reverse certain TCJA changes to the treatment of research expenditures as part of a larger bipartisan tax deal.)

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_supplA.pdf

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230922_2_supplA.pdf

Expanded scope of IRS letter ruling program for corporate transactions

In other regulatory developments, the IRS kicked off 2024 with the release of Rev. Proc. 2024-1 and Rev. Proc. 2024-3, which expand the agency's letter ruling practice for certain corporate transactions.

URL: https://www.irs.gov/irb/2024-01_IRB#REV-PROC-2024-1

URL: https://www.irs.gov/irb/2024-01_IRB#REV-PROC-2024-3

The practical implication of this guidance is that the IRS will now issue:

- “Transactional rulings” and “comfort rulings” under sections 332, 351, 368, and 1036,
- With respect to distributions under section 355, rulings regarding the non-device requirement, whether a distribution and an acquisition by one or more persons of stock in the distributing corporation or the controlled corporation will be part of a plan (or series of related transactions) under section 355(e) and certain issues related to the business-purpose requirement, and
- Rulings on the excise tax on repurchases of corporate stock under section 4501.

A new alert from Deloitte Tax discusses the significance of the two revenue procedures for the IRS's letter ruling practice.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppc.pdf](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppc.pdf)

Updates to recently proposed section 987 regulations

The Treasury Department and the IRS on November 9 of last year released proposed currency regulations under section 987 and related rules. Section 987 applies to taxpayers with a qualified business unit (QBU) in the form of a disregarded entity, branch, partnership, trust, or estate, if the QBU has a functional currency that is different from the functional currency of its tax owner(s). Section 987 addresses foreign currency translation related to operations, assets, and liabilities of QBUs, and provides rules for computing taxable income (and associated earnings and profits) of the QBU, recognizing currency gain or loss, and translating basis in property that is transferred to or from a QBU.

[URL: https://www.federalregister.gov/documents/2023/11/14/2023-24649/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit](https://www.federalregister.gov/documents/2023/11/14/2023-24649/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit)

The government issued a technical correction to the preamble of the proposed regulations on December 6, however, to clarify certain details in the guidance.

[URL: https://www.federalregister.gov/documents/2023/12/06/2023-26785/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit-correction](https://www.federalregister.gov/documents/2023/12/06/2023-26785/income-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit-correction)

An updated tax alert on the proposed regulations that reflects the changes to the preamble is available from Deloitte Tax. (This updated alert replaces a previous tax alert that was released on November 17.)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-20-december-2023.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-20-december-2023.pdf)

FBAR requirement for dual residents with treaty foreign residency

On the judicial front, the US District Court for the Southern District of California recently ruled in *Aroeste vs. United States* that an individual who was a lawful permanent resident of the United States should be treated as a nonresident of the United States for purposes of filing a Report of Foreign Bank and Financial Accounts (FBAR) once that individual began to be treated as a resident of Mexico under the residency tiebreaker provisions of the US-Mexico Income Tax Treaty.

The government is expected to appeal the court's decision in *Aroeste* to the Ninth Circuit. For the time being, taxpayers filing as non-US residents under an applicable tie-breaker provision of a US income tax treaty (with any jurisdiction) should continue filing FBARs or any other required international information returns.

A new alert from Deloitte Tax discusses the decision.

[URL: https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppb.pdf](https://dhub.deloitte.com/Newsletters/Tax/2024/TNV/240112_2_suppb.pdf)

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.