

TAX ALERT

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December 23, 2015

Protecting Americans from Tax Hikes (“PATH”) Act of 2015 - International Tax Provisions

Dear clients, colleagues and friends,

On Dec. 18, 2015, Congress passed and the President signed into law the PATH Act of 2015, which provides certain provisions with either permanent or temporary extensions. The domestic provisions of the PATH Act of 2015 were described in our last *Tax Alert* released on Dec. 18, 2015 ([click here](#) to read the previously released *Tax Alert*).

This *Tax Alert* details two extensions that specifically relate to international tax.

Temporary Provision:

Look-through rule for payments between related Controlled Foreign Corporations. Current tax law provides that dividends, interest, rents and royalties received or accrued by a controlled foreign corporation (“CFC”) from a CFC that is a related person will not be treated as Subpart F income (income subject to U.S. tax regardless of whether the funds have been repatriated to the U.S.) to the extent attributable or properly allocable to income of the related CFC that is neither Subpart F income nor income effectively connected to a U.S. trade or business.

This provision can be used as a planning technique for intercompany finance needs and movement of cash (e.g., repatriation of profits) and is often used in conjunction with the entity classification election rules (or often referred to as the “check-the-box” rules).

The PATH Act of 2015 has retroactively extended the look-through treatment for related CFCs for two years to tax years through Dec. 31, 2019 and tax years of U.S. shareholders within such tax years of foreign corporations end.

IRC Section 954(c)(6)(C), as amended by Section 144(a) of the PATH Act of 2015.

Permanent Provision:

Subpart F exception for active financing income. The U.S. parent of a CFC engaged in banking, financing or similar business is eligible for deferral of U.S. federal income tax on that CFC’s earnings if the CFC is predominantly engaged in that business and conducts substantial activity with respect to the business. To meet this exception, the CFC must meet certain provisions which requires the CFC to demonstrate that its income is in fact active financing income (see Section 954(h)(2) for more detail regarding this income test). If met, then the CFC’s active financing income is not treated as Subpart F income to the U.S. parent. The PATH Act of 2015 retroactively and permanently extends this Subpart F exception.

IRC Sections 953(e)(10) and 954(h)(9), as amended by Section 128 of the PATH Act of 2015.

Please contact your Green Hasson Janks tax advisor at 310.873.1600 for additional information or to determine whether this development relates to your business.

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