FAMILY OFFICE TAX ROUNDTABLE

McDermott Will & Emery

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NEW TREASURY REGULATION UPDATES FOR PARTNERSHIPS & S CORPORATIONS

SPEAKERS

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AGENDA

1. Section 1061 Regulations
2. Section 163(j) Regulations
3. Tax Capital Account Reporting Requirement
4. Eligible Terminated S Corporation Regulations

SEC. 1061 BACKGROUND

BACKGROUND – SEC. 1061

- Profits interest guidance under Rev. Proc. 93-27 and Rev. Proc. 2001-43
- Section 1061 was adopted as part of the Tax Cuts and Jobs Act (P.L. 115-97) enacted on December 22, 2017
- Normal holding period under Section 1222 for long-term capital gain is one-year (preferential capital gain federal tax rate of 20%)
- Effective for tax years beginning after December 31, 2017, Section 1061 generally imposes a 3-year holding period requirement in order for gains attributable to certain profits interests "applicable partnership interest" to be taxed as long-term capital gain
- Proposed Regulations released on July 31, 2020 [REG-107213-18, 85 Fed. Reg. 49,754 (Published on August 14, 2020)]

BACKGROUND – SEC. 1061

- 1061(a) provides
  - If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess *(if any)* of —
    - The taxpayer's net long-term capital gain with respect to such interests for such taxable year, over
    - The taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections 1222 by substituting "3 years" for "1 year,"
  - Shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).
- Proposed regulations refer to this as the "Recharacterization Amount"

INDEX – PROPOSED REGULATIONS

INDEX – PROPOSED REGULATIONS

- **1.702-1(a)(2)**: Adds new sentence to reflect flow through of section 1061 items
- **1.704-3(e)(vii)**: Adds new paragraph to provide securities partnership aggregation not reasonable if does not account for Section 1061; Treasury seeking comments
- **1.1061-1**: Definitions
- **1.1061-2**: Applicable Partnership Interests and Applicable Trades or Businesses
- **1.1061-3**: Exceptions to the definition of API *(note that S corp rule proposed to be effective for years after 12.31.17, and proposed QEF rule as of date of publication of proposed regulations)*
- **1.1061-4**: Section 1061 Computations
- **1.1061-5**: Section 1061(d) transfers to related persons
- **1.1061-6**: Reporting rules
- **1.1223-3(b)(5)**: Adds new paragraph for mechanics to bifurcate partnership interest that includes one or more profits interest (same definition as profits interest under Rev. Proc. 93-27)
- Unless otherwise indicated, all effective for tax years beginning on or after the date final regulations are published

FOUNDATIONAL DEFINITIONS, TRANSITION RULES & EFFECTIVE DATE

FOUNDATIONAL DEFINITIONS

- **Applicable Partnership Interest (API)**: Any interest in a partnership which, directly or indirectly, is transferred to (or is held by) an Owner Taxpayer or Passthrough Entity in connection with the performance of "substantial services" by the Owner Taxpayer or Passthrough Entity, or any other related person (under secs. 707(b) or 267(b)), in any "applicable trade or business"
- **API Holder**: Refers to any person who holds an interest in an API
- **Owner Taxpayer**: A person who is subject to federal income tax on the Recharacterization Amount and is required to calculate such amounts
- **Applicable Trade or Business (ATB)**: Any activity conducted on a regular, continuous, and substantial basis (by reference to Sec. 162) which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of (i) raising or returning capital, **and** (ii) either (a) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or (b) developing "specified assets"
- **ATB Activity Test**: Met if "specified actions" are conducted at a level of activity required for an activity to constitute a trade or business under section 162
- **Owner Taxpayer**: Person subject to federal income tax on net gain with respect to an API or an indirect API during tax year, including owner of Passthrough Entity
- **Passthrough Entity**: Means a partnership, an S corporation for which election under 1362(a) is in effect, and a passive foreign investment company with respect to which shareholder has a QEF election in effect

FOUNDATIONAL DEFINITIONS

- **Specified Actions**: Generally include both raising or returning capital actions and investing or developing actions described in Sec. 1061(c)(2)(A)
- **Substantial Services**: To the extent that a taxpayer receives a partnership interest in connection with the performance of services by the taxpayer or a related person, the services provided are presumed to be substantial services
- **Specified Asset**: Generally,
  - (i) securities (as defined in sec. 475(c)(2) except last sentence),
  - (ii) commodities (as defined in sec. 475(e)(2)),
  - (iii) rental or investment real estate,
  - (iv) cash or equivalents,
  - (v) options and derivative contracts with respect to any of (i)-(iv); and
  - (vi) an interest in a partnership to the extent of the partnership's proportionate interest in any of (i) – (v)
- **Section 1061(d) Related Person**: For purposes of transfers of APIs to "related persons", either (i) a member of the taxpayer's family within the meaning Sec. 318(a)(1), (ii) a person performed a service within the current calendar year or the preceding 3 calendar years in any ATB in which or for which the taxpayer performed a service; or passthrough entity to the extent a member of the taxpayer's family or a colleague is an owner thereof

PROP. REG. 1.1061-2

ONCE AN API, ALWAYS AN API

- Once a partnership interest is an API, it remains an API and never loses that character as such, unless one of the exceptions applies
  - This is the case even if
    - (i) the taxpayer or a related person ceases to provide services in an ATB,
    - (ii) a partner retires and provides no further services so long as such partner continues to hold the partnership interest,
    - (iii) a partner provides services but the ATB activity test is not met in a later year, or
    - (iv) the API is contributed to another passthrough entity or a trust or is held by an estate
- If an interest in a partnership is transferred to a "passthrough taxpayer" (e.g., an S corporation or an entity taxed as a partnership) in connection with the performance of its own services, the services of its owners, or the services of persons related to either the passthrough entity or its owners, the interest is an API as to the passthrough taxpayer
- Character retention: Generally, API gains and losses retain their character as API gains and losses as they are allocated through passthrough entities to the Owner Taxpayer

APPLICATION OF ATB ACTIVITY TEST

- “Specified Actions” are aggregated
  - May also be aggregated with “related parties” (referencing Secs. 267(b) and 707(b))
  - Actions taken by agents or delegates taken into account
- Raising/returning capital actions and investing/developing actions not both required in same year
- ATB Activity Test satisfied even if
  - no raising/returning capital actions are performed in current year, but were performed in a prior year; and
  - sufficient investing/developing actions are performed in the current year
- Merely exercising voting right is not developing
- Managing partnership’s working capital not investing or developing
- Example 6 (profits interest in partnership operating hardware store)

CARRY WAIVERS

- Waive right to receive allocations of carry issued by a fund if such allocations do not relate to 3-year property in exchange for allocations relating to 3-year property
- Proposed regulations do not necessarily ban carry waivers or add additional hurdles to establish a viable carry waiver, BUT cautions that such carry waivers (and similar arrangements) may not be respected and may be challenged:
  - Under existing provisions of the Code and Treasury Regulations, and/or
  - The substance over form or economic substance doctrines

PROPERTY DISTRIBUTIONS TO AN API HOLDER

- Proposed regulations generally follow existing rules relating to the distribution of property with respect to an API from a partnership (i.e., a partnership's holding period of a distributed asset is tacked onto the holding period of a distributee partner)
- Property (such as stock of a portfolio company) that is distributed in respect of an API
  - Remains within the scope of section 1061, and
  - Will continue to be subject to section 1061 notwithstanding that the property distributed is not itself an API
- *Can you distinguish in-kind distributions on capital interests when holder also has an API?*

PROP. REG. 1.1061-3

EXCEPTIONS TO THE DEFINITION OF AN API

- Section 1061(b) Guidance Reserved: "To the extent provided by the Secretary"
  - Section 1061(a) will not apply to "income or gain attributable to any assets *not held* for portfolio investment on behalf of third-party investors"
  - "Third-party Investor" is a person
    - (A) Holds interest in partnership that does not constitute property held in connection with applicable T/B; and
    - (B) Is not (and has not been) actively engaged (or related to such person) in providing substantial services for that partnership or any applicable trade or business
  - ABA Comments (October 5, 2020) and NYSBA Report No. 1442 (October 5, 2020) both seek a carve out family office partnerships because not third-party investors

STATUTORY EXCEPTIONS TO THE DEFINITION OF AN API

1. Partnership interest held by an employee of another entity not conducting an ATB and who provides services only to that other entity
2. Capital Interest Gains and Losses not subject to Sec. 1061 – generally exempts from recharacterization LT capital gains and losses that represent a return on the API Holder's invested capital in a passthrough entity
3. Partnership interest held by a corporation
   - S corporations not a "corporation"
   - QEFs (election made by taxpayer) also not a "corporation"

CAPITAL INTEREST GAINS AND LOSSES EXCEPTION

- Capital Interest Gains and Losses consist of three items

  (i) Capital Interest Allocations: Allocations based on relative capital account balance (or owners if non partnership) in "same manner" to both API Holders and Unrelated Non-Service Partners

  - Same manner allows (i) subordinate allocation of API and (ii) no reduction for cost of services performed by API Holder or Related Person
  - Unrelated Non-Service Partners have significant capital account balance (5% or more of aggregate)
  - Allocations clearly identified in partnership agreement and books and records *as separate and apart* from allocations made with respect to API

  (ii) Passthrough Interest Capital Allocations +

  - Passthrough Capital Allocations – "same manner" with respect to capital accounts
  - Passthrough Interest Direct Investment Allocations – non-API assets directly held by Passthrough Entity

  (iii) Capital Interest Disposition Amounts: amount of long-term capital gain and loss recognized on sale or disposition of all or a portion of a Passthrough Interest that may be treated as Capital Interest Gain or Loss

QUESTIONS ON CAPITAL INTEREST ALLOCATIONS

- Is it proper that Capital account does not include contributions attributable to loans made or guaranteed by any other partner or partnership (or Related Person to either partner or partnership)?
- Do Targeted allocations satisfy separate and apart requirement?
- Does waiver of carry interest count as cost of services?
- Does 5% safe harbor for significant capital account balances treat preferred equity as separate?
- What about undistributed profits interest – treat as invested capital for subsequent allocations?
- Do regulatory allocations violate the same manner requirement?
- What about tracking allocations – is same manner requirement applied per fund or side pocket? Deal-by-deal?
- Treasury seeking comments on other allocation methodologies

BONA FIDE UNRELATED PURCHASER EXCEPTION

- Proposed regulations add an exception for certain purchases of an API by bona fide unrelated taxpayers
- Generally, not an API with respect to such purchaser if:
  - The purchaser does not currently and has never provided services in the relevant ATB (or to the passthrough entity in which the interest is held, if different),
  - Does not contemplate providing services in the future, and
  - Not related to a person who provides services currently or has provided services in the past

* Exception is inapplicable to an unrelated non-service provider who becomes a partner by making a contribution to a passthrough entity that holds an API and in exchange receives an interest in the passthrough entity's API

PROP. REG. 1.1061-4

AMOUNTS EXCLUDED FROM API GAINS & LOSSES

- Long-term capital gain and long-term capital losses determined under sec. 1231 (property used in trade or business)
  - * *The NYSBA questions this carve-out*
- Long-term capital gain and long-term capital losses determined under sec. 1256
- Qualified dividends included in net capital gain for purposes of sec. 1(h)(11)(B) (domestic corporations and qualified foreign corporations)
- Capital gain and losses that are recharacterized as long-term or short-term without regard to holding period under sec. 1222, like mixed straddle elections
- Comments requested on collectible gains and loss under section 1(h) and unrecaptured section 1250 gain (certain depreciable realty)

PROP. REG. 1.1061-5

TRANSFERS OF API TO RELATED PERSONS

- Transfer of API (directly or indirectly) to a Section 1061(d) Related Person can result in immediate taxation of the excess of:
  i. The net built-in LT capital gain in assets attributable to the transferred interest with a holding period of 3 years or less, over
  ii. The amount of LT capital gain treated as ST capital gain under section 1061(a) at the time of the transfer
  iii. Above includes unrealized amounts, revaluation mechanics and remedial allocations
- Grantor trusts, Qsubs and disregarded entities are generally disregarded for purposes of sec. 1061
- "Section 1061(d) Related Person" includes:
  - Members of a taxpayer's family within the meaning of 318(a)(1);
  - Taxpayer's colleagues who provide services in the ATB during certain specified time periods;
  - Passthrough entity to the extent a member of the taxpayer's family or a colleague is an owner thereof

TRANSFERS OF API TO RELATED PERSONS

- “Transfer”
  - Broadly defined – includes (but not be limited to) contributions, distributions, sales and exchanges, and gifts
  - Excludes Sec. 721(a) contributions to partnerships – based on 704(c) allocation/revaluation principles
  - Treasury seeking comments on transfers other than section 721(a) contributions that should be excluded
  - *Are forfeitures and reallocations of profits interests a transfer?*
- Trap for the unwary
  - Consider application to customary estate planning (e.g., gifts to family members and other potentially common estate planning transfers, contributions to S-corps) for GPs and others that hold carried interests

PROP. REG. 1.1061-6

REPORTING RULES

- Proposed regulations create a detailed reporting regime
- Passthrough entities required to furnish Owner Taxpayer with information sufficient to calculate Recharacterization Amount, namely:
  - 1-year and 3-year property information
  - Capital gain income not subject to Sec. 1061 (e.g., Secs. 1256 and 1231)
  - Partners share of capital interest and API interest
- If information is not provided, amounts attributed to 3-year property will be presumed to be zero

FINAL & NEW PROPOSED REGULATIONS ON SECTION 163(J)

SELECTED HIGHLIGHTS

SECTION 163(J) BACKGROUND

- Section 163(j) as amended by the TCJA became effective for tax years beginning after December 31, 2017
- Under new Section 163(j), Taxpayer's business interest expense deduction is limited to the sum of 30% of adjusted taxable income (ATI) plus business interest income
  - ATI is taxable income subject to certain adjustments:
    - Add back for business interest expense and 199A deduction
    - Add back for depreciation prior to 2022 (EBITDA to EBIT)
  - Disallowed interest expense may be carried forward
  - Excess ATI does not carry forward
- Under a small business exception, a taxpayer with average gross receipts of less than $25M for 3 preceding years is not subject to Section 163(j) (an "excepted trade or business")
- Under CARES Act:
  - Limitation increased to 50% of ATI for 2019 and 2020
  - Taxpayers may elect to use its 2019 ATI for its 2020 Section 163(j) calculation

SECTION 163(J) BACKGROUND – APPLICATION TO PARTNERSHIPS

- Limitation is applied at the partnership level
  - Partnership computes its own Section 163(j) limitation based on partnership's ATI, business interest expense (BIE) and business interest income
  - Deductible BIE allocated to partners as part of nonseparately stated taxable income and is not subject to further limitation at partner level
  - Excess limitation from partnership (ETI) and excess business interest income are allocated to partners and included in partner's own section 163(j) limit
  - Partner's share of BIE that is disallowed at the partnership level is carried forward at the partner level and can be deducted only when and if the partner is allocated ETI or excess business interest income in a subsequent year **from the same partnership**
- ETI from one partnership cannot be used to offset disallowed BIE from another partnership – SILO Rule

DEFINITION OF ATI - HIGHLIGHTS

- Section 163(j) generally calculates ATI based on EBITDA for taxable years through 2021 and EBIT thereafter
- The Final Regulations reverse course from the Former Proposed Regulations and permit taxpayers to calculate ATI by adding back adjustments for depreciation, amortization and depletion deductions that are capitalized into inventory
- No double benefit from add-back of depreciation:
  - The Final Regulations provide that when a taxpayer sells property that has a basis affected by amortization, depreciation or depletion during the EBITDA period, ATI must be reduced by such adjustments, whether or not a gain was recognized
  - Likewise, where a partner sells or otherwise disposes of a partnership interest, they are required to subtract from ATI their distributive share of deductions (to the extent allowable under Section 704(d)) for depreciation or amortization with respect to property for the EBITDA period
- Gain or loss on sale of partnership interest is included in partner's ATI, but only to the extent allocable to partnership assets used in a "non-excepted trade or business." Allocation required if partnership is engaged in both excepted and non-except trades or businesses

DEFINITION OF INTEREST - HIGHLIGHTS

- The Former Proposed Regulations treat as interest (i) amounts paid, received or accrued as compensation for the use or forbearance of money as interest; (ii) time value component of certain swap payments; and (iii) amounts closely related to interest
- The Final Regulations retain this (overbroad) definition but add exceptions for certain items that commentators viewed as problematic
  - The Final Regulations exclude, commitment fees, debt issuance costs, partnership guaranteed payments, and hedging gains and losses from “other amounts treated as interest,” but continue to cover items such as Section 1258 gain and factoring income
  - The Final Regulations treat substitute interest payments as interest expense or interest income only if the payment relates to a sale-repurchase or securities lending transaction that is not entered into by the taxpayer in the ordinary course of its business

INTEREST DEFINITION (ANTI-AVOIDANCE RULE)

- The Former Proposed Regulations anti-avoidance rule provided, "[a]ny expense or loss, to the extent deductible, incurred by a taxpayer in a transaction or series of integrated or related transactions in which the taxpayer secures the use of funds for a period of time is treated as interest expense of the taxpayer if such expense or loss is **predominantly incurred** in consideration of the time value of money"
- The Final Regulations contain a modified anti-avoidance rule concerning amounts treated as interest
- The new anti-avoidance rule treats items as interest if the item of expense or loss is **economically equivalent** to interest and **a principal purpose** of structuring a transaction is to reduce the amount treated as interest
- The new anti-avoidance rule disregards both a taxpayer's business purpose and the receipt of funds at a lower pre-tax cost. The anti-avoidance rule further provides that an item is not treated as interest income if a principal purpose for structuring a transaction is to artificially increase the taxpayer's business interest income

INTEREST DEFINITION (ANTI-AVOIDANCE RULE)

- The Final Regulations provide several examples of the anti-avoidance rule's application
- One notable example concerns guaranteed payments:
  - A, B, and C are *equal partners* in ABC partnership. ABC is considering acquiring an additional loan from a third-party lender to expand its business operations. However, ABC already has significant debt and interest expense. For the purpose of reducing the amount of additional interest expense ABC would have otherwise incurred by borrowing, A agrees to make an additional contribution to ABC for use in its business operations in exchange for a guaranteed payment for the use of capital under section 707(c)

RELATIONSHIP OF SECTION 163(J) LIMITATION TO OTHER PROVISIONS AFFECTING INTEREST

- Under the Former Proposed Regulations, Section 163(j) only applies to otherwise deductible interest
  - Thus, business interest expense does not include interest expense permanently disallowed as a deduction
  - Also, Code sections which defer the deductibility of interest expense or capitalize interest expense apply before Section 163(j)
- Final Regulations take the same approach
- Section 163(j) is applied before loss limitation rules; such as Section 461(l) (excess business loss rules); Section 469 (PAL Rules); Section 465 (at-risk rules)

SALES OF PARTNERSHIP INTERESTS WITH EXCESS BUSINESS INTEREST EXPENSE

- The Former Proposed Regulations dealt with dispositions of partnership interests, where the partnership had excess business interest expense, in one of two ways. If a partner disposed of all or **substantially all** of their interest in a partnership, their adjusted basis in their partnership interest would be increased by the entire amount of their remaining excess business interest expense (the allocated portion of excess business expense which had not previously been used). There was **no basis adjustment** where the partner disposed of less than substantially all of their interest
- The Final Regulations depart significantly from this approach and instead adopt a **proportionate approach**. Under the proportionate approach the basis of the partnership interest being disposed of is increased by the excess business interest expense attributable to that interest
- The proportionate approach is viewed as eliminating potential **timing differences** between income receipt and recognition under the approach in the Former Proposed Regulations

INTERACTION BETWEEN SECTIONS 163(D) & (J) – TRADING PARTNERSHIPS

- The Former Proposed Regulations applied section 163(j) at the partnership level and the Section 163(d) investment interest expense limitation at the partner level independently of one another
- For a trading partnership, non-materially participating partners are required to treat their allocable share of a partnership's business interest expense as investment interest for purposes of Section 163(d)
- Thus, interest expense could be subject to both Section 163(j) at the partnership level and Section 163(d) at the partner level. This result appeared to be incompatible with **Section 163(j)(5)** ("Business interest" shall not include "investment interest")
- Under the New Proposed Regulations, interest expense allocable to non-materially participating partners is subject to Section 163(d) at the partner level, but not Section 163(j) at the partnership level

ALLOCATIONS FROM EXEMPT (SMALL BUSINESS) PARTNERSHIPS

- The Former Proposed Regulations provided that a partner's 163(j) limitation applied to any business interest expense allocated from an exempt entity (e.g., a partnership that meets the small business exception)
- The Final Regulations reverse course and provide that business interest expense of an exempt partnership is not subject to Section 163(j) at the partner level
- The character of excess items generally does not change if a non-exempt partnership becomes exempt in one tax year or vice versa
- The approach in the Final Regulations is more consistent with the general rule under Section 163(j) that partnership level business interest expense is tested at the partnership level

SELF-CHARGED LENDING TRANSACTIONS

- Under the New Proposed Regulations, the business interest expense of a borrowing partnership attributable to a self-charged lending transaction is treated as business interest expense of the partnership for Section 163(j) purposes
- If the lending partner is allocated excess business interest expense from the borrowing partnership and has interest income attributable to the transaction, the lending partner **treats the interest income as an allocation of excess business interest income** to the extent of the lending partner's allocation of excess business interest expense in the taxable year
- The lending partner includes re-characterized business interest income only once when calculating their own Section 163(j) limitation
- Excess business interest income from a self charged lending transaction continues to be treated as investment income for a lending partner where otherwise applicable

TIERED PARTNERSHIPS

- The Final Regulations and New Proposed Regulations address the application of Section 163(j) to tiered partnerships and generally apply an entity approach
- If a lower tier partnership allocates excess business interest expense to an upper tier partnership the excess business interest expense is taken into account at the upper tier partnership level instead of being reallocated amongst its partners
- The Preamble to the New Proposed Regulations states this approach was favored in order to remain more consistent with the Section 163(j) entity level view of partnerships and to place responsibilities for compliance at the partnership level

TAX CAPITAL ACCOUNT REPORTING REQUIREMENT

BACKGROUND

- 2018 Instructions for Form 1065 required partnerships to report a partner's capital account on a tax basis at both the beginning and end of the year if either amount is negative
- Early releases of drafts of the 2019 Form 1065 would have required partnerships to report all partners' capital accounts using a tax basis method (Tax Capital Reporting Requirement)
- Commentators objected that this requirement would be overly burdensome and that many partnerships would be unable to comply in a timely manner or ever
- Notice 2019-66 deferred Tax Capital Reporting Requirement to 2020; and 2019 return instructions followed the 2018 instructions
- Notice 2020-43 provides guidance on reporting tax capital accounts for 2020 (i.e., years that end on or after December 31, 2020)

NOTICE 2020-43 – METHOD #1: MODIFIED OUTSIDE BASIS METHOD

- Determine each partner's outside tax basis and then subtract from that basis the partner's share of partnership liabilities
- Requirement that partner notify the partnership of any changes to the partner's basis other than changes attributable to contributions, distributions and K-1 allocations
  - E.g., purchase transaction regardless of whether the partnership has a Section 754 election in effect or a substantial built-in-loss

METHOD 2: MODIFIED PREVIOUSLY TAXED CAPITAL METHOD

- Previously taxed capital equals:
  - The amount a partner would receive in a hypothetical liquidation
  - Increased by tax loss that would be allocated to the partner from the hypothetical liquidation
  - Decreased by the tax gain that would be allocated to the partner from the hypothetical liquidation
- Hypothetical liquidation assumes a taxable sale off all assets
  - At FMV if readily available
  - If FMV not readily available, 704(b) book values or GAAP values
  - Assumes all partnership debt is nonrecourse to simplify the calculation and allocation of gain or loss

NOTICE 2020-43

- Requests for comments on the two methods for determining tax capital accounts
- Consideration of the “Transactional Approach” favored by taxpayers and their advisors

ELIGIBLE TERMINATED S CORPORATIONS

TAX CUTS & JOBS ACT (P.L. 115-97)

- Enacted Section 481(d)(1), which permits an eligible terminated S corporation (ETSC) to take into account any Section 481 adjustments attributable to the revocation of an S election over the six-taxable year period beginning with the year of change
- ETSC is a C corporation that meets three requirements:
  - Corporation was an S corporation on December 21, 2017;
  - C corporation revoked S election during the two-year period beginning on Dec. 22, 2017; and
  - Owners of stock of corporation must generally be the same (and in identical proportions) on both December 22, 2017; and the day on which the revocation is made

TAX CUTS & JOBS ACT (P.L. 115-97)

- Enacted Section 1371(f), which provides that in the case of a distribution of money following the post-termination transition period by ETSC
  - The distributing ETSC's AAA is allocated to a distribution of money that would otherwise be treated as a dividend (qualified distribution)
  - The qualified distribution is chargeable to accumulated E&P in the same ratio as the amount of AAA bears to accumulated E&P

BACKGROUND

- T.D. 9914 released on September 14, 2020
  - Provides guidance on the definition of ETSC
  - Provides rules relating to the distributions of money by a ETSC after post-termination transition period
  - Amends current regulations to extend treatment of distributions of money during the post-termination transition period to all shareholders of the corporation
  - Clarifies the allocation of current E&P to the distributions of money and other property

THANK YOU