

# 2015 TAX YEAR-IN-REVIEW

December 30, 2015

Special Report

## HIGHLIGHTS

- Many Extenders Made Permanent
- Repair Regs De Minimis Threshold Increased
- ACA Cadillac Plan Excise Tax Delayed
- TEFRA Partnership Rules Repealed
- Audit Rates Fall
- Same-Sex Marriage Nationwide
- FATCA Implementation Continues
- Supreme Court Upholds ACA Tax Credit
- Private Tax Collection Revived

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## 2015 Tax Developments Help Prepare the Way for 2016 Tax Planning and Compliance

2015 was undeniably the most significant year for tax legislation since the *American Taxpayer Relief Act of 2012*...despite starting out with the assumption that significant tax legislation would be in a holding pattern until after the 2016 Presidential elections. 2015 closed with a long list of regulations and rulings to its credit...despite concerns that a reduced IRS budget would slow guidance to a crawl. And the Supreme Court, appellate courts and the U.S. Tax Court all showed that taxpayers could still score some decisive victories.

**IMPACT.** *Tax developments during 2015 impact a wide variety of taxpayers and involve many different issues. They impact those 2015 tax year returns that will be filed during the 2016 filing season; they also affect refund opportunities for earlier, "open" years; as well as point the way to strategic planning in 2016 and beyond. This Tax Briefing highlights some of the more significant developments that have taken place during the past year.*

### TAX LEGISLATION

*2015 proved to be a significant year for tax legislation. Hundreds of changes to the Internal Revenue Code were made.*

#### PATH Act

After years of routine temporary extensions, Congress made permanent a number of previously temporary tax breaks for individuals and businesses as well as extending others.

The *Protecting Americans from Tax Hikes Act of 2015* (PATH Act) (P.L. 114-113) was signed into law by President Obama in December.

**Permanent extensions for individuals.** Incentives for individuals extended permanently, and in some cases modified, by the PATH Act include:

- American Opportunity Tax Credit
- Deduction for certain expenses of elementary and secondary school teachers
- Transit benefits parity
- Deduction for state and local sales taxes
- Reduced earnings threshold for additional child tax credit
- Modification of the earned income tax credit
- Tax-free distributions from individual retirement plans for charitable purposes for individuals age 70 ½ and older

**Permanent extensions for businesses.** The PATH Act makes permanent, and in some cases modifies, many popular tax incentives for businesses, including, among others:

- Research tax credit
- Enhanced expensing under Code Sec. 179
- Charitable deduction for contributions of food inventory
- Basis adjustment to stock of S corporations making charitable contributions of property
- Employer wage credit for activated military reservists
- 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements

- Treatment of certain dividends of regulated investment companies
- Exclusion of 100 percent of gain on certain small business stock
- Reduction in S corporation recognition period for built-in gains tax
- Subpart F exception for active financing income

**More incentives extended.** The PATH Act did not leave out the rest of the traditional extenders. However, lawmakers did not make these remaining tax breaks permanent. Extended for several years (in some cases through 2019, in other cases through 2016) are:

- Bonus depreciation
- Work Opportunity Tax Credit (WOTC)
- Higher education tuition and fees deduction
- Energy incentives
- Special expensing rules for television and film productions
- And more.

**COMMENT.** *Because the extensions are not uniform, as mentioned, some tax breaks are made permanent, others are extended through 2019 and others are extended through 2016, careful planning is vital.*

### FY 2016 Omnibus/IRS Funding

**ACA.** The *Consolidated Appropriations Act, 2015* (P.L. 114-113) (FY 2016 omnibus) provides for a two-year delay of the ACA excise tax on high-cost employer-sponsored health coverage (known as “Cadillac” plans). Under the FY 2016 omnibus, the excise tax on high-cost plans will first be effective in 2020 rather than in 2018, as originally scheduled. The FY 2016 omnibus also provides for a one-year moratorium (2017) on the ACA’s health insurance provider fee. Further, the PATH Act imposes a two-year moratorium (2016 and 2017) on the ACA’s excise tax on qualified medical devices.

**IRS funding.** Along with allocating \$290 million to improve IRS customer service and cybersecurity, and combat identity

theft, Congress also imposed new requirements for individual tax identification numbers (ITINs), increased the penalty for paid tax preparers who engage in willful or reckless conduct and made other administrative changes. For IRS employees, the PATH Act codifies the agency’s Taxpayer Bill of Rights, prohibits the use of personal email for official business, provides for termination of employment for taking official actions for political purposes, and more.

“2015 was undeniably the most significant year for tax legislation since the *American Taxpayer Relief Act of 2012*”

### Bipartisan Budget Act

The *Bipartisan Budget Act of 2015* (P.L. 114-74) repealed the TEFRA unified partnership audit rules, effective for partnership tax years beginning after 2017, and replaces them with streamlined procedures which become mandatory in several years. The 2015 Budget Act also repeals automatic enrollment in certain employer-sponsored health plans and makes a number of pension-related changes.

### Surface Transportation Act

The *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41) revised some significant return due dates (effective for the 2017 filing season), overruled the Supreme Court’s decision in *Home Concrete, 2012-1 USTC ¶50,315* on overstated basis, and included other tax compliance measures.

**Stepped-up basis.** The *Surface Transportation Act* requires consistency between estate tax value and the “stepped-up basis” of assets acquired from a decedent. Executors of large estates are required to disclose to the IRS information identifying the value of each interest received. The IRS issued guidance in Notice 2015-57,

setting a February 29, 2016 deadline for statements otherwise due before that date.

### Trade Preferences Act

The *Trade Preferences Extension Act of 2015* (P.L. 114-27) contains a number of tax-related provisions, including among others:

- Renewal of the health care tax credit (HCTC)
- Requirement for taxpayers to possess a valid information return (Form 1098-T, Tuition Statement) to claim certain deductions and credits
- Overhaul of the penalty structure for certain information returns

### FAST Act

The *Fixing America’s Surface Transportation (FAST) Act* (P.L. 114-94) is a multi-year highway and transportation funding bill that includes:

- Various excise taxes used to finance the highway fund
- New rules for the revocation or denial of U.S. passport in case of certain unpaid taxes
- Requiring the IRS to use private debt collectors to recover certain tax receivables

### AFFORDABLE CARE ACT

The IRS continued to issue a steady flow of ACA guidance for individuals and businesses. The U.S. Supreme Court upheld the IRS’s regulations on the Code Sec. 36B premium assistance tax credit. Year-end tax legislation also affected the ACA (see discussion earlier in this Briefing).

### Code Sec. 36B Credit

In June, the U.S. Supreme Court held, in a 6 to 3 decision, that the Code Sec. 36B premium assistance tax credit is not limited to enrollees in state-run Health Insurance Marketplaces, *King, 2015-1 USTC ¶50,356*. Enrollees in federally-facilitated Health Insurance Marketplaces may also claim the credit, if eligible, the Supreme Court held.

## Health Care Tax Credit

In 2015, the IRS issued guidance to reflect the extension and modification of the Health Care Tax Credit (HCTC) by the *Trade Preferences Extension Act of 2015* (Notice 2016-2). The IRS described procedures for claiming the HCTC.

## Code Sec. 6055/6056 Reporting

Beginning in 2016, providers of minimum essential coverage must report certain information to the IRS and to covered individuals about the individual's health coverage in 2015 (known as Code Sec. 6056 reporting and Code Sec. 6055 reporting). In Notice 2016-4, the IRS announced an extension of the due dates for the 2015 information reporting requirements (both furnishing to individuals and filing with the IRS) for insurers, self-insuring employers, and certain other providers of minimum essential coverage under Code Sec. 6055 and the information reporting requirements for applicable large employers under Code Sec. 6056.

**COMMENT.** *The IRS has developed new forms for the new information reporting requirements: Form 1095-B, Health Coverage; Form 1094-B, Transmittal of Health Coverage Information Returns; Form 1095-C, Employer-Provided Health Insurance Offer and Coverage;*

*and Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return (HCTT-2015-84).*

## Market Reforms

In 2015, the IRS issued final regulations on the ACA's health insurance market reforms (TD 9744). The final regulations address, among other subjects, grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, appeal and review processes, and patient protections.

## Minimum Value

Proposed regulations issued by the IRS in 2015 provide that employer-sponsored plans that fail to provide substantial coverage for inpatient hospitalization or physician services do not provide minimum value under the ACA (NPRM-REG-143800-14). The IRS included limited transition relief.

## Code Sec. 4980D Excise Tax

Following passage of the ACA, the IRS released Notice 2013-54, which described certain arrangements, such as HRAs, as employer payment plans, which are considered to be group health plans subject to the ACA's market reforms. Failure to comply

with the ACA's market reforms triggers excise taxes under Code Sec. 4980D.

**COMMENT.** *The IRS issued limited transition relief (Notice 2015-17), which expired after June 30, 2015. Notice 2015-87 provides further guidance on this issue.*

## Expatriate Health Plans

The IRS released interim guidance on expatriate health plans to reflect passage of the *Expatriate Health Coverage Clarification Act of 2014* (EHCCA) (P.L. 113-235) their relationship with the ACA (Notice 2015-43).

## INDIVIDUALS

*The IRS issued guidance impacting individual taxation in a number of areas while at the same time acknowledging that audit coverage rates for individuals were falling.*

## Audit Coverage

Audit rates for individual returns dropped from 1.58 million in fiscal year (FY) 2010 to 1.23 million in FY 2015, the IRS announced (CERCA Conference, October 23, 2015).

## Innocent Spouse Relief

The IRS issued proposed regulations that would revise the existing regulations under Code Sec. 6015, which governs relief from joint and several liability for innocent spouses (NPRM REG-134219-08). Among the proposed changes are additional guidance on the exception under Code Sec. 6015(g)(2) to the judicial doctrine of *res judicata*, a definition of "underpayment" or "unpaid tax" for purposes of obtaining equitable relief under Code Sec. 6015(f), and more.

## Mortgage Interest

Reversing the Tax Court, a panel of the Court of Appeals for the Ninth Circuit found that when multiple unmarried taxpayers co-own a qualifying residence, the debt limit provisions under Code Sections

## TOP 10 TAX DEVELOPMENTS WITH IMPACT ON 2016

*The start of a New Year presents a time to reflect on the past 12 months and, based on what has gone before, predict what may happen next. Here is a list of the top 10 developments from 2015 that may prove particularly important as we move forward into the New Year:*

- #1 PATH Act (permanent extenders and more)
- #2 Supreme Court On ACA Tax Credit
- #3 Affordable Care Act Implementation/Changes
- #4 Revised Repair Reg Rules
- #5 FATCA Implementation
- #6 New Partnership Audit Rules
- #7 Rules To Reign In Certain Partnership Strategies
- #8 Tax-Related Identity Theft
- #9 Budget Pressures On IRS
- #10 Supreme Court On Same-Sex Marriage

163(h)(3)(B)(ii) and (C)(ii) apply per taxpayer and not per residence. (*Voss*, CA-9, August 7, 2015).

**IMPACT.** *The question was one of first impression in the Ninth Circuit and at least a temporary setback for the IRS.*

### Mortgage Assistance

A safe harbor against income recognition for distressed homeowners receiving financial assistance under certain federal programs was extended through 2017 (*Notice 2015-77*).

### Estate Tax

The IRS released final regulations on the estate tax portability election in June (*TD 9725*). The estate of a decedent survived by a spouse makes the portability election by timely filing a complete and properly prepared estate tax return.

### myRAs

Treasury announced the nationwide launch of the new myRA retirement savings account following the successful conclusion of its pilot program (*TDNR JL-10250*).

### Annuity Conversion

The IRS announced that it would issue regulations to limit the ability of plan sponsors to promote lump sum options to pension plan participants currently receiving annuity benefits (*Notice 2015-49*).

### Same-Sex Marriage

**Supreme Court decision.** The Supreme Court held in June that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex (*Obergefell*, 2015-1 *USTC* ¶50,357). Further, states must recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

**COMMENT.** *Proposed regulations issued soon after Obergefell reflect and clarify*

*earlier guidance that treated same-sex married couples the same as opposite-sex married couples for federal tax purposes (NPRM REG-148998-13). The IRS also reiterated that domestic partners are not married for federal tax purposes.*

## BUSINESS DEDUCTIONS AND CREDITS

*The IRS released guidance on a number of key business-related expense items during 2015, including costs involved with the “repair regs,” the Code Sec. 199 deduction, the research tax credit and more.*

*“The IRS released guidance on a number of key business-related expense items during 2015...”*

### Repair Regulations

Complaints over the operation of the so-called “repair regs” during 2015 ended on an encouraging note when the IRS granted small-businesses and others, safe-harbor relief.

**Small business \$2,500 de minimis cap.** In much-anticipated news, the IRS announced in November an increase in the de minimis safe harbor limit under the “repair regs” -- from \$500 to \$2,500 -- for taxpayers without an applicable financial statement (AFS) (*Notice 2015-82*). The new \$2,500 threshold, up from \$500, takes effect starting with tax year 2016. However, the IRS also provided “audit protection” to qualified taxpayers by not challenging use of the new \$2,500 threshold in tax years prior to 2016.

**COMMENT.** *The “repair regs” had created new rules that control when an expense may be deducted when incurred and when it must be capitalized. An expense for repairs, etc. up to the de minimis safe*

*harbor can be deducted immediately. For taxpayers with an applicable financial statement (AFS), the de minimis threshold under the repair regs was unchanged and remains \$5,000.*

**Remodel-refresh retail/restaurant remodel costs.** The IRS announced a safe harbor method for qualified taxpayers in the restaurant business or retail trades to use to determine if costs paid or incurred to refresh or remodel a qualified building are deductible or must be capitalized (*Rev. Proc. 2015-56*). The safe harbor calls for 75 percent of qualified costs to be deducted immediately and 25 percent to be capitalized as cost for building improvements. The agency also described how taxpayers may obtain automatic consent to change to the safe harbor method of accounting.

### Code Section 199 Deduction

*2015 saw taxpayers in increasing numbers discover the benefits of the Section 199 domestic production activities deduction.*

**Repackaging.** A federal district court found that a taxpayer’s production of “unit doses” of medications qualified for the Code Sec. 199 deduction (*Precision Dose, Inc.*, DC-Calif., September 24, 2015).

**IMPACT.** *The decision represented another victory for taxpayers in their battle with the IRS over the definition of “packaging, repackaging, labelling and minor assembly” activities.*

**Section 199 wages.** Temporary regulations described the allocation of W-2 wages in short tax years for purposes of the Code Sec. 199 deduction (*TD 9731*). The temporary regulations also addressed the calculation of W-2 wages when a trade or business is acquired or disposed of.

**DPGR/MPGE determination.** Proposed regulations clarified how to determine domestic production gross receipts (DPGR), and provide guidance on identifying materials manufactured, produced, grown, or extracted (MPGE) for purposes of the Code Sec. 199 deduction (*NPRM REG-136459-09*).

**IMPACT.** *Notably, these regulations remove the benefits and burdens of ownership test to identify the taxpayer entitled to claim the Section 199 deduction for contract manufacturing activities.*

**Audit directives.** A directive from the IRS Large Business and International (LB&I) Division provided additional guidance to examiners on what activities would be outside the scope of the Code Sec. 199 deduction (*LB&I-04-0315-001*).

### Other Business Deductions/Credits

**Installment obligations.** Proposed regulations incorporate the holding of Rev. Rul. 73-423 that requires recognition of gain on the disposition where the transferor of the obligation receives stock in satisfaction of the obligation; and also applies it to the receipt of a partnership interest (*NPRM REG-109187-11*).

**Abandoned securities.** Reversing the Tax Court, the Court of Appeals for the Fifth Circuit found that a taxpayer can claim an ordinary loss for abandoned securities, even though the securities were not worthless and could have been sold to another party (*Pilgrim's Pride Corp., 2015-1 USTC ¶50,211*).

**Compensation.** The IRS issued final regulations in 2015 to clarify the exception for

performance-based compensation from the deduction limits on compensation exceeding \$1 million (*TD 9716*).

**Marijuana expenses.** IRS Chief Counsel determined that a state excise tax on marijuana products is not technically a business expense and can be treated as a reduction in the amount realized on the sale of marijuana-related property (*CCA 201531016*). The Court of Appeals for the Ninth Circuit affirmed the Tax Court's denial of business deductions to a medical marijuana dispensary since the use and sale of marijuana remains prohibited under federal law (*Olive, July 9, 2015*).

## PARTNERSHIPS

*Partnerships continue to outpace other tax entities for doing business in a number of sectors. The IRS Statistics of Income Bulletin indicated that the number of partnerships and partners in the U.S. continued to increase. Those statistics showed partnerships filed over three million returns, representing more than 27 million partners. 2015 saw the IRS, with mixed success, trying to keep up.*

### Payment for Services

Proposed partnership regulations treat certain partnership arrangements as disguised

payments for services, rather than as an interest in the partnership (*NPRM REG-115452-14*). As a result, the income received from the disguised payments is taxed as ordinary income, rather than a distributive share of partnership income that could be capital gain.

**COMMENT.** *One technique that triggered these regulations was the use of "management fee waivers" by private equity funds.*

### Changing Interests

Final regulations under Code Sec. 706(d) addressed how to allocate partnership items among partners whose interests in the partnership change during the partnership's tax year (*TD 9728*). Among the changes, the final regulations set forth an expanded scope of the varying interest rule.

**COMMENT.** *New proposed regulations, issued together with the final regulations, would add additional "extraordinary items" (including performance of services), as well as broadening what may constitute an allocable cash-basis item and requiring a look-through rule for tiered partnerships (*NPRM REG-109370-10*).*

### Corporate Partner Deemed Exchange

Final, temporary and proposed regulations require a corporate partner of a partnership to recognize gain on the corporation's deemed exchange of appreciated property for its own stock using the partnership (*TD 9722, NPRM REG-149518-03*). The corporate partner recognizes gain at the time of any transaction with the economic effect of an exchange of appreciated property for the partner's stock.

### Mandatory Basis Reduction

The IRS issued proposed regulations that require corporations that engage in certain gain elimination transactions to reduce the basis of their corporate assets or to

## INFLATION ADJUSTMENTS

*Congress has made some, but not all, dollar amounts within various Tax Code provisions, subject to an inflation adjustment each year. Among the adjustments:*

- Social Security Wage Base at \$118,500 for 2015 and 2016 (*ssa.gov*);
- Inflation-adjusted tax brackets, standard deductions show slight rise for 2016 (*IR-2015-119, Rev. Proc. 2015-53*);
- The optional standard mileage rate for business drops from 57.5 cents per mile for 2015 to 54 cents per mile for 2016. The rate for medical and moving expenses drops from 23 cents to 19 cents per mile. (*IR-2015-137, Notice 2016-1*);
- The Applicable Federal Rates (AFRs), which are revised monthly, continued to hold steady at historic lows during 2015.

**Planning Tip:** With the Federal Reserve threatening several rounds of interest-rate increases in the future, predictions are that the AFRs will change as well. Low-interest rates, which have made certain AFR-based tax techniques that rely on present-value computations desirable, may also soon disappear for taxpayers who do not act quickly.

recognize gain (*NPRM REG-138759-14*). The regulations would also provide relief from basis reduction or gain recognition by allowing consolidated group members that are partners in the same partnership to aggregate their bases in stock distributed by the partnership.

### Publicly-Traded Partnerships

In 2015, the IRS lifted its nearly year-long pause in issuing private letter rulings on publicly traded partnerships (PTPs) (*IRS Statement, March 9*). The IRS followed up with guidance (*NPRM REG-132634-14*).

### Bankruptcy Discharge

The IRS nonacquiesced in several Tax Court decisions that allowed individual general partners to exclude their shares of the partnership's cancellation of debt (COD) income from each partner's gross income (*AOD 2015-1*).

## CORPORATIONS

*Although the main headline-grabbers in the corporate tax area for 2015 involved international issues (corporate inversions and proposals for a more globally-competitive U.S. tax system; see International Compliance, within this Briefing), major policy changes were seen taking shape in the Section 355 spinoff and consolidated return areas, as well as efforts by the IRS to be more accommodating in applying F reorg and Section 351 rules to current transactional situations.*

### Spinoffs

The IRS announced in 2015 that it would cease issuing private letter rulings on Code Sec. 355 spinoffs that raise tax avoidance concerns (*Notice 2015-59, Rev. Proc. 2015-43*). The new ruling policies apply to ruling requests received on or after September 14, 2015 and to distributions after that date.

**COMMENT.** *The IRS indicated that certain proposed spinoffs lack an adequate business purpose and would primarily serve as devices for the tax-free*

*distribution of investment assets, rather than assets of an active trade or business.*

**COMMENT.** *Effective generally for distributions on or after December 7, 2015 under the PATH Act, Code Sec. 355 will not apply to any distribution if either the distributing corporation or the controlled corporation is a real estate investment trust (REIT).*

### Final "F" Reorg Regs

The IRS released final regulations describing a corporate reorganization under Code Sec. 368(a)(1)(F) (an F reorg) (*TD 9739*). The final regulations describe six F reorg requirements that adopt the principle that the F reorganization is tested separately ("in the bubble") from all other transactions that take place in connection with only a "mere change" taking place.

**COMMENT.** *The final regulations also address outbound F reorgs.*

### Consolidated Groups

The IRS issued much-anticipated proposed regulations that would tighten the rules for reporting income and deductions that accrue on the day that a corporation joins or leaves a consolidated group (*NPRM REG-100400-14*). The regulations would revise the so-called "end of the day rule" and "next day rule" to clarify the reporting period. The regulations would also remove what is "properly allocable" to a particular period in favor of a bright-line rule.

### Sec. 351 Series Transactions

The IRS ruled that a series of prearranged corporate transactions will be analyzed so that some transactions are treated separately for tax purposes, while other transactions are collapsed and recast (*Rev. Rul. 2015-10*). At the same time, the IRS also ruled (*Rev. Rul. 2015-9*) each step of a prearranged series of transactions (a Sec. 351 transfer and a "D" reorganization) will be analyzed separately, even though the transactions are part of the same plan.

## INTERNATIONAL COMPLIANCE

*International compliance continued to grow in importance throughout 2015. A major focus was information reporting, as demonstrated by the Foreign Account Tax Compliance Act (FATCA), the offshore voluntary disclosure program (OVDP), and information exchanges with other countries. Treasury also took action to limit corporate inversions.*

### FATCA

The IRS and foreign tax authorities are moving ahead to implement FATCA's reporting and disclosure regime. The exchange of tax information between governments is taking place under the authority of intergovernmental agreements (IGAs) negotiated by Treasury with foreign jurisdictions.

**Implementation.** In September, the IRS began exchanging financial account information with foreign tax administrators (*IR-2015-111*). The IRS also added countries to the list of countries with which it automatically exchanges tax information on the amount of deposit interest paid to nonresident aliens (*Rev. Proc. 2015-50*).

**Reporting.** The IRS released 2015 updates of Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and instructions for Form 1042, to incorporate changes to reporting under FATCA. In an update to the Instructions for Form 8938, Statement of Specified Foreign Financial Assets, the IRS revised the reporting requirements for certain foreign retirement, pension and savings accounts so that they need not be reported.

### FBAR Administration

Some IRS operating divisions issued interim guidance to improve the administration of the IRS's FBAR (Report of Foreign Bank and Financial Accounts) compliance program (*SBSE-04-0515-0025, Interim Guidance for FBAR Penalties*). The procedures are designed to ensure consistent and effective penalty administration.

**COMMENT.** In December 2014, FinCEN issued Notice 2014-1 extending the filing date for the FBAR for certain individuals with signature authority over but no financial interest in one or more foreign financial accounts to June 30, 2016 (FinCEN Notice 2014-1). In December 2015, FinCEN further extended the filing due date to April 15, 2017 (FinCEN Notice 2015-1), for individuals whose filing due date for reporting signature authority was previously extended by Notice 2014-1.

## OVDP

The IRS will continue its offshore voluntary disclosure program (OVDP) for an indefinite period (IR-2015-9). Disclosures under the related Streamlined Filing Compliance Program also continue to increase (IR-2015-116).

**IMPACT.** Under the OVDP, taxpayers enter into a closing agreement with the IRS to disclose their accounts and pay back taxes and interest, plus a penalty. In return, taxpayers avoid criminal prosecution.

## Inversions

The IRS issued final regulations that affirm the government's tight standards for determining whether a corporate group has substantial business activities in a foreign country (TD 9720). The final regs adopt without substantial changes the temporary regulations.

**COMMENT.** Treasury and the IRS also intend to take additional steps to curb corporate inversions (Notice 2015-79, TDNR JL-10281). The measures are designed to "limit the ability of U.S. companies to combine with foreign entities when the new foreign parent is located in a 'third country,' limit the ability of U.S. companies to inflate the new foreign parent corporation's size and avoid the 80-percent rule, and make other regulatory changes."

## Transfers

The IRS announced that it will issue regulations to prevent U.S. taxpayers from

## 2015 TAX DEVELOPMENTS—BY THE NUMBERS

The number of tax developments in 2015 was much greater than can be highlighted in this Tax Briefing. Developments here were selected based upon their impact on a broad cross-section of taxpayers, but this selection is not comprehensive. The following chart lists the number of 2015 tax developments reported by Wolters Kluwer Tax & Accounting over the past year in each of the following categories:

Tax Court Regular, Memo & Summary Decisions	361
District and Appellate Court Decisions	481
Treasury Regulations (Proposed & Final)	56
IRS Notices, Revenue Rulings & Procedures	188
IRS Letter Rulings, TAMs, CCAs	924
IRS Announcements & News Releases	175

escaping taxation on appreciated property and intangible assets by transferring the property to foreign partners who are not subject to U.S. taxation (Notice 2015-54). The regulations will require that the U.S. transferor recognize income on the transfer immediately or on a deferred basis.

**Treatment of intangible assets.** The IRS issued proposed regulations that would tax certain transfers of intangible property to foreign corporations that currently are not taxed (NPRM REG-139483-13). The IRS also removed exclusions for foreign goodwill and going concern value.

**Transfers from expatriates.** The IRS issued proposed regulations on a new tax under Code Sec. 2801 that applies to transfers of property from individuals who abandoned U.S. citizenship or residency and who later make a gift or bequest to U.S. taxpayers (individuals and domestic trusts) (NPRM REG-112997-10.)

## BEPS

The Organisation for Economic Co-operation and Development (OECD) released its final package of measures to address base erosion and profit shifting (BEPS) activities. The BEPS project aims to develop proposals to close gaps in international tax rules that allow corporate profits to escape taxation

through double non-taxation, or to be shifted to low tax countries where there is little economic activity.

**Model Income Tax Treaty.** Treasury issued proposed revisions to the U.S. Model Income Tax Convention to address base erosion and profit-shifting (BEPS) activities and other tax abuses by multinational corporations (MNCs) (TDNR JL-10057). The proposed revisions reflect the U.S.'s position on ways to address BEPS in the context of allocating appropriate taxing rights between the U.S. and its treaty partners.

**Country-by-country reporting.** The IRS issued proposed regulations to implement country-by-country reporting for multinational enterprises with a U.S. parent (NPRM REG-109822-15). The IRS believes that the reporting will improve tax enforcement of transfer pricing practices.

## International Practice Units

LB&I posted several Practice Units for agency examiners. Practice Units serve as both job aids and training materials on international tax issues.

## Competent Authority Assistance

LB&I issued new procedures for U.S. taxpayers to request assistance from the U.S.

Competent Authority (USCA) to address double taxation and other issues of tax treatment under U.S. tax treaties with other countries (*Rev. Proc. 2015-40*).

### Controlled Foreign Corporations

The IRS issued temporary and final regulations that tighten the rules requiring current taxation of controlled foreign corporations (CFCs) (*TD 9733*). The regulations expand the definition of taxable U.S. property to encompass certain partnership transactions, and tighten the rules that exclude rent and royalty income from Subpart F income.

The IRS issued proposed regulations to extend the Subpart F rules to transactions involving a CFC and a foreign partnership that has one or more partners who are U.S. shareholders of the CFC (*NPRM REG-155164-09*). The rules would impose taxation by treating an obligation of the foreign partnership as an obligation of its U.S. partners.

### PFICs

The IRS released proposed regulations intended to clarify when foreign insurance company income is excluded from the definition of passive income under the passive foreign investment company (PFIC) rules (*NPRM REG-108214-15*).

### Dividend Equivalents

The IRS issued final, temporary and proposed regulations that provide guidance on financial instruments that are treated as paying dividend equivalents (*TD 9734, NPRM REG-127895-14*).

**COMMENT.** *According to the IRS, some taxpayers were investing in instruments that paid substitute dividends based on U.S. securities. Congress enacted Code Sec. 871(m) to ensure that withholding would apply to these dividend equivalents.*

### Repatriation

The Court of Appeals for the Fifth Circuit held that repatriation benefits should not be reduced by deemed indebtedness created after the year of repatriation (*BMC Software, Inc.*, CA-5, March 13, 2015). The appeals court concluded that Code Sec. 965(b)(3), which reduces the dividends-received deduction for increases in related-party debt, did not apply to the deemed increase in debt.

### Foreign Tax Credits

The IRS issued final regulations on foreign tax credit splitting events, just as temporary regulations were set to expire (*TD 9710*). The final regulations maintain the same conceptual framework of the temporary regulations.

### IDENTITY THEFT

*2015 saw a rising number of identity theft victims as well as increased efforts by the IRS to interdict criminals*

### 2016 Tax Season

The IRS announced it will have new measures in time for the 2016 filing season to curb tax-related identity theft and refund fraud (*IR-2015-117, FS-2015-23, FS-2015-24*). At the same time, the IRS also encouraged return preparers to create a security plan to safeguard taxpayer information from theft by criminals.

### Joint Efforts

IRS Commissioner John Koskinen unveiled in 2015 a new joint effort with state tax administrators and companies handling tax preparation and software to combat identity theft refund fraud (*IR-2015-87*).

### Limited Form W-2 Automatic Extensions

To curb identity theft, final and temporary regulations remove the automatic

extension of time to file most forms in the W-2 series (*TD 9730, NPRM REG-132075-14*). Effective for the 2017 filing season, taxpayers will be allowed only a one-time 30 day non-automatic extension. Further, the IRS issued proposed regulations to remove automatic extensions for many information returns outside the Form W-2 series.

## TAX ADMINISTRATION

### Private Delivery Services

The IRS updated its list of designated private delivery services (*Notice 2015-38*) that taxpayers may use to submit documents to the agency while qualifying for the “timely mailing treated as timely filing rule.”

### Disaster Relief

The IRS continued to use its authority to delay filing and payment of certain tax obligations for those taxpayers and their advisors who were affected by disasters during the year (*irs.gov*). From the wildfires in California, to the severe drought in Texas, the unprecedented snows in Massachusetts and other disasters, the IRS accommodated these victims throughout 2015.

### Whistleblowers

Whistleblower reform legislation does not require that a whistleblower first bring his or her information to the IRS Whistleblower Office to be eligible for an award, the Tax Court held in consolidated cases (*Whistleblower 21277-13W, 144 TC No. 15*).

### Refund Claims

Final regulations clarify the proper place to file a claim for credit or refund with the IRS (*TD 9727*). The IRS declined to extend the regulations to protective and informal refund claims and left unchanged the prohibition on refunds on equitable grounds.