

Status of Key Outstanding Regulations Related to TCJA – Potential 2020 Action

Code Section	Potential Guidance	Prior Guidance	Notes
163(j) <i>Interest expense</i>	Final regulations	Final regulations: released 7/28/2020 Proposed regulations: 7/28/2020	Final §163(j) regulations (finalizing proposed regulations published on 12/28/2018) were issued the same day as the most recent proposed regulations. Those proposed regulations included new rules relating to modifications to the definition of business interest expense, the application of §163(j) to partnerships, and the application of §163(j) to CFCs. As the comment period closed on 11/2/2020, it is unlikely that any of those rules will be finalized by the end of 2020.
245A <i>Dividends received deduction</i>	Final regulations (coordination rules) Proposed regulations (general rules)	Final regulations: released 8/21/2020 Proposed regulations: 8/21/2020	Final regulations (finalizing proposed regulations published on 6/18/2019 and removing temporary regulations) related to extraordinary dispositions and extraordinary reductions were issued the same day as the most recent proposed regulations. Those proposed regulations coordinate the extraordinary disposition rules under §245A with the disqualified basis rule under §951A. While the comment period recently closed on 10/26/20, they may still be finalized by the end of this year. Separately, forthcoming proposed regulations are expected to relate to the general provisions of §245A, but may not be issued by year-end.

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951A <i>GILTI high-tax exclusion / 954(b)(4) subpart F high-tax exception</i>	Final regulations	Final regulations: released 7/20/2020 Proposed regulations: 7/20/2020	Final GILTI high-tax exclusion regulations (finalizing proposed regulations published on 6/21/2019) were issued the same day as the most recent proposed regulations. Those proposed regulations included rules to combine the GILTI high-tax exclusion and the subpart F high-tax exception into a single election generally based on the GILTI high-tax exclusion rules. As the comment period closed on 9/21/2020, it is unclear whether any of those rules will be finalized by the end of 2020.
245A, 861, 901, 903, 904, 905 <i>Foreign tax credits</i>	Final regulations	Final regulations: released 9/29/2020 Proposed regulations: 9/29/2020	Final FTC regulations (finalizing proposed regulations published on 12/17/2019) were issued the same day as the most recent proposed regulations. Those proposed regulations included rules for allocating and apportioning certain expenses and foreign taxes, modifications to the definition of a creditable foreign tax, and modifications to the definition of financial services entities. As the comment period does not close until February 10, 2021, these rules will not be finalized in 2020.
959, 961 <i>PTEP and basis</i>	Proposed regulations	Notice 2019-01 (released 12/14/2018)	The Notice also withdrew proposed regulations issued in 2006. Proposed regulations may not be issued until early 2021.

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958(b) <i>Downward attribution</i>	Final regulations	Final regulations: released 9/21/2020 Proposed regulations: 9/21/2020	Final downward attributions regulations (finalizing proposed regulations published on 10/2/2019) were issued the same day as the most recent proposed regulations. Those proposed regulations included rules related to the modification of §958(b)(4) by narrowing the scope of foreign corporations that are treated as CFCs for purposes of the look-through rule under §954(b)(6). As the comment period closes on 11/20/2020, it is unlikely that any of those rules will be finalized by the end of 2020.
1297 <i>PFIC insurance exception</i>	Final regulations: To OIRA 10/21/2020 Proposed regulations: To OIRA 10/21/2020	Proposed regulations: 7/11/2019	Proposed regulations also included other non-TCJA related rules.
1061 <i>Carried interest</i>	Final regulations	Proposed regulations: 7/31/2020	TCJA added §1061 to recharacterize certain net long-term capital gain with respect to applicable partnership interests as short-term capital gain. The proposed regulations provided guidance on TCJA changes.
162(m) <i>Deduction limitation for employee remuneration in excess of \$1M</i>	Final regulations	Notice 2018-68 (8/20/2018) Proposed regulations: 12/20/2019	TCJA amended §162(m) to (i) revise the definition of covered employee; (ii) expand the definition of publicly held corporation; and (iii) eliminate the exceptions for commissions and performance-based compensation. Notice 2018-68 and the proposed regulations provided guidance on TCJA

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			changes and grandfather rules.
274 <i>Nondeductible parking expenses</i>	Final regulations	Proposed regulations: 6/19/2020	TCJA amended §274 by disallowing a deduction for the expense of any qualified transportation fringe (QTF) as defined in §132(f) provided to an employee of a taxpayer. The proposed regulations provided guidance on TCJA changes.
162(f) <i>Deduction for fines, penalties, and other amounts</i>	Final regulations	Proposed regulations: 5/12/2020	TCJA amended §162(f) to deny a deduction for amounts paid in relation to the violation of any law or governmental investigations into potential law violations (subject to certain exceptions). The proposed regulations provided guidance on TCJA changes.
199A(g) <i>Domestic production activities deduction for cooperatives</i>	Final regulations	Proposed regulations: 6/19/2019	TCJA added §199A(g) to provide specified cooperatives a deduction that is based on the former §199 deduction that was repealed by TCJA. The proposed regulations provided guidance on TCJA changes.
512 <i>Unrelated business taxable income</i>	Final regulations	Proposed regulations: 4/23/2020	TCJA added §512(a)(6) to amend the UBTI calculation for exempt organizations with more than one unrelated trade or business. The proposed regulations provided guidance on TCJA changes.
1031 <i>Definition of “real property”</i>	Final regulations: To OIRA 10/28/2020	Proposed regulations: 6/11/2020	TCJA amended §1031 to only apply to real property. The proposed regulations provided guidance on TCJA changes.

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1400Z <i>Foreign investors in qualified opportunity zones</i>	Proposed regulations		The forthcoming proposed regulations are expected to address eligibility requirements for foreign persons eligible to defer gain under §1400Z-2(a).
45Q <i>Credit for carbon oxide sequestration (non-TCJA)</i>	Final regulations	Proposed regulations: 5/28/2020	The proposed regulations provided guidance regarding the carbon oxide sequestration credit under §45Q and how such a credit may be recaptured.
861 <i>Classification of cloud transactions and transactions involving digital content (non-TCJA)</i>	Final regulations	Proposed regulations: 8/14/2019	The proposed regulations provided guidance on character and source of income for certain cloud computing and other transactions, including those involving digital content.