

---

# *Notice 2016-52 details Section 909 regulations for FTC splitting events arising from foreign-initiated adjustments such as EU State aid*

September 19, 2016

---

## ***In brief***

On September 15, 2016, Treasury and the IRS issued [Notice 2016-52](#) (the Notice), announcing future Section 909 regulations addressing situations in which foreign tax credit (FTC) splitter arrangements arise due to foreign-initiated adjustments to which Section 905(c) would apply. The Notice preamble specifically references retroactive payments for prior-year taxes required under the European Union (EU) State aid rules as adjustments that could raise this issue. However, the future regulations announced by the Notice could apply to any foreign-initiated adjustment to a taxpayer's foreign tax liability.

The Notice adds two new types of splitter arrangements to the exclusive list set forth in the current regulations under Section 909: (1) arrangements arising from the application of Section 905(c) to successor entities, and (2) arrangements arising from distributions made before payment of additional tax required by foreign-initiated adjustments. Treasury and the IRS are concerned that taxpayers anticipating a foreign-initiated adjustment may attempt to change their ownership structure or cause a Section 902 corporation to make an extraordinary distribution so that a subsequent foreign tax payment will create a high-tax post-1986 pool of earnings and profits (E&P) that can generate substantial deemed-paid foreign taxes without the payment of US income tax on the E&P to which the taxes relate. The new rules to be included in future regulations are to apply to foreign income taxes paid on or after September 15, 2016.

---

## ***In detail***

### ***Background***

Subject to Section 904, Section 901 provides that a US taxpayer may elect to claim a credit for foreign income, war profits, or excess profits taxes (foreign taxes) paid to a foreign country or possession of the United States. Section 902 provides

that a US corporation may claim an indirect (or deemed paid) credit for foreign taxes paid by a foreign corporation from which it receives a dividend, if certain ownership requirements are met. Section 960 treats certain inclusions in gross income of a US person under Section

951 as a dividend for purposes of Section 902, thereby allowing an indirect credit to a US corporation meeting the Section 902 ownership requirements.

If a taxpayer's foreign tax liability for a prior year changes, Section 905(c)

generally requires the IRS to redetermine the amount of US federal income tax for the years affected. For Section 902 or Section 960 deemed-paid foreign taxes, however, Section 905(c) authorizes a prospective adjustment to the foreign corporation's post-1986 foreign E&P and tax pools in lieu of redetermining the US shareholder's US federal income tax for the prior taxable year. If accrued foreign taxes of a Section 902 corporation are paid more than two years after the close of the year to which such taxes relate, the taxes are taken into account in the tax year when the foreign taxes are paid. Section 905(c) and its regulations do not address how a taxpayer should account for additional payments of foreign tax for a Section 902 corporation's earnings if, as a result of a liquidation, reorganization, or other corporate transaction, the person that makes the additional payment of tax pursuant to a foreign-initiated adjustment is different from the Section 902 corporation that would have paid the tax had it been paid in the year to which the additional tax relates.

**Observation:** There has been considerable controversy as to whether payments for prior-year foreign tax should be taken into account for FTC purposes in the year paid or the year to which the taxes relate. In recent litigation the Federal Circuit affirmed the IRS position that such foreign taxes are taken into account for purposes of claiming a refund of US income tax, and that the 10-year FTC limitation period begins with the tax year to which the foreign taxes relate. See *Albemarle & Subs. v. Comm'r*, 797 F.3d 1011 (Fed. Cir., 2015), *reh'g denied*, 805 F.3d 1060 (2015).

Section 909(a) provides that, if there is an FTC 'splitting event' with respect to a foreign income tax that a taxpayer

paid or accrued, such tax will not be taken into account before the tax year when the taxpayer takes the related income into account. Similarly, Section 909(b) provides that with respect to a splitting event of foreign income tax that a Section 902 corporation (as defined in Section 909) paid or accrued, such tax is not taken into account for purposes of Sections 902, 960 or 964(a) before the year in which the related income is taken into account for US federal income tax purposes by the Section 902 corporation or a US corporation that meets the ownership requirements of Section 902(a) or (b) with respect to such Section 902 corporation. Section 909(d) and the regulations provide that a splitting event occurs if the related income was, is, or will be taken into account by a 'covered person' with respect to the payor. Treasury and the IRS issued proposed and temporary regulations in 2012 and final regulations in 2015 that implement the statute, provide an exclusive list of splitter arrangements, and identify the split taxes and related income for each such arrangement. Under the current final regulations, the exclusive list includes splitter arrangements involving (i) reverse hybrids, (ii) loss sharing within a group, (iii) hybrid instruments, and (iv) partnership inter-branch payments.

The Notice adds two new types of splitter arrangements to the exclusive list in the Section 909 regulations.

#### ***Splitter arrangements arising from applying Section 905(c) to successor entities***

##### ***New rules***

The first new splitter arrangement (section 3.01 of the Notice) addresses changes in ownership structures that result in an FTC splitting event occasioned by a foreign-initiated tax

adjustment. In general, the FTC splitting event occurs when a Section 902 corporation is required to pay foreign taxes (payor) with respect to a prior taxable year (relation-back year) as a result of a foreign-initiated adjustment, where the payor would not have been the technical taxpayer (*i.e.*, payor) for purposes of the US FTC regime if the foreign taxes had been paid in the relation-back year.

Specifically, the new rules provide that a splitter arrangement arises when a Section 902 corporation pays 'covered taxes' during a tax year (the 'splitter year') as a result of a 'covered transaction.' For this purpose, 'covered taxes' are foreign income taxes that (1) result from a 'specified foreign-initiated adjustment' to the amount of foreign tax accrued for prior tax years ('relation-back years'); and (2) are taken into account (under Section 905(c)) by adjusting the payor's E&P and tax pools in the tax year the taxes are paid. A 'specified foreign-initiated adjustment' is a foreign-initiated adjustment (or series of related adjustments) that results in an additional foreign income tax liability that exceeds \$10 million (regardless of when or how paid).

**Observation:** The Notice does not explain why Treasury and the IRS set a \$10 million threshold with respect to foreign-initiated adjustments. Presumably, the threshold was included for administrative purposes. Further, the Notice does not elaborate on the meaning of the phrase "or series of related adjustments to more than one taxable year" in the definition of a foreign-initiated adjustment. The use of this phrase raises a number of issues, such as whether foreign audits for different taxable years that are concluded in different taxable years may be grouped for purposes of determining the \$10 million threshold. Note that the issues addressed by the new rules

arise in large part from the Section 905(c) prospective adjustment rules that the Treasury and IRS introduced in 1988.

A ‘covered transaction’ generally is any transaction or series of related transactions that meet both of the following conditions:

(1) The transaction(s) result(s) in covered taxes being paid by a Section 902 corporation (the successor entity) that would not have been the payor of the taxes in the relation-back year (the predecessor entity); **and**

(2) The predecessor entity (or a successor) (i) was a covered person with respect to the payor immediately before the transaction(s), or (ii) if the payor did not exist immediately before the transaction(s), the predecessor entity (or a successor) was a covered person with respect to the payor immediately after the transaction(s).

There are two exceptions provided to the definition of a ‘covered transaction:’ (1) if the transaction(s) result(s) in a Section 381(c)(2) transfer of the predecessor entity’s E&P to the payor, and (2) if the taxpayer can demonstrate, by clear and convincing evidence, that the transaction(s) were not structured with a principal purpose of separating the covered taxes from the predecessor entity’s E&P to which the covered taxes relate.

‘Related income’ for this purpose equals the sum of the portions of the predecessor entity’s E&P for each of the relation-back years that are all of the following:

(1) described in Section 316(a)(2) (‘section 316(a)(2) earnings’)

(2) in the separate category or categories to which covered tax is assigned and

(3) attributable to *all* activities that gave rise to income (computed under foreign law) included in the foreign tax base that was adjusted pursuant to the specified foreign-initiated adjustment (adjusted foreign tax base). This is regardless of which particular activities gave rise to the adjustment.

**Observation:** The language of this rule appears to cause all income in the relevant foreign tax base to become related income, not just the additional income affected by the foreign-initiated tax adjustment. For example, if the foreign tax was originally imposed on \$1000, but an adjustment added \$100 to that amount, the rule appears to require the entire \$1100 tax base to be taken into account. There is some question as to whether this harsh result was actually intended.

The Notice states that if foreign income tax is imposed on the combined income of two or more entities for FTC purposes (including disregarded entities), the principles of the above rules will apply on an entity-by-entity basis. Further, the principles of Treas. Reg. sec. 1.909-6(d) apply to determine the amount of related income of the predecessor entity that is transferred to other persons or taken into account by a Section 902 shareholder or the payor Section 902 corporation in any relation-back year or subsequent year before the splitter year.

In the case of a splitter arrangement as described above, ‘split taxes’ are (i) the amount of covered taxes relating to the predecessor entity’s related income that was not transferred to the payor in the covered transaction, (ii) reduced by the ratable portion of the covered taxes that, under the principles of Treas. Reg. sec. 1.909-6(e)(4), would no longer be treated as split taxes because a Section 902

shareholder or the payor Section 902 corporation took the related income into account prior to the splitter year.

**Observation:** The scope of the term ‘covered transaction’ is broad, and may include many common restructuring transactions, such as a Section 351 contribution or other transfer (*e.g.*, sale), of a foreign disregarded entity from one Section 902 corporation to another. Further, by including the standards of ‘a principal purpose’ and ‘clear and convincing evidence,’ the new rules appear to intend setting a high bar for a taxpayer to negate the existence of a ‘covered transaction.’ In this regard, taxpayers will need to consider when the transaction was planned and/or undertaken in relation to the foreign tax audit process and timing of the foreign-initiated adjustment that results in the payment of additional foreign income tax.

### Example

The Notice provides the following detailed example illustrating the rules described above. All dollar amounts in this example are in millions.

#### (i) Facts.

- USP, a US corporation, wholly owns CFC1.
- CFC1 wholly owns CFC2.
- CFC1 and CFC2 are foreign corporations resident in Country X that were formed at the beginning of Year 1 and use the US dollar as their functional currency.
- CFC1 wholly owns DE, a Country X disregarded entity treated as a corporation for Country X tax purposes.
- CFC1 does not earn any income or pay any foreign taxes except through DE.

- For each of Years 1 through 5, DE earns \$200 of E&P for which it accrues and pays no foreign tax. CFC1's post-1986 E&P pool at the end of Year 5 is \$1,000, and all the E&P is general category income.
- In Year 6, DE earns no income and CFC1 transfers all of its interest in DE to CFC2 in a Section 351 transaction.
- In Year 8, after exhausting all effective and practical remedies to minimize its liability for Country X tax, DE pays \$200 in Country X foreign income taxes to settle a series of related adjustments proposed by Country X for Years 1 through 5.

(ii) Splitter arrangement.

- CFC1's transfer of its interest in DE to CFC2 in Year 6 and the payment of foreign income taxes by CFC2 through DE in Year 8 will give rise to a splitter arrangement under the rules described above -- unless USP satisfies the 'principal purpose' exception.
- The \$200 of foreign income taxes paid by CFC2 are covered taxes because (1) they are added to CFC2's Year 8 post-1986 tax pool under Section 905(c), and (2) they result from a specified foreign-initiated adjustment for relation-back years.
- The transfer of CFC1's interest in DE to CFC2 is a covered transaction, because (1) it resulted in CFC2 (a Section 902 corporation) being the payor of the covered taxes and CFC1 would have been the payor of the covered taxes if they were paid or accrued in the relation-back years; (2) immediately before the transfer,

CFC1 was a covered person with respect to CFC2; and (3) the transfer did not result in a Section 381(c)(2) transfer of CFC1's E&P to CFC2.

- There would be an exception if USP could establish by clear and convincing evidence that the transfer was not structured with a principal purpose of separating covered taxes from CFC1's related post-1986 E&P.

(iii) Related income.

- The related income is \$1,000, the sum of CFC1's Section 316(a)(2) E&P for each of Years 1 through 5 attributable to DE's activities that gave rise to income (computed under foreign law) included in DE's adjusted foreign tax base.
- Because CFC1 made no distributions before Year 8, the full amount of the related income remains in CFC1's E&P pool at the beginning of Year 8, the splitter year.

(iv) Split taxes. The split taxes equal \$200, the amount of the covered taxes CFC2 paid.

**Observation:** The Treasury and IRS apparently take the view that, when CFC2 (due to a Section 351 transaction) pays additional foreign tax pursuant to a foreign audit adjustment that relates to prior years of CFC1 (the Section 351 transferor), the prospective (not retroactive) adjustment rule applies -- and it applies to CFC2, not CFC1.

***Splitter arrangements arising from distributions made before the payment of additional tax pursuant to foreign-initiated adjustments***

*New rules*

The Notice observes in section 3.02 that taxpayers could achieve a result similar to the arrangement described above by using distributions to move post-1986 E&P from one Section 902 corporation to another before the first such corporation makes a tax payment under a specified foreign-initiated adjustment. In such a case, the payor corporation first takes into account the E&P to which the tax payment relates but, due to the distributions, a covered person that is a Section 902 corporation ('Section 902 covered person') takes the E&P into account before the first corporation (*i.e.*, the payor corporation) pays the tax.

In regard to this fact pattern, the future regulations will provide that a splitter arrangement results when a Section 902 corporation pays covered taxes during the splitter year, and the payor (or a predecessor) has made a 'covered distribution,' defined as any distribution with respect to the payor's stock to the extent that the distribution:

- (1) occurred in a payor's tax year to which the covered taxes relate or any subsequent year up to and including the year immediately before the year in which the covered taxes are paid
- (2) resulted in a distribution or allocation of the payor's E&P to a Section 902 covered person (other than E&P attributable to effectively-connected income or other income subject to US federal income tax in the payor's hands) and
- (3) was made with a principal purpose of reducing the payor's E&P to which

the covered taxes relate in advance of the payment of covered taxes.

Under the Notice, a principal purpose for the distribution is presumed if the sum of all covered distributions (without regard to the principal purpose requirement) is greater than 50% of (i) the payor's E&P at the beginning of the payor's tax year when the covered tax is paid, and (ii) all covered distributions (without regard to the principal purpose requirement).

However, a taxpayer can overcome this presumption with clear and convincing evidence that a principal purpose of the distribution was not to reduce the payor's E&P that included the E&P to which the covered taxes relate in advance of the payment of the covered taxes. The Notice suggests one way would be to demonstrate that the distributions were consistent with the payor's pattern of distributions before the taxpayer reasonably anticipated the specified foreign-initiated adjustment. Further, the Notice provides a rule that if a distribution may be considered paid from an E&P pool including both E&P to which the covered taxes relate and E&P that is not related to the covered taxes, a taxpayer may not rebut the presumption by claiming that the distribution reduced only the unrelated earnings.

In this type of splitter arrangement, determining 'related income' first requires determining the 'initial related income' in the payor's hands. The 'initial related income' is the sum of the payor's E&P for each of the relation-back years that, consistent with the definition used for Section 905(c) related splitter arrangements, are (i) Section 316(a)(2) earnings, (ii) in the separate category or categories to which covered tax is assigned, and (iii) attributable to all activities that gave rise to income (computed under

foreign law) included in the adjusted foreign tax base, regardless of which particular activities gave rise to the adjustment. Further, if foreign income tax is imposed on the combined of two or more entities (including disregarded entities), these rules will apply on an entity-by-entity basis.

Importantly, each covered distribution will be treated as resulting in a distribution of initial related income to the recipient on a pro rata basis under Treas. Reg. sec.1.909-6(d), and the recipient of a covered distribution is treated as having taken into account 'related income' in the tax year in which the covered distribution was made. Further, the same pro rata rules apply to determine the amount of the covered distribution recipient's related income that is transferred to other persons or taken into account by a Section 902 shareholder (or payor Section 902 corporation) after the covered distribution was made, but in a tax year before the splitter year.

In this type of splitter arrangement, the 'split taxes' are the covered taxes multiplied by a ratio that is based on the amount of the initial related income that has been distributed to another Section 902 corporation in a tax year prior to the splitter year, and not otherwise taken into account by a Section 902 shareholder (or the payor Section 902 corporation). Specifically, the numerator of the ratio is the total amount of related income taken into account by a distributee as of the beginning of the splitter year (reduced for any amounts taken into account before the splitter year by a Section 902 shareholder or payor Section 902 corporation), and the denominator is the payor's (or any predecessor corporation's) initial related income.

**Observation:** The Notice presumes that a covered distribution was undertaken with a principal purpose of reducing the payor's E&P to which the covered taxes relate in advance of the payment of covered taxes if the sum of all covered distributions (without regard to the principal purpose requirement) is greater than 50% of (i) the payor's E&P at the beginning of the payor's tax year when the covered tax is paid, and (ii) all covered distributions (without regard to the principal purpose requirement). The Notice does not elaborate on why a 50% threshold was used or how the distribution of a lesser percentage (e.g., 40%) will be treated under the future regulations. The Notice does provide helpful guidance, however, by stating that a taxpayer may be able rebut the presumption by demonstrating a pattern of past distributions by the Section 902 corporation. Notice 2016-52 does not address situations involving a decrease in E&P.

The Notice provides two examples to illustrate the rules described in section 3.02. All dollar amounts in these examples are in millions.

*Example 1*

(i) Facts

- USP wholly owns CFC1.
- CFC1 wholly owns CFC2.
- CFC1 and CFC2 are foreign corporations resident in Country X that were formed at the beginning of Year 1 and use the US dollar as their functional currency.
- For each of Years 1 through 9, CFC2 earns \$100 of E&P for which it does not accrue or pay any foreign income tax.
- In Year 10, CFC2 earns \$120 of E&P for which it accrues and pays

\$20 of foreign income tax. Its E&P pool at the end of Year 10 is \$1,000  $(\$100 \times 9) + \$120 - \$20$ .

- On July 1, Year 11 (a year to which CFC look-through applies), CFC2 distributes \$750 of its accumulated E&P to CFC1. CFC1's \$750 of dividend income does not result in an income inclusion to USP.
- In Year 12, after having exhausted all available and practical remedies to minimize its liability for Country X tax, CFC2 pays \$20 of foreign income tax to Country X for each of Years 1 through 9 to settle related Country X audit adjustments.
- Under Section 905(c), CFC2 adds the \$180 of additional Years 1 through 9 tax to its post-1986 tax pool in Year 12. CFC2 does not earn any other income or pay any other foreign tax in Years 11 and 12.
- CFC2's E&P pool at the beginning of Year 12 amounts to \$250  $(\$1,000 - \$750)$ .

(ii) Splitter arrangement

- The \$750 distribution to CFC1 in Year 11 and the \$180 payment of foreign income taxes in Year 12 will give rise to a splitter arrangement. There is an exception if USP rebuts the presumption that the distribution in Year 11 was made with a principal purpose of reducing CFC2's E&P in advance of the \$180 payment.
- The \$180 foreign tax payment results in covered taxes because (1) that amount is added to CFC2's tax pool in Year 12 under Section 905(c), and (2) it results from a specified foreign-initiated adjustment for relation-back years (i.e., Years 1-9). The \$20 of foreign income taxes previously paid for

Year 10 are not covered taxes because they did not result from a foreign-initiated adjustment.

- Unless USP establishes by clear and convincing evidence that the \$750 distribution in Year 11 was not made with a principal purpose to reduce CFC2's E&P in advance of the covered tax payment, the distribution is a covered distribution because it (1) occurred in or after the relation-back years for the covered taxes, and before Year 12, when the covered taxes were paid, (2) resulted in a distribution of \$750 of CFC2's E&P to CFC1, a Section 902 corporation that is a Section 902 covered person with respect to CFC2, and (3) is presumed to have a principal purpose to reduce CFC2's E&P in advance of the covered tax payment because it is more than 50% of the sum of CFC2's E&P at the beginning of Year 12 plus the distribution  $(\$750 > 0.50 \times (\$250 + \$750))$ .

(iii) Related income

- The initial related income in CFC2's hands is \$900 (the Section 316(a)(2) earnings for Years 1 through 9), all of which were attributable to activities that gave rise to income included in the CFC2's adjusted foreign tax base.
- The Year 11 covered distribution of \$750 results in a pro rata distribution of initial related income of \$675  $(\$750 \times (\$900 / \$1000))$ . Therefore, CFC1 is treated as taking into account related income equal to \$675 in Year 11, the year of the covered distribution.
- Because CFC1 made no distributions in Year 11, the full

amount of the related income remains in CFC1's E&P pool at the beginning of Year 12, the splitter year.

(iv) Split taxes

- The split taxes equal the covered taxes multiplied by a ratio, the numerator of which is the total amount of related income at the beginning of Year 12, and the denominator of which is the initial related income. The final amount of split taxes is \$135  $(\$180 \times (\$675 / \$900))$ .

*Example 2*

(i) Facts

- The facts are the same as in Example 1, except that USP wholly owns CFC3, which wholly owns CFC1. CFC3 is a foreign corporation resident in Country X.
- In Year 11 (a year to which CFC look-through applies), CFC1 distributes \$300 to CFC3, which does not result in an income inclusion to USP.

(ii) Result

- CFC1 made a distribution of \$300 to CFC3 in Year 11, and CFC1's \$750 of E&P consisted of related income and other income. CFC1 is treated as having distributed \$270  $(\$300 \times (\$675 / \$750))$  of related income to CFC3.
- Thus, at the beginning of Year 12, the year in which the covered taxes are paid, CFC3 has \$270 of related income and CFC1 has \$405 of related income.
- The amount of split taxes remains \$135.

### **Conforming revision**

Because the Section 909 regulations provide for different treatment of pre-2011 taxes than post-2010 taxes, Notice 2016-52 states that a conforming revision will be made to the existing regulations. Specifically, the future regulation will revise Treas. Reg. sec. 1.909-6(g)(3) to include the two new types of splitter arrangements and ensure that covered taxes paid under these arrangements are not considered pre-2011 taxes.

### **Timeline**

The new rules apply to foreign income taxes paid on or after September 15, 2016. The Notice states that similar rules will apply to taxpayers claiming a Section 901 direct FTC for taxes paid by a US person pursuant to a foreign-initiated adjustment to a Section 902 corporation's tax liability.

Notice 2016-52 requests comments on these rules. Specifically, the Treasury and IRS seek comments on whether the transactions described in the Notice would be more appropriately addressed under Section 905(c) providing that additional foreign tax payments be accounted for through adjustments to the tax and E&P pools of Section 902 corporations that are not the same entity as the payor of the tax.

The Notice also solicits comments on whether (and what kind of) an objective test, rather than a subjective test based on taxpayer intent, should be used to determine when these transactions are treated as splitter arrangements. The deadline for all comments is December 14, 2016.

**Observation:** Treasury and the IRS issued Notice 2016-52 out of a concern of certain tax planning that may be undertaken when a taxpayer anticipates a foreign-initiated adjustment to its foreign tax liability. This planning may have become more

visible in the wake of the EU's recent activity in several State aid investigations, which may result in significant amounts of foreign taxes being paid by certain US taxpayers. In this regard, the Notice expresses no opinion on the creditability of any additional foreign taxes that may be paid as a result of those investigations, and expresses no opinion on the application of current law to foreign taxes paid prior to September 15, 2016, but after transactions described in the Notice had been undertaken.

In light of the Notice, it is worth observing that final regulations under Section 905(c) have still not been issued, even though – as Notice 2016-52 itself observes – the 2007 temporary regulations expired six years ago and exist only in proposed form at this time. As stated in the Notice, the Section 905(c) regulations do not address how to adjust the E&P and foreign tax pools of a Section 902 corporation when the corporation is no longer in existence at the time that foreign tax is paid in a later year. The guidance in this regard has been limited to a few items of non-precedential administrative guidance, and no guidance addresses the situation where there is a successor corporation in the context of Section 905(c).

**Observation:** It is interesting that Treasury and the IRS set forth a subjective tax-motivated standard, but request comments on whether an objective test should be adopted. In this regard, the longstanding touchstone of the FTC regime is to provide taxpayers relief from double taxation, and not permit a taxpayer an FTC unless the potential for double taxation is present. On its face, it would seem that a subjective standard that considers a taxpayer's past practice and/or motivation for engaging in certain transactions is more favorable to taxpayers, as it

would not treat all situations where there is a split in foreign taxes and related income as subject to Section 909. However, an objective standard that would deny a claim of FTCs any time there is a splitting event would seem to be more consistent with the tax policy underlying the FTC regime and other statutory limitations on claiming FTCs (e.g., Section 901(k), (l), and (m)), which apply if the conditions of those sections are met, regardless of a taxpayer's motivations. Further, as noted, the new rules would only apply to foreign taxes paid pursuant to a foreign-initiated adjustment, or series of related adjustments to more than one taxable year, if the foreign taxes paid exceed \$10 million.

### **The takeaway**

Treasury and the IRS issued Notice 2016-52 to address situations where, in anticipation of the payment of an additional foreign tax pursuant to foreign-initiated adjustment, a taxpayer may undertake certain restructuring transactions or cause a foreign corporation to make distributions that result in the separation of the additional payment of foreign income taxes from the income to which it relates. The Notice announces that, for foreign taxes paid on or after September 15, 2016, the future regulations will include such transactions as foreign tax credit splitting events subject to Section 909, unless the taxpayer is able to demonstrate through clear and convincing evidence that the transactions or distributions were not undertaken with a principal purpose of creating a separation of the foreign taxes. Because of the broad scope of transactions described in the Notice, and the inclusion of corporate distributions made by foreign corporations, many taxpayers may be unknowingly subject to the new rules with respect to foreign tax payments

on or after September 15, 2016, that relate to prior taxable years. Taxpayers will need to assess past and proposed global structuring transactions and distributions of foreign earnings, as well as their foreign tax audit activity and

developments to determine the potential impact of the new rules. In some cases, taxpayers may want to consider alternative transactions or documentation with respect to transactions that clearly evidence that such transactions or distributions

were not, or will not, be undertaken with a principal purpose of separating any anticipated foreign tax payment from the income to which the foreign tax relates.

### ***Let's talk***

For a deeper discussion of how this might affect your business, please contact:

#### ***International Tax Services***

Alan Fischl  
(202) 414-1030  
[alan.l.fischl@pwc.com](mailto:alan.l.fischl@pwc.com)

David Sotos  
(408) 808-2966  
[david.sotos@pwc.com](mailto:david.sotos@pwc.com)

Michael Urse  
(216) 875-3358  
[michael.urse@pwc.com](mailto:michael.urse@pwc.com)

Tim Anson  
(202) 414-1664  
[tim.anson@pwc.com](mailto:tim.anson@pwc.com)

Michael DiFronzo  
(202) 312-7613  
[michael.a.difronzo@pwc.com](mailto:michael.a.difronzo@pwc.com)

Marty Collins  
(202) 414-1571  
[marty.collins@pwc.com](mailto:marty.collins@pwc.com)

**Stay current and connected.** Our timely news insights, periodicals, thought leadership, and webcasts help you anticipate and adapt in today's evolving business environment. Subscribe or manage your subscriptions at:

[pwc.com/us/subscriptions](http://pwc.com/us/subscriptions)

© 2016 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

#### SOLICITATION

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

At PwC, our purpose is to build trust in society and solve important problems. PwC is a network of firms in 157 countries with more than 208,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com/US](http://www.pwc.com/US).