

MEMO# 29576

December 18, 2015

Congresses Passes Comprehensive Tax Extenders Package

[29576]

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TO:

TAX MEMBERS No. 29-15

PENSION MEMBERS No. 36-15

ACCOUNTING/TREASURERS MEMBERS No. 28-15

529 PLAN MEMBERS No. 11-15

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 39-15

TRANSFER AGENT ADVISORY COMMITTEE No. 65-15

INTERNATIONAL MEMBERS No. 46-15

RE:

CONGRESSES PASSES COMPREHENSIVE TAX EXTENDERS PACKAGE

Congress has passed a \$680 billion tax extenders package that contains several items of interest to the industry. Called the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"), [\[1\]](#) this legislation retroactively makes permanent key tax provisions that expired at the end of 2014 and makes certain other changes to the Internal Revenue Code. The PATH Act is expected to be signed into law by President Obama.

Tax Provisions.

Section 871(k) Flow-Through made Permanent. The PATH Act makes permanent the section 871(k) flow-through provisions, which provide more equitable U.S. withholding tax treatment for distributions of interest and short-term capital gains to foreign shareholders. Section 871(k) permits U.S. funds to designate certain distributed amounts to foreign shareholders as interest-related dividends and short-term capital gain dividends that are exempt from U.S. withholding tax. The PATH Act makes section 871(k)'s permanence effective for taxable years beginning after December 31, 2014.

FIRPTA Flow-Through made Permanent. The PATH Act also makes permanent the

provisions of section 897(h) regarding a RIC's qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA). Under the PATH Act, the amendments to section 897(h) take effect January 1, 2015 but generally do not apply with respect to the requirement to withhold under section 1445 prior to the date of enactment of the PATH Act.

REIT Provisions Enacted. The PATH Act incorporates a number of changes to the REIT provisions of the Code, which were proposed in Chairman Camp's tax reform discussion drafts. [\[2\]](#) Some of these provisions will also impact RICs.

FIRPTA exception threshold increased. The PATH Act increases from 5 percent to 10 percent the maximum stock ownership a shareholder may have held in a publicly traded corporation to avoid having that stock treated as a U.S. real property interest on disposition. In addition, certain publicly traded entities are permitted to own and dispose of any amount of stock treated as a U.S. real property interest, including stock of a REIT, without triggering FIRPTA withholding. However, an investor in such an entity that holds more than 10 percent of such stock is still subject to withholding. These provisions apply to dispositions and distributions on or after the date of enactment of the PATH Act.

Interests in RICs and REITs not excluded from USRPI definition. The PATH Act provides that the "cleansing rule" (which applies to corporations that either have no real estate or have paid tax on their real-estate transactions) applies only to interests in a corporation that is not a qualified investment entity for purposes of FIRPTA. In addition, the cleansing rule applies to stock of a corporation only if neither the corporation nor any predecessor of such corporation was a RIC or REIT within a certain time period. These provisions apply to dispositions on or after the date of enactment of the PATH Act.

Dividends derived from RICs and REITs ineligible for DRD. The PATH Act provides that for purposes of determining whether dividends from a foreign corporation (attributable to dividends from an 80-percent owned domestic corporation) are eligible for a dividend received deduction, dividends from RICs and REITs are not treated as dividends from domestic corporations, even if the RIC or REIT owns shares in a foreign corporation. The provision applies to dividends received from a RIC or a REIT on or after the date of enactment of the PATH Act.

So in the case of a U.S. parent corporation (tier 1) that receives a dividend from a foreign corporation (tier 2) that is attributable to an underlying dividend from an 80-percent owned U.S. corporation (tier 3), such dividend will not be eligible for the dividend received deduction if the third tier U.S. corporation is a RIC or a REIT. Under prior law, neither Section 857(c)(1) nor section 854 applied to prohibit or limit a dividend received deduction under section 245 when a U.S. RIC or a REIT paid a dividend to a foreign corporation that was eventually repatriated to its U.S. corporate parent.

Information Reporting Safe Harbor Created. The PATH Act creates a safe harbor for the failure to file a correct information return and for failure to furnish correct payee statements. If the error is \$100 or less (\$25 or less in the case of errors involving withholding), the issuer of the information return is not required to file a corrected return

and no penalty is imposed. Under the PATH Act, this provision is effective for returns and statements required to be filed after December 31, 2016.

Active Financing Exception made Permanent. The PATH Act permanently extends the exception from subpart F income for active financing income.

Retirement Savings Provisions.

Tax-free distributions from individual retirement plans for charitable purposes. The PATH Act permanently extends the ability of individuals at least 70½ years of age to exclude from gross income qualified charitable distributions from Individual Retirement Accounts (IRAs). The exclusion may not exceed \$100,000 per taxpayer in any tax year. The provision applies to distributions made in taxable years beginning after December 31, 2014.

Rollovers permitted from other retirement plans into simple retirement accounts. The PATH Act allows a taxpayer to roll over amounts from an employer-sponsored retirement plan (e.g., a 401(k) plan) to a SIMPLE IRA, provided the participant has had the SIMPLE IRA for at least two years. The provision applies to contributions made after the date of enactment.

Technical amendment relating to rollover of certain airline payment amounts. The PATH Act clarifies the effective dates of Public Law 113-243 (The FAA Modernization and Reform Act of 2012) to allow certain airline employees to contribute amounts received in certain bankruptcies to an IRA without being subject to the annual contribution limit. The provision is effective as if included in Public Law 113-243.

Treatment of early retirement distributions for nuclear materials couriers, United States Capitol Police, Supreme Court Police, and diplomatic security special agents. The PATH Act extends the relief under current law, which provides an exception to the 10-percent penalty on withdrawals from retirement accounts before age 50 for public safety officers, to include nuclear materials couriers, United States Capitol Police, Supreme Court Police, and diplomatic security special agents. The provision is effective for distributions after December 31, 2015.

Church Plan Clarification. The PATH Act prevents the IRS from aggregating certain church plans together for purposes of the non-discrimination rules, which prevent highly compensated participants from receiving disproportionate benefits under the plan, and it provides flexibility for church plans to decide which other church plans with which they associate. The provision also prevents certain grandfathered church defined benefit plans from having to meet certain requirements relating to maximum benefit accruals, and it allows church plans to offer automatic contribution arrangements. Additionally, the provision make it easier for church plans to engage in certain reorganizations and allows church plans to invest in collective trusts. The provision generally is effective on or after the date of enactment.

Section 529 and ABLE Account Provisions.

Section 529 Accounts. The PATH Act expands the definition of qualified higher education expenses that can be paid out of a section 529 account to include computer equipment and technology.

ABLE Accounts. The PATH Act allows ABLE accounts (a tax-preferred savings account for disabled individuals) to be established in any state. Prior law required accounts to be established in the beneficiary's state of residence.

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endnotes

[1] The House Ways and Means Committee summary of the PATH Act is available at: <http://waysandmeans.house.gov/wp-content/uploads/2015/12/SECTION-BY-SECTION-SUMMARY-OF-THE-PROPOSED-PATH-ACT.pdf>; The full text of the PATH Act is available at: http://docs.house.gov/billsthisweek/20151214/121515.250_xml.pdf.

[2] See ICI Memorandum [#27917](#), dated February 26, 2014.

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