



TaxNewsFlash

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Proposed regulations: Previously taxed earnings and profits and related basis adjustments

The U.S. Treasury Department and IRS today released [proposed regulations](#) (REG-105479-18) (103 pages) regarding previously taxed earnings and profits (PTEP) of foreign corporations and related basis adjustments.

The proposed regulations provide rules addressing core aspects of the PTEP system, including rules that:

- Address longstanding issues under sections 959 and 961
- Account for new provisions and amendments under the Tax Cuts and Jobs Act (TCJA)
- Implement Notice 88-71 (which provides guidance regarding foreign currency gain or loss with respect to PTEP) and Notice 2019-01 (which described rules for the maintenance of PTEP accounts and other aspects relating to the operation of section 959)

The proposed regulations are proposed to generally apply to tax years of foreign corporations beginning on or after the date the proposed regulations are finalized and to tax years of persons for which such tax years of foreign corporations are relevant. However:

- Portions of the proposed section 959 regulations relating to rules described in Notice 2019-01 would apply before the general applicability date to tax years of U.S. shareholders (and successors in interest) ending after December 14, 2018, and tax years of foreign corporations ending with or within those tax years, as described in the notice.
 - However, generally, for taxable years ending after December 14, 2018, but before the date the proposed regulations are finalized, taxpayers may rely on the provisions of Notice 2019-01.
- Taxpayers would be permitted to choose to apply the proposed regulations in their entirety to tax years of foreign corporations beginning before the general applicability date if certain conditions are satisfied—e.g., all tax years of covered shareholders for which the early application years are relevant must be open under section 6501, which each covered shareholder must confirm in a written statement to the foreign corporation that also provides the covered shareholder's consent to apply the proposed regulations before the general applicability date.
 - If a taxpayer chooses the early application of the proposed regulations, taxpayers must apply the proposed regulations in their entirety to an early application year and all succeeding early application years.

Comments on the proposed regulations and requests for a public hearing are due by March 3, 2025.

The preamble to the proposed regulations states that future guidance will address certain issues not addressed in the proposed regulations—e.g., issues involving nonrecognition transactions, redemptions, transactions to which section 964(e) applies, and structures where controlled foreign corporations (CFCs) are partners in a partnership, as well as issues addressed in Notice 2024-16 regarding the treatment of section 961(c) basis in certain transactions in which a domestic corporation acquires stock of a CFC in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1). Future guidance may also address any issues regarding the interaction of the proposed regulations with existing rules under other provisions.

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