An (Unexpected) Interest in ADS

ABA Mid-Year Tax Meeting
Capital Recovery & Leasing Committee
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Panelists:
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Alternative Depreciation System (ADS)

• Section 168(g)(2) provides that the alternative depreciation system is depreciation determined by using—
  (A) The straight-line method (without regard to salvage value),
  (B) The applicable convention determined under section 168(d), and
  (C) A recovery period determined using the class life of the property, 12 years for property without a class life, 40 years for nonresidential real or residential rental property, and 50 years for certain other property

• Special rules apply for certain property
ADS - Continued

• Generally applies to—
  • Tangible property used predominantly outside of the United States
  • Tax-exempt use property
  • Tax-exempt bond financed property
  • Any imported property covered by an executive order under section 168(g)(6)
  • Any property for which the taxpayer elects to use ADS under section 168(g)(7)
Use of ADS in Other Code Provisions

• Section 163(j)
  • Taxpayers making a real property trade or business (RPTOB) election or an electing farming business required to depreciate certain assets using ADS
    - Property with a recovery period of 10 years or more which is held by an electing farming business (Section 168(g)(2)(G))
    - Nonresidential real property, residential rental property, and qualified improvement property held by an electing RPTOB (Section 168(g)(8))
      ▪ Technical correction proposed to add qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property
  • Allocation of interest between excepted and non-excepted items (Prop. Reg. section 1.163(j)-10)

• Section 250 (FDII)
  • Used in the computation of Qualified Business Asset Investment ("QBAI") as defined in section 951A(d) with certain modifications to reflect section 250 terminology
Use of ADS in Other Code Provisions

• Section 861
  • The alternative tax book value method of apportioning expenses (including for foreign tax credit purposes) requires use of ADS depreciation (Reg. section 1.861-9(i))

• Section 951 (GILTI)
  • QBAI computed using ADS (section 951A(d))
    − Computed quarterly
    − Computation based on actual placed in service and disposition dates
  • Tested income computed using ADS
Discussion Topics – Section 951A/Section 250

- Is the computation of QBAI using ADS depreciation a change in method of accounting where CFC currently using impermissible depreciation method for section 964 E&P purposes?

- Is a method change required to use ADS for purposes of computing GILTI Tested Income?
  - If so, is the change made with a section 481(a) adjustment or on a cut-off basis?
    - Impact of section 7.07 of Rev. Proc. 2015-13
  - Does the CFC have audit protection for back years including transition tax year?
    - Impact of section 8.02(5) of Rev. Proc. 2015-13

- What is the impact on QBAI of cost segregation studies, repair capitalization, interest capitalization, or other changes/corrections to basis/recovery periods?
Discussion Topics – Section 951A/Section 250 (Cont.)

• Is there any ‘duty of consistency’ in asset classification for QBAI and other purposes?

• What is included in ‘tangible property” in determining QBAI?
  • Consider reference to section 168 in section 250 and whether that references section 168(k)

• In computing QBAI, pro rate on a daily basis, using section 168(d) conventions, or other method?

• Status of final regulations? Any anticipated method issue guidance?
  • Guidance under section 965 allowing CFCs to make method changes on amended returns for the section 965 transition tax year?
Discussion Topics – Section 861

• Determination of ADS based on ADS rules in year assets placed in service creating a potentially different ADS computation than used for QBAI—any consistency issues?
Discussion Topics – Section 163(j)

- Is the allocation of basis computed using ADS a method of accounting?
- If not, what is the impact of cost segregation studies, repair capitalization, interest capitalization, or other changes/corrections to basis/recovery periods?
- Government issued Rev. Proc. 2019-08 providing guidance on change in use for electing RPTOB or electing farming business
  - Any additional guidance?
  - What happens for QLIP/QRIP/QRP if technical correction not passed timely for 2018—how would taxpayers apply the change in use?
- Status of section 163(j) guidance?
Questions?