



proposed regulations provide greater flexibility in obtaining credit support from foreign subsidiaries

MSK Client Alert

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On October 31, 2018, the Treasury Department issued proposed regulations that fundamentally change the way that U.S. corporate borrowers can use controlled foreign corporations ("foreign subsidiaries") to obtain better credit terms.

Under the old rules under Section 956, a U.S. corporation could obtain very little credit support from its' foreign subsidiaries. This is because a guarantee or pledge of assets by a foreign subsidiary on U.S. corporate debt was viewed as an investment in U.S. real property by that foreign subsidiary, giving rise to a "deemed dividend" that was taxable in the U.S. under the old "Subpart F" income regime. Case law and IRS rulings have made it clear that this "deemed dividend" is not actually a dividend under the tax rules and, therefore, is not eligible for the preferred rate of tax on qualified dividends, among other matters.

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