## Start Section 267(a)(2) and (3) Matching Rules Tax-Charts.com **Payor Uses** Accrual No Deduction Copyright © 2015-2020, **Until Payment** Method **Andrew Mitchel LLC** Was the payor on the accrual No deduction is allowed Last Updated March 1, 2020 method of accounting? until the payment is made. Reg. 1.461-1(a)(1) ("Under the cash \* \* \* method of accounting. Reg. 1.446-1(c)(1)(ii) amounts representing allowable deductions shall, as a general **Disclaimer Payment Normal Accrual** rule, be taken into account for the taxable year in which paid.") This flowchart has been **Deduction Rules Apply** Made extensively reviewed to be Yes Was the payment made by As long as the amount accrued as complete and accurate the year end of the payor? would be allowed as as possible. However, due a deduction under the Sec. 267(a)(2) & (3) to the complexity of these No normal accrual rules, the Reg. 1.267(a)-3(b)(1) ("Except as provided \* \* \* a taxpayer [must] use rules, this flowchart section 267(a)(2) and (3) the cash method of accounting with respect to the deduction of amounts matching rules would not apply undoubtedly includes owed to a related foreign person.") To a Foreign errors and omissions. You Person Related should consult a tax Was the amount owed Was the payor related professional for individual to a foreign person? to the foreign person? advice regarding your own situation. This flowchart is Sec. 267(a)(3) Sec. 267(a)(3), (b) not updated for changes in Reg. 1.267(a)-3(a) Reg. 1.267(a)-3(b) U.S. Sec. 267(a)(3) the tax laws and should Source Fgn. Source Interest not be relied upon for any Was the otherwise deductible amount income Was the otherwise purpose whatsoever. (to the recipient) from U.S. sources? (Only U.S. deductible amount foreign source amounts are described in sections source interest income? 871(a)(1) and 881(a). See orange box below.) Copying, scanning, Reg. 1.267(a)-3(b)(2) Reg. 1.267(a)-3(b)(2), (c)(2), & (c)(3) or other duplication Tate & Lyle, Inc. v. Commr., 87 F.3d 99 (3d Cir. 1996) of this chart is Square D Co. v. Commr. 438 F.3d 739 (7th Cir. 2006) strictly prohibited. CFC or Reg. 1.267(a)-1(b), dealing with **PFIC U.S. Person Inclusion** unpaid expenses and interest, was Was the foreign person Yes Has the amount attributable to such item been promulgated in 1958. Section (i.e., the recipient) includible in the gross income of the U.S 267(a)(2) was substantially changed in 1984. Consequently, Reg. a CFC or a PFIC? person who owns stock in the CFC or PFIC? 1.267(a)-1(b) is no longer up to date Sec. 267(a)(3)(B) Sec. 267(a)(3)(B) (Reg. 1.267(a)-3 has not (Reg. 1.267(a)-3 has not yet been updated for the 2004 amendement), Reg. 1.267(a)-2T(b) was promulgated yet been updated for the 2004 amendement) in 1984, just after the amendment to Reg. 1.951A-5(c) Section 267(a)(2). This regulation, in See ABA Comments No Ded'n question and answer format, provides submitted to IRS on **Until Pmt** guidance with respect to: the May 7, 2015. completed contract method, original No deduction is allowed until the payment is made. issue discount unstated interest under section 483, cost recovery, **ECI To** depreciation, or amortization, and ceasing to be a related person. Recipient Fully Exempt Under Treaty Interest Was the otherwise deductible amount Was the related foreign Was the amount Section 267(a)(2) three times refers to income of the related foreign persor person fully exempt from owed interest? "the person to whom the payment is to be made." For simplicity, this chart which was effectively connected with the U.S. tax on the amount conduct by such related foreign person Reg. 1.267(a) owed pursuant to a U.S. tax refers to this person as the "recipient." of a trade or business in the U.S.? treaty (such as under an article relating to the taxation This chart does not address the loss of business profits)? Reg. 1.267(a)-3(c)(1) disallowance rules under Section 267(a)(1) and the regulations **Fully or Partially** Reg. 1.267(a)-3(c)(2), No thereunder **Exempt Under Treaty** (c)(3)Was the related foreign person No Ded'n exempt from U.S. tax (or subject to a See U.S. Source Box Above **Until Pymt** reduced rate of tax) on the amount owed pursuant to a U.S. tax treaty No deduction is allowed Reg. 1.267(a)-3(b)(2) provides in full: (such as under an article relating to until the payment is made Sec. 267(a)(2) This section applies to otherwise deductible the taxation of business profits)? amounts that are of a type described in section 871(a)(1)(A) [FDAP], (B) [certain Reg. 1.267(a)-3(b)(1) ("An amount that is owed to a related Reg. 1.267(a)-3(c)(1) Accounting foreign person \* \* \* may not be deducted \* \* \* amount is paid to the related foreign person.") until such gains on timber and coal] or (D) [gains on Method certain intangibles], or in section 881(a)(1), (2) or (4). The rules of this section also apply Mis-Match **Normal Accrual** Was, by reason of the method of accounting of the recipient, to interest that is from sources outside the **Deduction Rules Apply** United States, Amounts other than interest the accrued amount not includible in the recipient's income? that are from sources outside the United As long as the amount accrued Sec. 267(a)(2)(A) States, and that are not income of a related would be allowed as foreign person effectively connected with the Related a deduction under the conduct by such related foreign person of a No normal accrual rules, the trade or business within the United States, At the close of the taxable year of the payor, were section 267(a)(2) and (3) are not subject to the rules of section the payor and the recipient related persons? 267(a)(2) or (3) or this section. See matching rules would not apply Sec. 267(a)(2)(B), (b) paragraph (c) of this section for rules governing the treatment of amounts that are **Defer Deduction** income of a related foreign person effectively connected with the conduct of a trade or **Until Inclusion** business within the United States by such The deduction is allowed when the amount is related foreign person. includible in the gross income of the recipient. Sec. 267(a)(2), flush