



Report on recent US international tax developments - 27 February 2015

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More details emerged this week with respect to the Senate Finance Committee tax reform working groups established by Committee Chairman Orrin Hatch in mid-January. The five bipartisan working groups -- including one on international tax -- are tasked with reviewing key areas of tax reform with the goal of coming up with options and potential legislative policy solutions that could be used to develop a tax reform plan.

The tax press is reporting that the working groups will hold educational meetings through mid-March with roundtable discussions taking place during the last three weeks of April. Under this timeline, final reports reportedly would be delivered to the committee chair and ranking minority member by late May. Senator Ron Portman, the co-chair of the international tax working group, was quoted as saying he hoped his group would deliver their report at the end of April.

The annual US International Fiscal Association (IFA) meeting this week in Washington set the stage for a discussion of the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) agenda from the US perspective. Robert Stack, Treasury Deputy Assistant Secretary (International Tax Affairs), took the podium to say the US Government is wary of how foreign governments might use some of the substantive tools coming out BEPS on audit. Stack singled out several bad practices, including paying auditors based on assessments or revenue targets. He also underscored the need for taxpayers to have the right to independent review of their cases as well as access to fair mutual agreement procedures. With respect to mandatory baseball arbitration and dispute resolution, Stack was quoted as saying that the "US hasn't given up."

In regard to Action 5 on permanent establishments (PEs), Stack expressed concern about possible broadening of the PE standard by expanding the coverage of preparatory and auxiliary activities. The US also has concerns regarding subjectivity in the transfer pricing area under BEPS, with Stack arguing that only if the arm's length standard fails should other special measures be employed. The Treasury



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official said the US will oppose any implication that tax administrators should be allowed to judge where an investor would have invested, nor will it agree to the transfer pricing draft's "minimally functional entity" standard. The US may be more amenable to a contingent payment model, Stack said, in situations where there are underpriced intangibles that are hard to price.

There is also a report this week that the US will develop a form that is similar to the OECD country-by-country template. A Treasury official was quoted as saying the US would also adopt the €750 million (approx. US\$840 million) filing threshold outlined by the OECD.

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