Report on recent US international tax developments – 13 September 2019

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The United States (US) Congress has returned to Washington from its August recess and will try to move legislation that may contain international components, including tax extenders and *Tax Cuts and Jobs Act* (TCJA) technical corrections, as well as attempt to bring three pending US tax treaties to the Senate floor for a vote.

House and Senate tax-writers have taken different approaches to tax extenders, and a compromise may not be sorted out until a legislative vehicle is ready to move – possibly a September continuing resolution but more likely an appropriations package later in the year. Two tax extender bills are on the table. Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden sponsored a tax extenders bill (S. 617) that would retroactively extend, through 2019, 26 tax provisions that have been expired since the end of 2017 and the 3 that expired at the end of 2018. The House Ways and Means Committee in June approved a bill (H.R. 3301), to extend through 2020 tax provisions that expired at the end of 2017 and 2018, and that will expire at the end of 2019. Provisions expiring at the end of 2019 that would be extended, through 2020, under the Ways and Means bill include the controlled foreign corporation (CFC) look-through rule.

Ways and Means Committee Chairman Richard Neal has also shown interest to move forward at least some TCJA technical corrections this year. High-profile international tax corrections include those addressing Internal Revenue Code[1]

Section 965 transition tax overpayments and fixing certain issues arising under the TCJA with respect to the so-called downward attribution rule, which applies to CFCs.

In July, the Senate gave its advice and consent to protocols amending tax treaties with Spain, Switzerland, Japan and Luxembourg that were long held up over Senator Rand Paul's concerns regarding information-sharing articles in the protocols. Attention now turns to new US income tax treaties with Chile, Hungary and Poland, which may require reservations to account for TCJA enactment of the Base Erosion and Anti-abuse Tax (BEAT) in 2017. Senate Foreign Relations Chairman Jim Risch has said the pending tax treaties will be considered by year end, "We're not going to be dragging our feet." Senator Paul's objections to the proposed treaties generally may persist.

On the regulatory front, numerous international tax-related TCJA guidance projects – in both final and proposed form – are anticipated for release this fall:

- Regulations providing guidance on the application of the BEAT proposed in December 2018 were targeted for finalization in August or September but have yet to be listed under the Office of Management and Budget Office of Information and Regulatory Affairs review. It is anticipated that the final regulations may also be accompanied by new proposed BEAT regulations in certain areas.
- Final regulations on the business interest expense limitation under Section 163(j); issues under consideration include whether Section 163(j) can be turned off for CFCs, and how exceptions from Section 163(j) operate.
- New proposed regulations for Global Low-taxed Income (GILTI) under Section 951A, published in conjunction with final GILTI regulations in June, would provide for a GILTI "high-taxed exclusion." Comments on those proposed regulations are due 19 September and it is possible they could be finalized by the end of this year or early in 2020.
- Final foreign tax credit regulations are expected in the fall.
- Regulations relating to the dividends-received deduction under Section 245A (temporary regulations were released with the GILTI package in June).
- Anti-hybrid and Foreign-Derived Intangible Income final regulations are expected later in the year or early next year.

On 9 September 2019, Pierre Gramegna, Minister of Finance of Luxembourg, and J. Randolph Evans, US Ambassador to Luxembourg, announced that the respective ratification procedures of the protocol to the US tax treaty with Luxembourg had been completed, thus bringing the protocol into force. The protocol introduces a new information exchange article, incorporating the exchange of information standard reflected in both the 2008 OECD[2] Model Treaty and the 2006 US Model Treaty.

US Treasury Secretary Steven Mnuchin this week was quoted as saying that the United States and France are engaged in a 90-day period of negotiation over the latter's imposition of a new 3% Digital Services Tax (DST). The US position is that the French DST, enacted last July, unfairly targets US multinationals. The press quoted Secretary Mnuchin as saying that if a common solution is not reached during the discussion, "we'll consider all of our options, which Ambassador Lighthizer's looking at," apparently referring to the US Trade Representative's Section 301 investigation of the DST.

And a senior Treasury official this week was quoted as saying that the US will consider instituting trade actions against as many as 24 countries if those nations impose unilateral digital taxes that are deemed to be discriminatory against US companies.

Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Organisation for Economic Co-operation and Development.

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