Global Tax Alert

Report on recent US international tax developments 16 March 2018

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Congressional Republicans and the Trump Administration reportedly are giving consideration to moving forward with a so-called "phase 2" tax bill. US House Ways and Means Committee Chairman Kevin Brady this week said during an interview that "we" are working on a second tax bill, although he declined to offer any specifics other than it would cover areas missed by last year's *Tax Cuts and Jobs Act* (TCJA). Chairman Brady made a point of saying the second tax bill would be separate from efforts to develop a technical corrections bill related to the TCJA. A Trump Administration official confirmed that the President and Republican lawmakers have discussed the idea, with President Trump reportedly floating a proposal to lower the capital gains tax rate.

On the subject of a TCJA technical corrections bill, the Congressional Joint Committee on Taxation (JCT) reportedly is reviewing the recent tax reform legislation to identify areas in need of correction. JCT Chief of Staff Thomas Barthold this week was quoted as saying his committee currently was working on the TCJA "bluebook," and that part of that process includes the identification of provisions in need of technical corrections. Those identified technical corrections may be listed in the coming bluebook. Although there is no set timetable for the release of the bluebook, the JCT plans for it to be released before the end of this Congressional session. The JCT chief noted that in his mind, technical corrections are a narrow concept that apply when legislative intent is clear, but the statutory language is somehow defective.



The Internal Revenue Service (IRS) this week released a set of Frequently Asked Questions (FAQs) on the Internal Revenue Code¹ Section 965 repatriation transition tax. The new FAQs provide basic information and are meant to help taxpayers meet their filing and payment requirements. Among the areas covered in the FAQs are how to report Section 965 income and how to report and pay the tax. This latest release follows three sets of guidance released by the IRS on the transition tax: Notices 2018-07 and 2018-13 and Revenue Procedure 2018-17. An IRS press release indicated the IRS plans to issue additional guidance on Section 965 in the coming weeks.

The Government has indicated that it is close to issuing the final anti-corporate inversion regulations under Section 7874. The news came in the form of a court filing in the IRS's appeal in Chamber of Commerce v. IRS in the Fifth Circuit. In Chamber of Commerce, a federal district court held that Treasury and the IRS violated the Administrative Procedures Act (APA) by issuing Reg. Section 1.7874-8T with an immediate effective date and without complying with the APA's 30-day noticeand-comment requirement. In a motion filed in the case on 9 March, the IRS stated that the process to finalize the proposed regulations is almost complete, and a draft of the final anti-inversion regulations has been submitted to the Office of Management and Budget for review.

The Organisation for Economic Co-operation and Development (OECD) on 16 March released the eagerly-anticipated Interim Report of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), titled "Tax Challenges Arising from Digitalisation." The Interim Report provides an in-depth analysis of the main features of certain highly digitalized business models and value creation and the potential implications for the existing international tax framework. It also provides an overview of unilateral measures that have been introduced by countries in this area. The report further discusses interim measures that some countries have indicated they would implement, suggesting there is a strong need to act quickly. The report includes an outline of the possible long-term approaches to address these challenges. The report notes there is "no consensus on the need for, or merits of, interim measures. with a number of countries opposed to such measures." A Global Tax Alert on the over 200-page report is pending.

The OECD on 12 March also released the third batch of peer review reports on BEPS Action 14, Making Dispute Resolution Mechanisms More Effective. The third batch of peer review reports relates to the implementation by the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain.²

Endnote

- All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
- See EY Global Tax Alert, OECD releases third batch of peer review reports on Action 14, dated 14 March 2018.

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