Global Tax Alert

Report on recent US international tax developments – 18 December 2015

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The US Congress this week passed a bipartisan tax extenders bill, the $622 billion *Protecting Americans from Tax Hikes (PATH) Act of 2015*, which will make a number of tax extender provisions permanent, extend others for five years, and extend the remainder of the provisions for two years, through 2016. President Obama has said he will sign the bill into law.

The House approved the bill on 17 December, the Senate passed the bill today (18 December).

Importantly, the bill includes permanent extension of the Subpart F active financing exception and a five-year extension of the controlled foreign corporation (CFC)-to-CFC look through rule (for taxable years beginning before 1 January 2020).

Other international tax provisions include:

- Permanent extension of the exemption for certain Regulated Investment Company (RIC) dividends paid to nonresident alien individuals and foreign corporations
- Permanent extension of the treatment of RICs as qualified investment entities under the Foreign Investment in Real Property Tax Act (FIRPTA), and
- Two-year extension of the application of Section 199 to Puerto Rico

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The package also includes new provisions related to FIRPTA, including an exception for foreign retirement or pension plans and an expansion of the exception for certain stock of REITs, among other provisions.

Both Ways and Means Committee Chairman Kevin Brady and Senate Finance Committee Chairman Orrin Hatch hailed the legislation as a positive step toward US tax reform. Senator Hatch was quoted as saying the bill's adjustment to the tax and revenue baseline would make "conditions vastly more favorable" for future comprehensive tax reform.

In other news, Internal Revenue Service (IRS) and Treasury officials this week offered their insights at the annual IRS/George Washington University international tax conference in Washington DC.

Regarding tax treaty developments, a Treasury official said the United States was in active negotiations with Luxembourg, with two rounds of negotiations completed and a third round scheduled for early in 2016.

Another Treasury official told the conference that taxpayers should expect more anti-corporate inversion guidance coming in 2016. The official was quoted as saying that IRS Notice 2015-79 represented "quick, easy things that we thought were the right things to do." Treasury is continuing to consider earnings stripping, the official said, as well as other measures to help stem the tide of US multinationals inverting overseas.

Treasury also appears increasingly concerned about the ongoing European Union (EU) state aid investigations and whether US companies are being unfairly singled out. Robert Stack, Treasury Deputy Assistant Secretary (international tax affairs) said the EU Commission's state aid actions raise the question whether political pressure within the EU regarding tax avoidance will result in the development of an unfair European tax system. The Treasury official also pointed to the fact that four of the five ongoing EU state aid investigations involve US multinationals. "It just seems to defy mathematics that the only people who run afoul of it [EU law] happen to be US taxpayers," the official said.

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