

Report on recent US international tax developments - 23 February 2018

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Guidance to implement provisions in the *Tax Cuts and Jobs Act* (TCJA) continues to dominate United States (US) Treasury and Internal Revenue Service (IRS) discussions, both within and outside the Government. A Treasury official this week was quoted as saying Treasury and the IRS have had several substantive meetings on the Internal Revenue Code¹ Section 163(j) interest expense limitation provision and that a notice is planned for release in the coming weeks. He said the Government would also begin a major push to address guidance for the TCJA's global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) provisions in about four to six weeks. Regarding GILTI, Treasury reportedly is considering whether the income should be tested individually on a shareholder-by-shareholder basis within a US consolidated group or on a consolidated basis. Guidance on the TCJA's base erosion and anti-abuse tax is expected at the end of 2018.

The Treasury official warned taxpayers not to expect Treasury to lessen the impact of the Section 965 repatriation transition tax. The official said taxpayers should expect the Administration to "apply that provision largely consistently with how it was written."

The IRS Large Business and International Division this week issued guidelines for handling delinquent Forms 1120-F and requests for waivers under Reg. Section 1.882-4(a)(3)(ii). According to the IRS, the guidance is meant to ensure that examiners analyze such requests in a "fair, consistent and timely manner."

Failure to timely file Form 1120-F can result in the denial of deductions and credits under Section 882(c)(2). Reg. Section 1.882-4(a)(3)(ii) permits the Commissioner to waive the filing deadline, and allow the foreign corporation to claim deductions and credits if the foreign corporation can establish that it acted reasonably and in good faith in failing to timely file a return.

The European Commission has indicated it will survey European multinational enterprises about how the TCJA's international tax provisions may affect their companies. A questionnaire reportedly has been developed that will be

issued to European multinationals, asking them to describe the type of transactions and business operations that will be affected by certain TCJA provisions, and whether they plan to change their business strategies, among other issues. Some European governments have voiced concern that the FDII and certain other TCJA international provisions may be discriminatory and in violation of World Trade Organization rules. Following an Economic and Financial Affairs Council meeting on 20 February, European Commission Vice President Valdis Dombrovskis said it was too early to talk about retaliation, however.

Endnote

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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