

Report on recent US international tax developments - 4 January 2019

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The Republican-dominated Congress failed to enact year-end tax legislation as 2018 came to a close, leaving the new, divided 116th Congress to address - at least in theory - *Tax Cuts and Jobs Act* (TCJA) technical corrections, tax extenders and other tax-related legislation. The US House on 20 December had approved the *Retirement, Savings, and Other Tax Relief Act of 2018* and the *Taxpayer First Act of 2018*, addressing two tax-extender provisions, retirement policy, TCJA technical corrections, Internal Revenue Service (IRS) reform provisions, and disaster relief. The Senate did not take up the bill, however, which would have required Democratic support for passage.

Congress also failed to enact certain necessary spending bills in late December, forcing the Federal Government to enter into a partial government shutdown beginning at midnight on 21 December. As of press time, the Government remains in partial shutdown as the Trump Administration and congressional Republicans spar with congressional Democrats over border security funding.

In one of his last acts as House Ways and Means Committee Chairman before Democrats took control of the House, Kevin Brady on 2 January published a discussion draft of the *Tax Technical and Clerical Corrections Act*. Provisions in the discussion draft were developed by the Joint Committee on Taxation staff, as well as the staffs of the Ways and Means Committee, Senate Finance Committee and Treasury. The draft is meant to provide information to

stakeholders and an opportunity to offer feedback on the provisions, including on potential additional technical corrections that might be considered. Incoming Ways and Means Committee Chairman Richard Neal previously indicated he would hold hearings on the TCJA and on potential changes to correct the law.

It is unclear if ongoing Office of Management and Budget (OMB) review of TCJA regulations will be affected by the partial government shutdown. The OMB Office of Information and Regulatory Affairs is currently reviewing proposed regulations under Internal Revenue Code¹ Section 250 on the deductions for foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI), as well as final regulations on the Section 965 transition tax.

Also just before the holidays, the Government issued proposed regulations implementing Sections 245A(e) and 267A (enacted by the TCJA), regarding hybrid dividends and certain amounts paid or accrued in hybrid transactions or with hybrid entities. The proposed regulations also include rules under Sections 1503(d), 6038, 6038A and 7701. The IRS further released proposed regulations under Section 864(c)(8) on the tax treatment of foreign partners' gains on the sale of an interest in a US partnership.

Endnote

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

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