Report on recent US international tax developments – 9 March 2018

The United States (US) Internal Revenue Service (IRS) on 5 March issued Notice 2018-20, expanding the "no taxpayer identification number (TIN)" list to include foreign jurisdictions that offer TINs to individuals or entities that are resident in those jurisdictions. Notice 2018-20 also announced that Australia has been added to the no-TIN list; other countries currently on the list include Bermuda, the British Virgin Islands and the Cayman Islands.

The latest notice follows Notice 2017-46 issued in September 2017, which provided guidance modifying the requirements of Reg. Section 1.1441-1T(e)(2)(ii)(B) for withholding agents to obtain and report the foreign TINs (FTINs) of their account holders. Some jurisdictions that restrict the collection or disclosure of FTINs of their residents had requested that their residents not be required to provide FTINs to withholding agents for purposes of Reg. Section 1.1441-1T(e)(2)(ii)(B). Notice 2018-20 is a response to those requests. The Government plans to amend the regulations to provide that withholding agents are not required to collect or report FTINs of residents in those jurisdictions on the no-TIN list.

A Treasury official this week was quoted as saying the Government is considering carving out long-term bank loans from the term "accounts receivable" for purposes of the higher tax rate imposed on cash or cash equivalents under the Internal Revenue Code[1] Section 965 repatriation transition tax. Section 965 imposes a tax on accumulated foreign earnings that are held as cash or cash equivalents at a 15.5% rate, with non-cash holdings subject to an 8% tax. Banks are concerned that their long-term loans will be considered accounts receivable subject to the higher transition tax rate. IRS Notice 2018-13, released in January, states that the cash position of any specified foreign corporation includes the "net accounts receivable" of such corporation.

The Treasury official said the Government is considering refining the definition of accounts receivable. Another official was quoted as saying it was never Treasury's intention to include long-term loans in the definition of accounts receivable subject to the higher, cash or cash equivalent transition tax rate.

The European Union (EU) is taking another step to determine whether to take action against certain provisions in the *Tax Cuts and Jobs Act* (TCJA), suggesting that certain of the international tax provisions are discriminatory or in violation of World Trade Organization (WTO) rules. The tax press is reporting that the EU has requested that the Organisation for Economic Co-operation and Development (OECD) Forum on Harmful Tax Practices conduct a "fast track" review of certain of the TCJA's provisions. The request reportedly came after a meeting of EU Finance Ministers in which the Ministers discussed how to react to the tax reform law and whether to take action in the WTO.

According to the report, a recent EU document states that the new base erosion and anti-abuse tax may contravene the OECD Model Tax Convention's Article 24 on non-discrimination. The document reportedly also addresses the TCJA's foreign derived intangible income provision.

All this comes after the European Commission (EC) indicated it will survey European multinational enterprises about how the TCJA's international tax provisions may affect their companies. A questionnaire is being 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. The questionnaire reportedly is the first step the EC must take before filing a WTO complaint.

Endnote

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

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