Global Tax Alert

Report on recent US international tax developments 3 January 2020

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The United States (US) Government in late December 2019 issued final regulations (TD 9890) relating to withholding and reporting tax on certain US-source income paid to foreign persons. More specifically, the regulations – under Internal Revenue Code Sections 1441, 1471, and 6049 – provide guidance on certain due diligence and reporting rules that apply to persons making certain US-source payments to foreign persons. The final rules also provide guidance on certain aspects of reporting by foreign financial institutions on US accounts. The final regulations are effective 2 January 2020.

The US Treasury and Internal Revenue Service (IRS) on 23 December also released proposed regulations (REG-100956-19) modifying the rules for determining the source of income from sales of inventory produced within the US and sold without the US, or vice versa. These proposed regulations also contain new rules for determining the source of income from sales of personal property (including inventory) by nonresidents that are attributable to an office or other fixed place of business that the nonresident maintains in the US. Finally, these proposed regulations modify certain rules for determining whether foreign source income is effectively connected with the conduct of a trade or business within the US. The regulations are proposed to apply to taxable years ending on or after 23 December 2019. As proposed, the regulations permit taxpayers to "apply the rules therein in their entirety for taxable years beginning after 31 December 2017, and before these regulations apply."



On 20 December 2019, Treasury's Financial Crimes Enforcement Network (FinCEN) issued Notice 2019-1, further extending the filing deadline for certain individuals who previously qualified for an extension of time to file a Report of Foreign Bank and Financial Accounts (FBAR) with respect to signature authority under Notice 2018-1 and preceding guidance.

As such, the notice is only relevant for persons who were previously granted extensions of time to report signature authority over (but no financial interest in) certain foreign financial accounts under FinCEN Notices 2011-1 and 2011-2, and most recently extended by FinCEN Notice 2018-1. FinCEN Notice 2019-1 grants a further extension of time to file FBARs with respect to signature authority for 2019 and prior years under extension. It is important to note that Congress changed the due date to 15 April and directed that a six-month extension of the filing deadline to 15 October be made available. As of the date of Notice 2019-1, all filers are granted an automatic extension of time to file calendar-year 2019 FBARs without the need to specifically request the extension.

A senior Treasury official told a Washington audience before the holidays that he hoped that pending US tax treaties with Chile, Hungary, and Poland would be approved by the Senate in 2020, "although there is still a rocky road in front of us." Treasury Assistant Secretary for Tax Policy, David Kautter, on 20 December was quoted as saying that disagreements among Treasury and Congressional lawmakers regarding the Base Erosion and Anti-abuse Tax have held up the treaties' approval and subsequent ratification.

Another Treasury official at the same conference was quoted as saying that the department is in the process of reviewing US treaty policy in the wake of the 2017 Tax Cuts and Jobs Act (TCJA), and the review is not limited to the pending treaties. She said the Government is evaluating both treaties that have been signed as well as agreed to in substance in light of the TCJA, and also existing US treaties to determine if they may require a protocol.

The Treasury official further disclosed that the IRS is committed to negotiating and implementing bilateral agreements on the automatic exchange of country-by-country (CbC) reports. She indicated that there has been progress in regard to a number of negotiations, including with Germany and France. The US has indicated that it plans to negotiate bilateral CbC agreements, instead of applying a single multilateral competent authority agreement. The official added that the US Government remains adamantly opposed to public disclosure of CbC reports.

The Organisation for Economic Co-operation and Development (OECD) on 23 December announced that the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has released additional interpretative guidance for tax administrations and multinational enterprise groups on the implementation and operation of CbC Reporting (BEPS Action 13). The new guidance makes clear that under the BEPS Action 13 minimum standard, the automatic exchange of CbC reports filed under local filing rules is not intended. A summary of CbC reporting notification requirements in Inclusive Framework member jurisdictions was also posted on the OECD website.

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