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Global Tax Alert

Report on recent US international tax developments - 17 January 2020

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The United States (US) Internal Revenue Service (IRS) reportedly may be scaling back the broad definition of interest in the 2018 proposed Internal Revenue Code[1] Section 163(j) regulations, according to an IRS official this week. While the official defended the Government's authority to provide an expansive definition of interest, she was also quoted as saying the Government is considering trimming the list of items not normally considered interest. Section 163(j), as amended by the *Tax Cuts and Jobs Act*, limits the deduction for business interest expense for tax years beginning after 31 December 2017. The proposed regulations, issued on 26 November 2018, include in the definition of interest many items that are not treated as interest under general Federal income tax principles, the Code or regulations, but that the IRS and Treasury viewed as "closely related" to interest and that "affect the economic yield or cost of funds of a transaction involving interest."

The final Section 163(j) regulations are currently under review at the Office of Management and Budget's Office of Information and Regulatory Affairs.

The same IRS official also said that the IRS is considering amending the fair market value requirement in proposed regulations issued in early October 2019 to address the pending phase-out of the London interbank offered rate (LIBOR) and variant interest rates. The proposed regulations address tax issues resulting from the transition to the use of referent interest rates other than

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interbank-offered rates (IBORs) in debt instruments and other contracts. The transition from IBOR may impact debt instruments as well as many non-debt instruments that reference IBOR.

An IRS official this week was quoted as saying the IRS is willing to entertain issuing private letter rulings in the cryptocurrency space to address issues not covered in cryptocurrency guidance issued in October 2019. The IRS issued Rev. Ruling 2019-24 and frequently asked questions (FAQs) that expanded on guidance issued in Notice 2014-21. The official said that taxpayers interested in entering into a letter ruling should contact the IRS to request a pre-submission conference. Taxpayers may also send cryptocurrency questions to the IRS using a link in the cryptocurrency FAQs posted on the IRS website.

France will not eliminate its Digital Services Tax (DST) in the face of threats of US retaliatory tariffs, according to France's Finance Minister in an editorial in the Wall Street Journal on 14 January. The Finance Minister reiterated that the French Government is committed to withdrawing the 3% DST once an agreement is reached at the Organisation for Economic Co-operation and Development (OECD) on a digitalization tax plan. "There is a simple way out," the Finance Minister said, "Our American allies can suspend their [proposed tariff] proceedings and continue working toward an agreement on an international digital tax."

In regard to BEPS[2] 2.0, the OECD is currently preparing for an upcoming meeting of the Inclusive Framework at the end of January. Following that meeting, the OECD will release a project update in advance of the mid-February G20 Finance Ministers' meeting.

Endnote

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Base Erosion and Profit Shifting.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax and Transaction Services, Washington, DC

- Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- Joshua Ruland joshua.ruland@ey.com

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