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Global Tax Alert

Report on recent US international tax developments – 6 March 2020

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The Internal Revenue Service (IRS) will not be issuing regulations that align the transfer pricing rules to changes introduced by the *Tax Cuts and Jobs Act* (TCJA) in relation to the definition of intangible property before 2021, an IRS official said this week. The official was also quoted as saying a regulation that addresses the valuation of transactions on an aggregate basis is expected to be released sometime in 2020. The TCJA moved the definition of intangible property (IP) from Internal Revenue Code Section 936(h)(3)(B) to Section 367(d)(4) and included goodwill, going-concern value and workforce in place within the definition. The law also confirmed the position the IRS has taken that the Secretary can require IP transfers to be valued on an aggregate basis or on the basis of the realistic alternatives to the transaction.

A group of House Congressional Republicans recently urged Treasury Secretary Steven Mnuchin to withdraw Section Two of IRS Notice 2007-55 relating to the treatment of liquidating distributions of a real estate investment trust (REIT). In Notice 2007-55, the IRS announced that it would challenge transactions in which a foreign government or other foreign shareholder claimed that distributions received from a REIT or regulated investment company were exempt from taxation under Section 892 or otherwise not subject to Section 897(h)(1). The House legislators claimed in a letter that the provision "subjects a liquidating distribution made by a REIT to a foreign taxpayer (which is essentially the sale of shares of stock in the REIT) to a punitive tax that is not levied on other similar types of investments." According to the legislators, the notice has been a major impediment to foreign investment in United States (US) commercial real estate and infrastructure.

A similar letter was sent to the Treasury Secretary by a bipartisan group of Senators last December.

The United Kingdom (UK) Government this week announced that it would "consider" US opposition to unilateral digital services taxes (DSTs) in the lead up to trade talks with the US. The UK planned to introduce a 2% DST from April 2020 that would be imposed on revenues from search engines, social media platforms and online marketplaces, with details coming as early as next week when the UK Budget is presented. The US has vowed retaliation against countries that unilaterally impose a DST on US companies.

Endnote

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

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