Report on recent US international tax developments – 13 March 2020

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The Internal Revenue Service (IRS or Service) expects fewer large corporate taxpayers will participate in the compliance assurance program (CAP) due to the fact that the Service is keeping to its strict eligibility requirements. An IRS Large Business and International Division (LB&I) official this week was quoted as saying that the number of participants is expected to drop from 161 to 150, saying the Service "locked down" eligibility requirements and participant expectations. The IRS has not accepted new applicants into CAP since 2015, but it opened up the 2020 CAP program to new applicants last fall.

CAP is a cooperative pre-filing program available to certain large taxpayers that began as a pilot program in 2005 and was made permanent in 2011. It is intended to allow the IRS and taxpayers to reach agreement on the treatment of various tax issues before a return is filed. The program involves three phases: (1) pre-CAP; (2) CAP; and (3) Compliance Maintenance. Interested taxpayers must apply for the program and participants must apply annually to continue in the program each year.

The Treasury Inspector General for Tax Administration (TIGTA) this week released a report finding that "millions of dollars in discrepancies in tax withholding required by the *Foreign Investment in Real Property Tax Act* (FIRPTA) are not being identified or addressed." The review was meant to assess IRS efforts to verify the accuracy of withholding credits reported on Forms 1040NR and Forms 1120-F. TIGTA found more than US$688 million of discrepancies

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between withholding reported on Forms 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*, and the withholding assessed to the buyer's tax account filed during 2017.

The IRS agreed to all 12 of TIGTA's recommendations, but did not agree with TIGTA's outcome numbers, which they consider are overstated.

The number of *Tax Cuts and Jobs Act* (TCJA) tax regulations now at the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) or that have returned from OIRA to Treasury for final review continues to grow. At this time, there are a total of seven regulatory projects at Treasury following completion of the OIRA review (six of which are TCJA-related) and five projects currently at OIRA. International tax projects awaiting release from Treasury include final Internal Revenue Code[1] Section 245A(e) and 267A hybrid regulations and final Section 163(j) interest limitation regulations. OIRA is presently reviewing proposed Section 163(j) regulations, which reportedly will be released together with the pending final interest limitation regulations.

On 11 March 2020, the new Conservative United Kingdom (UK) Government presented its first Budget, confirming that a Digital Services Tax (DST) will be implemented as a 2% tax on revenues earned from 1 April 2020. According to press reports, the tax will be imposed on revenue that a group derives from providing a social media platform, search engine or an online marketplace to UK users, if the group exceeds designated thresholds. An exemption from the definition of an online marketplace for financial and payment services is expected to be included. A group's first £25m of revenues derived from UK users will not be subject to the DST. The UK Government is moving forward with the DST notwithstanding the United States (US) Government pressure to not impose a unilateral digital tax that it considers will disproportionately affect US companies. The UK Government reiterated that the UK will not impose its own DST if a global solution is reached.

Endnote

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

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