Report on recent US international tax developments – 20 March 2020

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The coronavirus (COVID-19) pandemic has taken center stage globally, including in the tax realm. The United States (US) Government this week took action on several fronts to address the economic uncertainty. President Trump signed into law the *Families First Coronavirus Response Act* (H.R. 6201), a package of measures to address initial hardships as a result of the pandemic. The legislation provides affected individuals with paid sick and family leave and creates tax credits for affected employers, expands food and nutrition services, allows for emergency state unemployment insurance grants, and increases Medicaid funding to states, among other things.

With the second congressional bill to address the crisis signed into law (the first being a coronavirus appropriations bill, H.R. 6074), attention now turns to efforts in the Senate – in conjunction with the House and the Trump Administration – to develop a much larger third package.

To that end, Senate Republicans on 19 March released their version of a third coronavirus bill, the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, a roughly US$1 trillion package highlighted by $1,200 per-individual mailed payments and importantly, business tax provisions addressing net operating losses (NOLs), the business interest limitation under Internal Revenue Code Section 163(j), and qualified improvement property (QIP). The bill also includes health, retirement, and charitable provisions, among others. This is a Senate Republican proposal and will require negotiation with Democrats to move forward.

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Under the Republican package, corporations could postpone estimated tax payments due after the date of enactment until 15 October, and employers and self-employed individuals could defer payment of the 6.2% employer share of Social Security taxes on employee wages, with half required to be paid by the end of 2021 and the rest by the end of 2022.

The Senate Republican bill would make two amendments to Section 172(a). First, it would suspend temporarily the 80% taxable income limitation enacted as part of the *Tax Cuts and Jobs Act* (TCJA) by generally allowing a deduction for NOLs incurred in taxable years beginning before 1 January 2021 (so for a calendar year taxpayer, this relief is for NOLs incurred in the 2018, 2019, or 2020 tax years) to fully offset a taxpayer's taxable income. Second, NOLs for taxable years beginning after 31 December 2017, and before 1 January 2021 can, at the election of the taxpayer, be carried back five years. (The released draft refers to years beginning before 1 January 2020, which would allow a carryback of losses for two years, but the description refers to losses incurred in three years (2018, 2019, and 2020), presumably a correction will be made before enactment.)

The business interest limitation under Section 163(j), currently set at 30% of adjusted taxable income based on EBITDA (earnings before interest, taxes, depreciation and amortization), would be set at 50% for 2019 and 2020.

The Republican bill would also address two TCJA technical corrections, one of which pertains to international tax. Democrats have thus far been reluctant to support TCJA technical corrections without addressing some of their own favored provisions. The international proposal in the bill would restore the limitation on downward attribution of stock ownership in applying constructive ownership rules to clarify that certain foreign subsidiaries should not be subject to those requirements. The correction would be retroactive to the enactment of the TCJA.

In Notice 2020-17 released on 18 March, the Internal Revenue Service (IRS) provided tax-payment relief for those affected by the pandemic, allowing any taxpayer who owes federal income tax due 15 April 2020, to remit that tax payment by 15 July 2020, without incurring penalties or interest. The payment extension is limited to tax payments of $1 million for individuals, regardless of filing status, and $10 million for consolidated groups and each C corporation that is not part of a consolidated group.

As we go to press, Treasury Secretary Steven Mnuchin tweeted on 20 March, that the income tax return filing deadline is extended from 15 April 2020 to 15 July 2020. President Trump reiterated the filing extension in a press briefing the same day. This is in addition to the payment extension.

The IRS also announced a new webpage (www.irs.gov/coronavirus) that consolidates information intended to help taxpayers affected by the coronavirus.

On 20 March 2020, Treasury and the IRS published final regulations providing guidance on determining the creditability of foreign taxes following covered asset acquisitions under Section 901(m). The final regulations are generally consistent with the prior temporary regulations and the proposed regulations published in December 2016.

Among other things, the final regulations include the three additional categories of transactions treated as covered asset acquisitions (CAAs) contained in the proposed regulations. Importantly, the final regulations modify various definitions to effectively exempt CAAs, to the extent gains and losses with respect to the relevant foreign assets are recognized by members of the domestic Section 901(m) payor or a member of the same consolidated group as the Section 901(m) payor. The final regulations further clarify that Section 901(m) calculations should be made prior to the application of Section 909 in the case of CAAs involving foreign tax credit splitters.

The finalized proposed regulations generally apply to CAAs occurring on or after the date the final regulations are published in the Federal Register.

The Organisation for Economic Co-operation and Development (OECD) this week released an update on its intent to continue "full steam" on the Base Erosion and Profit Shifting (BEPS) 2.0 project. The OECD plans to continue its efforts virtually with the goal of reaching a political agreement at the G20/OECD Inclusive Framework on BEPS plenary meeting that is still planned for Berlin on 1-2 July 2020. Under the circumstances, it is not clear how much formal public engagement there will be as the OECD and the participating countries further flesh out the details of the approaches under Pillar One and Pillar Two in advance of the July meeting. EY will continue to follow the discussions closely and will report regularly.

On 9 March 2020, the OECD released the compilation of comments received on the 2020 review of Country-by-Country Reporting (BEPS Action 13 minimum standard). The OECD received 79 contributions totaling 552 pages.

EY's Global Tax Policy Center this week released the COVID-19 Stimulus Tracker (18 March 2020 edition), which provides a snapshot of the policy changes that have been announced in countries around the world in response to the COVID-19 crisis. The COVID-19 Stimulus Tracker, which will be updated approximately every two days, is available on ey.com.

Endnote

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

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