

Report on recent US international tax developments - 15 May 2020

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The United States (US) House (lower chamber of Congress) is expected to vote today (15 May) to approve the *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES Act), H.R. 6800, a US\$3 trillion stimulus package that proposes the next installment in COVID-19 legislation. The 1800 + page bill (the summary is 71 pages) was introduced by House Democrats on 12 May and includes US\$1 trillion in state and local funding, more direct payments, unemployment insurance, money for testing, and a host of other provisions. The US Senate will not take up the bill, with the Majority Leader quoted as saying the HEROES Act is a "parade of absurdities."

Senate Majority Leader Mitch McConnell confirmed this week that there is a "high likelihood" there will be another coronavirus bill enacted by Congress, saying he is in discussions with members of the Trump Administration. Senate Republicans and the Trump Administration are first expected to reach some form of agreement on the parameters of what should be included in the next bill before negotiating with Democrats. Senator McConnell declined to set a timeline for action, however, reiterating that Senate Republicans are in no rush to pass another stimulus package. Senate action on a coronavirus bill before June is seen as increasingly unlikely.

Treasury and the Internal Revenue Service (IRS) this week issued final regulations ([TD 9897](#)) that adopt without substantive change the 2016 proposed regulations under Internal Revenue Code Section 385 that characterize certain corporate interests as stock or debt. The final regulations address the treatment of qualified short-term debt instruments, controlled partnerships, and consolidated groups under the so-called Distribution Regulations; these regulations recharacterize a debt instrument issued by a domestic corporation as stock if the instrument is issued to a member of the domestic corporation's expanded group in a distribution, in exchange for related-party stock, or in exchange for property in certain asset reorganizations.

Although the 2016 proposed regulations cross-referenced temporary regulations that expired on 13 October 2019, taxpayers were permitted to rely on the 2016 proposed rules if they applied the rules consistently and in their entirety.

Consistent with recent guidance, the Government reiterated that Treasury and the IRS continue to study the appropriate approach to making the Distribution Regulations more streamlined and targeted through future proposed regulations.

The IRS on 11 May announced certain modifications to the procedures for filing documents related to mutual agreement procedure and advance pricing agreement (APA) requests and APA annual reports. Documents requiring the taxpayer's signature may now be submitted using an image of the signature or the taxpayer's digital signature, and all submissions may be filed electronically.

In regard to pending and executed APAs, the IRS disclosed that officials from the Advance Pricing and Mutual Agreement Program are discussing both substantive and procedural issues with treaty partners, including the application of transfer pricing methods during periods of economic distress and the impact on specific industries, among other issues.

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