

Report on recent US international tax developments - 11 September 2020

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The United States (US) Treasury on 3 September announced that the Internal Revenue Code¹ Section 163(j) final regulations (TD 9905) that were released in July 2020, will be published on 14 September 2020. Based on the expected publication date in the Federal Register, the final regulations are generally expected to be applicable to taxable years beginning on or after 13 November 2020. Therefore, for a calendar year taxpayer, the final rules generally would be effective for taxable years beginning 1 January 2021.

Taxpayers may choose to apply the final regulations to a taxable year beginning after 31 December 2017 and before the effective date of the final regulations. In that case, however, the taxpayer must consistently apply the rules under the Section 163(j) regulations, and if applicable, the final regulations modifying other regulation provisions set forth in TD 9905 (for example, Reg. Section 1.263A-9) to that taxable year. Note that different applicability dates may apply with respect to anti-avoidance rules, and each section has its own specific provisions with respect to applicability dates that should be reviewed when determining applicability dates based on the taxpayer's particular facts and circumstances.

On the international front, the tax press this week quoted the French Finance Minister as saying that the US is hindering progress in regard to the BEPS² 2.0 negotiations. Finance Minister Bruno Le Maire reportedly said on 9 September that he believes the US Government does not want agreement on a Pillar 1 proposal and therefore the European Union should move forward with its own alternative digital tax proposal in the first quarter of 2021.

The OECD³ expects to have blueprints of proposals for both Pillar 1 and Pillar 2 of the BEPS 2.0 project ready by October 2020. In the meantime, a number of countries have already moved forward to enact their own digital tax proposals.

Endnotes

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. Base Erosion and Profit Shifting.
3. Organisation for Economic Co-operation and Development.

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