

Report on recent US international tax developments - 23 October 2020

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In [Revenue Procedure 2020-44](#), the United States (US) Internal Revenue Service (IRS) has confirmed that certain fallback language modifying debt instruments, derivatives, and other financial contracts to cover the possible discontinuance of the London Interbank Offered Rate (LIBOR) will not result in a deemed taxable exchange for US federal income tax purposes. The confirmation also applies to other "interbank offered rates" (IBORs), such as the Euro Interbank Offered Rate (EURIBOR). In addition, the IRS confirmed that the modifications will not change the tax treatment of a "synthetic" debt instrument (i.e., an integrated debt instrument and hedge under Reg. Sections 1.988-5 or 1.1275-6).

Given the very large number of financial instruments referencing LIBOR and other IBORs, the demise of these indices will affect numerous taxpayers. The Revenue Procedure is, however, limited to only certain, specific modifications. Taxpayers (and their foreign entities) should evaluate all floating-rate debt instruments they hold or have issued, as well as derivative and other transactions into which they have entered, to determine if the Revenue Procedure may be relied upon to avoid the realization of gain or loss from contract modifications to include fallback language to account for the possible discontinuation of LIBOR.

The Revenue Procedure applies to contract modifications made on or after 9 October 2020, and before 1 January 2023, but can be relied on for contracts modified before 9 October 2020. For details, see EY Global Tax Alert, [US IRS confirms that some modifications to debt instruments and other contracts to reflect LIBOR discontinuation will not result in a deemed taxable exchange](#), dated 20 October 2020.

The head of the IRS Advance Pricing and Mutual Agreement Program (APMA) this week was quoted as saying that the IRS will consider amending existing advance pricing agreements (APAs) because of the economic implications from the COVID-19 pandemic, but it will not be automatic. The official indicated that APMA will consider requests on a case-by-case basis for early termination of existing APAs that will run through 2020. He cautioned, however, that consideration of such requests does not mean the IRS will accept changes to the transfer pricing method absent compelling justification.

There reportedly also are no plans by APMA to release formal guidance in regard to APAs or mutual agreement procedures that address the effects of the COVID-19 pandemic. The APMA program expects to see a large number of requests for APA amendments due to the pandemic's economic fallout after 2020 financial results become available.

The US Government this week announced (Announcement 2020-40) that the 1989 US-Hong Kong shipping agreement will be terminated effective 1 January 2021, effective for taxable years beginning on or after that date. Last summer, President Trump issued an Executive Order on Hong Kong Normalization, which, among other things, directed that notice be given to Hong Kong of the US Government's intent to terminate the shipping agreement.

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