4 December 2020

Global Tax Alert

Report on recent US international tax developments - 4 December 2020

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The Organisation for Economic Co-operation and Development (OECD) will hold a two-day virtual public consultation on the Base Erosion and Profit Shifting (BEPS) 2.0 Pillar One and Pillar Two Blueprints on 14-15 January 2021, according to Pascal Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration. The OECD Director was quoted as saying that while the overall architecture of the Pillars has been agreed upon, certain aspects may be overly complicated and the public consultation may be an opportunity to simplify some of that complexity.

Public comments on the blueprints are due by 14 December 2020. The Inclusive Framework on BEPS reportedly will meet at the end of January 2021 to move the project forward, although Saint-Amans said further progress may not be possible if the new United States (US) delegation is not in place. The plan remains for agreement on the two pillars to be reached by mid-2021.

On the US-tax front, the Internal Revenue Service (IRS) on 4 December released final (TD 9936) and proposed (REG-111950-20) passive foreign investment company (PFIC) regulations that follow proposed regulations that were issued in July and October 2019.

The final regulations under Internal Revenue Code Sections 1291, 1297 and 1298 provide guidance on PFICs and clarify certain longstanding PFIC issues, including those of particular interest to the insurance industry. The final regulations retain the basic approach and structure of the proposed regulations, but with certain revisions. The final regulations, at over 250 pages, are effective upon filing in the Federal Register.

The proposed regulations address PFICs and the treatment of qualified improvement property under the Alternative Depreciation System for Sections 250(b) and 951A(d) purposes.

The US Treasury and the IRS on 20 November issued final regulations (TD 9934) under Sections 245A and 951A that coordinate two independent sets of anti-abuse rules that apply to extraordinary dispositions and disqualified transfers (together, EDs). Both rules apply to certain transactions of a controlled foreign corporation (CFC) occurring during the so-called Global Intangible Low-taxed Income (GILTI) gap period. Absent the final regulations, gain recognized in an ED effectively could be taxed twice. The final regulations, which come three months after the release of the proposed regulations in August 2020, are effective 12 January 2021. The final regulations are substantially similar to the proposed regulations.

The final regulations can be applied retroactively, at the taxpayer's option. As a result, taxpayers may wish to file amended returns to mitigate negative consequences caused by the application of both sets of anti-abuse rules. In addition, taxpayers should evaluate whether the final regulations create opportunities to manage their overall tax liability, taking into account potential legislative and regulatory changes in the coming years, the taxpayer's attribute profile (including foreign tax credits), and projections for future income and taxes. Taxpayers may also want to consider repatriation strategies, mergers and acquisitions, and numerous other unique considerations.

The IRS Large Business and International (LB&I) Division on 17 November released a memorandum (LB&I-04-1120-0020) providing interim guidance for revenue agents and examiners regarding examinations with Section 965 transition tax issues. In particular, the memorandum provides guidance on the Section 965(k) six-year statute of limitations on assessment for returns with a Section 965 transition tax. The guidance does not cover returns that are subject to the centralized partnership audit regime under the *Bipartisan Budget Act of 2015* or to TEFRA partnerships, which will be the subject of separate guidance.

Endnotes

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. *Tax Equity and Fiscal Responsibility Act of 1982* (TEFRA).

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EYG no. 000025-20Gbl

1508-1600216 NY
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