8 January 2021

Global Tax Alert

Report on recent US international tax developments - 8 January 2021

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our EY Global Tax Alert Library on ey.com.

The Georgia Senate runoff elections were won this week by Democrats Jon Ossoff and Raphael Warnock, giving Democrats control of the United States (US) Senate beginning later this month. With the Democratic and Republican parties split 50-50 in the Senate, Vice President-elect Kamala Harris will break ties, allowing major Democratic priorities like stimulus, climate change, and health care, potentially paid for with tax increases, to be brought up and passed in the House and Senate.

How President-elect Joe Biden will proceed with his stated intention to raise the statutory corporate income tax rate to pay for changes that can benefit middle-income Americans on "day one" of his presidency is unknown. Some Biden advisors and congressional Democrats have indicated the types of tax increases supported by Biden during the campaign would not be included as part of initial stimulus legislation, but instead would be used to offset the cost of changes in permanent policies. That could mean such tax increases might not take effect on 1 January 2021, but could be delayed, maybe until 2022.

During the campaign, Biden proposed improvements to US manufacturing through a 10% "Made in America" Tax Credit for investment in revitalizing factories and reshoring jobs, which has been paired with a 10% "offshoring" surtax on a US company's overseas production profits from sales back to the US – such income would be taxed at 30.8%. Biden also proposed combining

Building a better working world

a 28% corporate tax rate with a 21% tax rate on Global Intangible Low-Taxed Income (GILTI), proposed applying GILTI on a jurisdictional basis, rather than an aggregate basis as it currently applies, and repealing the GILTI relief for foreign profits relating to qualified tangible property.

A key question is whether Biden and congressional Democrats will simply push to modify GILTI, or whether additional changes to the *Tax Cuts and Jobs Act's* (TCJA) international tax reforms may be considered.

Beyond international tax, Biden has called for a "minimum corporate tax" of 15% applying to book income for companies with net income greater than US$100 million, which is seen as addressing concerns that some major corporations pay no taxes.

With respect to regulations, the Treasury Department on 6 January released additional final regulations (TD 9943) (the 2021 Final Regulations) with guidance on the business interest expense limitation under Internal Revenue Code[1] Section 163(j) (the Section 163(j) Limitation). The Section 163(j) Limitation was modified in December 2017 by the TCJA, and in March 2020 by the *Coronavirus Aid, Relief, and Economic Security Act* (the CARES Act). The 2021 Final Regulations retain the same basic structure as the Proposed Regulations published in September 2020 (2020 Proposed Regulations) and include certain definitions and rules for applying the Section 163(j) limitation to controlled foreign corporations and certain partnerships. The 2021 Final Regulations adopt (with some revisions), clarify and reserve on certain aspects of the 2020 Proposed Regulations.

The 2021 Final Regulations apply to tax years beginning on or after the date that is 60 days after the regulations are published in the Federal Register. The 2021 Final Regulations allow taxpayers to apply the rules retroactively, subject to certain requirements.

The US Government this week de-escalated tensions over France's enactment of a Digital Services Tax (DST), with the US Trade Representative (USTR) announcing on 7 January that it is suspending tariff action in the Section 301 investigation of the DST. The USTR in July 2020 announced the imposition of tariffs on selected French goods that were scheduled to go into effect on 6 January 2021. According to a press release, the action was taken to enable a coordinated response for ongoing investigations of similar DSTs adopted or under consideration in 10 other jurisdictions.

The public consultation meeting on the Organisation for Economic Co-operation and Development (OECD) Pillar One and Two Blueprints will be held virtually on 14-15 January 2021. The OECD this week announced that the Inclusive Framework on Base Erosion and Profit Shifting follow-up virtual meeting on 27-28 January will also be open to the public.

Endnote

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

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax and Transaction Services, Washington, DC

- Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- Joshua Ruland joshua.ruland@ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

EYG no. 000155-21Gbl

1508-1600216 NY
ED None

ey.com