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Treasury and IRS news

Treasury, IRS moving forward with TCJA international guidance; 2 more repatriation transition notices expected

Guidance to implement provisions in the *Tax Cuts and Jobs Act* (TCJA) continues to dominate Treasury and IRS discussions, both within and outside the government. A Treasury official in mid-February was quoted as saying Treasury and the IRS have had several substantive meetings on the Section 163(j) interest expense limitation provision and that a notice is planned for release in the coming weeks.

He said the government would also begin a major push to address guidance for the TCJA's global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) provisions in mid-March or early April. Regarding GILTI, Treasury reportedly is considering whether the income should be tested individually on a shareholder-by-shareholder basis within a US consolidated group or on a consolidated basis. Guidance on the TCJA's base erosion and anti-abuse tax (BEAT) is expected at the end of 2018.

A Treasury official also disclosed there will be two more Section 965 transition notices this year, with the first one expected to be issued in March. (The government issued transition guidance in the form of Notice 2018-7 and Notice 2018-13 in December and January, respectively.)

According to an IRS official, the next transition notice will focus on timing and procedural issues, including elections and estimated tax payments. Specifically, the IRS official indicated that the notice would address how companies elect installment payments and who makes the election if a shareholder is a domestic partnership. The official was quoted as saying the government is inclined to allow the US partners to make the election. The third transition notice reportedly will also address the way in which corporations handle their estimated tax payments for 2018.

The Treasury official cautioned taxpayers not to expect Treasury to lessen the impact of the Section 965 repatriation transition tax, however. The official said taxpayers should expect the Administration to "apply that provision largely consistently with how it was written."

Meanwhile, the European Commission has indicated it will survey European multinational enterprises about how the TCJA's international tax provisions may affect their companies. A questionnaire reportedly has been developed

that will be issued to European multinationals, asking them to describe the type of transactions and business operations that will be affected by certain TCJA provisions, and whether they plan to change their business strategies, among other issues.

Some European governments have voiced concern that the FDII and certain other TCJA international provisions may be discriminatory and in violation of World Trade Organization (WTO) rules. Following an Economic and Financial Affairs Council (ECOFIN) meeting on 20 February, European Commission Vice President Valdis Dombrovskis said it was too early to talk about retaliation against the US, however.

IRS guidance under new Section 965 prevents certain foreign corporations from making accounting period changes

On 13 February 2018, Treasury and the IRS issued [Revenue Procedure 2018-17](#), modifying Revenue Procedures 2002-39 and 2006-45, relating to IRS procedures for the adoption, retention or change in accounting periods, to prevent certain calendar year foreign corporations from changing their accounting period for 2017 when a US shareholder is required to include an amount in gross income under Section 951(a)(1) by reason of Section 965.

Revenue Procedure 2018-17 can apply with respect to a request by a foreign corporation to change an annual accounting period that ends on 31 December 2017, regardless of when such request was filed.

The *Tax Cuts and Jobs Act* enacted a repatriation transition tax provision in Section 965. The transition tax requires a mandatory inclusion of the accumulated foreign earnings of controlled foreign corporations (CFCs) and other foreign corporations with a 10% domestic corporate shareholder, collectively referred to as specified foreign corporations (Section 965 SFCs).

Revenue Procedure 2018-17 can apply to Section 965 SFCs wanting to change their tax year that ends on 31 December 2017. For 52-53-week tax years, such years are treated as beginning on the first day of the calendar month nearest to the first day of the 52-53-week tax year, and ending or closing on the last day of the calendar month nearest to the last day of the 52-53-week tax year, as the case may be.

In the Revenue Procedure, the government states that a Section 965 SFC with a tax year ending on 31 December 2017, could avoid the purposes of Section 965 by changing its tax year to defer a US shareholder's inclusion or reduce the amount of such inclusion.

Revenue Procedure 2018-17 modifies Revenue Procedures 2002-39 and 2006-45 to make procedures therein for the approval of accounting period changes inapplicable to certain Section 965 SFCs.

Revenue Procedure 2018-17 can apply with respect to a request by a calendar year Section 965 SFC to change an annual accounting period beginning on 1 January 2017 that ends on 31 December 2017, regardless of when such request was filed. The application of Revenue Procedure 2018-17 is also not limited to Section 965 SFCs where there is an actual transition tax inclusion or where the deficit of the Section 965 SFC offsets earnings of a deferred foreign income corporation (DFIC). Instead, Revenue Procedure 2018-17 can apply to a Section 965 SFC that has any US shareholder with a transition tax inclusion.

New guidelines issued for delinquent Forms 1120-F and waiver requests

The IRS Large Business and International (LB&I) Division in February issued guidelines for handling delinquent Forms 1120-F and requests for waivers under Reg. Section 1.882-4(a)(3)(ii). According to the Service, the guidance is meant to ensure that examiners analyze such requests in a “fair, consistent and timely manner.”

Failure to timely file Form 1120-F can result in the denial of deductions and credits under Section 882(c)(2). Reg. Section 1.882-4(a)(3)(ii) permits the Commissioner to waive the filing deadline, and allow the foreign corporation to claim deductions and credits if the foreign corporation can establish that it acted reasonably and in good faith in failing to timely file a return.

US to initiate tax treaty talks with Armenia

Treasury Secretary Steven Mnuchin said the United States would enter into tax treaty negotiations with Armenia. The Treasury Secretary made the statement during a 6 February hearing on Capitol Hill.

Treasury may delay Section 987 branch currency regulations until 2020

A Treasury official in February said the government plans to further delay the effective date of the final Section 987 branch currency regulations until 2020, citing the need to focus on TCJA guidance. The final regulations under Section 987 were issued in December 2016.

Recall that the final foreign currency regulations were identified in Notice 2017-38 (along with seven other regulations) as significant tax regulations requiring additional review under Executive Order 13789. The Treasury official said the plan now is to issue additional proposed regulations sometime mid-year or early fall 2018.

If implemented, this would be the second delay for the Section 987 regulations; on 2 October 2017, Treasury and the IRS announced in Notice 2017-57 that they intended to delay the applicability date of the final and related temporary regulations by one year. At the time, this made the final Section 987 regulations applicable to tax years beginning on or after *two years* after the first date of the first tax year following 7 December 2016 (i.e., 1 January 2019, for in-scope calendar-year taxpayers).

Treasury tax official resigns

Dana Trier, Treasury Deputy Assistant Secretary for Tax Policy, unexpectedly resigned his post, a department official confirmed on 26 February. Trier, who assumed his position in July 2017, has been a leading government figure in ongoing discussions regarding pending *Tax Cuts and Jobs Act* (TCJA) guidance. It is unclear what impact, if any, Trier's departure will have on the release of future TCJA guidance.

IRS updates Priority Guidance Plan to add projects implementing some TCJA international provisions

The IRS issued the [second quarter update](#) to its 2017-18 Priority Guidance Plan, adding new guidance projects to implement the changes enacted by the *Tax Cuts and Jobs Act* (TCJA).

The second quarter update to the [2017-2018](#) Priority Guidance Plan includes 18 new projects related to the implementation of the TCJA. The introduction to the plan update describes these projects as “near term priorities.” The plan update also adds several other new projects relating to guidance that the IRS has issued over the past several months. Several of the TCJA implementation projects relate to international provisions, including:

1. Computational, definitional and other guidance under new Section 163(j)
2. Guidance implementing new Section 965 and other international sections of the TCJA (this guidance was published as Notice 2018-07)
3. Guidance under new Section 1446(f) for dispositions of certain partnership interests (this guidance was published as Notice 2018-08)

Taxpayers that are interpreting new Section 163(j), new Section 965, new Section 1446(f) and other international sections of the TCJA should continue to monitor the release of new guidance.

IRS assumes major role in OECD’s International Compliance Assurance Program

An IRS official in February said the Service is taking a leadership role in the OECD’s International Compliance Assurance Program (ICAP). The OECD launched an ICAP pilot in January 2018 involving eight major jurisdictions, including the US. It will focus on multilateral risk assessment and resulting tax assurance for large Multinational Enterprise (MNE) groups.

ICAP will use Country-by-Country (CbC) reports and other taxpayer-provided information to allow MNE groups and tax administrations to engage in open and transparent discussions on tax risks, and, if agreement can be reached that the issues are low risk, to provide outcome letters that state this. The IRS official said the ICAP program is an example of how the IRS is attempting to be “proactive with regard to CbC reporting.”

The official said: “The hope with the pilot program is that participants will be able to identify certain flows that can be removed from the audit process, so it really is a dispute prevention effort from the start.”

Transfer pricing news

IRS announces increase in user fees for unilateral and bilateral APAs

The IRS has announced that fees for Advance Pricing Agreements (APAs) are expected to increase in a two-step process, 30 June 2018 and 31 December 2018.

In the announcement, the IRS significantly increases the user fee amounts as follows:

	Revenue Procedure 2015-41	For APA requests after 30 June 2018	For APA requests after 31 December 2018
New APAs	US\$60,000	US\$86,750	US\$113,500
Renewal of APAs	US\$35,000	US\$48,500	US\$62,000
Small Case APAs	US\$30,000	US\$42,000	US\$54,000
Amendment to APAs	US\$12,500	US\$17,750	US\$23,000

OECD developments

OECD releases additional CbCR guidance, country approaches to CbC reporting

On 8 February 2018, the OECD released additional guidance to give greater certainty to tax administrations and multinational enterprise (MNE) groups on the implementation and operation of BEPS Action 13 Country-by-Country (CbC) Reporting. Accordingly, the existing guidance on the implementation of CbCR ([the Guidance](#)) has been updated to address two specific issues: (i) the definition of total consolidated group revenue, relevant to

determine whether a filing obligation exists; and (ii) whether non-compliance with the confidentiality, appropriate use and consistency conditions constitutes a Systemic Failure, which could trigger an obligation for local filing of the CbC report.

Additionally, the OECD released a [compilation](#) of the approaches adopted by 24 member jurisdictions of the Inclusive Framework on BEPS, with respect to some of the issues where the Guidance allows for alternative approaches.

The latest Guidance marks the seventh release by the OECD regarding practical questions that have arisen concerning the implementation and operation of CbC Reporting.

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