7 September 2018

Global Tax Alert

Report on recent US international tax developments - 7 September 2018

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The United States (US) House and Senate returned to session this week for a relatively short session prior to the expected recess for the November mid-term elections. Those elections, which are top of mind for all members and will determine Congressional control in 2019, to a certain extent will drive the fall legislative agenda, including in the area of taxation. The election will also have a major impact on the agenda for a post-election lame duck session. If Democrats win control of the House and/or Senate, it is not clear whether they will cooperate in enacting legislation during the lame-duck period.

The House Ways and Means Committee reportedly will meet the week of 10 September to consider "Tax Reform 2.0" legislation. This will be to prepare the legislation if House Republican leaders choose to move forward with a floor vote before the end of the month. Committee Chairman Kevin Brady was quoted as saying the legislative text will be released before the markup. The Chairman earlier had said Tax Reform 2.0 legislation would be in the form of three separate bills to better the chances of enactment of at least part of the package. The legislation is aimed at three areas: (1) making permanent individual and small business tax cuts; (2) promoting savings for families and retirement; and (3) spurring innovation, including by allowing start-ups to write off more of their initial costs. Tax Reform 2.0 faces an uphill battle in the Senate, where passage will require 60 votes.

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Chairman Brady has continued to say that technical corrections and other changes to the *Tax Cuts and Jobs Act* (TCJA) will not be addressed in Tax Reform 2.0, as lawmakers wait to see Treasury regulations on issues under the bill, particularly in regard to international tax issues. While House Speaker Paul Ryan has said that a bill focusing on fixing aspects of the TCJA's international provisions would be developed after the elections, it seems unlikely that such a bill will develop as the regulatory process is still ongoing.

Congressional tax staff, led by the staff of the Joint Committee on Taxation, are working on a TCJA explanatory "Blue Book," which is expected before year end. The Blue Book will also likely recommend technical corrections that the relevant staffs have identified by consensus as being necessary and appropriate. It is unclear when a TCJA technical corrections bill will be released and could start to move through the legislative process.

In regard to international guidance for the remainder of 2018, there is the expectation of the release of: (i) proposed rules on the Global Intangibles Low-taxed Income (GILTI) provisions, which are under Office of Management and Budget review and expected imminently; (ii) proposed regulations on the Internal Revenue Code[1] Section 163(j) interest expense deduction limitations; (iii) foreign tax credit regulations focusing on transition to the new GILTI and branch baskets, allocation of expenses, etc.; (iv) regulations on the Base Erosion Anti-Abuse Tax (BEAT); (v) regulations on hybrid transactions; (vi) changes to the PFIC rules; and (vii) possibly regulations on the Foreign Derived Intangible Income (FDII) provisions.

The Internal Revenue Service this week issued Revenue Procedure 2018-47, providing excise tax relief for certain regulated investment companies (RICs) that have income inclusions under Section 951(a)(1), due to the transition tax on untaxed foreign earnings under Section 965, for the excise tax year ended on 31 December 2017. A Global Tax Alert is forthcoming.

Endnote

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

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