# Global Tax Alert

# Report on recent US international tax developments 5 April 2019

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Republican House Ways and Means Committee members on 3 April wrote to United States (US) President Trump to voice their concerns about France's proposed digital services tax (DST) which is intended to apply from 1 January 2019. The 16 committee members characterized the French proposal as "designed and explicitly intended to target US companies." The letter, which also refers to the United Kingdom's (UK) proposed DST, argues that such taxes act as "a 'de facto' tariff on US exports" and threaten the US tax base. The group urged the Administration to "engage forcefully on these issues, including addressing them as a trade barrier."

US government officials this week said future final Internal Revenue Code<sup>1</sup> Section 250 regulations will include certain clarifications addressing both Foreign Derived Intangible Income (FDII) documentation and FDII intangible property manufacturing end-users. (Proposed Section 250 regulations were released in early March 2019.) In terms of documentation, a Treasury official was quoted as saying the rules would be expanded in the final regulations and that generally, the Government wants to require documentation through "normal business records." The official added that the Government is interested in hearing from taxpayers, noting he expects the final rules will include multiple documentation options.



In terms of foreign use of intangible property used in manufacturing based on the location of the end-user, an Internal Revenue Service (IRS) official was quoted as saying the final regulations will provide more guidance on who an end-user is under various circumstances. The official said the IRS is requesting comments on "where to draw the line." A Treasury official added that existing sourcing rules may not be used to determine end-users, and that the FDII regulations may have their own set of rules to generate answers.

The IRS may use the new Advance Pricing and Mutual Agreement Program (APMA) Functional Cost Diagnostic Model released last February in examinations in appropriate cases, according to an IRS official this week. The IRS earlier had indicated that the excel-based financial model was developed for use when reviewing certain Advance Pricing Agreement (APA) requests and was not intended as an examination tool. The official noted, however, that there is no link between the APMA diagnostic tool and recent IRS interim guidance requiring transfer pricing issue teams to consult with APMA before making adjustments involving a related party in a treaty country.

The US Government Accountability Office (GAO) this week released a critical report on implementation of the Foreign Account Tax Compliance Act (FATCA), concluding that FATCA data limitations and a lack of a comprehensive

strategy have hampered IRS efforts to increase compliance. The GAO recommended specific actions that should be taken to enhance compliance efforts, eliminate overlapping requirements, and mitigate the burdens on US persons abroad. Among its recommendations, the GAO urged the IRS to develop a "comprehensive plan for managing efforts to leverage FATCA data in agency compliance efforts." The IRS responded that the resources needed to develop such a plan "would be better spent on enforcement activities."

The Organisation for Economic Co-operation and Development's Forum on Tax Administration (FTA) announced a second pilot of the International Compliance Assurance Program (ICAP 2.0). A new handbook that will guide the second pilot was also endorsed and published by the FTA. ICAP is a voluntary risk assessment and assurance program designed to facilitate open and cooperative multilateral engagement between multinational enterprise (MNE) groups willing to engage actively and transparently and tax administrations in jurisdictions where the MNEs have business activities. The first ICAP pilot program was launched in January 2018, with the participation of eight FTA member jurisdictions (Australia, Canada, Italy, Japan, the Netherlands, Spain, the UK and the US). ICAP 2.0 includes nine additional participating tax administrations: Austria, Belgium, Denmark, Finland, Germany, Ireland, Luxembourg, Norway, and Poland.

## Endnote

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

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