

Report on recent US international tax developments - 12 April 2019

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US House and Senate tax leaders on 10 April issued a joint release urging countries to abandon unilateral measures to adopt digital tax proposals, and instead "focus on and engage productively in the OECD dialogue in order to reach measured and comprehensive solutions." The statement by Senate Finance Committee Chairman Chuck Grassley and Committee ranking member Ron Wyden, and House Ways and Means Committee Chairman Richard Neal and Committee ranking member Kevin Brady came as G-20 Finance Ministers are meeting in Washington, DC. Discussions surrounding digital taxation are also expected at the margins of the World Bank/International Monetary Fund spring meetings being held on 12-14 April.

The Internal Revenue Service (IRS) issued a correction to the final Internal Revenue Code¹ Section 965 regulations on 9 April, amending the preamble to dispense with a 60-day delay in the effective date of the regulations. The *Congressional Review Act* generally requires a 60-day delayed effective date for "major" rules, unless Treasury and the IRS determine that the 60-day delay is "unnecessary and contrary to the public interest." The Office of Management and Budget's Office of Information and Regulatory Affairs had determined that the regulation was a major rule, but Treasury and the IRS deemed the delay not necessary. The final Section 965 regulations ([T.D. 9846](#)) were published on 5 February, and were effective on that date.

Immediate action may be required: Pursuant to the December 2018 Form 5472 instructions, foreign-owned United States (US) disregarded entities (DREs) (e.g., US LLCs owned by one foreign person) that are required to file Form 5472, due to having transactions with related persons (reportable transactions), must file a separate extension to file Form 5472 beyond the regular due date for Form 1120 (a pro-forma Form 1120 is used to transmit Form 5472 to the IRS). Consequently, foreign-owned US DREs must file Form 7004 on or before the regular due date for filing Form 1120 - generally **15 April 2019** for foreign-owned US DREs with a 31 December 2018 taxable year end - by either faxing it to 1-855-887-7737 or mailing it to: Internal Revenue Service, 1973 Rulon White Blvd M/S 6112, Attn: PIN Unit, Ogden, Utah 84403 (note: zip code changed from Form 5472 instructions).

A penalty of US\$25,000 may apply if Form 5472 is not timely-filed. Foreign-owned US DREs that did not timely-filed extensions for their 2017 taxable year should ensure that Form 5472 is filed as soon as possible.

The United Nations Committee of Experts on International Cooperation in Tax Matters recently released a draft update to the "Practical Manual on Transfer Pricing for Developing Countries." The updated release includes a new chapter on financial transactions and revised profit split guidance, among other changes.

The European Union (EU) and the United Kingdom (UK) this week agreed to a six-month extension of Article 50 to 31 October 2019, meaning that the UK will not leave the EU today, 12 April. The agreement allows the UK to leave the EU earlier than 31 October if it ratifies the Withdrawal Agreement ahead of that date. A "no deal" Brexit remains the default option on 31 October unless Article 50 is revoked or a Withdrawal Agreement is ratified by the British Parliament.

Endnote

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

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EYG no. 001767-19Gbl

1508-1600216 NY
ED None

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