Tax & Investment in the US

First quarter 2015

Key tax developments for global companies operating in the US

Highlights

- *Former House Ways & Means Chairman, Dave Camp, joins PwC*

What tax issues are potentially affecting companies investing in the USA today?

- *IRS enforcement strategy changes: impact on US inbounds*
- *OFII comments to OECD on interest deductibility*
- *CEO Survey results: key US inbound issues*
- *Impact of Obama FY 2016 Budget on US inbound companies*

Former House Ways & Means Chairman Dave Camp joins PwC

PwC is honored to introduce Former US House of Representatives Ways and Means Committee Chairman Dave Camp, as a senior policy advisor based in our Washington National Tax Services practice. At PwC, Chairman Camp will be a key resource for taxpayers, providing his thoughts on federal policy, focusing on tax reform, the economy, and the impact of policy change. He will provide tremendous insight for US inbound companies.

IRS enforcement strategy changes: impact on US inbounds

The Internal Revenue Service (IRS) is implementing a new integrated approach to its international program by concentrating on issues that relate to specific types of taxpayers, including US inbounds.

The IRS has developed a strategic platform to group areas of international tax knowledge based on taxpayer planning imperatives. For US inbound companies, the IRS has identified the following key issues: taxable jurisdictions, income shifting, inbound financing, and repatriation/withholding tax. The IRS has formed technical speciality groups or 'practice units' to focus on these issues and provides road maps for agents, guiding their approach to examinations. The IRS has also aligned its information management in a similar, taxpayer-specific, manner. This will allow data points, such as FACTA requirements, to be sorted and brought to the attention of the appropriate US inbound specialists within the IRS.

This overall shift in the IRS's approach and focus will make it important for foreign companies investing in the US to be familiar with the IRS's key issues unique to US inbounds in anticipation of more guided and specialized questions and scrutiny expected by the IRS and its Large Business and International (LB&I) Division.

See our article for more discussion: Shifting IRS enforcement strategies: US inbounds take note.

OFII comments to OECD on interest deductibility

The Organization for International Investment (OFII) and PwC work collaboratively through a joint business relationship to provide support to US inbound companies. OFII, with the assistance of PwC, recently provided comments to the Organisation for Economic Co-operation and Development (OECD) in response to their December 2014 Discussion Draft on proposed rule changes on interest deductibility as part of the Base Erosion and Profit Shifting (BEPS) project. These comments were also circulated to the Treasury Department, Senate Finance Committee, and House Ways and Means Committee members.

The focus of the response was highlighting how the OECD proposals would hinder, rather than support, international trade and the global economy. The comments cite empirical evidence that thin capitalization rules have a negative impact on investment and urges OECD to consider the economic impact of restricting economic growth.

The response discusses the OECD's requirements beyond the arm's length principle when determining interest deductibility. In a case where internal leverage exceeds external leverage, the proposed rules will limit the deduction allowed in that jurisdiction, which has the potential to penalize legitimate business transactions with no profit shifting motivation. Businesses looking for legitimate financing within their global organization are being held to a standard not applicable for wholly domestic companies.

In addition, the proposed group-wide test to determine interest deductibility in the US is discussed. The computation and information gathering required have proved daunting and caused confusion in jurisdictions that have enacted a similar policy. This test also misinterprets financing needs within companies, assuming the entity within a group with the majority of assets and earnings would be the location requiring financing, which is not necessarily the norm. Smaller entities, a startup entity for example, would more likely require more financing than their established affiliates.

The response noted that implementing these proposals would put US inbound entities at a disadvantage compared to domestic companies, create an impractical and confusing requirement, not accomplish the goal of limiting double taxation, and as a result, impair investment in the United States.

See the full response letter here for more information: Draft discussion response

CEO Survey results: key US inbound issues

PwC interviewed over 1,300 CEOs in over 75 countries to understand the current trends, challenges, and growth opportunities attracting the attention of business leaders around the world in various industries. Two key conclusions relevant to companies investing in the US were reached by the survey:

Growth in US investment: The survey concludes that global business leaders rate the US as their most important market for overseas growth and surpassing China as the number one place to invest. The survey notes that the US tax regime has an impact on the decision whether to invest or expand in the US, and CEOs believe that an internationally competitive and efficient tax system should be the government's number one priority. The survey notes that over 70% of CEOs view the top threats to company growth as over-regulation, increased tax burden, and government response to fiscal debt.

Mergers and acquisitions driving growth: Merger and acquisition (M&A) activity is at its highest point since 2007. CEO's are looking to M&A opportunities to grow and expand their companies both domestically and across borders. Technology is a driving force in current growth, and companies are looking to acquire or merge with entities within their supply chain and innovators both within and outside of their current industry. More than half of the CEOs surveyed believe that companies will increasingly compete in new industries over the next three years.

For more information on the CEO Survey results, click here.

Impact of Obama FY 2016 Budget on US inbound companies

In February 2015, the Obama Administration released its fiscal year 2016 budget. Several of the tax proposals will have a significant impact on US inbound companies, including the following key issues:

The allowable **interest deduction** for US inbounds will require computing the US share of a company's global interest expense based on the share of US earnings to earnings worldwide. Not only is this expected to increase administrative complexity, but if a company is not able to substantiate its deduction through this calculation, the allowable deduction has been limited to 10% of ATI (down from 50% under currently law).

The budget also focuses on **US companies with controlled foreign corporations** (CFCs), who through a cross-border transaction reduce their ownership of the CFC below 50%, thus eliminating the CFC classification. The proposal would utilize the constructive ownership rules of Section 958(b) to ensure the CFC remains intact, under the US entity. This proposal would apply for years beginning after December 31, 2015, so US inbounds with CFCs need to be considering how this impacts their current and potential structure.

In an effort to **expand current anti-inversion rules**, the budget proposal would reduce the continuity of ownership percentage to be classified as an inversion from 80% to 50%, thus including significantly more cross-border transactions as inversions.

Additional inbound related proposals in the Budget include:

- expansion of the CFC attribution rules
- restricting deductions of payments made to hybrid entities
- update to the FIRPTA rules
- additional FATCA requirements.

For more detail on all key inbound issues present in the FY 2016 Budget please click here.

Let's talk

For a deeper discussion, please contact:

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