Tax & Investment in the US

Summer 2015

Key tax developments for global companies operating in the US

Highlights

- *Proposed changes to US model income tax treaty*
- *Senate Finance Committee tax reform working groups issue reports*
- *Insourcing reception*
- *Doing business in the US: new edition available*
- *PwC- OFII US Inbound tax roundtables*

Significant changes proposed to Model US Income Tax Treaty

The US Department of Treasury recently issued proposed revisions to the US model income tax convention (Model Treaty), which will be the template for future US tax treaties and protocols. Treasury stated that one goal of the new proposals is to limit treaty benefits for so-called 'stateless income' that is not taxed by any jurisdiction. In addition, the release of these proposals serves as one resource of the United States to influence the OECD's BEPS initiative as the OECD also looks to reform global treaty policy.

Most notably for US inbound companies, key provisions of the Model Treaty would disallow treaty benefits for the following:

- *Payments made by expatriated US entities:* Expatriated entities - as defined by Internal Revenue Code section 7874(a)(2)(A) and also knows as 're-domiciled entities' - would receive no treaty protection on interest, dividend, royalty, or other income payments made within 10 years after their expatriation and would be taxed in accordance with current US tax rules.
- *Income attributable to 'exempt permanent establishments':* Income derived by a resident of a contracting state, but attributable to a permanent establishment outside of the resident state, could be denied treaty benefits if the overall effective tax rate on that income is less than 60% or if the country where income is attributable does not have a comprehensive tax treaty with the United States. The rule also applies to branches, including those in the United States.
- *Income subject to special tax regime:* A special tax regime is defined as any legislation or other administrative practice that provides a preferential effective tax rate. Interest, royalties, and other income from a related party may be denied treaty benefits, if the recipient is subject to a special tax regime, subject to certain exceptions.

The Treasury has requested comments on the proposed revisions and expects to issue a new Model Treaty by the end of this year. The Organization for International Investment (OFII) plans to provide comments on the Treasury proposals as OFII believes that the revisions represent a fundamentally troubling direction for US tax treaty policy that would significantly impact US inbound companies.

Read more about these treaty restrictions and a several other proposed revisions, including Treasury's ability to terminate a treaty based on law changes, here: PwC's Tax Insights: *US Treasury proposes fundamental changes to US Model Income Tax Convention*.

Senate Finance Committee tax reform working groups issue reports

In an effort to advance US tax reform intiatives, the Senate Finance Committee (Committee) established working groups to provide recommendations on tax reform approaches. Five bipartisan working groups were launched, each with specific focus. One working group was responsible for International Tax, which was identified as a key area due to the Committee's concerns around re-domicilation of US companies and over the OECD BEPS project as potentially interfering with US tax reform.

In July 2015, the working groups issued their reports. The International Tax report compared the taxation of inbound versus outbound US companies and focused on a variety of issues of which several could impact US inbound companies - including:

- **Patent boxes'** which provide lower tax rates on certain forms of intangible business income, have been enacted by many countries outside the United States. The working group report suggests the United States should implement an 'innovation box' policy to incentivize companies to keep their research and development activities within the United States. This approach likely would encourage foreign-based companies to invest in the United States in the area of research and development. On July 29, two members of the House Committee on Ways and Means released a draft proposal to establish an innovation box regime that would lower the effective US corporate rate on income derived from certain intellectual property.
- Revising **interest expense limitations** to 'discourage excessive leverage' for both US and foreign companies operating in the United States. According to the working group report, the rules need to be designed to 'level the playing field' for inbound and outbound companies. The report did not recommend any one specific method for limiting interest deductions.
- Reducing the applicability of **Foreign Investment in Real Property Act (FIRPTA)** to allow more US investment without triggering FIRPTA liability, and exempting foreign pension funds from FIRPTA.

Note: In the introduction to the International Tax report, co-chairs Senators RobPortman and Charles Shumer state that international tax reform as outlined in the report would 'work best with substantial corporate tax rate reduction and broader tax reform for all businesses.'

Although the working group reports look at tax reform from a variety of taxpayer perspectives, several provisions could significantly impact foreign companies investing in the United States.

For more information on this issue please see: PwC's Tax Insight: *Senate Finance Committee tax reform working groups issue reports*, which includes links to the reports.

Insourcing reception

OFII hosted members of the US Inbound community on Capitol Hill at a reception on July 9th, sponsored by PwC. Government affairs representatives from over 125 global companies with operations in the United States gathered with members of Congress and staff and PwC professionals to celebrate recent foreign direct investment across America.

The speakers at the well-attended reception included Ways & Means Committee Member Charles Boustany, who discussed the inbound interests in his state (Louisiana) as well as the need for international tax reform, and Rep. Bill Foster who discussed foreign direct investment in the United States.

Doing Business in the United States: new edition available

PwC issued its latest annual *Doing Business in the United States: A guide to the key tax issues* (Guide). The Guide provides a broad understanding of the tax implications of business operations in the United Sates and offers helpful observations into the tax consequences for foreign companies. In addition, it is reference tool on topics such as US tax treaties and current US tax rates.

Inbound insights from PwC specialists are provided in the Guide on various technical issues, such as permanent establishment rules, payroll tax issues for foreign employers, and withholding taxes, as well as on strategic issues, such as what US tax departments need to be considering now. In addition to US regulatory guidance, the Guide discusses recent developments on the global front, such as, the OECD BEPS initiative. Access PwC's Doing Business in the US

To request a hard-copy of the Guide, please contact:

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US Inbound tax roundtables

PwC's US Inbound Tax team, along with OFII, are hosting roundtables across the country to bring together global companies investing in the United States and tax specialists to discuss the unique opportunities and challenges around tax and other areas of interest to these companies.

Participants will:

- Learn about the latest legislative and technical developments and gain insight from PwC and OFII on how their business could be impacted
- Discuss 'top of mind' issues that may be relevant to their company
- Network and exchange with peers their respective experiences.

PwC specialists in the areas critical to US inbound companies, including state and local tax, transfer pricing, tax controversy, and international tax, will provide insights on the latest trends and engage in discussions with participants around how changes may impact business in the United States.

For more information on upcoming events, and how to register, please contact Liana Gravers or Jelena Budjevac of the PwC US Inbound Tax team and see the schedule below for planned events:

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Jelena Budjevac
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Where	When
New York	9/24
Chicago	9/25
Detroit	9/29
St. Louis	10/12
Philadelphia	10/28
Dallas	11/4
Toronto	11/2015
Houston	12/2

Let's talk

For a deeper discussion, please contact:

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