## Global Tax Alert

# Report on recent US international tax developments 24 April 2020

# **NEW!** EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our <u>EY Global Tax</u> <u>Alert Library</u> on ey.com.

The United States (US) Senate (on 21 April) and House (on 23 April) passed the *Paycheck Protection Program and Health Care Enhancement Act* (H.R. 266), a US\$484 billion¹ interim coronavirus relief measure. The President signed the bill into law on 24 April. The legislation will provide \$310 billion for the Small Business Administration's now-exhausted Paycheck Protection Program (PPP), \$60 billion for disaster loans through the Economic Injury Disaster Loan program, and an additional \$100 billion for the Department of Health and Human Services, which includes \$75 billion for health care provider relief and \$25 billion for coronavirus testing.

Legislative attention will now turn to a fourth COVID-19 bill, which may rival the CARES Act (\$2 trillion) in scope. That legislation may take shape in the coming weeks, but the timing for when the next coronavirus bill will be passed by Congress is unclear. Democrats and Republicans are laying the groundwork for their divergent positions. In a joint statement this week, House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer said: "As soon as [the interim package] has passed in the House, we will advance CARES 2, which must be transformative and far-reaching." Pushing back, Senate Majority Leader Mitch McConnell was quoted as saying it is "time to begin to think about the amount of debt we're adding to our country and the future impact of that."

In the meantime, the staff of the Joint Committee on Taxation on 22 April released a <u>description (JCX-12-20) of certain provisions</u> of the CARES Act.



The Internal Revenue Service (IRS) on 23 April released new, much-anticipated <u>frequently asked questions (FAQs)</u> on the interaction of the CARES Act's NOL carryback provision and Internal Revenue Code<sup>2</sup> Section 965. The FAQs address many procedural questions. The IRS recently released <u>Revenue Procedure 2020-24</u>, which provides procedures for taxpayers either to elect to waive the carryback period for NOLs or elect for NOLs arising in those years to exclude tax years in which there is a Section 965(a) inclusion. The IRS also recently released <u>temporary procedures</u> for faxing certain Forms 1139 and 1045 to the IRS. The FAQs provide further information on the topic.

The IRS this week also published <u>frequently asked questions</u> (FAQs) that provide relief for certain US business activities conducted by a nonresident alien or foreign corporation when the activities were only conducted in the US due to COVID-19-related travel disruptions. The FAQs state that the activities of certain individuals temporarily present in the US will not be taken into account for a period of up to 60 consecutive calendar days beginning on or after 1 February 2020, and on or before 1 April 2020 (the COVID-19 Emergency Period) for purposes of determining whether the individual or entity is engaged in a US trade or business or has a US permanent establishment.

Concurrently with the FAQs, the IRS released two related revenue procedures. Revenue Procedure 2020-20 provides guidance for purposes of determining both US tax residency and whether an individual qualifies for tax treaty benefits for income from personal services when nonresident individuals are stranded in the US as a result of travel disruptions due to the COVID-19 emergency. Revenue Procedure 2020-27 provides guidance with respect to qualification for the Section 911 foreign earned income exclusion as a result of days spent away from a foreign country during a specified period as a result of the COVID-19 emergency.

The IRS recently published new <u>frequently asked questions</u> (FAQs) describing best practices and common mistakes in preparing transfer pricing documentation. The guidance is designed to encourage and help taxpayers to prepare improved documentation with an aim to reduce the number of issues selected for examination and improve examination efficiency for the issues that are selected. The released FAQs seem to encapsulate broad, long-standing IRS experience in regard to Section 6662(e) documentation it is receiving during audits, which is deficient.

### **Endnote**

- 1. Currency references in this Alert are to the US\$.
- 2. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax and Transaction Services, Washington, DC

Arlene FitzpatrickJoshua Rulandjoshua.ruland@ey.com

### About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited. All Rights Reserved.

EYG no. 002397-20Gbl

1508-1600216 NY ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

### ey.com