

Corporate Tax Alert

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United States – Baucus international tax reform proposals: impact on foreign multinationals

Senate Finance Committee Chairman Max Baucus issued a staff-level discussion draft of a comprehensive international tax reform proposal on 19 November 2013 (See [Corporate Tax Alert of 22 November 2013](#)). Although the headline proposals in the Baucus draft are targeted at outbound issues such as deferral of offshore income and the matching of related onshore expenses, there are a number of important provisions that may impact inbound companies:

- Denying a deduction to a domestic corporation or foreign corporation with effectively connected income (ECI) for payments made to related parties in what the draft calls a "base erosion arrangement" that reduces the amount of foreign income tax paid by the payee and in which the payments are not included in the income of a U.S. shareholder under Internal Revenue Code section 951(a). (Base erosion arrangements include hybrid transactions—e.g. sale and repurchase agreements—or instruments, hybrid entities, conduit financing arrangements with related parties or exemption arrangements (arrangements that reduce the foreign tax on an item of income by 30% or more below the statutory rate).
- Codifying the IRS position in Rev. Rul. 91-32 treating dispositions of partnership interests as ECI based on the nature of the assets of the partnership, and requiring the transferee of a partnership interest to withhold 10% of the sales price upon the purchase of a partnership that gives rise to ECI, unless the transferor provides an affidavit stating that it is not a foreign person.
- Eliminating the title passage rule for the sale of inventory property for which an office or fixed place of business in the United States is a material factor in the sale. Under present law, this sale of inventory gives rise to foreign source income even if the sale is attributable to a U.S. office or fixed place of business, so long as the inventory is sold for use, disposition, or consumption outside the United States and if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale.
- Eliminating the deduction for property and casualty reinsurance premiums and related expenses paid by an insurance company to an affiliated insurance company when such premiums or related expenses are not subject to U.S. Federal income tax. Income items earned by the U.S. insurance company that are related to the non-deductible premiums and other expenses (e.g., ceding commissions) are excludable from taxable income. Affiliated insurance companies may elect to tax as U.S. ECI premiums and related items that would otherwise be non-deductible to the U.S. payor, in which case the otherwise non-deductible items would be deductible.
- Eliminating the portfolio interest exemption on corporate debt held by non-resident aliens and foreign corporations. Treaty exemptions will still be available to reduce the 30% gross basis withholding tax on interest payments.

- Repealing the dual consolidated loss provisions.
- Modifying the definition of a U.S. real property interest (USRPI) for a corporation that is, or was, taxed as a real estate investment trust (REIT) or regulated investment company (RIC) under subchapter M. Also, for REITs, increasing from 5% to 10% the percentage of ownership of a class of stock regularly traded on an established securities market that a foreign shareholder may have during the five years prior to disposition of stock, in order for the stock not to be treated as a USRPI upon sale. The proposals also modify other provisions related to REITs, RICs and foreign pension funds.

For further information please contact our specialists from the U.S. Tax Group in Belgium (contact details are provided below).

Contact

Any questions concerning the items in this publication? Please contact your usual tax consultant at our Deloitte office in Belgium or:

- Marcia Doyle, mardoyle@deloitte.com, + 32 2 600 69 02
- Andro Petrosovitch, apetrosovitch@deloitte.com, + 32 2 600 69 62

For general inquiries contact:

- bedeloittetax@deloitte.com, + 32 2 600 60 00

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Berkenlaan 8b
1831 Diegem
Belgium

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