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Corwin Addresses International Raisers, New Securities Notice in Broad Speech

ATLANTA—Treasury International Tax Counsel Manal Corwin May 20 addressed a range of global developments that included a new notice on securities lending transactions and multiple international loophole closers that now are part of legislation to extend expiring tax provisions.

In a speech to the Atlanta Region International Fiscal Association, Corwin outlined the revenue raisers found in a detailed summary of The American Jobs and Closing Tax Loopholes Act of 2010 (H.R. 4213), also unveiled May 20 (see related report  in this issue).

Corwin's comments to IFA came just hours before Treasury and the Internal Revenue Service issued Notice 2010-46, which addresses the U.S. tax imposed on substitute dividend payments received by foreign taxpayers that lend U.S. dividend paying securities in securities lending transactions (see related report  in this issue).

With regard to the extenders legislation, Corwin told the audience she was not expressing any opinions about the provisions and said stakeholders should look to published information and not to her comments for technical details of the revenue raisers.


Corwin noted, however, that the bill picked up two of the administration's fiscal year 2011 budget proposals in the international area—one to prevent inappropriate separation of the foreign tax credit from the underlying income and the second to provide for repeal the so-called 80-20 company rules.

Range of Proposals Discussed

She said the so-called foreign tax credit splitter proposal in H.R. 4213 is "a slight expansion" of the administration's original provision. The Treasury official outlined several other foreign loophole closers that were not part of the administration's budget, including:

- denial of the foreign tax credit with respect to foreign income not subject to U.S. taxation by reason of covered asset acquisitions;
- separate application of foreign tax credit limitation to items resourced under tax treaties;
- a limitation on the use of tax code Section 956 for foreign tax credit planning (the "hopscotch" rule) addressing the treatment of dividend distributions up through chains of companies;
- a special rule with respect to certain redemptions by foreign subsidiaries;
- modification of affiliation rules for purposes of rules allocating interest expense; and
- a rule stating that guarantees issued after the legislation's date of enactment will be sourced like interest and, as a result, if paid by U.S. taxpayers to foreign persons, will generally be subject to withholding tax.

Correction to Statute of Limitations Provision

Significantly, the legislation also would make a technical correction to a controversial statute of limitations provision under the Hiring Incentives to Restore Employment (HIRE) Act (Pub. L. No. 111-147), which was enacted on March 18 (52 DTR GG-1, 3/19/10 ).

The correction would clarify the circumstances under which the statute of limitations will be tolled for corporations that fail to provide certain information on cross-border transactions or foreign assets. The statute of limitations period will not be tolled if the failure to provide such information is shown to be due to reasonable cause and not willful neglect.

Notice Offers Relief for Some Taxpayers

Addressing Notice 2010-46, Corwin said the notice was drafted in response to provisions on securities lending transactions also enacted, among a host of others intended to promote foreign tax compliance, as part of the HIRE Act.

The notice, which withdraws Notice 97-66, outlines a proposed regulatory framework to address potential over-withholding that may occur as a result of tax code Section 871(l) enacted by the HIRE Act, and provides transition relief with respect to substitute dividend payments made between the effective date of the HIRE Act and the issuance of regulations.

Notice Offers Relief For Some Taxpayers

Specifically, Corwin said, Notice 97-66 will be withdrawn on Sept. 14, 2010, the effective date of the HIRE Act provision. The May 20 notice provides interim relief for what she called "certain narrow categories of taxpayers," including controlled foreign corporations and certain other entities, who will be considered to pass muster as long as they follow the principles set out under the HIRE Act.

Should those taxpayers be found to be abusing the leeway they have been given, Corwin warned, these entities will not be considered financial intermediaries eligible for relief from cascading withholding for a period of five years.

The notice is intended to be interim guidance while IRS works to write regulations, Corwin said.

More HIRE Act Guidance Soon

She stressed that IRS and Treasury also are hard at work on other guidance on HIRE Act foreign tax compliance provisions, with the first major piece of guidance expected within weeks. That will come in the form of a notice that will help taxpayers determine "who is in and who is out" of the statutory reporting and disclosure requirements, she said.

It also will address issues to help taxpayers design systems to facilitate the reporting, as well as providing guidance on due diligence requirements, Corwin told the IFA meeting.

Corwin said IRS and Treasury are continuing to work on the business plan, but said the government is awaiting the outcome of numerous pieces of tax legislation, including the extenders bill. Should that legislation be enacted, she said, "the business plan will effectively write itself."

The Treasury international tax counsel also provided an update on treaties, noting that the United States and Spain will open the first round of negotiations to update an existing tax treaty in July.

She said the United States is finalizing its negotiations with Poland and plans to engage in discussions with the United Kingdom to assess how well the 2001 U.S.-U.K. accord is working. Periodic talks with the U.K. on a going-forward basis were part of the original plan in 2001, Corwin said.

Check-the-Box Question Raised

In answer to a practitioner question, Corwin said the fact that the administration's fiscal year 2011 budget dropped a provision limiting use of the check-the-box regime in its FY 2010 budget does not mean the government has abandoned the issue.

The administration has a "panoply of concerns" about the regime and "we continue to think about a more comprehensive approach to entity classification," she said.

By [Alison Bennett](#)

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