Tax & Investment in the US

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Key tax developments for global companies operating in the US

Highlights

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

- *US research credit extended: significant benefit for many US inbound companies*
- *The widespread reach of FATCA: How will it affect your business?*
- *Debt-equity and capital structure on the agenda for tax reform*

US research credit extended: Significant benefit for many US inbound companies

The Section 41 research credit was extended retroactively for two years, from January 1, 2012, through December 31, 2013, as part of the American Taxpayer Relief Act of 2012, which was signed into law by President Barack Obama on January 1, 2013.

The extension left unchanged the credit rates for the regular research credit, 20%, and the alternative simplified credit, 14%.

Many US inbound companies perform part of their global research in the US. Often, the research credit is overlooked because of parent company funding. Important to note, parent company funding does not impact the research credit available to US inbound companies.

Another common misconception is that supplies purchased from the parent or other related companies do not quality for credit, when, in fact, they do if used in US based research activities.

The research credit is a valuable benefit to reduce permanently the US effective tax rate. In addition, a comprehensive analysis of research activities for the credit is useful to take better advantage of the current tax deduction for research activities, assuming proper elections are made.

For more information, contact Jim Bowers at (214) 999-2554.

The widespread reach of FATCA: How will it affect your business?

FATCA, the Foreign Account Tax Compliance Act, was enacted in 2010 to prevent and detect offshore tax evasion. Based on the name and a quick reading of the rules, FATCA appears to be solely directed at financial institutions, causing many companies outside the financial services industry to mistakenly believe they are not affected. However, upon closer review, many of these companies have learned that they have entities in their worldwide network falling under the purview of FATCA, or have operational areas that make or receive payments subject to FATCA.

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Multinational enterprises that are withholding agents are currently obligated to report, withhold on payments, and document payees, but FATCA requires changes to these activities. FATCA mandates that multinational businesses evaluate entity payees differently, engage in withholding on certain gross proceeds transactions (a change from historic processes), as well as report additional information to the Internal Revenue Service (IRS).

Now more than ever, multinational companies are faced with navigating new complex information reporting rules. The critical analysis you will need to perform is the determination of how FATCA's complex regime will affect your organization and what changes and new steps are required to your existing procedures. This work demands an understanding of the types of entities in your company's organizational structure and which payment types create new or different obligations.

To learn more, please click here.

For more information, contact Stuart Finkel at (646) 471-0616.

Debt-equity and capital structure on the agenda for tax reform?

Over the past few years, taxpayers and the IRS have spent a significant amount of time focused on the use of debt in the capital structure of US business operations. This has involved aggressive challenges by the tax authorities, particularly for cross border related party debt at the federal and state levels. These areas continue to be of material importance and require continued focus and vigilance.

Beyond these developments, however, it is increasingly important to focus on the current US tax policy debate related to the use of debt, and to stay engaged with respect to the potential for changes in US law for the deductibility of interest.

Several recent US proposals would further restrict interest deductibility for either the purpose of generating revenue or to deal with specific perceived concerns. These proposals have ranged from thin capitalization rules mirroring those used in other countries to across the board reductions in the amount of deductible interest.

This debate is further fueled by other developments in the global tax environment such as the OECD Base Erosion and Profit Shifting (BEPS) project, which is specifically focusing on financing arrangements within its broader scope. Coupled with the attention being focused on the tax positions of businesses, this causes increased pressure for proposing changes in this area.

It is uncertain as to whether or when changes will actually be enacted, but it is certain that businesses with operations in the US should be both watching this area closely and be actively engaged in the debate and the implications for their business operations.

For more information, contact Oren Penn at (202) 414-4393.

Let's talk

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