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Advantage

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UNITED STATES

Obama's International Tax Reforms

On 4 May 2009, President Obama announced his Administration proposals for international tax reform, with potential impact on US businesses with "check-the-box" affiliates, US businesses with multinational operations, and US individuals and businesses with offshore bank accounts.

The Obama Administration proposals represent the most substantive changes in the US approach to tax on international activities in over a decade, and these proposals could have a major impact on affiliates of US corporations in Thailand.

It is important to note that the Obama Administration proposals are just that, proposals, and will only be effective on completion of the US legislative process.

The "check-the-box" rules

The advent of elective classification in 1997 brought tax relief to many US corporations. However, the elective classification also had a dramatic impact on the Subpart F regime, and in many cases, businesses were able to utilize the rules to avoid the Subpart F international provisions of the tax code, which require immediate taxation of foreign earnings. The Obama Administration proposal stops the use of the "check-the-box" rules to avoid the Subpart F tax regime and other abuse of the international tax code.

Expenses in relation to foreign earnings

This proposal is a reprise of the Ways and Means Committee Chairman, Charles B Rangel's 2007 tax reform proposals (HR 3970). The proposal requires an allocation of worldwide expenses under a formula that will force the attribution of domestic expenses to foreign earnings. The expenses attributed to foreign operations would be deferred until foreign operations pay dividends and repatriate monies to the US.

All multinational businesses with US headquarters will have to examine and allocate costs accordingly. US businesses, whose debts are primarily located in the US parent company, may be most at risk under this proposal as interest deductions allocated to foreign operations would be deferred or lost.

Foreign tax credit rules

Also contained in the Obama Administration proposal is Senator Rangel's 2007 proposal to treat all foreign operations as a single subsidiary for the purposes of computing foreign earnings and profits, and for the treatment of foreign tax credits. The proposal is to blend a multinational's tax rate and curb the ability to "cherry pick" which foreign subsidiaries pay dividends to manipulate both US taxable income and foreign tax credits.

Offshore bank accounts

The Obama Administration proposals also strengthen the Qualified Intermediary (QI) system by increasing tax enforcement measures, increasing the penalties for failing to report overseas income in offshore bank accounts, increasing surveillance and extending the statute of limitations for tax enforcement. The current QI system is largely viewed as ineffective and this proposal is another attempt to respond to the recent scandals by implementing the European-style "know-your-customer" regime as part of the QI system.

The information herein was contributed by Chad Koebnick, Managing Director, International Tax Services, RSM McGladrey, www.rsmmcgladrey.com.

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