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Final regulations – Straddle rules and when an obligation under a debt instrument will be treated as a position in personal property
Authored by Mark Price 1

Automatic Exchange of Information: The Common Reporting Standard
Authored by Victor Mendoza and Simon Dwyer 2

Treaty and IGA update
Authored by Anthony Marsicovetere 3

Final regulations – Straddle rules and when an obligation under a debt instrument will be treated as a position in personal property

Authored by Mark Price

The Treasury Department and IRS recently released for publication in the *Federal Register* final regulations (T.D. 9691) concerning application of the straddle rules to a position in personal property as a result of being an obligor under a debt instrument.

The **final regulations** adopt "without substantial change" regulations that were proposed in September 2013 and remove corresponding temporary regulations.

Effective date provisions are clarified with the release.

Summary

The final regulations provide guidance under section 1092 regarding the circumstances when an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, part of a straddle.

The regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. Accordingly, taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property generally will be affected by these regulations.

Effective date clarifications

The final regulations adopt the effective/applicability date provisions of the 2013 proposed regulations and provide that Reg. section 1.1092(d)-1(d) applies to straddles established on or after January 17, 2001 (the date when a 2001 notice of proposed rulemaking was filed with the *Federal Register*).

The preamble to the release states that no inference is intended with respect to straddles established before January 17, 2001, and that the IRS may in "appropriate cases" take a position under section 1092(d)(2) that an obligation under a debt instrument was part of a straddle prior to the effective/applicability date of Reg. section 1.1092(d)-1(d) if the debt instrument "functioned economically as an interest in actively traded personal property."

The final regulations also clarify provisions in Reg. section 1.1092(d)-1 concerning accounting for notional principal contracts as well as defining actively traded personal property for purposes of the straddle rules, and provide what the preamble to the final regulations describes as "explicit effective/applicability-date provisions for all paragraphs of Reg. section 1.1092(d)-1" so as to make clear the application of earlier regulatory guidance.

Automatic Exchange of Information: The Common Reporting Standard

Authored by Victor Mendoza and Simon Dwyer

The OECD (Organisation for Economic Co-operation and Development) Common Reporting Standard (CRS) is a big step towards a globally coordinated approach to the disclosure of income earned by individuals and organizations. As a measure to counter tax evasion, it builds upon other information sharing legislation, such as FATCA (the U.S. Foreign Account Tax Compliance Act) and the European Union (EU) Savings Directive.

KPMG's Global Financial Services (FS) Tax practice is pleased to provide you with a new publication titled, "Automatic Exchange of Information: The Common Reporting Standard" that examines this issue. This new report looks at the impact of CRS and the influence these new Standards have upon financial institutions around the world, and considers the steps financial institutions should take to achieve compliance cost-effectively.

Here are some of the key issues examined in the publication:

- A major increase in reporting requirements –
  - These initiatives involve governments obtaining information from their financial institutions and exchanging data automatically with other nations. Financial institutions (and other investment entities) will have significant additional reporting responsibilities, which may vary in format and timing from jurisdiction to jurisdiction, with potential penalties for those unable or unwilling to comply fully.
- Collecting complex and varied information –
  - Financial institutions will need to collect account holder status and tax residency, which may differ from FATCA, and use that information to drive the gathering and reporting of interest, dividends, account balance, income from certain insurance products, and sales proceeds from financial assets for certain nonresident account holders.
- A big impact on systems and culture –
  - Financial institutions need to keep abreast of new regulations around the world, manage relationships with multiple tax authorities, and educate staff and clients on reporting requirements and account opening procedures.
- More than just an enhanced version of FATCA –
  - FATCA is much narrower in scope than the CRS. The lack of account balance thresholds for reviewing account holders and the expansion of those financial institutions subject to the CRS, together with the search for nonresident account holders from more than 40 jurisdictions, makes the scale of the CRS a multiple of what it was for FATCA. This is especially true for those financial institutions that took a tactical approach to their FATCA solution, either by creating temporary manual processes or by excluding U.S. persons.

To download and read the report, please click *here*.

Treaty and IGA update

Authored by Anthony Marsicovetere

The Senate Foreign Relations Committee recently approved tax agreements with Spain and Poland:

- A Protocol amending the income tax treaty between the United States and Spain
- An income tax treaty between the United States and Poland

With the Foreign Relations Committee's approval of the Protocol and income tax treaty, the committee can be expected to issue reports and refer the agreements to the full Senate for its advice and consent. The Protocol and income tax treaty have not been scheduled for floor action. If the Senate approves—treaty approval requires a two-thirds vote, although tax treaties ordinarily are approved by unanimous consent without an actual vote—Instruments of Ratification will eventually be drafted.

In the third quarter of 2014, the United States concluded four Model 1 Intergovernmental Agreements (IGAs) and no Model 2 IGAs. The following countries concluded an IGA during the third quarter of 2014: Brazil, Czech Republic, Lithuania, and Sweden. A number of countries continue to be in the process of negotiating their IGAs, and there are several more IGAs that have been agreed to and are going through the administrative process (e.g., translation) prior to the official signing. Also during Q3, the IGAs of several jurisdictions actually entered into force. These jurisdictions include Hungary, Ireland, Isle of Man, Mauritius, New Zealand, Slovenia, and the United Kingdom.

Contact us

International Bank Tax Contacts

Thomas Zegel
E: tzegel@kpmg.com

Terry Lamantia
E: tlamantia@kpmg.com

Mary Rosano
E: mrosano@kpmg.com

Todd Voss
E: tvoss@kpmg.com

Linda Zhang
E: lindazhang@kpmg.com

Jason Connery – WNT
E: jconnery@kpmg.com

Robert Rizzo
E: lrizzo@kpmg.com

Anthony Marsicovetere
E: amarsicovetere@kpmg.com

Daniel Mayo
E: dmayo@kpmg.com

Lee Moskowitz
E: lmoskowitz@kpmg.com

Raymond Jasen
E: rjasen@kpmg.com

International Bank Tax Practice Leader
Thomas Zegel

Editor
Anthony Marsicovetere

E-mail us at **us-taxintlbanknews-GM@kpmg.com** to receive our next International Bank Tax Newsletter.