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Transfer Pricing

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U.S. Treasury "white paper" on EC's state aid investigations of transfer pricing rulings

The U.S. Treasury Department today released a "white paper" outlining Treasury's concerns with the approach of the European Commission and its state aid investigations.

Background

A Treasury **blog posting** (August 24, 2016) notes that the United States has been working with international counterparts on a number of initiatives—e.g., the G-20 / OECD's base erosion and profit shifting (BEPS) project—to curtail the erosion of the corporate tax bases.

- The concern of Treasury officials is that the EC's state aid investigations threaten to undermine progress in this area and could "create an unfortunate international tax policy precedent."
- Officials of the U.S. Treasury Department have engaged extensively with the EC to express concerns related to the state aid investigations.
- Treasury Secretary Lew wrote to the EC president in February 2016 urging the Commission to reconsider these new actions while reaffirming the U.S. commitment to continued collaboration through the BEPS project. Read ***TaxNewsFlash-Transfer Pricing***
- These investigations have major implications for the United States. In particular, recoveries imposed by the EC "…would have an outsized impact on U.S. companies" and "settlement payments ultimately could be determined to give rise to creditable foreign taxes." U.S. taxpayers could eventually be "footing the bill" for these state aid recoveries in the form of foreign tax credits that would offset the U.S. tax bills of these companies.

- The investigations have global implications as well for the international tax system and the G20's agenda to address BEPS while improving tax certainty to fuel growth and investment.

White paper

Treasury today released a **white paper** [PDF 151 KB] outlining the concerns with the EC's approach. The white paper:

- Highlights that the EC's approach is new and was unforeseeable by the relevant companies and EU Member States

- Emphasizes that the EC should not seek to impose recoveries under this new approach in a retroactive manner because it sets a bad precedent for tax policymakers around the world

- Explains that the EC's approach undermines U.S. tax treaties and international transfer pricing guidelines already accepted broadly in the global tax community, and undermines the work done as part of the BEPS project

Today's Treasury blog posting concludes:

"A strongly preferred and mutually beneficial outcome would be a return to the system of international tax cooperation that has long fostered cross-border investment between the United States and EU Member States. The U.S. Treasury Department remains ready and willing to look for a path forward that achieves the shared objective of preventing the continued erosion of the corporate tax base while ensuring our international tax system is fair for all."

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.