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INSURANCE TAX UPDATE

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Senate Jobs Bill May Impose Withholding Tax on Payments to Non-U.S. Insurance Companies

The Senate passed a jobs bill on February 24, 2010 that includes provisions that would subject payments to certain foreign financial institutions to a 30% withholding tax. Congress has indicated that it is considering the extent to which this withholding tax is applicable to non-U.S. insurance companies. The withholding tax provisions are substantially similar to those proposed in the Foreign Account Tax Compliance Act of 2009, or FATCA, which was proposed in the House and Senate in October 2009 and was passed by the House in December 2009.

Under the Senate bill:

- A 30% withholding tax would be imposed on payments to foreign financial institutions, including, potentially, insurance companies, that fail to enter into an agreement with the IRS to disclose financial accounts owned by U.S. persons, generally effective with respect to payments made after December 31, 2012. If a non-U.S. insurance company, including a reinsurance SPV, were treated as a foreign financial institution, then any debt or equity interest in the company that is not publicly traded would be treated as a "financial account" for these purposes. Even if a non-U.S. insurance company were not treated as a foreign financial institution for these purposes, it would still be required to disclose to withholding agents each U.S. person that owns 10% or more of the company's equity interests.
- Foreign targeted bearer obligations issued more than two years after the bill's enactment would not be eligible for the portfolio interest exception to withholding and would be subject to limitations on deductibility generally applicable to bearer obligations.
- Dividend related payments on equity swaps linked to U.S. companies would be treated as U.S. source income and therefore subject to 30% withholding tax, generally effective with respect to payments made 180 days or later after enactment.
- Taxpayers would be required to disclose interests in foreign financial assets on their tax returns, generally effective with respect to taxable years beginning after the bill's enactment.

- Interests in foreign trusts and passive foreign investment companies would be subject to increased reporting requirements, generally effective as of the bill's enactment.

The FATCA provisions in the Senate jobs bill are intended to offset $13 billion in tax cuts targeted at stimulating employment, and the FATCA provisions in the Senate bill are nearly identical to those in the extenders bill passed by the House in December 2009. The bill must go to conference before the House and Senate vote on a final version.

More Information

For more information concerning the Senate jobs bill, please contact your regular Sidley attorney or one of the attorneys listed below:

Robert Kreitman
212.839.8637
rkreitman@sidley.com

Nicholas Brown
212.839.5585
nbrown@sidley.com

Paul Wysocki
212.839.3503
pwysocki@sidley.com

Tracy Williams
312.853.3664
tdwilliams@sidley.com

Sharp Sorensen
312.853.7151
ssorensen@sidley.com

Laura Barzilai
212.839.6739
lbarzilai@sidley.com

Lee Christie
312.853.3586
lchristie@sidley.com

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