THE RECENT SPATE OF TAX REFORM NOTICES PROVIDES OPENINGS FOR TAXPAYER INPUT

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By: Mary Burke Baker, Karishma Shah Page, Scott Aliferis, Lauren M. Flynn, Peter V. Nelson, Nicholas A. Leibham, Eli M. Schooley, Steven R. Valentine

The Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") are picking up the pace in releasing substantive guidance regarding implementation of the Tax Cuts and Jobs Act ("TCJA"), passed by Congress and signed into law by President Trump in December 2017. Savvy taxpayers should view this steady stream of guidance as an open invitation and prime opportunity to provide input and help shape the regulations, notices, and other pronouncements that will impact how the TCJA ultimately affects their businesses.

THREE KEY NOTICES OPEN THE DOOR FOR PUBLIC COMMENT

On April 2, 2018, three important notices provided interim guidance to taxpayers and indicated the intent of Treasury and the IRS to issue regulations on each of the topics addressed. In each case, public comments have been requested to assist the regulators in drafting further guidance.

- **Deemed Repatriation Transition Tax, Notice 2018-26:** This is the fourth notice concerning the TCJA's deemed repatriation "transition tax," following Notices 2018-07, 2018-13, and 2018-17. The newly released guidance provides a roadmap of issues on which Treasury and the IRS intend to issue regulations regarding the implementation of the tax. Among other things, it includes guidance regarding the payment of estimated taxes and a waiver of penalties given the uncertainty taxpayers are facing on how to calculate the amount of the tax.
- **Interest Expense Deductibility, Notice 2018-28**: This highly anticipated guidance on new limitations on interest expense deductibility in the TCJA expresses the intent of Treasury and the IRS to promulgate regulations on the subject. Recognizing that taxpayers need some direction in the meantime, the notice includes descriptions of some of the policies that will be incorporated into the regulations. Topics addressed include the treatment of carryover interest, including the applicability of the base erosion and anti-abuse (BEAT) tax, application of the limitation at the consolidated group level, and how the limitation applies to partnerships and partners.
- **Partnership Interest Disposition, Notice 2018-29**: This notice addresses the treatment of a disposition of a partnership interest held by a non-U.S. person that is not publicly traded. As with the other notices, it indicates Treasury and IRS intent to issue regulations, but also provides interim guidance that taxpayers may rely upon until regulations are issued.

A LIMITED WINDOW OF TIME TO PROVIDE INPUT TO TREASURY AND THE IRS

Each of these notices includes a call for public comments about the policies described in the notice and other relevant issues that stakeholders think Treasury and the IRS should consider. Because of the public clamor for timely guidance, the notices provide a limited timeframe in which to comment. Comments regarding Notice 2018-28 are due May 31, 2018, and comments on Notice 2018-29 are due June 1, 2018. Notice 2018-26 does not include a precise deadline, but a 60 day comment period can be assumed.

DON'T SHUT YOUR BUSINESS OUT

Treasury and the IRS play a critical role in determining how tax reform will ultimately affect your business. Regulations, notices, revenue rulings, revenue procedures, forms, instructions, and IRS processing and enforcement procedures all impact your final tax outcome. The value and significance of engaging throughout the entire lifecycle of tax reform cannot be overstated.

In addition to responding to specific calls for comments from Treasury and the IRS, any instance where the tax reform legislation is not clear, results in unintended consequences, would impose significant cost and burden to adapt your business model or software systems, or is inconsistent is a prime opportunity to provide constructive input. Since there is rarely a situation where one size fits all, no taxpayer should assume that Treasury and the IRS are aware of their particular concerns. The more Treasury hears about any specific issue, the more likely that issue is to be prioritized for guidance. To help shape the guidance process early and effectively, stakeholders should act now and not necessarily wait for proposed regulations or other guidance to be released. No issue or taxpayer is too small to be considered, particularly if concerns are shared by a significant number of businesses and individuals.

Treasury and IRS may be especially receptive to stakeholder input given the 2018 effective date of tax reform and the large number of regulatory projects about to be launched, together with already stretched resources and staffing. Further, Treasury and the IRS are juggling resources to complete the review of regulations and other guidance ordered by the president. SEC filings, though postponed, will require taxpayer certainty so financial reports can be filed accurately. Given these considerations, this is an optimal time for taxpayers to lend officials a hand in clarifying and implementing the new law.

K&L GATES'S TAX POLICY TEAM IS HERE TO ASSIST

The K&L Gates tax policy team is ready to assist you in evaluating the impact of tax reform and providing comments, suggestions, and other input to Treasury and the IRS throughout the entire guidance and regulatory life cycle. Please do not hesitate to contact any of this Alert's authors regarding this or any other tax policy matter.

KEY CONTACTS

MARY BURKE BAKER
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON DC
+1.202.778.9223
MARY.BAKER@KLGATES.COM

KARISHMA SHAH PAGE
PARTNER

WASHINGTON DC
+1.202.778.9128
KARISHMA.PAGE@KLGATES.COM

SCOTT ALIFERIS
GOVERNMENT AFFAIRS ADVISOR

WASHINGTON DC
+1.202.661.3865
SCOTT.ALIFERIS@KLGATES.COM

LAUREN M. FLYNN
GOVERNMENT AFFAIRS ANALYST

WASHINGTON DC
+1.202.778.9051
LAUREN.FLYNN@KLGATES.COM