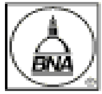 Daily Tax Report™

96 DTR G-4

International Taxes

Obama Proposals Could Have Drastic Impact On Leveraged Companies, Practitioner Says

The Obama administration's international tax proposals could have a drastic negative impact on highly leveraged multinational companies, Sullivan & Worcester practitioner Douglas Stransky said May 20.

Stransky, who offered a detailed technical discussion on a broad range of international tax topics during a BNA audioconference on tax and accounting, was referring to the president's proposal to prohibit deductions for expenses associated with deferred income until that income is brought back to this country.

"For companies that borrow lots of money in the United States, effectively this may be a repeal of deferral," Stransky said during the audioconference.

Broad Technical Discussion

He noted that it remains unclear how the Obama proposal on deferral would be implemented. His comments came in the context of a technical discussion of the rules that currently govern Subpart F, in a presentation intended to address intermediate U.S. international tax for noninternational tax professionals.

Stransky also discussed how the Obama proposals could change the current framework for the foreign tax credit.

The administration would make two controversial alterations in this area. One would require taxpayers to determine their deemed paid foreign tax credits on a consolidated basis on all foreign earnings, including lower-tier subsidiaries under tax code Section 902(b), repatriated to the United States in that year.

Foreign Tax Credit Proposals Addressed

The second would adopt a matching rule to prevent the separation of creditable foreign taxes from associated foreign income.

Stransky said under the first change, taxpayers would be required to consider all of their foreign earnings in "one giant pool," rather than the current system where the income is separated into baskets and other categories.

While the Obama proposal appears to be aimed at preventing U.S. businesses from using these different categories as loopholes, Stransky said, Section 902 is structured to prevent abuse in the first place. "I'm confused as to how that would be considered a loophole," he said. "This proposal would essentially eliminate Section 902."

Matching Rule Raised

In addressing the new proposed matching rule, the Sullivan & Worcester practitioner acknowledged the administration has been concerned about the inappropriate separation of foreign tax credits from foreign income for some time.

However, he noted, IRS issued guidance in 2006 that "basically shut down that planning" and said the administration's proposal appears to be aimed at those situations.

In the so-called technical taxpayer regulations (REG-124152-06), IRS generally said the person who owns the income for tax purposes is the person legally liable for foreign tax and thus eligible for the foreign tax credit (150 DTR GG-1, 8/4/06).

Obama Proposal on Transfer Pricing Addressed

Stransky also mentioned another aspect of the Obama proposals addressing transfer pricing. The administration's plan would add workforce in place, goodwill, and going concern value to the definition of intangible property for purposes of tax code Sections 367(d) and 482, which Stransky said would have the effect of eliminating planning opportunities and creating more taxation associated with these items.

Stransky's presentation went into detail on a series of technical tax topics, including tax code Section 367, calculation of the foreign tax credit and planning ideas to maximize the ability to use the credit, planning under Subpart F,

dispositions of controlled foreign corporations, transfer pricing, tax treaties and permanent establishment, and U.S. taxation of foreign persons.

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ISSN 1522-8800

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