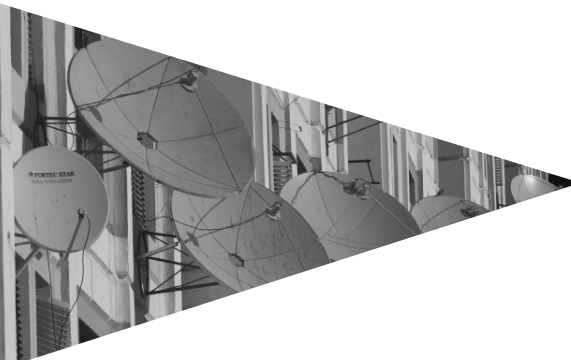


# Washington Dispatch



## In this issue...

### Legislation

- 1 Congress averts shutdown, competing deficit plans released

### IRS news

- 3 IRS will not challenge creditability of Puerto Rican excise tax
- 3 Notice 2011-34: further guidance under FATCA information reporting and withholding regime
- 5 Final regulations under Section 904(d) issued
- 5 IRS advises on valuing compensation paid for intangible property requiring further development
- 6 IRS clarifies field guidance on potential effect of transfer pricing adjustments on Section 965 foreign earnings repatriations
- 6 IRS issues 12th Annual APA Report
- 7 Fourth Circuit confirms IRS may recompute tax liability for a tax year beyond statute of limitations
- 8 Government issues revised FBAR form and instructions; Notice on answering tax return questions on foreign financial accounts
- 8 IRS offers guidance on tax accounting, withholding tax issues raised by consent fees

### Tax agreements

- 9 US-Panama TIEA in effect

## Legislation

### Congress averts shutdown, competing deficit plans released

Congress recessed in mid-April for a two-week district work period, but not before presiding over a FY 2011 budget showdown that brought the federal government to within an hour of shutting down. The ultimate result was a compromise budget for the remaining FY 2011 period. The month also saw House Republicans and President Obama release their competing visions as to how the US government should address the burgeoning deficit. These two opposing frameworks ultimately will be the opening bids in the national debate on tax reform and entitlement reform, which will serve as the cornerstones of any plan to bring the US economy back into fiscal alignment.

But first the FY 2011 budget showdown that nearly closed the federal government. At the beginning of April, the federal government was functioning on the second of two temporary funding bills. Budget negotiations to keep the government operational through the end of the current 2011 fiscal year (30 September 2011) were ongoing, if in fits and starts, but with no deal in the offing.

The federal government was scheduled to shutter as of midnight 8 April if lawmakers were unable to reach a budget compromise. At the 11th hour (literally), Congress came to an agreement on a plan to fund the federal government for the remainder of fiscal year 2011, thereby averting a government shutdown. A separate bill (H.R. 1363) to fund the federal government for one week (until 15 April) was passed quickly by both the House and Senate after the parameters of the larger budget agreement were finalized.

The House on 12 April posted H.R. 1473 online, the appropriations package encapsulating the details of the FY 2011 budget agreement. The House and Senate approved the bill on 14 April, which was sent to President Obama for his signature, putting an end to the FY 2011 budget saga.

Almost overshadowed by the looming government crisis, House Budget Committee Chairman Paul Ryan (R-WI) on 5 April released a budget resolution for fiscal year 2012 and an accompanying report calling for major reform of the tax code and entitlement programs as part of a larger effort to reduce the federal budget deficit.

Congressional budget resolutions typically do not prescribe specific tax policies; rather, they set revenue targets and policy goals to be fleshed out by the House Ways and Means Committee and Senate Finance Committee. Chairman Ryan's plan does not include a specific tax reform proposal nor does it identify which tax expenditures would be eliminated in an effort to broaden the base.

**For more information on Ernst & Young LLP's International Tax Services:**

- ▶ Follow us on Twitter at: [twitter.com/EYIntlTax](http://twitter.com/EYIntlTax)
- ▶ Visit us at: <http://www.ey.com/GL/en/Services/Tax/International-Tax>
- ▶ Scan using your mobile device with a QR reader to bookmark our site:



However, the report specifically calls for tax reform that sets top rates for individuals and businesses at 25% and for the continuation of the Bush tax cuts slated to expire at the end of 2012. As expected, the House Budget Committee approved Chairman Ryan's fiscal 2012 budget resolution later that week and it was approved by the full House on 15 April.

President Obama followed with the release of his framework for deficit reduction on 13 April, in effect offering the Democratic counter response to Chairman Ryan's plan and setting the stage for the debate on tax reform and entitlement reform. The president's vision is in sharp contrast with the fiscal year 2012 budget proposal, offered by Chairman Ryan.

President Obama's proposal would reduce the federal budget deficit by \$4 trillion over the next 12 years, offering a mix of spending cuts, tax increases and changes to entitlement programs.

In a follow-up speech in Washington, the president contrasted his approach with Chairman Ryan's proposals, which the president characterized as "less about reducing the deficit than it is about changing the basic social compact in America." The president made the case for his framework, which includes keeping annual growth of domestic spending low, finding additional savings in the defense budget, reducing federal health care spending, and reforming the tax code and reducing tax expenditures.

The president also repeated his call for corporate tax reform to increase competitiveness and encourage investment. Treasury Secretary Timothy Geithner has said the administration is developing a specific proposal on corporate tax reform, but the president did not speak to that issue or offer any details.

There are now three major federal deficit reduction proposals on the table, the president's Democratic approach, Chairman Ryan's Republican approach, and the National Commission for Fiscal Responsibility and Reform plan released last December. Adding some fuel to the fire, Standard and Poor's in mid-April warned the US government that it was revising its outlook with regard to the US top credit rating to "negative," meaning S&P could lower its "long-term rating on the U.S. within two years" if the federal government fails to take action with regard to the country's deficits.

In addition, the so-called "Gang of Six" – six senators evenly split among the Republican and Democratic caucuses – is reportedly readying their bipartisan plan for deficit reduction. There is speculation that a Gang of Six plan could be released as early as the first week in May. The Gang of Six, made up of Democratic Sens. Kent Conrad (D-ND), Dick Durbin (D-IL), and Mark Warner (D-VA), and Republican Sens. Tom Coburn (R-OK), Saxby Chambliss (R-GA), and Mike Crapo (R-ID), reportedly have

been conducting private meetings since December. Some pundits are saying that their plan could be the best hope for deficit reduction before the 2012 presidential election.

Similarly, the White House announced that the first meeting on deficit reduction between a bipartisan group of lawmakers – four Democrats and two Republicans – and Vice President Joe Biden will take place 5 May at Blair House in Washington. In an 13 April deficit reduction speech, President Obama called for such a group to meet during May and June.

The next major battle looming on the horizon is raising the federal debt limit, currently set at \$14.3 trillion. The Obama Administration is calling for an early-July deadline to raise the limit. Although leaders of both parties agree the debt limit will have to be increased to avoid a US government default, Republicans are expected to demand spending cuts that would be tied to any debt limit increase.

## IRS news

### IRS will not challenge creditability of Puerto Rican excise tax

On 30 March 2011, the IRS issued Notice 2011-29, providing that, pending the ultimate determination by the Service on whether or not a new Puerto Rican excise tax is a creditable tax, the IRS will not challenge a taxpayer's position that the excise tax is a tax in lieu of an income tax under Section 903 and therefore creditable under Sections

### Obama Administration continues to oppose stand-alone repatriation legislation

There was an interesting back-and-forth on the issue of a US repatriation tax holiday. At the end of March, House Majority Leader Eric Cantor (R-VA) repeated calls for a stand-alone temporary repatriation measure to be enacted before comprehensive tax reform. The Obama Administration, which has repeatedly said it opposes such a measure outside of fundamental US tax reform, felt it necessary to have Treasury Assistant Secretary for Tax Policy Michael Mundaca post a Treasury blog titled "Just the Facts: The Costs of a Repatriation Tax Holiday." The lengthy blog posting reiterated the Administration's arguments against such a proposal.

901. Notice 2011-29 is effective for Puerto Rico excise tax paid or accrued on or after 1 January 2011.

Notice 2011-29 provides that any change in the US foreign tax credit treatment of the excise tax after resolution by the IRS of the pending issues will be prospective, and will apply to excise tax paid or accrued after the date that further guidance is issued.

The issue harkens back to 25 October 2010, when the government of Puerto Rico amended the Puerto Rico Internal Revenue Code of 1994 so that a portion of the income of certain non-Puerto Rican residents is treated as Puerto Rican-source income effectively connected to a Puerto Rican trade or business that is subject to Puerto Rican income tax (source tax). The legislation also added an excise tax that, when applicable, displaces the source tax. The excise tax is imposed on a controlled group member's acquisition from another group member of certain personal property manufactured or produced in Puerto

Rico and certain services performed in Puerto Rico. The legislation became effective as of 1 January 2011.

Notice 2011-29 is a welcome development in that it provides timely taxpayer-friendly guidance allowing taxpayers to take the position that the excise tax is a creditable tax for US foreign tax credit purposes.

### Notice 2011-34: further guidance under FATCA information reporting and withholding regime

On 8 April 2011, Treasury and the IRS issued Notice 2011-34, the second in what is expected to be a series of guidance under the information reporting and withholding regime enacted as part of the Foreign Account Tax Compliance Act (FATCA) provisions contained in the *Hiring Incentives to Restore Employment (HIRE) Act*. This second notice contains guidance on the following seven sets of issues:

- ▶ Refinements to the specified approach for how participating

Foreign Financial Institutions (FFIs) are to identify which of their pre-existing individual accounts are US accounts for purposes of the FATCA rules;

- ▶ Application of the pass-through payment rules, which require certain participating FFIs to perform withholding on payments they make to customers who have not provided information about their US status (“recalcitrant accountholders”) and noncompliant FFIs, *i.e.*, other foreign financial institutions that have not entered into the necessary agreement (FFI Agreement) with the IRS if required to do so;
- ▶ Categories of FFIs that will be deemed to be in compliance with the FATCA rules without entering into an FFI Agreement (deemed compliant FFIs);
- ▶ Reporting obligations of FFIs with respect to US accounts;
- ▶ The interaction between the FFI rules and the qualified intermediary (QI) rules;
- ▶ The application of the FATCA rules in the case of affiliated FFIs, *i.e.*, the expanded affiliated group;
- ▶ The effective date of FFI Agreements.

Noteworthy points with respect to Notice 2011-34 include the following:

- ▶ The notice replaces the Notice 2010-60 procedures for documenting pre-existing individual accounts. The new

approach identified by the notice distinguishes among the following types of accounts:

- Documented US accounts;
- Accounts of \$50,000 or less;
- Pre-existing individual “private banking” accounts for which an enhanced review of account files by the relationship manager is required;
- Accounts with US indicia not identified above, for which only an electronic search, and no manual review, is required, and
- Pre-existing individual accounts with a balance of \$500,000 or above (“high value accounts”), for which both an electronic search and a manual review of account files is required.
- The chief compliance officer or equivalent-level officer of the FFI must certify to the FFI’s timely completion of required review processes for pre-existing individual accounts within one year (for private banking accounts) and two years (for high value and US indicia accounts) after the effective date of the FFI agreement.
- The pass-through payment rules will extend to all payments made by an FFI, even if the payments are not allocable to specified assets held by the FFI.
- Payments made by an FFI to a recalcitrant account holder or noncompliant FFI will be subject

to withholding under the pass-through payment rules to the extent that the FFI’s assets could produce withholdable amounts (or, if the payment is made with respect to an asset that the FFI holds as custodian or the like, to the extent that assets of the issuer of such asset could produce withholdable amounts).

- Certain local institutions and fully intermediated funds will be eligible to be treated as deemed compliant, so that they will not have to enter into FFI Agreements. There is no general carve out from FATCA, however, for regulated funds that are widely held or publicly traded, as had been requested by some commentators.
- The information reporting requirements for US accounts have been simplified, and it will not be necessary to report gross contributions to/withdrawals from such accounts. Account balances will be reported on an annual, rather than on a quarterly basis.
- FFIs that comply with their FATCA reporting obligations and are not “US payors” will be exempt from performing basis reporting under Section 6045(g).
- All qualified intermediaries, withholding foreign partnerships, and withholding foreign trusts will have to enter into FFI Agreements unless they are deemed compliant.

- There will be a centralized application procedure for “expanded affiliated groups” containing two or more FFIs, such that one member will apply on behalf of all members, and there will be centralized points of contact for the IRS. The government is considering whether there should be a similar procedure for investment funds under common management.

Treasury and the IRS continue to actively solicit comments from stakeholders, which shows that they are invested in working with stakeholders to create a system that is as workable as possible. In that regard, this notice demonstrates that the government team has taken on board some of the comments received in response to the first notice. However, this notice also underscores the government’s commitment to moving forward with the implementation of the FATCA rules.

### **Final regulations under Section 904(d) issued**

The US government on 6 April 2011 released final regulations and removed the temporary regulations under Section 904(d) regarding the reduction of foreign tax credit limitation categories under Section 904(d) by the American Jobs Creation Act of 2004 (AJCA). The final regulations generally adopt the rules contained in the temporary regulations issued in December 2007, with some clarifications. The

final regulations also adopt special loss recapture provisions for financial services entities.

The final regulations include the following clarifications and additions:

- ▶ Gain recognized on the sale of a partnership interest by any 25% partner will be general category income to the extent such gain would not be classified as foreign personal holding company income under the principles of the look-through rules of Section 954(c)(4);
- ▶ Financial services entities with overall foreign losses or separate limitation losses in, or with respect to, a pre-2007 separate category for high withholding tax interest, where no excess taxes in the category were carried forward to post-2006 years, should allocate the loss to the post-2006 general income category or recapture such loss in subsequent years as general category income, as the case may be;
- ▶ Section 952(c)(2) recapture accounts maintained by a CFC with respect to subpart F income in a separate category that were subject to the earnings and profits limitation of Section 952(c)(1)(A) are allocated to separate categories in the same manner as the associated post-1986 undistributed earnings; and
- ▶ Taxpayer may choose to use one of the safe harbor methods provided in the final regulations on a timely filed, original or amended, tax return, or during audit. A taxpayer’s choice to use a safe

harbor method is evidenced by simply employing the method in determining its foreign tax credit limitation.

The temporary regulations technically expired on 20 December 2010. The final regulations reaffirm the guidance provided by the temporary regulations, and provide helpful clarifications on issues that were uncertain under the temporary regulations. The clarification that the look-through rule for sales of partnership interests applies to sales by any partner with a 25% interest in a partnership, and not just CFCs, is particularly helpful. In addition, the special transition rules regarding certain loss recapture provisions provided for financial services entities will likely benefit relevant taxpayers.

### **IRS advises on valuing compensation paid for intangible property requiring further development**

In Chief Counsel Advice (CCA) 201111013, the IRS advised an unidentified person (apparently, an International Field Examiner) that the arm’s length payment owed by a related-party transferee to the transferor may be valued based on fundamental financial principles if the use of comparables and other traditional transfer pricing methods do not “work well.”

This CCA reflects the IRS position that the methods specified in Reg. Section 1.482-7T (the regulation currently governing cost sharing arrangements) can be the “best

method” outside the “cost sharing” context when dealing with transfers of “in-process” intangibles. IRS personnel have previously taken this position in speeches and in discussions, but not so unambiguously in writing.

This CCA may also arguably be viewed as an extension of Reg. Section 1.482-4T(g), which provides that the “principles, methods, comparability, and reliability consideration” of Reg. Section 1.482-7T can apply to transactions that are not cost sharing arrangements but that nevertheless involve a transfer of intangible property and sharing the risks and costs of developing the intangible.

### **IRS clarifies field guidance on potential effect of transfer pricing adjustments on Section 965 foreign earnings repatriations**

In a Large Business and International (LB&I) Alert released on 25 March 2011, the IRS has clarified how examiners should make a “protective adjustment” in accordance with the third directive that the IRS issued on cases involving both a Section 965 foreign earnings repatriation issue and a Section 482 transfer pricing adjustment. The third directive, released in May 2009 (Industry Directive, Tier I Issue – Section 965 Foreign Earnings Repatriation Directive #3 (Directive #3)), established procedures for closing cases with Section 482 adjustments that may affect the amount of a Section 965 dividends received deduction (DRD).

The latest LB&I Alert expands on the guidance issued in Directive #3 by explaining the procedure by which coordination of Section 482 and Section 965 adjustments is to be effectuated. The guidance in the LB&I Alert relates to cases that are either forwarded to Appeals or in which a 30-day letter is issued to the taxpayer, thereby affording Appeals rights.

For cases sent to Appeals, if a proposed Section 482 adjustment for tax years ending between the initial measurement date and the last measurement date is not agreed at Exam, a protective adjustment should be made to the Section 965 DRD as if the taxpayer had elected to apply [Revenue Procedure] 99-32 treatment. The protective adjustment does not need to be an actual numerical adjustment to the Section 965 DRD amount; instead, the examiner can include specific language in the 30-day letter or the transmittal letter sent to Appeals, and in the International Examiner’s Report and Forms 5701 (Notice of Proposed Adjustment) and 886-A (Explanation of items).

The guidance in the LB&I Alert offers a tool to effectuate a result that has been repeatedly articulated by the Service in prior pronouncements. In Notice 2005-64, the IRS explicitly stated that accounts payable created pursuant to a Revenue Procedure 99-32 election should be treated as RPI (related-party indebtedness) for purposes of calculating the limitation on the DRD under Section 965(b)(3). This position was reiterated in the

internal memorandum AM 2008-010 released by the IRS Associate Chief Counsel (International).

### **IRS issues 12th Annual APA Report**

The IRS issued the twelfth congressionally-mandated, annual Advance Pricing Agreement (APA) report on 20 March 2011 in Announcement 2011-22. The report provides an updated discussion of the APA Program, including its activities and structure for calendar year 2010. The report provides useful insights into the operation of the program, and can give some indication of the treatment and processes that companies applying for an APA can expect to encounter.

Some of the report’s highlights include:

- ▶ During 2010, 144 APA applications were filed and 69 APAs were completed. Four hundred APA requests were pending at the end of the year. In 2010, more applications were filed and slightly more APAs were completed than in 2009. The average time required to complete a new bilateral APA decreased slightly (from 45.4 months in 2009 to 43.6 in 2010).
- ▶ The number of recommended negotiating position papers completed increased from 35 in 2009 to 58 in 2010.
- ▶ In 2010, 44 APAs were completed with companies having a foreign parent while 20 were completed with companies having a US parent.

- ▶ The sale of tangible property in the United States continued to be the most common type of related-party transaction covered by an APA in 2010. The Comparable Profits Method (CPM), using an operating margin as the profit level indicator (PLI), was once again the transfer pricing method (TPM) most commonly used in the completed APAs. Also, the CPM using a

PLI based on the ratio of operating profit to total services cost continued to be the most commonly used TPM for APAs covering services in 2010.

- ▶ Compustat continues to be the most frequently used database for finding comparable company information.
- ▶ Cost sharing APAs continue to lag other types of covered transactions with three or fewer US parent / foreign subsidiary cases and three or fewer non US parent / domestic subsidiary cases completed in 2010.

#### Fourth Circuit confirms IRS may recompute tax liability for a tax year beyond statute of limitations

The Court of Appeals for the Fourth Circuit has affirmed the decision of the United States District Court for the Eastern District of North Carolina in *R.H. Donnelley Corporation v. United States*. The Court of Appeals held that, for purposes of determining the available excess business tax credits (including excess foreign tax credits under prior

Section 904(c) and excess research tax credits under Section 41), the IRS may recalculate the underlying tax liability giving rise to the alleged tax overpayment, despite the fact that the statute of limitations on assessment and collection has closed for the year in which the tax overpayment is claimed.

The Fourth Circuit's decision reaffirms and amplifies a long-standing principle set forth in *Lewis v. Reynolds*. This case should not be viewed as a

significant or novel development for taxpayers claiming tax credits relating to otherwise closed tax years. Nevertheless, this case serves as a reminder that the IRS does closely review refunds claims and that the IRS may recalculate any items of income or deduction relating to the tax year underlying the alleged tax overpayment.

The Fourth Circuit's opinion and holding reflects the court's displeasure with the taxpayer's

**Get the world – to go**  
**Now getting tax rates is easier than ordering take out**

You can now access 2010, 2009, and 2008 corporate income tax rates of over 50 countries whenever and wherever using your mobile device. The 2010 rates are updated quarterly.

Type into your mobile web browser:  
[www.ey.mobi/ITS/rates](http://www.ey.mobi/ITS/rates)



statute of limitations gamesmanship and attempt to gain a second benefit from the IRS's failure to timely discover and disallow an improperly claimed substantial deduction. The court's reasoning and holding is premised on a long line of cases (and rulings) that recognize that, because tax years are not insular units, the IRS has the implied authority to recalculate all tax years necessary to determine whether there actually was an overpayment in the year of the claimed refund. *Donnelley*, however, takes this recognition of the IRS's authority one step further in holding that that the Commissioner is also authorized to recalculate foreign tax and business credit limitations that may impact the determination of whether there has actually been any overpayment of tax.

### **Government issues revised FBAR form and instructions; Notice on answering tax return questions on foreign financial accounts**

The US Treasury on 26 March 2011 issued a revised Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts*, with instructions. The revised form reflects final regulations under the Foreign Bank Account Reporting (FBAR) rules issued on 24 February 2011. This guidance affects both reports for 2010 that are due on 30 June 2011, and questions on 2010 income tax returns that currently are in the process of being prepared.

One very significant change in filing procedures not reflected in these regulations is a warning that this

form is not considered filed until it is received by Treasury's Detroit Data Center. Delivery of the form to a local office of the IRS or to an IRS tax attaché located in a US embassy or consulate abroad no longer constitutes filing until the form is in fact received by the Detroit Data Center.

A second change will complicate filings with respect to signature authority. Previously, an officer or employee of any member (US or non-US) of a widely-held or publicly-traded group did not need to file to report signature authority over an account owned by any group member. Now, this exemption only applies to accounts owned by group members of which the person with signature authority is an officer or employee, and is no longer available for accounts owned by non-US members of the group, such as CFC subsidiaries. Also, this exemption is no longer available for officers and employees of subsidiaries of widely-held companies that are not publicly traded.

On 30 March 2011, the IRS issued Notice 2011-31, which provides guidance to taxpayers regarding how to answer questions related to foreign financial accounts found on 2010 federal income tax returns, e.g., Schedule B of Form 1040, the "Other Information" section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120. For returns filed on or after 28 March 2011, the notice requires taxpayers to follow the new final FBAR regulations, along with the

revised FBAR form and instructions, when answering questions related to foreign financial accounts on 2010 tax returns.

### **IRS offers guidance on tax accounting, withholding tax issues raised by consent fees**

In a recent private letter ruling (PLR 201105016), the IRS provides guidance on tax accounting and, by implication, withholding issues for "consent fees" paid to lenders by borrowers. Such fees frequently are paid in connection with debt restructurings and modifications, but there has been no guidance on their treatment for tax purposes until now. Although this ruling discusses the problem from the point of view of the issuer, the treatment of the holder can be readily inferred.

The ruling concludes that a consent fee paid in connection with the retirement of an instrument is deductible by the issuer as retirement premium, with the implication that it is therefore capital gain to the holder, and, thus, exempt from withholding tax if paid to a non-US holder. Although the ruling does not address the case of a consent fee paid in connection with a modification of the instrument that causes a deemed exchange of the debt instrument for a deemed new instrument, the ruling's rationale indicates that as to the holder the consent fee is treated as retirement premium, and as to the issuer the consent fee is converted into OID on the deemed new instrument.

The ruling also holds that a consent fee paid in connection with a modification to a debt instrument

that does not cause a deemed taxable exchange is to be treated like any other payment on the instrument, and thus is treated first as a payment of accrued, unpaid interest and OID and then as a payment of principal. But the implications of treating a consent fee as payment of principal for tax purposes – deferred recognition of the fee for both the issuer and the holder, conversion of the fee into capital gain in the hands of the holder, and changes to how any OID is to be accrued over the remaining term of the instrument – are counterintuitive. One can only speculate about whether this ruling will be the last word on the subject of consent fees.

The conclusions implied by PLR 201105016 are welcome news for issuers who pay and holders who receive consent fees in connection with a retirement: the fee will be deductible by the issuer, capital gain

for a domestic holder and exempt from withholding in the hands of a non-US holder. The implied treatment for issuers who pay and holders who receive consent fees in connection with a reissuance is also welcome, as least for holders. The issuer will receive a deduction, albeit spread out over the remaining term of the instrument, and holders will recognize capital gain on the deemed retirement of the old instrument.

That said, some of the implications of treating a consent fee paid in connection with a modification that does not cause a reissuance as a payment of principal are counterintuitive. Although the fee will be deductible by the issuer and a capital gain to the holder, this deduction/income will be deferred until the instrument matures.

Issuers and holders of instruments with respect to which a consent fee has been paid should consider

the effect of this ruling on their tax accounting. Non-US holders who have had withholding on consent fees should consider whether it might be possible to apply for a refund based on the rationale of this ruling.

## Tax agreements

### US-Panama TIEA in effect

Treasury in mid-April announced the entry into force of a Tax Information Exchange Agreement with Panama. The agreement, effective 18 April, allows both countries to share information on all national taxes in civil and criminal matters for tax years beginning on or after 30 November 2007. The Panamanian agreement follows similar TIEAs signed with Monaco (March 2010) and Gibraltar and Liechtenstein (December 2009).

### A heads up ...

A revised Form 8832 (Entity Classification Election) for the 2011 tax year was released by the IRS in January 2011. The revised form now includes a box to indicate that an entity is making a late check-the-box election under Rev. Proc. 2009-41. There is also an additional page (the form is now 3 pages instead of 2) with the 3rd page specifically for the reasonable cause explanation for the late election, as well as signature blocks as required by Rev. Proc. 2009-41.

If an entity does not meet the requirements of Rev. Proc. 2009-41, an entity may still seek relief for a late election by requesting a private letter ruling from the IRS.

## International Tax Services, Washington, DC

|                           |                        |
|---------------------------|------------------------|
| ▶ <b>Margie Rollinson</b> | <b>+1 202 327 5757</b> |
| ▶ Robert Ackerman         | +1 202 327 5944        |
| ▶ Barbara Angus           | +1 202 327 5824        |
| ▶ Stephen Bates           | +1 415 894 8190        |
| ▶ David Canale            | +1 202 327 7653        |
| ▶ Doug Chestnut           | +1 202 327 5780        |
| ▶ David Golden            | +1 202 327 6526        |
| ▶ Liz Hale                | +1 202 327 8070        |
| ▶ Lilo Hester             | +1 202 327 5764        |
| ▶ Stephen Jackson         | +1 212 773 8555        |
| ▶ Karen Kirwan            | +1 202 327 8731        |
| ▶ Kyle Klein              | +1 202 327 8843        |
| ▶ Richard Larkins         | +1 202 327 7808        |
| ▶ David Levere            | +1 212 773 4610        |
| ▶ Dick McAlonan           | +1 202 327 6025        |
| ▶ Stephen Meadows         | +1 202 327 6020        |
| ▶ Alan Munro              | +1 202 327 7773        |
| ▶ Jose Murillo            | +1 202 327 6044        |
| ▶ Peg O'Connor            | +1 202 327 6229        |
| ▶ Donald Proper           | +1 212 773 6542        |
| ▶ John Turro              | +1 202 327 8019        |
| ▶ Tim Wichman             | +1 312 879 2282        |
| ▶ Ken Wood                | +1 202 327 8018        |
| ▶ Steven Wrappe           | +1 202 327 5956        |
| ▶ Jelena Budjevac         | +1 202 327 5729        |
| ▶ Tom Coony               | +1 202 327 5658        |
| ▶ Petya Kirilova          | +1 202 327 6075        |
| ▶ Tammy LeGrys            | +1 202 327 7757        |
| ▶ Katherine Loda          | +1 212 773 6634        |
| ▶ John Morris             | +1 202 327 8026        |
| ▶ Jasper Nzedu            | +1 202 327 6203        |
| ▶ Ben Orenstein           | +1 212 773 4485        |
| ▶ Karen Petrosino         | +1 212 773 0375        |
| ▶ Julia Tonkovich         | +1 202 327 8801        |
| ▶ fax number              | +1 202 327 6721        |

---

## International Tax Services

- ▶ Global ITS, **Jim Tobin**, *New York*
- ▶ ITS Director, Americas, **Jeffrey Michalak**, *Detroit*
- ▶ ITS Director of National Washington, DC, **Margie Rollinson**, *Washington*
  
- ▶ Northeast  
**Craig Hillier**, *Boston*
- ▶ East Central  
**Johnny Lindroos**, *McLean, VA*
- ▶ FSO  
**Phil Green**, *New York*
- ▶ Midwest  
**Simon Moore**, *Chicago*
- ▶ Southeast  
**Scott Shell**, *Charlotte, NC*
- ▶ Southwest  
**Paul Palmer**, *Houston*
  
- ▶ West  
**Julie Wooldridge**, *Irvine, CA*
- ▶ Canada  
**George Guedikian**, *Toronto*
- ▶ Israel  
**Sharon Shulman**, *Tel Aviv*
- ▶ Mexico and Central America  
**Koen Van 't Hek**, *Mexico City*
- ▶ South America  
**Alberto Lopez**, *New York*

Ernst & Young

Assurance | Tax | Transactions | Advisory

### About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 141,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [www.ey.com](http://www.ey.com).

### International Tax Services

About Ernst & Young's International Tax Services practice

Our dedicated international tax professionals assist our clients with their cross-border tax structuring, planning, reporting and risk management. We work with you to build proactive and truly integrated global tax strategies that address the tax risks of today's businesses and achieve sustainable growth. It's how Ernst & Young makes a difference.

The Washington Dispatch is a monthly communication prepared by Ernst & Young's Washington International Tax Services summarizing recent developments and "inside-the-beltway" news pertinent to multinational companies. For additional information, please contact your local international Tax professional.

ITS Washington, DC  
Margie Rollinson

[www.ey.com](http://www.ey.com)

© 2011 Ernst & Young LLP.  
All Rights Reserved.

SCORE no. CM2366

*This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.*