Peter Barnes Comments on BEAT Provision in Law360

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A literal reading of one of the new international provisions in the recent federal tax overhaul could have the unintended consequence of encouraging U.S. companies to change their operations to avoid the harsh treatment, practitioners said.

Peter Barnes, a senior fellow at Duke University School of Law, also argued for playing it safe. [Mr. Barnes is also Of Counsel to Caplin & Drysdale's International Tax and Tax Controversies practice groups.]

"There may be a break on the cost component, but that's not the way the rule is written," he said.

Barnes, a former tax executive with General Electric Co., said that the provision could cause U.S. multinationals to restructure their operations — and that some of those restructurings could hurt, rather than help, the U.S. overall. For example, he said, a company might decide to have a foreign affiliate that currently provides services or intangibles also provide the good.

If a U.S. company uses foreign-owned intellectual property to make pills in the U.S., the royalty for that IP is a base-eroding payment, Barnes noted. On the other hand, if the foreign entity that owns the IP makes the pills, "that's not a base-eroding payment even though there's an intangible component in there because they're buying goods," he said. This kind of restructuring is "an unintended but clearly foreseeable consequence of the BEAT."

For the full article, please visit *Law360's* website (subscription required).

Excerpt taken from the article "Tax Specialists Call for Generous Reading of BEAT Provision" by Molly Moses for Law360.

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