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New Proposed U.S. Excise Tax on Certain U.S. “Outsourcing” Payments

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In September, a new bill was introduced in the U.S. Senate entitled the “Halting International Relocation of Employment Act” or “HIRE Act” (the “Bill”). Generally, the Bill proposes a 25% excise tax on certain outsourcing payments made by U.S. persons or entities to non-U.S. persons or entities. The Bill, if enacted, could have a significant impact on Canadian companies that are currently engaged in certain cross-border arrangements with U.S. companies, including subsidiaries or affiliates.

In general, the Bill would impose a 25% excise tax on any premium, fee, royalty, service charge, or other payment made in the course of a trade or business by a U.S. person to any non-U.S. person if the benefit of the labor or services is directly or indirectly directed to consumers located in the United States. In addition, the Bill would also generally prohibit U.S. companies from deducting any such outsourcing payments in determining their U.S. federal taxable income. The Bill provides little specific guidance as to the meaning of these terms. Accordingly, if this legislation were to be adopted into law, the scope of payments or activities that might otherwise be subject to the excise tax and deduction denial remains uncertain. However, based on the language used in the draft proposal, intercompany and affiliate licensing or service arrangements appear likely to be “within scope”.

To date, the sponsor of the Bill has been unsuccessful in bringing the Bill up for debate before the full U.S. Senate due, in part, to the current government shutdown. It is unclear whether and to what extent the Bill may gain support in the future. We will continue to monitor this proposed legislation. Any Canadian company that is currently engaged in, or is considering, a cross-border licensing, service or similar arrangement with a U.S. company (including subsidiaries or affiliates) should monitor the progress of the Bill and consider the potential impact its passage could have on those arrangements.

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