Impact of "Fiscal Cliff" Debate in the United States

January 4, 2013

By Sean M. King, President & Managing Director of Align Global Consulting, Inc.

When the dust settled on the now infamous "fiscal cliff" debate, the American Taxpayer Relief Act of 2012 ("the Act") cleared the U.S. House of Representatives and Senate on 1 January, 2013.

Mainstream U.S. media reports focused on the major provisions of the Act relating to individual taxpayers. Most notably, the Act:

- Permanently leaves in place the six individual income tax brackets ranging from 10 to 35 percent for married taxpayers earning taxable income below $450,000 and unmarried taxpayers earning below $400,000. For taxpayers earning annual taxable income above these thresholds, however, there is an additional bracket of 39.6 percent, equal to the top marginal rate in effect prior to 2001; and
- Permanently sets the top rate on income from capital gains and qualified dividends at 20 percent (up from 15 percent in 2012) for unmarried taxpayers with income over $400,000 and married taxpayers with income over $450,000.

Lost among the individual provisions was the extension through 2013 of several expired or expiring temporary business tax provisions, commonly referred to as "extenders." Under the Act, certain provisions that expired at the end of 2011 are retroactively extended to the beginning of 2012. The extenders package in the Act is based largely on a pared-down extenders bill approved by the U.S. Senate Finance Committee on 2 August, 2012.

Two important international tax provisions were included among the extenders. Specifically, the Act:

- Extends the "active financing" exception to "subpart F" income, thereby allowing deferral of the active financing income of a controlled foreign corporation ("CFC") engaged predominantly in banking, financing, or similar business activity; and
- Extends the section 954(c)(6) "look-through" treatment for payments between related CFCs.

In many respects, the fiscal cliff and the resulting Act are only the beginning of what will be a larger tax policy debate in 2013. If lawmakers and the U.S. president are successful in orchestrating comprehensive tax reform, corporations, individuals and their tax advisors will likely need to evaluate a wider range of tax benefits than those commonly considered in the past. Of note for U.S. multinational corporations, the U.S. president has previously signaled that comprehensive international tax reform may be included in the process. The professionals at Align can assist you and your organization in assessing the impact of any such reform.

With offices in Research Triangle Park and Silicon Valley, Align Global Consulting is a globalization consulting and advisory firm that represents clients expanding globally or improving existing operations by providing creative legal and tax solutions to address commercial, trade, investment and regulatory matters. Align's comprehensive list of services includes global structuring, global business transactions, cross-border M&A transactions, and international tax planning for outbound and inbound investment. Align assists companies in all stages of growth, from emerging growth companies to the Fortune 100. With "big firm" credentials and experience, Align handles matters traditionally entrusted to larger firms, while maintaining a commitment to the lost art of one-on- one client service.