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Proposed revisions to the US Model Income Tax Treaty

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The US Treasury Department released proposed revisions to the US Model Income Tax Treaty (the 'Model Treaty'); the proposed changes are intended to combat treaty abuse and deny treaty benefits in certain situations. The revisions to the Model Treaty include: (i) changes to the Limitation on Benefits provision which most notably incorporates a derivate benefits test; (ii) the introduction of 'special tax regime' provisions that deny treaty benefits for interest, royalties and other income derived from a related party where the recipient jurisdiction has a preferential effective tax rate; (iii) new rules on 'expatriated entities' where certain expatriated entities remain subject to domestic tax law and are denied treaty benefits; (iv) a right for partial treaty termination if a treaty partner makes certain 'subsequent changes' to its domestic law; and (v) a provision targeting 'exempt permanent establishments'.

Although the US Department of Treasury has expressed a desire to finalize the proposed changes by the end of 2015, it is significant to note that the effects of the proposed changes do not affect current US income tax treaties. Additionally, the Model Treaty is just that – a model used by the US Department of Treasury to negotiate treaties and it is up to participating countries to either accept the provisions or negotiate for alternatives. In either case, it will be a significant amount of time before these proposed changes are adopted, ratified by the US senate and included in any bilateral US income tax treaty or amending protocol in an existing treaty although the proposals reflect the current legislative attitude towards certain international transactions.