GREENWICH TREASURY ADVISORS
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New 60 Day/180 Day Upstream Loan Rules

As reported in the NY Times and the Wall Street Journal, the IRS on Friday relaxed its rules for allowing upstream loans from foreign subs to US parents. Prior to this, such upstream loans could only be done for 30 days, and the IRS will now allow this for 60 days, *provided that the loan is repaid*. This can now be repeated three times for a total of 180 days within a taxable year.

For those companies facing funding difficulties in the US with excess cash abroad, the immediate advantages are: increased domestic liquidity, reduced net interest expense, and reduced counter-party credit risk on the current investment of overseas cash.

Even if the domestic liquidity and net interest expense benefits are not compelling, the ability to reduce overseas bank counterparty risk by moving foreign excess cash to the US is a significant benefit in of itself given the problems and lack of coordination the EU countries are having in dealing with failing European cross-border banks. As discussed below, this relaxation will negatively impact non-US liquidity.

One disadvantage may be the perceived tax risk regarding how one can safely and quickly roll over a maturing upstream loan without incurring deemed dividend designation. In the past, I have heard of companies replacing one loan from Subsidiary A with another loan from Subsidiary B, and using their in-house bank to facilitate the round-tripping. Another risk might be whether there would be domestic funding available to replace any foreign sub loans that must be repaid.

Getting Tax and their outside advisors involved is the next step in evaluating whether upstream loans are beneficial for your company. The US Treasury is clearly giving the US companies a break to help manage the current liquidity crisis, so borrowing now for 60 days with the expectation that the safe rollover issue will be solved by maturity date may not be a significant risk. For example, the US Treasury has also eased the taxation rules for acquiring banks.

Another consideration is the impact of this rule change on non-US liquidity. Foreign money market funds will likely incur large redemptions as US companies bring money home. All US MNC's will want to look at the ability of their foreign money market funds to handle the likely redemptions, which could significantly impact your day-to-day international cash management. In addition, withdrawal of US MNC funds from foreign money market funds, Euro CP, and the (London) bank time deposit market will increase liquidity pressures on banks operating abroad.

About Greenwich Treasury Advisors

Founded in 1992, GTA is an independent consultancy dedicated exclusively to corporate treasury consulting. We have had over 350 clients, ranging from Global Fortune 10 MNC's to public and private mid-market companies, providing them with practical treasury management advice on:

- FX, interest rate and commodity risk policies, including GAAP hedge accounting
- Structuring world-class treasuries
- Global cash management and improving foreign unit treasury operations
- Funding strategies and securing funds.

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