

Report on recent US international tax developments - 15 November 2019

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A senior United States (US) Treasury official this week provided a rundown of coming *Tax Cuts and Jobs Act* (TCJA) international guidance. David Kautter, US Treasury Assistant Secretary for Tax Policy, told a Washington audience that both final foreign tax credit regulations and final and proposed Base Erosion and Anti-abuse Tax (BEAT) regulations would be released in the coming days. The BEAT regulations cleared the Office of Management and Budget Office of Information and Regulatory Affairs last week. He also said that final and proposed regulations under Internal Revenue Code Section 163(j) may be released by the end of December and now stand at over 550 pages.

Other TCJA international tax guidance expected by year end or in January 2020 includes final and proposed regulations under Section 267A on related party amounts paid or accrued in hybrid transactions or involving hybrid entities, and proposed regulations on the new inventory sourcing rule under Section 863(b).

Another senior Treasury official this week was quoted as saying that the final regulations on the Foreign Derived Intangible Income deduction, the new Global Intangible Low Tax Income high-tax exclusion and the Section 250 participation exemption will be issued in the first half of 2020.

On 12 November 2019, the Ninth Circuit Court of Appeals **denied** a request by the taxpayer in *Altera v Commissioner* for a rehearing before the full court on the issue of whether participants in a cost-sharing arrangement (CSA) must share stock-based compensation costs (SBC costs). A Ninth Circuit panel previously upheld 2003 Internal Revenue Service regulations requiring CSA participants to share SBC costs. The taxpayer now has 90 days from 12 November 2019 to apply for certiorari to the US Supreme Court.

EY on 12 November 2019 submitted a [comment letter](#) to the Organisation for Economic Co-operation and Development (OECD) on the [public consultation document](#), *Secretariat Proposal for a "Unified Approach" Under Pillar One*. The EY submission provides a comprehensive review of the strategic issues involving Pillar 1, as well as key implementation issues that must be resolved.

On 8 November, the OECD released a public consultation document, "[Global Anti-Base Erosion Proposal \('GloBE'\) - Pillar Two](#)." Pillar 2 is part of the ongoing OECD project "Addressing the Tax Challenges Arising from the Digitalisation of the Economy" (BEPS 2.0). It calls for the development of a coordinated set of rules to address ongoing risks from structures that allow multinational enterprises to shift profit to jurisdictions where they are subject to no, or very low taxation.

Endnote

1. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
2. See EY Global Tax Alert, [OECD issues consultation document on technical design aspects of Pillar Two](#), dated 14 November 2019.

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