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Global Tax Alert

Officials discuss OECD BEPS 2.0 project at DC Conference

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Pascal Saint-Amans, Director of the Organisation for Economic Co-operation and Development's (OECD) Center for Tax Policy and Administration, told a conference in Washington, DC on 19 December 2019 that OECD staff, working with the 136 countries in the Inclusive Framework, plan to move forward to develop additional details that would create a new taxing right (NTR) aimed at reallocating more taxable profits of multinational enterprises (MNEs) to market jurisdictions, while leaving for the future a more political determination as to how to address the United States (US) Treasury concerns that a deviation from arm's-length principles (ALP) would make it difficult to gain political consensus in the US Congress. Documents being developed for purposes of a meeting of the Inclusive Framework in late January are expected to provide further details of this new taxing right, under so-called Pillar One of the OECD project, as well as spell out how additional refinements and simplifications to the ALP, addressing dispute resolution and dispute prevention, could work.

The objective is for the Inclusive Framework to agree to an outline of the Pillar One work in late January, endorsing with modifications and further detail the Pillar One proposal for a "unified approach" released by the Secretariat on 9 October. If there is a consensus within the Inclusive Framework, Saint-Amans said the plan would be to provide a public report to the G20 finance ministers in late February, and that report would be subject to comment in the hopes

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of reaching a final agreement on Pillar One in July 2020. Saint-Amans cautioned that he hoped his timetable will hold despite the uncertainty created by the 3 December letter from US Treasury Secretary Mnuchin to the OECD Secretary General stating that the US position is that Pillar One only be imposed on MNEs on a voluntary basis. Saint-Amans pointed out that Secretary Mnuchin's letter did say that the United States remains committed to this OECD process to forge an international consensus and noted that while the Secretary's letter created uncertainty as to the future of the Pillar One project, it is normal for there to be last minute changes in positions by countries as part of the negotiating process.

As for Pillar Two, which is a separate work stream intended to ensure that MNEs pay a minimum level of tax, the plan appears to be that the OECD will release another public consultation document by April of 2020 that will expand upon and tie together the issues raised in the 8 November Pillar Two consultation document. As the Secretariat noted at the 9 December public consultation on Pillar Two, this new consultation is expected to discuss in more detail how the income inclusion rule, or minimum tax, will fit together with backstop rules, including the undertaxed payments rule, the switch over rule and the subject to tax rule.

Speaking at the same GWU/IRS 32nd Annual Institute on Current Issues in International Taxation, Treasury Deputy Assistant Secretary for International Affairs Chip Harter said that the OECD negotiations really come down to whether a consensus can be reached that would trade off better administrability of the ALP for a new simplified formula for determining nexus and profit allocation rules for larger, consumer-facing MNEs. Harter expressed concerns that the Pillar One approach was evolving in a manner that could bring into scope more MNEs than some countries would like and would move the international tax system towards a partial destination-based system, which raises some concerns.

Therefore, Harter explained that the Secretariat was refining the proposals to narrow them further. However, despite the work to do so, Secretary Mnuchin felt that businesses were deeply divided by the proposals, and that this division would complicate the US political process for adopting the OECD proposals. He explained the revised US approach (i.e., creating a voluntary Pillar One mechanism) as one that many MNEs should find attractive because they would achieve more certainty through the so-called Amount B and Amount C refinements to the ALP, even if they would pay more foreign tax under Amount A.

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