14 February 2020

Global Tax Alert

Report on recent US international tax developments - 14 February 2020

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US Treasury Secretary Steven Mnuchin confirmed during a Senate Finance Committee hearing on the FY 2021 budget on 12 February that the United States (US) and France had, in fact, reached agreement to de-escalate tensions over France's enactment of a digital services tax (DST). According to press reports in January, France agreed to suspend collection of the 3% DST and, in turn, the US agreed not to impose retaliatory tariffs of up to 100% on approximately US$2.4 billion of French goods. No action reportedly would be taken by either side through the end of 2020 in the hopes of reaching a multilateral digital tax agreement. Secretary Mnuchin further was quoted as saying that reaching a multilateral digital solution is a "priority for us for the balance of this year." (This week France announced that it will suspend 2020 collection of the DST until December 2020, but 2019 DST remains due in April 2020. EY Global Tax Alert, *French tax authorities confirm postponement of Digital Services Tax payments for 2020, but 2019 payments remain due*, dated 11 February 2020 provides details).

The Finance Committee hearing also saw Democratic Senate Finance Committee members arguing that Internal Revenue Service (IRS) regulations implementing the international provisions of the *Tax Cuts and Jobs Act* (TCJA) had contributed to the drop in corporate tax receipts and to the change in the Congressional Budget Office's (CBO) revenue baseline. Secretary Mnuchin said, and repeated at several points during the hearing, that Treasury's job is to implement the law consistent with congressional intent.

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Also this week, Senate Finance Committee Ranking Member Ron Wyden and Senator Sherrod Brown introduced legislation that would amend the Internal Revenue Code Section 951A Global Intangible Low-taxed Income (GILTI) high-taxed exception. The *Blocking New Corporate Tax Giveaways Act* (S. 3280) would clarify that high-taxed amounts are excluded from tested income for purposes of determining GILTI "only if such amounts would be foreign base company income or insurance income."

The Organisation for Economic Co-operation and Development (OECD) on 11 February 2020 released its final report on the transfer pricing (TP) aspects of financial transactions. The report, which has been published as a follow-up work in relation to Base Erosion and Profit Shifting (BEPS) Action 4 and Actions 8-10, represents the first time that guidance on financial transactions has been included in the OECD TP Guidelines, making this an important development. The report covers the accurate delineation of financial transactions, in particular with respect to multinational enterprises' capital structures. It is divided into five main sections, including: Interaction with the guidance provided in section D.1 of the OECD Guidelines (i.e., accurate delineation of the transaction); Treasury functions, including related transactions such as intra-group loans, cash pooling and hedging; Financial Guarantees; Captive insurance; and Risk-free and risk-adjusted rates of return. See EY Global Tax Alert, *OECD releases final transfer pricing guidance on financial transactions*, dated 11 February 2020 for details.

The OECD also released a public Consultation Document on the review of Country-by-Country (CbC) reporting. The Consultation Document covers the implementation and operation of BEPS Action 13, the scope of CbC reporting, the content of a CbC report, and other aspects of BEPS Action 13 (the master file and local file). Public comments on questions raised in the Consultation Document and on all aspects of the BEPS Action 13 report are due by 6 March 2020. The public consultation meeting will be held on 17 March 2020. See EY Global Tax Alert, *OECD releases Consultation Document on the review of Country-by-Country Reporting*, dated 11 February 2020 for details.

The OECD on 13 February released a new economic analysis showing the impact of the BEPS 2.0 Pillar One and Pillar Two international tax reform proposals, concluding they would raise about US$100 billion annually in corporate tax receipts. This represents a 4% increase in global corporate income tax revenue, with the gains spread across high, middle and low income economies. The report notes that the estimates are based on assumptions that may change as the proposals are finalized.

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EYG no. 000705-20Gbl

1508-1600216 NY
ED None

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