

Report on recent US international tax developments - 21 February 2020

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

A senior United States (US) Treasury official this week was quoted as saying the Government is "fairly confident" that it will release all major *Tax Cuts and Jobs Act* (TCJA) guidance by 1 October 2020. The official also offered an unofficial timeline of coming international tax projects. Final Internal Revenue Code Section 901(m) regulations will be out "any day now," he said, and final and proposed hybrid regulations are expected for release in the next few weeks. Eagerly anticipated final and proposed Section 163(j) regulations should be out in March, with Foreign Derived Intangible Income (FDII) and Global Intangible Low-taxed Income (GILTI) expected to be released this summer; foreign tax credit regulations and other international guidance would follow.

The official also addressed the three pending US tax treaties with Chile, Hungary and Poland that remain stalled over the TCJA enactment of the Base Erosion and Anti-abuse Tax (BEAT). The official specifically pointed to the suggestion that BEAT violates the US Model Treaty's relief from double taxation and nondiscrimination provisions. The official suggested that the most direct solution may be to simply reopen negotiations with those three countries to address BEAT in the context of the treaties.

Altera Corporation (Altera) has filed a [petition](#) for a writ of certiorari asking the US Supreme Court to review the Ninth Circuit Court of Appeals' decision upholding a 2003 cost-sharing regulation. The regulation required participants in a cost-sharing arrangement to treat stock-based compensation costs as compensable under Section 482.

In its petition, Altera contends that the Government employed an indefensible “bait-and-switch,” attempting to justify the 2003 regulation using arguments that it advanced for the first time in the Ninth Circuit after the Tax Court held the regulation invalid. Altera argues that, by accepting the Government’s new rationale, and giving it “Chevron Deference,” the Ninth Circuit failed to follow settled rules of administrative law established by the Supreme Court. Specifically, Altera notes that those rules require agencies to give notice and opportunity to comment on proposed rules and to acknowledge and explain in rulemaking any changes to long-standing positions.

The Altera petition asserts that the Ninth Circuit opinion would allow the Government to impose billions of dollars in taxes based on a position not advanced prior to litigation. Moreover, Altera states that the significant departure from a long-standing approach to cost sharing would upend “many companies’ research-and-development agreements.” In addition, Altera argues that the Ninth Circuit’s broad interpretation of *Chevron* would enable agencies to evade meaningful judicial review.

Pascal Saint Amans, Director of the Organisation for Economic Co-operation and Development’s (OECD) Centre for Tax Policy and Administration, this week was quoted as saying that the OECD is on track to reach agreement on the core principles of the Base Erosion and Profit Shifting (BEPS) 2.0 Pillars One and Two project by the end of 2020.

Saint Amans said that the focus through the end of this year will be to reach consensus on the main aspects of a digital taxation system, with more detailed guidance possibly spilling into 2021 through work by the Inclusive Framework on BEPS.

In the meantime, OECD Secretary General Angel Gurría released a report to the G20 Finance Ministers and Central Bank Governors on 14 February warning that the US proposal to implement the BEPS 2.0 Pillar 1 proposal on a safe harbor basis “could raise major difficulties, increase uncertainty and fail to meet all of the policy objectives of the overall process.” The Secretary General confirmed that “a final decision on the matter will be taken only after the other elements of the consensus-based solution have been agreed upon.” The OECD [report](#) was released ahead of a G20 Finance Ministers meeting next week.

The OECD on 19 February issued a Consultation Document on [draft Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy](#). According to the OECD, the consultation is meant to address the fact that the “sharing” and “gig” economies are rapidly expanding. This presents major opportunities for tax administrations to adopt compliance strategies to target what up until now has been part of the informal cash economy and is increasingly taking place on digital platforms. The consultation runs through 20 March 2020.

Endnote

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax and Transaction Services, Washington, DC

- ▶ Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- ▶ Joshua Ruland joshua.ruland@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 000839-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com