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Global Tax Alert

Report on recent US international tax developments - 19 June 2020

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In a recent letter regarding the OECD[1] BEPS[2] 2.0 ongoing work, United States (US) Treasury Secretary Steven Mnuchin reportedly told other nations that talks had reached an impasse that prevented US agreement on even an interim basis, and said nations were "much closer to an agreement" on the Pillar 2 minimum tax element of the plan than Pillar 1. The work under Pillar 1 includes evaluating changes to jurisdiction to tax thresholds.

The tax deadlock spilled over to the trade sphere when the US threatened trade retaliation against countries that enacted or are considering a unilateral digital services tax (DST). In early June, the Office of the US Trade Representative (USTR) announced it was conducting a "Section 301" investigation into adopted or proposed DSTs in 10 jurisdictions, including those of some major US trading partners such as Brazil, India, Italy, Spain, the United Kingdom (UK) and the European Union, among others.

During a House Ways & Means Committee trade hearing this week, USTR Bob Lighthizer reportedly said, in part, that negotiations "were not making headway on Pillar One, which is the most important pillar in there. The other people getting together and deciding they're going to take action against the United States without our acquiescence is something that's not acceptable." While there's still "room for a negotiated settlement," Lighthizer said "the [Treasury] Secretary made the decision that rather than having them go off on their own, he would just say we're no longer involved in the negotiations." He gave a similar statement at the Senate Finance Committee saying the US must "show our strength."

Building a better working world

European officials reportedly are pushing back on the US action and vowing to proceed with DSTs if an OECD agreement proves elusive. French Finance Minister Bruno Le Maire was quoted as saying he and officials from the UK, Italy and Spain had jointly responded to Secretary Mnuchin's letter, which he labeled "a provocation towards all the partners at the OECD when we were centimeters away from a deal on the taxation of digital giants."

The OECD responded to the recent developments, saying nations "should remain engaged in the negotiation" and indicated it will maintain its meeting schedule for all members of the Inclusive Framework on BEPS to design a multilateral approach to the digitalization of the global economy.

The OECD's Working Party 6 and Mutual Agreement Procedure Forum earlier this month reportedly circulated a confidential questionnaire to members of the Business at OECD (BIAC) business group. The questionnaire, which was due by 17 June, was meant to determine transfer pricing compliance challenges resulting from the COVID-19 pandemic and identify issues that require guidance. The BIAC asked members to list up to five of the most pressing transfer pricing issues related to the coronavirus crisis.

The Office of Management and Budget Office of Information and Regulatory Affairs (OIRA) this week announced that it has completed its review of final regulations under Internal Revenue Code[3] Section 250, relating to the Foreign Derived Intangible Income (FDII) provision and the Global Intangible Low-taxed Income (GILTI) provision. OIRA reported the review process as concluded on 12 June; however, this does not necessarily mean release is imminent.

Several new *Tax Cuts and Jobs Act* (TCJA) international tax projects also came over from Treasury for OIRA review this week, including a final rule on the GILTI high-tax exclusion and a related proposed rule under Section 954(b)(4) for high-taxed subpart F income and rules under Section 964 for determining a foreign corporation's earnings and profits. OIRA this week also listed as under review final regulations under Section 163(j) and proposed rules on the limitation on the deduction for business interest expense.

A senior official in the Internal Revenue Service (IRS) Large Business and International Division this week provided more details with regard to the recently announced TCJA compliance campaign. The official distinguished the new TCJA campaign from others by saying it will not focus on specific transactions or issues. Rather he was quoted as saying IRS examiners would be reviewing taxpayers' entire returns to "develop a base-level of understanding of the *Tax Cuts and Jobs Act* to bridge from where we are to where we want to be with our employees." The campaign exams reportedly will begin soon after the IRS suspension of compliance action ends on 15 July.

Endnotes

1. Organisation for Economic Co-operation and Development.
2. Base Erosion and Profit Shifting.
3. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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