# Report on recent US international tax developments - 18 September 2020

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The short United States (US) congressional session in the lead-up to the 3 November election remains focused on bipartisan negotiations over the next coronavirus aid package and extending government funding and other expiring programs beyond the close of the 2020 fiscal year on 30 September. The two may be walled off from one another, as the Trump administration and House Democratic leadership have reportedly agreed to not attach coronavirus relief items to a continuing resolution (CR), which is the main must-pass bill confronting Congress. The planned CR is generally expected to extend until sometime in mid-December.

The terms of the coronavirus negotiations generally remain static. The Trump administration supports a US$1.5 trillion[1] package, Democrats want at least $2.2 trillion, and they disagree on the amount of funding in areas like unemployment benefits and additional funding for state and local governments. Neither side thus far seems willing to diverge far from their target amount.

Senate Republican leaders have stayed out of the direct coronavirus talks but have their own narrowly targeted, roughly $500 billion package supported by nearly all Republican members, even those with cost concerns over additional relief. House Speaker Nancy Pelosi has expressed little interest in such a pared-down plan, and Senate Democratic Leader Chuck Schumer has called the effort inadequate.

Building a better working world

Democratic presidential nominee Joe Biden's campaign released a document on 17 September contrasting his tax proposals with the *Tax Cuts and Jobs Act* and President Trump's calling for a 15% capital gains rate. The document states Biden's commitment to requiring "corporations and the wealthiest Americans to finally pay their fair share;" to not asking "a single person making under $400,000 per year to pay a penny more in taxes;" and to enacting more than a dozen middle class tax cuts.

Tax increases listed include, among others, the following previously released Biden proposals (quoting):

- Raising the corporate tax rate to 28%.
- Requiring a true minimum tax on ALL foreign earnings of US companies located overseas so that we do our part to put an end to the global race to the bottom that rewards global tax havens. This will be 21% — TWICE the rate of the Trump offshoring tax rate and will apply to all income.
- Imposing a tax penalty on corporations that ship jobs overseas in order to sell products back to America.
- Imposing a 15% minimum tax on book income so that no corporation gets away with paying no taxes.

Turning to regulations, on 17 September, the Treasury Department and the Internal Revenue Service (IRS) released Notice 2020-73 (the Notice), announcing an intention to amend certain final regulations under Internal Revenue Code[2] Section 987 and defer the applicability date of those, as well as other related regulations, by one year to taxable years beginning after 7 December 2021. Therefore, those regulations would apply to the taxable year beginning on 1 January 2022 for calendar-year taxpayers. The Treasury Department and the IRS do not intend to amend the applicability date of Reg. Section 1.987-12 (rules related to the deferral of gains and losses in certain terminations of Section 987 qualified business units). As a result, those rules generally remain applicable to events that occur on or after 6 January 2017.

A taxpayer generally may choose to apply those regulations to taxable years beginning after 7 December 2016 and before the amended applicability date, provided the taxpayer consistently applies those regulations to such taxable years. Taxpayers are permitted to rely on the Notice prior to the amendment of the regulations under Section 987 as described in the Notice.

The G20/Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) will meet on 8-9 October, but agreement on Pillar 1 is unlikely, according to Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration. Saint-Amans said this week that considerable progress has been made on the Pillar 1 blueprint, but indicated that no agreement can be reached until after the November US election. The OECD head was quoted as saying that if the process to reach agreement on Pillar 1 takes too much time, countries will act unilaterally.

Many countries have already initiated action to tax digital transactions and others are considering the move.

Saint-Amans also said he expects the Inclusive Framework on BEPS will settle on a Pillar 2 minimum tax rate of 12.5%, matching Ireland's corporate tax rate. He further reiterated earlier comments suggesting a future Pillar 3 should address the special considerations affecting lesser developed countries.

In her State of the Union address to the European Parliament on 16 September, European Commission (EC) President Ursula von der Leyen said the European Union will make every effort to effect a BEPS 2.0 agreement. But if no digital agreement is reached, the EC President said, "Europe will come forward with a proposal early next year."

## Endnotes

1. Currency references in this Alert are to the US$.
2. All "Section" references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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