Washington Dispatch

January 2021, Volume 25, Issue 1

EY's weekly and monthly US international tax podcasts are available on iTunes and ey.com:

- Listen and subscribe to the weekly podcast on iTunes
- Listen and subscribe to the monthly podcast on iTunes
- Access all podcasts on EY's Tax News Update: Global Edition tool

In this issue

US Treasury Secretary says no new taxes for now, commits to OECD BEPS discussions

US Treasury Secretary Janet Yellen was sworn into office on 26 January 2021, the day after the Senate approved her nomination to be the first woman to hold the post.

During her Senate Finance Committee confirmation hearings on 19 January, Yellen confirmed that the Biden Administration plans to delay tax increases for now due to the coronavirus pandemic.

Yellen noted that Biden had said that eventually, as part of a larger package with spending and investment proposals, the President would want to repeal parts of the 2017 tax cuts that benefited the wealthy and large companies, and reverse incentives for companies to offshore operations and profits. However, Biden has been clear that he does not want to completely repeal the *Tax Cuts and Jobs Act*. She said a provision in that law had the byproduct of rewarding corporations for moving operations offshore.

Yellen also testified that the US will work with other countries in negotiations to stop a "race to the bottom" on corporate taxation and, within that process, ensure competitiveness of American corporations. She affirmed that it is important for US companies to be globally competitive and said the OECD negotiations are important for that reason.

The new Treasury Secretary spoke with her UK and German counterparts on 27 January, saying she was "committed to active U.S. participation in the ongoing OECD discussions on international taxation to forge a timely international accord," according to a readout of the call.

A Treasury statement released after one of the calls reiterated the message that Secretary Yellen plans to "re-engage actively in the ongoing OECD discussions on international taxation."

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration noted Yellen's Senate Finance Committee confirmation hearing testimony, saying the US appears to have a "strong appetite" for the OECD Base Erosion and Profit Shifting (BEPS) 2.0 Pillar Two proposals regarding a minimum tax.

During a keynote speech in late January, Saint-Amans said: "What we can anticipate is a much more constructive approach" from the new Biden administration with respect to the BEPS 2.0 negotiations.

In regard to last year's US proposal to implement Pillar One as a safe harbor, Saint-Amans said "I don't see it has any chance to prosper anytime soon."

Treasury and IRS news

New final regulations address application of Section 163(j) limitation to CFCs and partnerships, while reserving on certain provisions

Treasury and the IRS on 5 January 2021 issued final regulations (TD 9943, the 2021 Final Regulations) that provide guidance on applying the limitations on the deductibility of business interest expense under Section 163(j) (the Section 163(j) limitation), which was significantly modified by the *Tax Cuts and Jobs Act*, and further modified by the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act).

The 2021 Final Regulations retain the same basic structure as the proposed regulations released in July 2020 (the 2020 Proposed Regulations) and include certain definitions and rules for applying the Section 163(j) limitation to controlled foreign corporations (CFCs) and partnerships.

While the 2021 Final Regulations adopt much of the 2020 Proposed Regulations, they also include significant revisions and clarifications. Additionally, the 2021 Final Regulations reserve on certain important provisions of the 2020 Proposed Regulations that the IRS continues to study, including: (i) the treatment of interest expense from debt-financed acquisitions of, and distributions from, passthrough entities; (ii) rules on partnership and partner basis adjustments upon partner dispositions; (iii) rules on the treatment of excess business interest expense in tiered partnerships; (iv) the computation of a US shareholder's adjusted taxable income when a CFC group election is in place; and (v) the treatment of foreign persons with effectively connected income (ECI).

The 2021 Final Regulations explicitly provide that taxpayers are not required to make the CFC grouping election within the first 60 days after the regulations are published as final but may make the election in subsequent years. This will allow taxpayers time to model out the implications of making such an election.

The 2021 Final Regulations largely reject comments seeking to modify the safe-harbor election, though the safe-harbor election was modified to apply to CFCs with net business interest income. Although a transition rule is provided that may be beneficial in certain circumstances, Treasury rejected comments seeking to modify SRLY rules as applicable to pre-group disallowed business interest expense carryforwards. As a result, taxpayers must carefully examine the attributes of each potential CFC group member before making a CFC group election to avoid unintended consequences.

The 2021 Final Regulations apply to tax years beginning on or after the date that is 60 days after the regulations are published in the Federal Register. Except as otherwise provided, taxpayers may apply the Final 2021 Regulations to a tax year beginning after 31 December 2017, and before 60 days after the applicability date, provided that they consistently apply the 2021 Final Regulations and the 2020 Final Regulations to that tax year and each subsequent tax year.

For tax years for which the 2021 Final Regulations do not apply, taxpayers may rely on the rules in the 2020 Proposed Regulations to the extent provided in the 2020 Proposed Regulations. Whether the incoming Biden Administration seeks to halt or suspend the application of the 2021 Final Regulations (for example, pending review of the regulations) remains to be seen.

IRS allows remote signing and submission of authorization Forms 2848 and 8821

The IRS has announced (IR-2021-20) that a new online option is now available for the submission of Form 2848, *Power of Attorney and Declaration of Representative*, and Form 8821, *Tax Information Authorization*. The new online tool, which is an interim solution in advance of the Tax Pro Account that is expected to be launched this summer, will allow tax professionals to submit authorization forms to the IRS electronically.

After creating a Secure Access account, tax professionals can access the new "Submit Forms 2848 and 8821 Online" option on the IRS.gov/taxpro page. The fax and mail options for submitting Forms 2848 and 8821 are still available, however signatures on such forms must be handwritten.

While the new online submission option represents a step in the right direction, its benefits are somewhat limited. Because using the system will not accelerate the current five-week timeline for processing authorizations through the IRS Central Authorization File, or "CAF" system, the only benefit over the traditional fax and mail options is the ability to use electronic signatures.

IRS official says guidance on worldwide interest expense allocation is a top priority, proposed FTC regs in 2021

An IRS official in mid-January said that guidance on the elective Section 864(f) worldwide interest expense allocation is a top international priority for the agency in 2021. Among the issues likely to be addressed are how the Section 864(f) election would operate and the worldwide group definition. The official noted there has not been much commentary on the provision and solicited taxpayer comments.

The official also was quoted as saying the IRS has put out a set of foreign tax credit regulations every year since 2017 and there are plans to issue a set of proposed regulations this year.

USTR finds DSTs adopted by six nations discriminatory; suspends DST-related punitive tariff actions on French goods

The US Trade Representative (USTR) recently released findings in its investigations of the Digital Services Tax (DST) regimes adopted by India, Italy, Turkey, Austria, Spain and the UK, initiated under Section 301. The USTR determined each DST to be discriminatory against US companies, inconsistent with prevailing principles of international taxation, and burdensome or restrictive to US commerce.

The USTR announced that no specific actions are being taken at this time. Separately, the USTR announced the suspension of punitive tariffs on certain French origin goods in relation to the Section 301 investigation of France's DST that were set to take effect on 6 January 2021.

OECD developments

OECD Inclusive Framework political leaders promote global consensus following OECD's public consultation on Pillar One and Two Blueprints

On 27 and 28 January 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) held a public meeting to provide an update on its ongoing international tax work. The agenda included discussion of the future of international taxation in connection with the ongoing G20/OECD project titled "Addressing the Tax Challenges of the Digitalisation of the Economy" (the BEPS 2.0 project).

At the meeting, finance ministers from six jurisdictions stressed the importance of reaching a consensus solution by mid-2021 and expressed their confidence that a positive outcome will be achieved.

The meeting followed the public consultation meeting hosted by the OECD on 14-15 January 2021 on the Pillar One and Pillar Two Blueprints. These Blueprints were released by the OECD on 12 October 2020 to reflect the progress made on both elements of the BEPS 2.0 project.

The public consultation meeting, which was held virtually, focused on the key questions posed in the consultation document and addressed the written comment submissions that were received from stakeholders as part of the consultation process. Representatives from business, labor groups, non-governmental organizations, academia and other interested parties participated in the consultation to discuss their perspectives. EY submitted a comment letter and a global team from EY participated in the consultation.

The Secretariat Director noted what he saw as the main takeaways from the consultation:

- Pillar One needs to be simplified, particularly with respect to segmentation and double tax relief.
- The major issue around the scope of Pillar One is largely a political issue.
- Pillar Two requires enhanced coordination of the rules, noting that countries can move on their own in this area so that the existence of this aspect of the project is necessary for rule coordination.

Looking ahead, the Director said that they would draw on the comments in attempting to work out the technical issues. He noted that this project likely will be discussed at the G20 Finance Ministers meeting in late February 2021 and reiterated the objective of reaching agreement on a solution by mid-2021.

OECD Secretariat issues updated guidance on tax treaties and impact of COVID-19 pandemic

The OECD on 21 January 2021 published on its website an *Updated guidance on tax treaties and the impact of the COVID-19 pandemic* (the guidance). This guidance revisits the guidance published on 3 April 2020 by the OECD Secretariat.

The updated guidance provides an analysis of some of the treaty-related issues that may arise due to the COVID-19 pandemic and is intended to provide more tax certainty to taxpayers. The guidance represents the OECD Secretariat's views on the interpretation of the provisions of tax treaties (i.e., each jurisdiction may adopt its own guidance to provide tax certainty to taxpayers). However, the document indicates that the guidance reflects the general approach of jurisdictions and illustrates how some jurisdictions have addressed the impact of COVID-19 on the tax situations of individuals and employers.

The guidance addresses permanent establishments, residence status of companies (based on place of effective management) and individuals, and the treatment of employment income.

The updated version of the guidance considers some additional fact patterns not addressed in detail in the April 2020 guidance, examines whether the analysis and the conclusions outlined in the April 2020 guidance continue to apply where the circumstances persist for a significant period, and contains references to country practice and guidance during the COVID-19 pandemic.

The OECD has published on its website diverse materials related to different focus areas in response to the COVID-19 crisis.

Note also that EY maintains a tracker that provides a snapshot of the tax policy changes in close to 140 jurisdictions around the world in response to the COVID-19 pandemic and that is updated frequently.

EY Member Firm US Tax Desks

Australia	Scott Hes, *Sydney*	scott.hes@au.ey.com
Canada	George Guedikian, *Toronto*	george.b.guedikian@ca.ey.com
	Emad Zabaneh, *Toronto*	emad.m.zabaneh@ca.ey.com
	Asif Rajwani, *Toronto*	asif.rajwani@ca.ey.com
	Ryan Coupland, *Calgary*	ryan.coupland@ca.ey.com
	George Tsitouras, *Montreal*	george.tsitouras@ca.ey.com
	Denis Rousseau, *Montreal*	denis.rousseau@ca.ey.com
	Richard Felske, *Vancouver*	richard.e.felske@ca.ey.com
China	Jeremy Litton, *Hong Kong*	jeremy.litton@hk.ey.com@hk.ey.com
	Lipeng He, *Shanghai*	lipeng.he@cn.ey.com
	Peter Kao, *Shanghai*	peter.kao@cn.ey.com
France	Paula Charpentier, *Paris*	paula.charpentier@ey-avocats.com
Germany	Thomas Day, *Munich*	thomas.day@de.ey.com
	Dmitri Bordeville, *Frankfurt*	dmitri.bordeville@de.ey.com
	Ann-Kristin Kautz, *Frankfurt*	ann-kristin.kautz@de.ey.com
	Lee-Bryan Serota, *Frankfurt*	lee.b.serota@de.ey.com
Israel	Amir Chenchinski, *Tel Aviv*	amir.chenchinski@il.ey.com
	Tal Levy, *Tel Aviv*	tal.levy@il.ey.com
	Itai Ran, *Tel Aviv*	itai.ran@il.ey.com
Japan	Joe Kledis, *Tokyo*	joe.kledis@jp.ey.com
Mexico	Alberto Lopez, *Mexico City*	alberto.r.lopez@mx.ey.com
	Manuel Solano, *Mexico City*	manuel.solano@ey.com
Singapore	Michael Xiang, *Singapore*	michael.xiang@sg.ey.com
Switzerland	Michael Parets, *Zurich*	michael.parets@ch.ey.com
UAE	Matt Berger, *Abu Dhabi*	matthew.berger@ae.ey.com
United Kingdom	Anthony Ammirato, *London*	anthony.ammirato@uk.ey.com
	Joseph Toce, *London*	jtoce@uk.ey.com
	Sean Trahan, *London*	sean.trahan@uk.ey.com
	Leif Jorgensen, *London*	ljorgensen@uk.ey.com

About EY
EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

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. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

prepared by Ernst & Young LLP's Washington International Tax Services summarizing recent developments and "inside-the-beltway" news pertinent to multinational companies. For additional information, please contact your local international Tax professional.

EYG no. 000710-21Gbl

1508-1600216 NY
ED None

ey.com