



Building a better  
working world

# Washington Dispatch

November 2021, Volume 25, Issue 11

---

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

### Legislation

2. House passes Build Back Better Act budget reconciliation bill; action moves to Senate
2. President Biden signs infrastructure legislation including new cryptocurrency reporting

### IRS news

2. Final FTC regs expected by year-end, PTEP regs in 2022
3. New IRS tool supports withholding agents' compliance with Form 1042-S

### Digital Taxation

3. US, Turkey announce joint statement on unilateral digital tax compromise
3. India, US agree on transitional approach for 2% Equalization Levy prior to implementation of Pillar One rule
4. OECD remains committed to BEPS Pillars in effect by end of 2023

### OECD news

4. OECD releases 2020 MAP statistics and awards

## Legislation

### House passes Build Back Better Act budget reconciliation bill; action moves to Senate

In a major step forward for the Biden Administration and Congressional Democrats, the House on 19 November passed the proposed *Build Back Better Act* (H.R. 5376) reconciliation bill in a 220 to 213 vote, following numerous delays and missed deadlines.

The House-passed *Build Back Better Act* (BBBA) includes significant changes to the international tax provisions of the Internal Revenue Code. These and other tax changes are generally intended to fund expanded social programs such as health coverage, affordable housing, universal pre-kindergarten and childcare, clean energy and climate investments, among other proposed spending provisions. Although largely consistent with the House Ways & Means Committee draft that was released on 13 September, the proposed international tax provisions in the House-passed BBBA include important technical changes and updates to the effective dates to make the proposals prospective only.

The BBBA now goes to the Senate, where consideration will begin in December and where it is expected to be modified. The House bill has already been shaped by the parameters set by Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ), reducing the size and scope of the bill and refocusing tax increases to pay for it away from rate increases and toward non-rate proposals such as a corporate minimum tax based on book income and a tax on stock buybacks, among other provisions.

Senator Manchin earlier suggested that major changes are possible to the House version of the Build Back Better bill, saying: "They're working off the House bill. That's not going to be the bill I work off of."

Senate Majority Leader Chuck Schumer (D-NY) indicated that he wants the Build Back Better bill to be approved by the Senate before the Christmas break.

An [EY Global Tax Alert](#) provides a review of the House-passed BBBA's international tax provisions and details the technical and effective date changes as compared to the original proposals released by the House Ways and Means Committee in September 2021.

### President Biden signs infrastructure legislation including new cryptocurrency reporting

President Joe Biden signed the long-awaited *Infrastructure Investment and Jobs Act* (H.R. 3684) into law on 15 November 2021, following passage in the House on 5 November and by the Senate last summer.

The legislation clears the way for about \$550 billion in new spending on highway and other projects. Worth noting, the infrastructure bill will impose information-reporting requirements on sales of cryptocurrency and other "digital assets." Cryptocurrency and other "digital assets" sold by customers of "brokers" will be subject to Form 1099-B reporting and cost-basis reporting.

The legislation specifically amends the Internal Revenue Code to make certain changes including expanding the definition of a broker, defining "digital assets," and applying the cost-basis-reporting regime for securities to digital assets. The amendments will be effective for information returns filed in 2024 for the 2023 calendar year.

## IRS news

### Final FTC regs expected by year-end, PTEP regs in 2022

A senior Treasury official in November 2021 said that the first set of eagerly anticipated final foreign tax credit regulations are still planned to be released before the end of the year. The official said the final rules, which are expected to come in at around 400 pages, are in the "clearance process." Treasury and the IRS issued proposed foreign tax credit regulations in September 2020.

Repeating prior comments, the official said the foreign tax credit package would focus on core rules, including jurisdictional nexus and refundable credits. A second set of final foreign tax credit regulations will likely be released in 2022, he said. The proposed regulations would apply to foreign taxes paid or accrued in tax years beginning on or after the date of publication of the final rules.

Proposed regulations on previously taxed earnings and profits (PTEP) are approximately a month or two from completion as to core aspects of the package, the official said, but will then require considerable review. The first set

of proposed PTEP regulations are expected to be released in 2022. The official conceded that provisions in the House's proposed *Build Back Better Act* could affect the first set of PTEP regulations currently in process, pointing to proposed changes to Section 961(c) basis adjustments.

### **New IRS tool supports withholding agents' compliance with Form 1042-S**

The IRS on 15 November 2021 launched a [new online tool](#) that is designed to support US withholding agents' compliance with reporting and withholding required with respect to IRS [Form 1042-S](#) (Foreign Person's U.S. Source Income Subject to Withholding). An IRS news release states that the tool performs a quality review of data before it is submitted to the IRS. An IRS tutorial is available on how to use the tool. According to the IRS, use of the tool is voluntary, "but the IRS will take into account a withholding agent's use of the tool when making enforcement and penalty determinations."

## Digital Taxation

### **US, Turkey announce joint statement on unilateral digital tax compromise**

The United States and Turkey issued a joint statement on 22 November announcing that the same terms in the Unilateral Measures Compromise reached in October 2021 among the US and five European countries with respect to digital services taxes (DSTs) and US trade actions, would also apply in the US-Turkey context.

On 21 October 2021, a [Joint Statement](#) from Austria, France, Italy, Spain, the United Kingdom and the US was released describing a compromise reached by the countries on a transitional approach to the treatment of existing DSTs and other relevant similar measures during the interim period before new BEPS Pillar One rules come into effect. The interim period is the period beginning on 1 January 2022 and ending on the earlier of the date that the Pillar One multilateral convention comes into force or 31 December 2023.

Under the October compromise, the five European countries - and now Turkey, while not required to withdraw their existing DST regimes until Pillar One takes effect, have agreed to allow a portion of taxes accrued by a multinational enterprise under their DSTs or any other unilateral measures before Pillar One takes effect to be credited against the portion of the corporate tax liability associated with Amount A as computed under Pillar One.

The US Government, in turn, agreed to terminate its proposed trade actions against the countries with respect to the existing DSTs and committed not to impose further trade actions with respect to such countries and their DSTs during this interim period.

### **India, US agree on transitional approach for 2% Equalization Levy prior to implementation of Pillar One rule**

On 24 November 2021, the Government of India issued a [Press Release](#) stating that India and the US have agreed on a transitional approach to the treatment of the current Indian e-commerce Equalization Levy (EL) during the interim period before the new BEPS Pillar One rules come into effect.

The transitional treatment includes the continuation of the 2% EL charge by India, subject to a partial future credit to the multinational enterprise (MNE) against that MNE's future "Pillar One Amount A" tax liability. The US Government agreed to terminate its proposed trade actions against India with respect to the current 2% EL.

### **IRS requests comments on APA, mutual agreement applications and compliance**

The IRS recently requested comments on Rev. Proc. 2015-41, which provides guidance on advance pricing and mutual agreement applications and compliance. Comments are due by 10 January 2022.

## OECD remains committed to BEPS Pillars in effect by end of 2023

G20 leaders' endorsement at the end of October 2021 of the Inclusive Framework agreement on key parameters of the BEPS 2.0 project is requiring swift action to ensure that the new rules come into effect globally as soon as possible. Grace Perez-Navarro, deputy director of the OECD's Centre for Tax Policy and Administration, on 18 November was quoted as saying the OECD is committed to having both BEPS Pillars in effect by the end of 2023. The OECD official said this will require the Pillar One multilateral convention to be completed by mid-2022.

Earlier, officials said model rules on the BEPS Pillar Two 15% global minimum tax framework were expected to be released by the end of November. Global minimum tax legislation is already pending in the US Congress in the proposed *Build Back Better Act*, and work has begun on a European Union directive on global minimum tax rules.

## OECD news

### OECD releases 2020 MAP statistics and awards

The OECD on 22 November 2021 held its third OECD Tax Certainty Day. During the event, the OECD released the [2020 statistics](#) on Mutual Agreement Procedures (MAP) and presented the [2020 MAP awards](#).

For 2020, the statistics include information from all members of the OECD/G20 Inclusive Framework on BEPS that joined the Inclusive Framework prior to 2021 and have submitted their MAP statistics for a total of 118 jurisdictions, an increase from the 105 jurisdictions covered in 2019 data. The 2020 data covers almost all MAP cases worldwide. Separate statistics are provided for transfer pricing cases and for "other" cases (i.e., non-transfer pricing cases) for 2020.

**EY Member Firm US Tax Desks**

<b>Australia</b>	Scott Hes, <i>Sydney</i>	scott.hes@au.ey.com
<b>Bahrain</b>	Joe Kledis, <i>Manama</i>	joe.kledis@bh.ey.com
<b>Canada</b>	George Guedikian, <i>Toronto</i>	george.b.guedikian@ca.ey.com
	Emad Zabaneh, <i>Toronto</i>	emad.m.zabaneh@ca.ey.com
	Asif Rajwani, <i>Toronto</i>	asif.rajwani@ca.ey.com
	Ryan Coupland, <i>Calgary</i>	ryan.coupland@ca.ey.com
	George Tsitouras, <i>Montreal</i>	george.tsitouras@ca.ey.com
	Denis Rousseau, <i>Montreal</i>	denis.rousseau@ca.ey.com
<b>China</b>	Richard Felske, <i>Vancouver</i>	richard.e.felske@ca.ey.com
	Jeremy Litton, <i>Hong Kong</i>	jeremy.litton@hk.ey.com@hk.ey.com
	Lipeng He, <i>Shanghai</i>	lipeng.he@cn.ey.com
	Peter Kao, <i>Shanghai</i>	peter.kao@cn.ey.com
<b>France</b>	Paula Charpentier, <i>Paris</i>	paula.charpentier@ey-avocats.com
<b>Germany</b>	Thomas Day, <i>Munich</i>	thomas.day@de.ey.com
	Dmitri Bordeville, <i>Frankfurt</i>	dmitri.bordeville@de.ey.com
	Ann-Kristin Kautz, <i>Frankfurt</i>	ann-kristin.kautz@de.ey.com
	Lee-Bryan Serota, <i>Frankfurt</i>	lee.b.serota@de.ey.com
<b>Israel</b>	Amir Chenchinski, <i>Tel Aviv</i>	amir.chenchinski@il.ey.com
	Tal Levy, <i>Tel Aviv</i>	tal.levy@il.ey.com
	Itai Ran, <i>Tel Aviv</i>	itai.ran@il.ey.com
<b>Japan</b>	Takayuki Ohta, <i>Tokyo</i>	takayuki.ohta@jp.ey.com
<b>Mexico</b>	Alberto Lopez, <i>Mexico City</i>	alberto.r.lopez@mx.ey.com
	Manuel Solano, <i>Mexico City</i>	manuel.solano@ey.com
<b>Singapore</b>	Michael Xiang, <i>Singapore</i>	michael.xiang@sg.ey.com
<b>Sweden</b>	Russell Antonevich, <i>Stockholm</i>	russell.antonevich@se.ey.com
<b>Switzerland</b>	Michael Parets, <i>Zurich</i>	michael.parets@ch.ey.com
<b>United Kingdom</b>	Noah Lewis, <i>London</i>	noah.lewis1@uk.ey.com
	Joseph Toce, <i>London</i>	jtoce@uk.ey.com
	Sean Trahan, <i>London</i>	sean.trahan@uk.ey.com
	Leif Jorgensen, <i>London</i>	ljorgensen@uk.ey.com
	Jillian Symes, <i>London</i>	jsymes@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](https://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](https://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.

© 2021 EYGM Limited.  
All Rights Reserved.

EYG no. 010477-21Gbl

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, legal or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](https://ey.com)**