Year-in-Review

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This special issue of the Washington Dispatch is a compilation of significant US international tax developments and guidance issued during the period of 1 January through 31 December 2022, addressing inbound and outbound taxation. The material is divided by subject area with most recent events listed first.

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Legislation

President Biden signs Inflation Reduction Act with 15% corporate minimum tax

On 16 August 2022, President Joe Biden signed into law the *Inflation Reduction Act of 2022* (the Act) passed earlier in the month by Congress. The legislation includes over $430 billion in climate and energy provisions and an extension of enhanced *Affordable Care Act* (ACA) subsidies. It includes offsets of more than $700 billion in revenue by:

- Imposing a 15% corporate alternative minimum tax (CAMT) on adjusted financial statement income for corporations with profits over $1 billion
- Introducing a new one percent excise tax on corporate stock buybacks
- Increasing IRS enforcement funding
- Reforming prescription drug pricing, including allowing Medicare to negotiate prescription drug prices

15% minimum tax and applicable corporations

An applicable corporation is liable for the CAMT to the extent that its "tentative minimum tax" exceeds its regular US federal income tax liability plus its liability for the base erosion and anti-abuse tax (BEAT). An applicable corporation's tentative minimum tax is a 15% minimum tax on its adjusted financial statement income (AFSI) to the extent it exceeds the CAMT foreign tax credit for the tax year. The CAMT applies to any corporation (other than an S corporation, regulated investment company, or real estate investment trust) whose average annual AFSI exceeds $1 billion for any three consecutive tax years preceding the tax year.

The Act adds new Section 56A, which defines "adjusted financial statement income" of a corporation (taxpayer) as the taxpayer's net income or loss reported in the taxpayer's applicable financial statement – as defined in Section 451(b)(3) – with adjustments for certain items.

For a corporation that is a member of a foreign-parented multinational group, the three-year average annual AFSI must be (i) over $1 billion from all members of the foreign-parented multinational group, and (ii) $100 million or more of income from only the US corporation(s), a US shareholder's pro rata share of controlled foreign corporation (CFC) AFSI, effectively connected income and certain partnership income.

A foreign-parented multinational group means two or more entities if (i) at least one entity is a domestic corporation and another is a foreign corporation; (ii) the entities are included in the same applicable financial statement; and (iii) the common parent of those entities is a foreign corporation (or the entities are treated as having a common parent that is a foreign corporation).

The CAMT will apply to tax years beginning after 31 December 2022.

Three-tax-year period

The three-tax-year period means any three consecutive tax years preceding the tax year in which the tax applies (beginning with three-tax-year periods in which the third year of the period ends after 31 December 2021).

Exceptions

The CAMT does not apply to corporations that have either changed ownership or fallen below the AFSI threshold for a specified number of consecutive years (to be determined by Treasury), conditioned upon the Treasury also determining that it would be inappropriate to continue subjecting the corporation to the tax. The exception no longer applies if the corporation meets the three-year average AFSI test for any tax year beginning after the year for which the determination applies.

The Act will require applicable corporations to compute two separate calculations for federal income tax purposes and pay the greater of the CAMT or their regular tax liability (regular tax liability plus BEAT liability). Companies should assess their structures to identify applicable corporations, taking into account the special rules for common employer groups and foreign-parented multinational groups.

Congress passes omnibus spending bill; tax measures (other than the SECURE 2.0 retirement changes) left out

The US Congress passed a $1.7 trillion omnibus spending bill in late December 2022; President Biden signed the 4,155 page bill into law on 29 December 2022. After a protracted negotiation, the final bill did not include business tax provisions such as modifications to Section 163(j) or relief from the Section 174 R&D amortization requirement – both of the *Tax Cuts and Jobs Act* cliffs that took hold this year – nor tax extenders or an expanded Child Tax Credit.

Comprehensive modeling can help applicable corporations consider and plan for any potential increase in their federal income tax liability. Modeling is especially critical post-TCJA given the many complicated and interrelated foreign and domestic tax provisions that can affect a corporation's tax liability, including the CAMT, BEAT, Section 163(j), foreign derived intangible income (FDII), global intangible low-taxed income (GILTI) and BEPS Pillar Two.

Climate and energy provisions

Embedded in the *Inflation Reduction Act* is $369 billion in climate and energy-related provisions, which are designed to: (i) incentivize and accelerate the buildout of renewable energy; (ii) advance the adoption of EV technologies; and (iii) improve the energy efficiency of buildings and communities.

Many of the Act's provisions with respect to energy transition and renewable energy investments are expected to spur development and investment; however, the new rules can be very complex, and it is important for taxpayers to understand the rules and how they apply to their particular projects.

Congress passes $280 billion CHIPS and Science Act

The US Congress passed and President Biden on 9 August 2022 signed into law the *CHIPS and Science Act* (HR 4346). The legislation provides $280 billion to build a domestic US supply chain for semiconductor chips in the face of foreign competition, while also spending billions on scientific and technological research to keep US industries competitive with China and other rivals.

CHIPS, which stands for *Creating Helpful Incentives to Produce Semiconductors*, includes $52.7 billion in funding for semiconductor manufacturing subsidies, grants and loans. Most of the money ($50 billion) is dedicated over five years to a CHIPS for America Fund that will implement incentives issued by the Commerce Department to "develop a domestic manufacturing capability, and research and development and workforce development programs authorized by the FY21 *National Defense Authorization Act* (NDAA)," according to a staff summary.

The legislation also includes a 25% "advanced manufacturing investment credit" for investments in semiconductor manufacturing and includes incentives for the manufacturing of semiconductors, as well as for manufacturing of specialized tooling equipment required in the semiconductor manufacturing process, with taxpayers allowed to treat the credit as a payment against tax (direct pay).

Recipients of the semiconductor incentive funds will be subject to certain restrictions.

The science and research provisions notably authorize $102 billion over five years for the National Science Foundation, the Commerce Department and the National Institutes of Standards and Technology to increase investments in R&D. The bill also focuses on STEM education from pre-K through high school, among other science provisions.

Inflation Reduction Act includes one percent stock buyback excise tax

The *Inflation Reduction Act of 2022* (H.R. 5376) includes an excise tax that imposes a surcharge on corporate stock buybacks. The provision adds a new Section 4501 to the Code, which would impose a 1% excise tax on publicly traded US corporations for the value of any of its stock that is repurchased by the corporation during the tax year. The stock buyback provision applies to repurchases of stock after 31 December 2022.

The term "repurchase" is defined broadly, and so the tax could apply not only to redemptions under stock repurchase program but a range of corporate transactions. Publicly traded corporations considering redemptions or economically similar transactions therefore should consider its potential application after that date and possible action before that date.

Treasury Secretary testifies in support of anti-inflationary measures, BEPS 2.0

Treasury Secretary Janet Yellen testified at a Senate Finance Committee hearing on the FY 2023 Budget on 7 June 2022, with the Treasury Secretary and Democratic Committee members united in calling for fighting inflation with clean energy proposals and prescription drug reforms to lower consumer costs.

The Secretary also faced questions regarding the OECD BEPS 2.0 project on new taxing rights and a global minimum tax (Pillar One and Pillar Two, respectively), after a delegation of congressional tax staff traveled to Europe for meetings on the project. She confirmed that ratification of a multilateral agreement to implement Pillar One will require congressional approval, but the form that takes has yet to be determined.

In an opening statement, Committee Chairman Ron Wyden (D-OR) raised concerns about inflation and enumerated steps Democrats have taken, and are prepared to take, to tackle prescription drug prices, energy costs, and the cost of renting or owning a home.

Ranking Member Mike Crapo (R-ID) said in his statement that Democratic spending decisions had contributed to inflation and took Democrats to task for continuing to pursue the tax increases and spending proposals from the House-passed *Build Back Better Act*. He specifically cited the corporate minimum tax on book income, saying it would hit manufacturers hard and undercut investments in innovation and emerging technologies.

Senator Crapo also raised concerns with the OECD-led international tax agreement, saying both pillars cede sweeping new rights to other countries, and noted the agreement cannot be fully implemented without congressional action. "In many cases, the terms can only be properly carried out with a multilateral treaty, requiring a two-thirds vote by the Senate," he said. He sharply criticized the Administration for not consulting with Congress as it has been negotiating aspects of Pillar One and Pillar Two, and for not providing Congress with any type of impact analysis on the US economy or on US-based companies.

Regarding the global tax agreement, Secretary Yellen said she was willing to work with Congress to make sure that companies making investments associated with business tax credits do not find the value of those credits diminished due to aspects of the global minimum tax regime.

Secretary Yellen also discussed the final foreign tax credit (FTC) regulations that were released in December 2021. The Treasury Secretary said that she would be willing to work with Congress in regard to concerns about the final FTC rules but said that she did not think the effective date of the regulations will be delayed, as requested by a number of companies.

Addressing whether a one-year delay in the regulations was warranted, Secretary Yellen said the regulations are very important to protect critical interests of the US, and the fundamental principle is that the US should allow a credit for foreign taxes only where the foreign taxing jurisdiction has the primary right to tax the income. A senator on the committee noted that Treasury is poised to make changes to the cost recovery and royalty withholding parts of the rules, but not as to creditability regarding withholding taxes on services. Changes to the final regulations could apply retroactively, Secretary Yellen said.

Statements and testimony from the hearing are available here.

Biden Administration releases FY2023 Budget with several new international tax proposals

The Biden Administration released the FY2023 Budget on 28 March 2022, including major tax proposals some of which were previously floated by the Administration or congressional Democrats and others that are new. Treasury also released the General Explanation (Greenbook) available here. The Budget folded most of the House-passed *Build Back Better Act* (BBBA) into the baseline and assumed it had been enacted.

The Budget continued to call for tax provisions that fell out of the House-passed *Build Back Better Act* due to opposition in Congress, including:

- Raising the corporate tax rate to 28%
- Increasing the top marginal income tax rate (to 39.6%) for high earners
- Reforming the taxation of capital income to tax capital gains of high earners at ordinary income rates
- Taxing carried interests as ordinary income
- Repealing deferral of gain from like-kind exchanges

As in last year's budget, the proposal to reform the taxation of capital income would tax long-term capital gains and qualified dividends of taxpayers with taxable income of more than $1 million at ordinary rates, with 37% generally being the highest rate (40.8% including the net investment income tax).

The Budget also included a new "billionaire's tax" that received considerable attention. The proposal would impose a 20% minimum tax on total income, inclusive of unrealized capital gains, for taxpayers with wealth of greater than $100 million. (Senator Joe Manchin (D-WV) said the next day that he did not support the "billionaire tax" proposal, which meant the measure would have had great difficulty passing the evenly-split Senate.)

The Budget included seven proposals that focused on reforming business and international taxation that were estimated to raise $1.628 trillion over 10 years.

Corporate rate and GILTI

The Budget proposed to increase the 21% corporate rate to 28%, which would consequently increase the global intangible low-taxed income (GILTI) rate in tandem. The new GILTI effective rate would be 20%, applied on a jurisdiction-by-jurisdiction basis. The proposal would be effective for tax years beginning after 31 December 2022. For tax years beginning before 1 January 2023, and ending after 31 December 2022, the corporate income tax rate would equal 21%, plus 7% times the portion of the tax year that occurs in 2023.

BEAT repealed and replaced with UTPR

The proposal would repeal the base erosion and anti-abuse tax (BEAT) as modified by the BBBA and replace it with an undertaxed payment rule (UTPR) that is consistent with the UTPR described in the OECD Pillar Two Model Rules, including a global annual revenue threshold ($850 million), de minimis exclusions and allocation among jurisdictions. Further, a US domestic minimum top-up tax would be part of the rules to protect US revenues from the imposition of UTPR by other countries.

The proposal expressly noted: "Separately, the proposal would provide a mechanism to ensure U.S. taxpayers would continue to benefit from U.S. tax credits and other tax incentives that promote U.S. jobs and investment." It is not clear, however, how those benefits would be preserved.

The UTPR would primarily apply to foreign-parented multinationals operating in low-tax jurisdictions and would not apply to income subject to the BEPS 2.0 Pillar Two Income Inclusion Rule (IIR), including income subject to GILTI. Both domestic corporations that are part of a foreign-parented multinational group and domestic branches of foreign corporations would be disallowed US tax deductions in an amount determined by reference to the low-taxed income of foreign entities and foreign branches that are members of the same financial reporting group (including the common parent of the financial reporting group).

The proposal to repeal the BEAT and replace it with the UTPR would be effective for tax years beginning after 31 December 2023.

Incentive to bring jobs to the US

A new general business credit would equal 10% of the eligible expenses paid or incurred in connection with onshoring a US trade or business that is linked to reducing or eliminating a trade or business or line of business currently conducted outside the United States or starting up, expanding, or otherwise moving the same trade or business within the United States, to the extent that this action results in an increase in US jobs. Deductions would be disallowed for expenses paid or incurred in connection with offshoring a US trade or business, including denying deductions against a US shareholder's GILTI or subpart F income inclusions for any expenses paid or incurred in connection with moving a US trade or business outside the United States.

The proposal, which was reprised from the FY2022 Budget but never really part of the public BBBA discussion, would be effective for expenses paid or incurred after the date of enactment.

The President's FY2022 Budget proposed to repeal the deduction for foreign-derived intangible income (FDII) on the grounds that it encourages offshoring of US businesses and jobs. That proposal was not included in the FY2023 Budget, even though it was not part of the BBBA.

Other business and international tax proposals

Other proposals to reform business and international taxation include:

- Disallowing stepped-up basis of a partnership's non-distributed property to a related partner until the property is disposed. The proposal would be effective for partnership tax years beginning after 31 December 2022.
- Conforming the definition of control to test the ownership of at least 80% of the total voting power and at least 80% of the total value of a corporation's stock. The proposal would be effective for transactions occurring after 31 December 2022.
- Expanding the retroactive election for those having an interest in a passive foreign investment company that is intended to reduce tax costs and increase tax compliance by removing, in certain cases, the need to seek consent. The proposal would be effective on the date of enactment. Forthcoming regulations or other guidance would permit taxpayers to amend previously filed returns for open years.
- Amending reporting obligations of US persons to provide information on foreign operations that would align with BBBA changes, for example, that would focus on foreign operations conducted by tested units within a country as opposed to the current definition of a foreign business entity that could allow blending across jurisdictions that the BBBA would remove.

Another related provision in the Budget would expand existing rules on financial account reporting to include reporting on the account balance (including the cash value or surrender value of cash-value insurance and annuity contracts) for all US office accounts of foreign persons and includes new reporting for other financial accounts held by foreign persons.

The Budget further sought to modernize rules for reporting on digital assets, including cryptocurrency, primarily by adding these types of assets to the scope of existing reporting requirements.

These provisions included amending the nonrecognition rules for securities loans to apply to loans of actively traded digital assets; increasing information reporting by certain financial institutions and digital asset brokers for purposes of exchanging information with other jurisdictions; requiring reporting by taxpayers of foreign digital asset accounts under Section 6038D; and amending the mark-to-market rules for dealers and traders to include digital assets.

President Biden pitches Build Back Better measures in first State of the Union

President Joe Biden gave his first State of the Union address on 1 March 2022 during which he called on Congress to enact many of the individual provisions of his proposed Build Back Better (BBB) plan, although not mentioning BBB by name. The President tried a different approach given the country's current economic climate, making the argument that the provisions would reduce inflation by lowering costs and lowering the deficit.

The President also targeted tax fairness, saying the administration would work to close what he called corporate tax loopholes. "The one thing all Americans agree on is that the tax system is not fair. We have to fix it." He also made a pitch for a 15% minimum corporate tax rate.

Tax Cuts and Jobs Act

Section 250 foreign derived intangible income (FDII)

IRS GLAM addresses allocating and apportioning 'deferred compensation expense' for FDII deductions

The IRS Office of Chief Counsel in spring of 2022 released a generic legal advice memorandum (AM 2022-001) that addresses how to properly allocate and apportion amounts it calls "deferred compensation expense" (DCE) under the Section 861 regulations for calculating a taxpayer's deduction for foreign-derived intangible income (FDII).

Reversing previous guidance, the IRS asserted that so-called DCE deductions should be allocated to FDII for the tax years in which the compensation becomes deductible under federal income tax accounting principles, even if the compensation is based on employees' service in years before FDII became effective.

In GLAM 2009-001 (2009 GLAM) and CCA 201714029 (2017 CCA), the IRS addressed the allocation of deductions that related to activities occurring before Section 199's enactment but accrued following enactment. The 2009 GLAM involved deductions for deferred compensation and the 2017 CCA involved deductions of certain litigation expenses.

To the extent the deductions factually related to gross income accruing before Section 199's enactment, the IRS had concluded the deductions would be allocated/apportioned under Section 861 to statutory and residual groupings of gross income based on the statutory groupings that existed before Section 199's enactment; they would not be based on the statutory groupings that existed in the year that the deductions accrued following enactment.

Nothing in the 2009 GLAM or 2017 CCA suggested that the analysis was specific to Section 199. Rather, the analysis in the GLAM and CCA interpreted Reg. Section 1.861-8.

The new GLAM may surprise many taxpayers, as it reverses the 2009 GLAM's longstanding guidance on the treatment of prior period expenses related to DCE. Note that Reg. Section 1.861-8(e)(5)(ii), issued in 2020, sets forth an allocation method consistent with the analysis in the new GLAM. This provision, however, applies only to litigation damages. The regulation does not expressly address the treatment of other types of prior period expenses.

The GLAM notes that the analysis "may apply to deductions other than compensation that may be seen as relating to an earlier period, such as a warranty payment resulting in a deduction allowable in 2018 that was incurred in respect of a product sold in an earlier year."

The GLAM's implications are not limited to FDII. Consistent with Reg. Section 1.861-8(e)(5)(ii), the analysis in the GLAM may apply to prior period expenses for purposes of the Section 904 foreign credit limitation.

While the new GLAM is not entitled to judicial deference, it does reflect the position of IRS Counsel. Taxpayers should assess the implications of the new GLAM for Section 861 allocation positions that they have taken, or are considering taking, for the treatment of prior period expenses.

Section 59A base erosion and anti-abuse tax (BEAT)

IRS to defer reporting for certain derivative payments in forthcoming BEAT regulations

The IRS announced (Notice 2022-30) in June 2022, that regulations under Sections 59A and 6039A (TD 9885) will be amended to defer the applicability date of some provisions relating to reporting qualified derivative payments (QDPs) until tax years beginning on or after 1 January 2025. In June 2021, the IRS had announced (Notice 2021-36) its intention to amend TD 9885 to delay the applicability date until tax years beginning on or after 1 January 2023.

The IRS issued final and proposed BEAT regulations in December 2019 and additional final regulations in October 2020. The preamble to the latter regulations noted a public comment requesting that the Government address the interaction of the QDP, the BEAT netting rule and QDP reporting requirements found in the 2019 final regulations. The new notice explains that Treasury and the IRS "continue to study these provisions and have determined that it is appropriate to further extend the transition period."

In the interim, certain financial services taxpayers should continue to be able to benefit from the QDP exception to base erosion payments without detailed reporting. The ability to continue to rely on this exception should enable them to better manage their BEAT position.

Foreign tax credit

IRS proposed foreign tax credit regulations offer relief from cost recovery and source-based attribution rules, include other key changes

Treasury and the IRS published proposed regulations on 22 November 2022 (REG-112096-22; proposed regulations) that address the definition of a foreign income tax and the allocation and apportionment of foreign taxes on disregarded payments. The proposed regulations would provide certain relief from the cost recovery requirement and the source-based attribution requirement on royalty income for purposes of determining the creditability of foreign taxes under Sections 901 and 903. The proposed regulations also would modify the disregarded payment rules for purposes of allocating and apportioning foreign taxes under Section 861.

The proposed regulations would modify the final foreign tax credit regulations published on 4 January 2022 (TD 9959; 2022 final regulations), as amended by technical corrections published on 27 July 2022 (87 FR 45018 & 87 FR 45021).

More specifically, the proposed regulations would make two significant changes to the cost recovery requirement. First, a foreign tax law would only need to allow for recovery of "substantially all" of each item of significant cost or expense, regardless of what the principles underlying any disallowances are. This "substantially all" determination would apply based on the foreign tax law (not a particular taxpayer's individual facts).

For purposes of applying the "substantially all" test, the proposed regulations introduce two safe harbors. The first would treat the foreign tax as not failing the "substantially all" test if the underlying foreign tax law disallows no more than 25% of one or multiple items of significant cost and expense. The second safe harbor would treat the foreign tax as not failing the "substantially all" test if the underlying foreign tax law limits recovery of a single item of significant cost or expense or multiple items that relate to a single category of significant costs or expenses based on a "qualifying cap."

Under the second change, even if a disallowance fails to meet the "substantially all" test, the proposed regulations would not prevent a foreign tax from satisfying the cost recovery requirement if the disallowance is consistent with the principles-based exception.

The amended cost recovery rules under the proposed regulations are expected to provide more certainty as to whether the cost recovery requirement would be satisfied for specific foreign taxes.

Source-based attribution requirement

The proposed regulations would add a new prong to the source-based attribution rule for royalties. Under the new rule, a foreign royalty withholding tax would meet the source-based attribution requirement if (i) the income subject to the tax is generally characterized as royalty income under the foreign tax law, and (ii) the terms of the license agreement under which the payment is made characterize the payment as a royalty and limit the territory of the license to the jurisdiction imposing the tax (the single-country rule).

Even when the agreement does not limit the territory to the jurisdiction imposing the tax or provides for payments in addition to those for use of intangible property, a payment may still qualify for the rule if certain requirements are met.

The proposed regulations also would revise the rules on disregarded reallocation transactions under Reg. Section 1.861-20 by providing that disregarded payments received in exchange for property do not constitute reattribution assets for purposes of allocating and apportioning taxes upon a disregarded remittance.

The rules on the cost recovery and royalty attribution requirements would apply to foreign taxes paid in tax years ending on or after 18 November 2022, the date the proposed regulations were filed. Because the 2022 final regulations apply to foreign taxes paid in tax years beginning on or after 28 December 2021, the proposed regulations generally would apply to all tax years to which the 2022 final regulations would have otherwise applied, aside from short tax years that end before 18 November 2022. Taxpayers may choose to apply these rules, once finalized, for foreign taxes paid in earlier tax year(s) beginning on or after 28 December 2021 (this generally would only arise for short tax years), provided that taxpayers generally apply all the rules in Proposed Reg. Section 1.901-2 consistently.

Taxpayers may rely on all or part of the proposed regulations, before they are finalized, for tax years beginning on or after 28 December 2021 (for the cost recovery and royalty attribution rules), provided the rules are applied consistently and by any related parties (within the meaning of Section 267(b), but without regard to Sections 267(c)(3) and 707(b)(1)).

While the proposed regulations would broaden the scope of creditable foreign taxes through the relief provided under the cost recovery rules and the sourced-based attribution rules for royalty income, they do not address, or provide safe harbors, for other situations in which traditionally creditable foreign taxes may be non-creditable under the 2022 final regulations.

Treasury and IRS to issue proposed regulations on application of noncompulsory payment regs to certain amended Puerto Rico tax decrees

The US Government in September 2022 announced in Notice 2022-42 that they plan to issue proposed regulations amending the Section 901 regulations on the application of the noncompulsory payment regulations to certain amended Puerto Rico tax decrees. Taxpayers can rely on the notice pending the issuance of the regulations.

The forthcoming proposed regulations would provide that foreign income tax paid or accrued to Puerto Rico under an existing tax decree amended on or before 31 December 2022, would not be treated as noncompulsory amounts under Reg. Section 1.901-2(e)(5). In particular, the forthcoming proposed regulations would not consider amending an existing tax decree under *PR Act 52-2022* as increasing a taxpayer's Puerto Rico income tax liability over time for purposes of Reg. Section 1.901-2(e)(5), solely because of any difference in the Puerto Rico income tax liability under the existing tax decree and the amended tax decree.

The taxpayer, however, must have its existing tax decree amended on or before 31 December 2022, and "the taxpayer's Puerto Rico income tax liability under the amended tax decree in each [tax] year [must be] less than the amount of income tax the taxpayer would have owed to Puerto Rico under Puerto Rico's generally applicable income tax laws in the absence of any tax decree in the [tax] year."

Notice 2022-42 provides that no inference as to the application of the noncompulsory payment regulations in any other context should be drawn from the notice.

The forthcoming proposed regulations would apply to tax years ending on or after 11 October 2022, which is the date the notice will be published in the Internal Revenue Bulletin.

Notice 2022-42 does not eliminate completely the need to undertake an analysis of the noncompulsory payment rules under Reg. Section 1.901-2(e)(5). Taxpayers must still analyze whether entering into a new agreement would cause their tax liability to exceed their tax liability as determined under Puerto Rico's generally applicable tax laws.

Furthermore, under Reg. Section 1.901-2(e)(5), the analysis must be on a separate entity by separate entity basis, which means that in the case of a US-based company with a controlled foreign corporation (CFC) in Puerto Rico, the noncompulsory payment rules must be applied to the US entity and the CFC separately.

CFOs comment on final US foreign tax credit regulations

In a letter to Treasury Secretary Janet Yellen dated 3 June 2022, a group of 28 Chief Financial Officers wrote in regard to the final foreign tax regulations released in December 2021: "Foreign withholding taxes for many service payments and royalties are not creditable under the Final Regulations. The inability to claim a tax credit for these withholding taxes provides a tax incentive for U.S. companies to provide services and develop patents and other intellectual property in a foreign country rather than in the United States to avoid double taxation. This could result in the loss of valuable U.S. jobs…"

Treasury and IRS publish technical corrections to final foreign tax credit regulations

The US Treasury on 27 July 2022 published technical corrections (87 FR 45018) to controversial final regulations (T.D. 9959) on foreign tax credits published on 4 January 2022.

The technical corrections revise the cost recovery requirement, which is a key element of the final regulations' rules for determining the creditability of a foreign tax under Section 901. The technical corrections also revise rules for allocating and apportioning foreign taxes paid or accrued with respect to certain sales of property that are disregarded for US federal tax purposes and limit the foreign taxes taken into account under the global intangible low-taxed income (GILTI) high-tax exclusion. The technical corrections represent the first round of changes to the final regulations, with additional changes expected in the coming months.

The technical corrections include limited revisions to rules coordinating the interaction of the final regulations with income tax treaties, although they did not change one of the more controversial aspects of the treaty coordination rule. The final regulations provided that if the relief from the double taxation article of an income tax treaty entitles a citizen or resident of the United States to claim a credit with respect to a foreign tax, then that citizen or resident may claim the credit even though the foreign tax would not otherwise be creditable under the final regulations. Because CFCs are not considered residents under US tax treaties, the implication – which many taxpayers dispute, but which was not addressed in the technical corrections – is that income tax treaties do not provide for a deemed paid credit under Section 960 for foreign taxes paid by a CFC.

The technical corrections' applicability dates mirror those of the relevant underlying final regulations. As a result, the technical corrections to the cost recovery rules apply to foreign income taxes paid or accrued in tax years beginning on or after 28 December 2021. The technical corrections to the disregarded sales rules apply to tax years that begin after 31 December 2019 and end on or after 2 November 2020. Finally, the technical corrections to the GILTI high-tax exclusion affect tax years beginning on or after 28 December 2021.

US Government officials have indicated that the government intends to provide additional guidance relating to the final regulations. That guidance may include proposed regulations addressing other aspects of the net gain requirement, such as the attribution requirement.

Under the final regulations, for example, many countries' withholding taxes imposed on royalties may not be creditable, despite the fact that they have traditionally been creditable and are consistent with widely accepted international tax norms. Proposed regulations are expected to provide additional exceptions to the attribution requirement that would make those taxes creditable, although the scope and effectiveness of those exceptions will remain uncertain until any guidance is issued.

Government officials have also indicated that they continue to consider whether further guidance is warranted under the disregarded payment rules. Those rules allocate and apportion foreign income taxes imposed on remittances by reference to the tax book value of the payor tested unit's assets, which leads to frequent distortions when the assets of the tested unit are assigned to one statutory grouping (for example, cash or bank deposits assigned to the passive category) but the income of the tested unit arises in another category (for example, general category tested income).

Final FTC regulations will be revisited to address BEPS 2.0 Pillar Two rules

A US Treasury official in March 2022 was quoted as saying the Gvernment will consider whether US foreign tax credits would be available for qualified domestic minimum top-up taxes related to the OECD BEPS 2.0 Pillar Two rules once more guidance becomes available. The official noted that the final foreign tax credit regulations do not explicitly address Pillar One or Pillar Two. But "as the pillars are getting implemented, we will have to reopen those regs," he said.

While the Pillar Two commentary released in March 2022 is explicit that countries should not provide foreign tax credits for taxes paid under the Income Inclusion Rule and the Undertaxed Payment Rule, the issue is less clear for qualified domestic minimum top-up taxes. The Treasury official elaborated that "it's something that we're going to have to study and look at, whether there should be a credit for qualified domestic minimum top-up tax, and it will depend on how they're implemented."

Earlier, an IRS official provided some insights into the final foreign tax credit regulations. He was quoted as saying that in a situation where a foreign jurisdiction divides a royalty into two parts based on payor location and the location of the use of the intellectual property, withholding tax on the portion based on the payor location may not be eligible for a US foreign tax credit. The IRS official said in this situation, no foreign tax credit would be available because the payor jurisdiction designation is not reasonably similar to US rules and does not meet the final regulations' attribution requirement.

Subpart F

Final regulations treat domestic partnerships as aggregates for applying certain subpart F provisions, and proposed regulations would apply a similar approach to PFICs

Treasury and the IRS on 25 January 2022 published final regulations (TD 9960) requiring an aggregate approach to determine the subpart F inclusion for a controlled foreign corporation (CFC) owned by a domestic partnership. Under this approach, a partner of a domestic partnership would have a subpart F inclusion from the indirectly-owned CFC if the partner itself were a US shareholder of the underlying CFC. This aggregate approach is consistent with the treatment of a domestic partnership for global intangible low-taxed income (GILTI) inclusion purposes.

The regulations finalize, with limited changes, regulations originally proposed in 2019.

The aggregate approach does not, however, apply for Section 1248 purposes or when determining whether (i) a US person is a US shareholder, or (ii) a foreign corporation is a CFC.

Accompanying proposed regulations (REG-118250-20) would extend the aggregate approach to domestic partnerships that own an interest in a passive foreign investment company (PFIC). The proposed extension would have the following consequences:

- A domestic partnership would no longer be treated as a PFIC shareholder for purposes of making qualified electing fund (QEF) or mark-to-market (MTM) elections, recognizing QEF inclusions or MTM amounts, or filing Forms 8621.
- A partner of a domestic partnership, rather than the domestic partnership, would be required to make a QEF election, and the partner would have to notify its partnership to assist it with information reporting and basis tracking in the QEF stock.
- Domestic partnerships would be treated as aggregates for purposes of applying the CFC-PFIC overlap rule under Section 1297(d).

The final regulations generally apply to tax years of a foreign corporation beginning on or after the date that the regulations were filed with the Federal Register (e.g., 2023 for calendar-year taxpayers). Domestic partnerships may apply the final rules in their entirety to tax years of a foreign corporation beginning after 2017, subject to certain consistency requirements. The proposed regulations generally would apply prospectively to tax years beginning on or after the date the rules are adopted as final regulations.

These final and proposed regulations are relevant to any domestic partnership owning stock in a foreign corporation. S corporations generally are treated like domestic partnerships for purposes of these final and proposed regulations.

The final regulations treat domestic and foreign partnerships the same way for subpart F inclusion purposes, However, the final CFC regulations and (if adopted in final form) the proposed PFIC regulations will make compliance for domestic partnerships and S corporations owning stock in foreign corporations far more complex.

Corporate

IRS issues interim guidance on application of new corporate alternative minimum tax

The IRS in late December 2022 issued eagerly anticipated interim guidance (Notice 2023-7) addressing the application of the corporate alternative minimum tax (CAMT), enacted under the *Inflation Reduction Act of 2022*.

Notice 2023-7 describes rules that the IRS intends to include in proposed regulations pertaining to: certain issues regarding IRC subchapters C and K; "troubled corporations"; groups of corporations that file consolidated returns; depreciation of Section 168 property; and the treatment of certain federal income tax credits under the CAMT. Taxpayers may rely on the interim guidance pending the release of proposed regulations.

Additionally, Notice 2023-7 provides a simplified method for determining whether an entity constitutes an "applicable corporation" and notes that further interim guidance may be forthcoming and may be oriented toward particular industries encountering unintended adverse consequences under the CAMT.

The IRS invites written comments on any (i) questions arising from Notice 2023-7; and (ii) issues that should be addressed in future guidance, including which guidance "is needed most quickly." Interested parties should submit written comments to the IRS electronically within 60 days from the date Notice 2023-7 is published in the Federal Register.

IRS releases guidance on new stock buyback excise tax

The IRS issued interim guidance (Notice 2023-2) in late December 2022 that addresses the 1% excise tax on certain corporate stock repurchases under new Section 4501. While the excise tax under the statute applies primarily to repurchases by publicly-traded domestic corporations and foreign corporations that inverted on or after 20 September 2021, the Notice includes a broad (and unexpected) anti-abuse rule that could subject certain repurchases made by any publicly-traded foreign corporation to the excise tax if the repurchase was "funded" by a domestic affiliate. Affected foreign corporations should consider the application of this rule to their cash pooling and other intercompany funding arrangements.

The excise tax applies to repurchases after 31 December 2022. Notice 2023-2 provides interim guidance until proposed regulations are issued. On 28 December, the IRS published Draft Form 7208, *Excise Tax on Repurchase of Corporate Stock*, which when finalized will be used to report stock repurchases for calculating the 1% stock buyback excise tax.

Taken together, Notice 2023-2 and draft Form 7208 will affect many, if not most, covered corporations, including those that do not have ongoing stock repurchase programs.

IRS issues proposed rules on single-entity treatment of consolidated groups

The IRS on 9 December 2022 issued proposed regulations on the single-entity treatment of consolidated groups for specific purposes. The proposed regulations (REG-113839-22) would treat members of a consolidated group as a single US shareholder in certain situations for purposes of Section 951(a)(2)(B).

The proposed rules would affect consolidated groups that own stock in foreign corporations. A Treasury official was quoted as saying the goal is to finalize the proposed regulations before 15 April 2023.

Section 367(d) regs coming early in 2023, official says

A senior IRS official said in November 2022 that proposed regulations under Section 367(d) will be released in early 2023. The regulations will limit a royalty inclusion for intellectual property that left the US and was subsequently repatriated.

In the fall, a US government official said the proposed regulations "would provide high-level situations where you could turn off that royalty after [the IP] has been repatriated." The official indicated that the upcoming Section 367(d) proposed regulations are separate and apart from a project on the 2023 priority guidance plan that would address changes to Section 367(d) and Section 482 regarding aggregation and the definition of intangible property.

PTEP regs coming in first half of 2023; 2006 proposed PTEP regs withdrawn

A senior IRS official told the October American Bar Association (ABA) Taxation Section meeting that the proposed previously taxed earnings and profits (PTEP) regulations would be issued in the first half of 2023.

On 20 October, the IRS announced the withdrawal of the 2006 proposed PTEP regulations under Section 959 and related basis adjustments under Section 961. The preamble to the withdrawal states that the "proposed regulations were never finalized, never went into effect, and did not indicate that taxpayers could rely on them. Withdrawing the proposed regulations at this point will help prevent possible abuse or other misuse of them—such as inappropriate basis adjustments in certain stock acquisitions to which Section 304(a)(1) applies—while the Treasury Department and the IRS continue to develop the new proposed regulations. The IRS may, where appropriate, challenge taxpayer positions giving rise to inappropriate results."

IRS official recommends all taxpayers request fast-track PLRs

An IRS official in March 2022 recommended that taxpayers should always request the new fast-track private letter ruling (PLR) process that was announced in January 2022 in Rev. Proc. 2022-10, saying there is no down-side. (See p. 17 for details on the pilot fast-track program.)

IRS Chief Counsel memo clarifies process for determining assessment statute expiration date in multi-year Section 332 liquidation

An IRS Chief Counsel Memorandum (AM 2022-002, dated 2 September 2022) concluded that the IRS should not only rely on Form 952 when determining the Assessment Statute Expiration Date (ASED) for a multi-year Section 332 liquidation, but should thoroughly review all the information filed by the parent and subsidiary to identify the tax year in which the first distribution was made.

The memo was written in response to an LB&I Workflow Coordination Liaison request about how to determine the ASED if the parent has not yet filed its return for its third tax year beginning after the end of the tax year of the first liquidating distribution. The memo says the IRS should assume that the ASED is the earliest possible date and adjust that date later if it receives information from the fourth year after the first distribution.

The memo also clarifies that the ASED is the same for all tax years during which the parent received a liquidating distribution from the subsidiary and for which it filed Form 952.

Sometimes it is not clear when the subsidiary made its first distribution, according to the memo, but it is the understanding of Chief Counsel that "the current practice is to treat the taxable year for which the initial Form 952 was filed as the year of the first liquidating distribution." The memo recommends modifying that practice by thoroughly reviewing all the information filed by the parent and subsidiary to identify the tax year in which the first distribution was made. Specifically, the IRS should review (i) Form 952; (ii) Form 966, *Corporate Dissolution or Liquidation*; (iii) when the first distribution was made; (iv) each statement the parent filed with its income tax returns; and (v) the events that occurred before the liquidation plan was formerly adopted.

The memo also specifies who may execute Form 952 on behalf of the parent for each tax year.

Chief Counsel Memo AM 2022-002 reminds taxpayers that filing Form 952 is a specific requirement for Section 332 treatment for a complete liquidation under the multi-year alternative under Section 332(b)(3). Failure to file Form 952 may result in the IRS denying nonrecognition treatment to a complete liquidation that would otherwise have qualified under Section 332.

The Memo provides a useful overview of the ASED's mechanics when a Form 952 is filed. Moreover, the Memo provides specific guidance on who has signatory authority to execute a Form 952. The Memo should be read in conjunction with the IRS's Internal Revenue Manual Section 25.6.22.6.2.3.1.

In addition, the Memo usefully reiterates the IRS's positions with respect to busting Section 332 liquidations, the timing of the plan of liquidation adoption and the continuation of consolidated group membership in financially stressed situations.

IRS announces pilot fast-track program to resolve corporate letter ruling requests in 12 weeks

The IRS is conducting an 18-month pilot program that allows taxpayers to request fast-track processing of corporate letter rulings if they meet the guidelines set out in Revenue Procedure 2022-10. The IRS will strive to issue a ruling within 12 weeks from assignment to an agency review team.

The program, which began on 14 January 2022, applies to both new and pending requests under the jurisdiction of the Associate Chief Counsel (Corporate). The program is not available, however, for requests to extend the time to make elections under Reg. Section 301.9100 (Section 9100 relief), but taxpayers can request expedited handling under the procedures in Revenue Procedure 2022-1.

The fast-track process replaces expedited handling for most requests under the jurisdiction of the Associate Chief Counsel (Corporate) and will generally be granted. An IRS official was quoted on 19 January 2022 as saying that fast-track processing is not "need-based." This contrasts with expedited handling, which is only granted under Revenue Procedure 2022-1 in "rare and unusual cases," when something outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain date to avoid serious business consequences.

Capital markets

IRS announces delay in effective date of Section 871(m) regulations

The IRS in late August 2022 announced plans to delay the effective date for aspects of the Section 871(m) regulations and further extend transition relief. More specifically, the IRS in Notice 2022-37 indicated that it plans to delay the effective date for certain rules in final regulations under Section 871(m) and to extend for two more years the phase-in period provided in Notice 2020-2 for certain provisions of the regulations.

The US Treasury Department in December 2019 issued final regulations (TD 9887) under Section 871(m) with guidance for entities that hold certain US equities and financial products referencing US-source dividends. Notice 2020-2 was issued concurrently with the 2019 final regulations. It announced that the IRS was extending the transition relief provided in Notice 2018-72 for two additional years and that it planned to amend the Section 871(m) regulations to reflect the delayed effective dates. These final Section 871(m) regulations are relevant for entities making payments to non-US entities on derivatives and other financial instruments referencing US equity securities.

The further extension of the phase-in period for certain provisions of the Section 871(m) regulations provides financial industry participants yet more time to implement the complex systems and processes necessary to comply with the rules of the Section 871(m) regulations.

Applicability date for foreign currency regulations under Section 987 extended again

The IRS on 15 August 2022 announced (Notice 2022-34) that it intends to defer by one more year the applicability date of certain foreign currency regulations under Section 987. The affected regulations will be amended to apply to tax years beginning after 7 December 2023 (e.g., to 2024 for calendar-year taxpayers).

The deferral was expected and is helpful because it gives taxpayers more time to create and implement the complex systems and processes necessary to transition to the 2016 final regulations. Notice 2022-34 does not mention that the IRS is considering changes to these regulations to simplify the rules (although it has been mentioned in prior deferral notices).

Until the final regulations are effective, taxpayers must compute Section 987 gain or loss under a reasonable method and must also apply the deferral-event and outbound-loss-event rules of Reg. Section 1.987-12.

Practitioners generally view a reasonable method as including (i) the methodology provided in the1991 proposed regulations; (ii) the "Earnings Only" methodology; or (iii) early adoption of the 2016 final regulations. Section 987 gain or loss can affect taxable income either directly or through the global intangible low taxed income (GILTI) rules under Section 951A, each of which may then affect other current income tax provisions.

IRS proposed regulations would limit Section 1256 mark-to-market accounting for foreign currency contracts to foreign currency forward contracts

Treasury and the IRS on 6 July 2022 issued proposed regulations under Section 1256 (REG-130675-17). The proposed regulations expressly overrule the Sixth Circuit's decision in *Wright v. Commissioner*, 809 F.3d 877 (6th Cir. 7 Jan. 2016) to limit the term "foreign currency contract" to only certain foreign currency forward contracts, and not foreign currency options.

The Preamble states that the proposed regulations do not change the status of foreign currency options that otherwise qualify as Section 1256 contracts. Specifically, nonequity options are separately listed as Section 1256 contracts in Section 1256(b)(1)(C). Section 1256(g)(3) defines a nonequity option as any listed option that is not an equity option. Section 1256(g)(5) defines a listed option as "any option … traded on (or subject to the rules of) a qualified board or exchange." Therefore, a foreign currency option that is listed on a qualified board or exchange is a "nonequity option" and remains subject to Section 1256.

The proposed regulations would be generally effective for contracts entered into on or after the date that is 30 days after their publication as final regulations in the Federal Register.

Taxpayers that have relied on *Wright* to include foreign currency options in the definition of foreign currency contracts will need to consider whether they intend to early adopt the proposed regulations or await final regulations mandating a transition. In particular, taxpayers should consider any potential system changes and book-tax differences, as well as whether a change in accounting method is necessary and, if so, whether that change is automatic or non-automatic.

Taxpayers that have not relied on the *Wright* decision ought to continue to exclude their over-the-counter foreign currency option contracts from the definition of foreign currency contracts under Section 1256. All taxpayers, regardless of jurisdiction, should continue to treat listed foreign currency options as non-equity options subject to Section 1256.

As the proposed regulations do not define the term "forward contract," and the Preamble indicates that the IRS may apply judicial doctrines and existing anti-abuse rules in determining the proper characterization of a transaction, taxpayers should reexamine their transactions to determine whether they are properly characterized as forward contracts or foreign currency options.

Cryptocurrency

IRS moving forward on cryptoasset issues

As cryptoassets took center stage in the mainstream media in the fall, the IRS indicated it is continuing to move forward with getting a handle on issues and reporting, amid a dearth of guidance.

The IRS in October announced that it established a digital asset project office to address crypto issues. In November, the new head of the office said: "There was a recognition enterprise-wide that digital assets [are] big and that we should have a dedicated staff to address strategy, priorities, and then activities." The office will be staffed with seven full-time IRS employees, the official said. The official was quoted as saying the digital asset office will establish strategies and priorities over the coming 12 to 18 months.

The IRS reportedly is currently drafting questions on cryptocurrency and digital assets that will be added to corporate and partnership returns, including questions for individuals. The IRS began asking a crypto asset question on Form 1040 in 2019 but is now poised to begin collecting information from entities.

The IRS also released the 2020 Statistics of Income report on 18 November 2022, showing that there was an almost 150% increase from 2019 to 2020, for taxpayers who checked "yes" on their returns in response to the question of whether they had cryptocurrency transactions. Over 2.3 million individual returns reported they had such transactions in 2020.

Treasury official briefs Senators on future cryptocurrency reporting regulations

In a letter to six Senators on 11 February 2022, the Treasury Assistant Secretary for Legislative Affairs wrote that future proposed regulations on cryptocurrency reporting requirements for brokers based on the recently enacted infrastructure legislation would be limited to only those with access to certain information.

Last year's *Infrastructure Investment and Jobs Act* applied information reporting requirements to digital assets (including cryptocurrency) and updated the definition of broker to better reflect the realities of how digital assets are acquired and traded, by adding to the definition "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."

The Treasury official wrote, "[A]ncillary parties who cannot get access to information that is useful to the IRS are not intended to be captured by the reporting requirements for brokers." As examples of those who would not be covered by the proposed regulations, the official pointed to those "validating transactions through a consensus mechanism," as well as individuals "selling storage devices used to hold private keys or persons who merely write software code." Treasury will study the extent to which others in the digital asset market, including centralized exchanges, decentralized exchanges and peer-to-peer exchanges should be treated as brokers, the official said.

Tax treaties

United States, Croatia sign income tax treaty

The US and Croatia on 7 December 2022 signed the first-ever income tax treaty and protocol between the two countries. The treaty is the first treaty based on the revised US Model Treaty released in 2016 (2016 Model). The 2016 Model updated the 2006 US Model Treaty and introduces several new provisions, including a number of anti-abuse rules.

The most significant provisions of the proposed treaty include:

- Lower withholding taxes on cross-border payments of dividends (0% withholding on dividends paid to certain pension funds), interest and royalties
- Denial of treaty benefits for:
  - Certain income of a beneficial owner that is a connected person and benefits from a special tax regime (STR)
  - Interest beneficially owned by a connected person that benefits from a notional interest deduction on amounts that are treated as equity in the person's residence state
  - Certain dividends and deductible payments made by a US corporation treated as an expatriated entity during the 10 years following the completion of an inversion transaction
- A comprehensive limitation on benefits (LOB) article, which includes a "derivative benefits" test, "headquarter company" test, a base erosion prong to the "subsidiary of a publicly traded company" test, and a revised "active trade or business test"
- Termination of certain treaty benefits if subsequent changes in domestic laws affect applicable tax rates
- Mandatory binding arbitration for the resolution of certain treaty disputes
- Coordination of the treaty with the US base erosion and anti-abuse tax (BEAT) under Section 59A

The accompanying protocol defines the term "pension funds" for United States and Croatia. In addition, it considers a specified voluntary pension insurance scheme in Croatia to be a resident for purposes of Article 4. The Protocol also describes how to determine the rate of taxation for STRs.

Finally, the protocol enables Croatia to request a consultation on possible amendments to the treaty if it enacts regimes similar to BEAT (Section 59A) or those for expatriated entities (Section 7874), US RICs or US REITs.

Once ratified, the treaty's withholding provisions will take effect for amounts paid or credited on or after the first day of the second month following the date on which the treaty enters into force. For all other taxes, the provisions will take effect for tax periods beginning on or after the first day of January following the date on which the treaty enters into force.

The exchange of information under Article 26 will take effect on the date on which the treaty enters into force, irrespective of the tax year to which the matter relates.

It is unclear how long the hearing and ratification process will take; other outstanding US tax treaties with Chile and Poland are pending ratification in the Senate.

It remains to be seen whether the US Treasury Department will take a similar approach, and follow the 2016 Model, in ongoing treaty-modernization negotiations with Switzerland and Israel or other US tax treaties currently in force.

Congressional Republicans urge Administration to not terminate US-Hungary treaty

In a 3 November 2022 letter to Treasury Secretary Janet Yellen and Secretary of State Antony Blinken, House Ways and Means Committee Ranking member Kevin Brady (R-TX), Senate Finance Committee Ranking Member Mike Crapo (R-ID), and Senate Foreign Relations Committee Ranking Member Jim Risch (R-ID) expressed concern about Treasury terminating the US-Hungary tax treaty.

"As we approach the end of the six-month advance-notice period to terminate the Treaty, we urge the Administration to reverse this decision and reengage with our treaty partner to ensure the United States upholds our treaty commitments." The US-Hungary treaty is scheduled to terminate in January 2023, absent action by the US government.

Treasury developing measures for future treaties to address new tax regimes; reservations to US-Chile treaty pending

A Treasury official in late October 2022 said the US Government is working on establishing "prophylactic" measures to address new tax regimes in the context of future tax treaties. He indicated that Treasury wants to include rules in US treaties that would consider tax regimes that do not yet exist in order to prevent issues arising later.

The official also confirmed earlier reports that US reservations to the proposed US-Chile tax treaty were pending approval in the Chilean Parliament. The US Senate Foreign Relations Committee last spring approved the Chilean treaty subject to two reservations. The official further said there are current plans to update the existing US-Switzerland and US-Israel tax accords.

US treaty negotiations with Israel, Switzerland set to start, pending treaties require TCJA updates

The US Government is set to begin negotiations with Israel and Switzerland to update the existing bilateral tax treaties with those countries, according to a Treasury official in September 2022. The Swiss treaty was signed in 1996, the Israeli accord in 1975 and will require a full revision.

The official said the proposed treaties with Vietnam and Poland, signed in 2015 and 2013, respectively, require updates to reflect the *Tax Cuts and Jobs Act* (TCJA). Negotiations are taking place with Vietnam for targeted reservations, and tax treaty negotiations with Romania and Norway reportedly are near completion. Neither the Romanian nor Norwegian treaties have been signed and will require targeted reservations to reflect the TCJA.

The Treasury official further indicated he was optimistic the Senate would give its advice and consent to the proposed US-Chile tax treaty before the end of the year, noting that targeted reservations to that accord have been drafted and are with the Chileans for approval.

US Treasury announces termination of tax treaty with Hungary

The US Treasury officially announced that the US Government on 8 July 2022 notified Hungary that it was terminating the US-Hungary tax treaty. According to the announcement, the treaty termination will be effective on 8 January 2023. According to the termination provisions contained in the treaty, the treaty will cease to have effect with regard to withholding tax on 1 January 2024, and with respect to taxable periods beginning on or after 1 January 2024.

Various media sources quoted a Treasury spokesperson in July as saying there have been "long-held concerns" with Hungary's tax system referring, for example, to a reduction in the Hungarian corporate tax rate to 9%. Some media outlets suggested that Hungary's current opposition to the proposed 15% global minimum tax proposal in BEPS 2.0 Pillar Two may have also played a role.

A Treasury spokesperson was quoted as saying that "Hungary made the U.S. government's long-standing concerns with the 1979 tax treaty worse by blocking the EU directive to implement a global minimum tax," and that "if Hungary implemented a global minimum tax, this treaty would be less one-sided; refusing to do so could exacerbate Hungary's status as a treaty-shopping jurisdiction, further disadvantaging the United States."

A new tax treaty with Hungary was negotiated and signed in 2010 though it never entered into force. It remains to be seen whether further negotiations could take place impacting the status of treaty relations between the two countries. However, if the six-month notice period continues to run without any revocation of the notice, the existing treaty would generally cease to have effect in 2024.

Senate Foreign Relations Committee reports out proposed US-Chile tax treaty

The US Senate Foreign Relations Committee on 29 March 2022 approved the long-delayed US-Chile income tax treaty. The US Senate does not ratify treaties. Instead, the full Senate has the authority, by a two-thirds vote, to give its advice and consent to the ratification of the treaty. Once the Senate takes action to approve the treaty, the President must sign the instruments of ratification to complete the approval and ratification process in the United States.

The Chilean Government in 2015 undertook the steps necessary for the treaty to be approved in Chile. The treaty will enter into force when all applicable approval procedures in the United States and Chile have been satisfied.

The Foreign Relations Committee approval was subject to two reservations concerning the base erosion and anti-abuse tax (BEAT) and Article 23 (Relief from Double Taxation). The reservation concerning BEAT clarifies that the treaty shall not prevent the imposition of BEAT under Section 59A.

The treaty was signed on 4 February 2010 (along with a protocol) and was reported favorably by the Senate Foreign Relations Committee in 2014, and again in 2015. A vote was considered in 2019, but never materialized.

Significant provisions of the proposed treaty include:

- Reduced withholding tax rates on dividends, interest and royalties
- The allowance of a withholding tax on the sale of certain stock
- A permanent establishment (PE) provision that deems a PE to exist from the provision of services under certain circumstances, and in cases where an installation used for on-land exploration of natural resources lasts for more than three months
- A limitation-on-benefits provision that includes a "headquarters company test" and a triangular provision
- Provisions providing for exchange of information between the tax authorities of the United States and Chile
- Rules that source interest and royalty income to the residence of the payor or, alternatively, if the payor has a PE in connection with which the liability to pay interest or royalties was incurred, then to the location of the PE
- A place-of-use test for sourcing royalty income in cases where the residence of the payor and the PE rules described previously do not apply

If the treaty is ratified, the withholding provisions would become effective for amounts paid or credited on or after the first day of the second month following the date on which the treaty enters into force. For all other taxes, the provisions would take effect for tax periods beginning on or after the first day of January following the date the treaty enters into force.

Withholding

IRS issues final revised qualified intermediary agreements effective beginning in 2023

The IRS released Revenue Procedure 2022-43 on 13 December 2022, setting forth a final, revised qualified intermediary (QI) agreement that will apply for QI agreements entering into effect on or after 1 January 2023. The QI agreement established under Revenue Procedure 2017-15 (2017 QI agreement) expired on 31 December 2022. The 2023 QI Agreement adopts many of the proposed changes in Notice 2022-23.

The new qualified intermediary agreement expands the scope of a QI agreement to allow QIs to assume withholding and reporting responsibilities for purposes of Section 1446(a) and (f).

The new QI agreement updates requirements for qualified derivatives dealers and qualified securities lenders for payments of dividend equivalents under Section 871(m). It also incorporates prior guidance from IRS FAQS, compliance and certification changes, stakeholder input and changes to the 2017 QI agreement.

IRS releases additional withholidng guidance for brokers on transfers of interests in publicly traded partnerships

The IRS in December 2022 issued Notice 2023-8 providing additional guidance on the final regulations under Section 1446(f) for withholding on dispositions of interests in publicly traded partnerships (PTPs). The Notice addresses (i) withholding requirements for non-US PTPs; (ii) reliance on late documentation; and (iii) when the short-sale exception applies. The Notice does not delay the effective date of withholding, which remains 1 January 2023.

The Notice allows a broker to presume that a foreign-traded entity is not a PTP unless the broker has actual knowledge otherwise. If the broker knows a foreign-traded entity is a PTP, however, the broker must withhold under Section 1446(f) on the disposition of a PTP interest unless the PTP issues a qualified notice that a withholding exception applies.

The IRS indicated that it intends to issue proposed regulations that would amend the final regulations to implement the guidance in the Notice.

The notice applies to PTP sales and distributions made on or after 1 January 2023. Brokers (including qualified intermediaries) may rely on the Notice until the proposed regulations are issued.

No delay or transition period for final Section 1446(f) regs implementation date

An IRS official was quoted as saying in early November 2022 that taxpayers should not expect the government to implement a transition period or delay in the implementation date for the final Section 1446(f) regulations (TD 9926) that were released in October 2020.

Section 1446(f) imposes a new withholding tax on transfers by non-US persons of interests in partnerships that are engaged in a US trade or business. The IRS announced in Notice 2021-51 that it would amend the regulations under Section 1446(a) and Section 1446(f) to defer the applicability date of certain provisions by one year to 1 January 2023. The affected provisions related to withholding address: (i) transfers of interests in publicly traded partnerships (PTPs); (ii) distributions made with respect to PTP interests; and (iii) non-publicly traded partnerships on distributions to transferees who failed to withhold properly.

Changes to QI withholding agreement rules expand QI withholding and reporting responsibilities

The IRS in May 2022 published Notice 2022-23 that proposed changes to the qualified intermediary (QI) withholding agreement rules that will allow a QI to assume withholding and reporting responsibilities for purposes of Sections 1446(a) and (f). Generally, these changes would apply to a QI that sells an interest in a publicly traded partnership (PTP) or receives a distribution from a PTP on behalf of a QI account holder. The following are some of the highlights:

Withholding responsibility

Under Notice 2022-23, the QI agreement will be updated to allow QIs to assume primary withholding responsibility for sales of PTP interests under Section 1446(f). In addition, QIs can assume primary withholding responsibility for PTP distributions, which include distributions of:

- Effectively connected income subject to Section 1446(a) withholding
- The excess of the cumulative net income of the PTP, subject to Section 1446(f) withholding
- US source FDAP (fixed, determinable, annual, periodical) income (based on a PTP Qualified Notice) subject to Chapter 3 or Chapter 4 withholding

Documenting account holders

Proposed changes to section 5 of the QI agreement will allow a QI to document the non-US resident status of an account holder who is a partner in a PTP using either documentary evidence or Forms W-8. However, there are restrictions to using documentary evidence.

Reporting on Form 1042-S

Proposed changes to section 8 of the QI agreement will allow a QI to file Form 1042-S on a pooled basis to report amounts realized and amounts subject to withholding on PTP distributions, as is generally permitted for other payments governed by the QI agreement. A QI acting as a disclosing QI is not required to file Form 1042-S (unless it knows or has reason to know that a correct Form 1042-S was not issued to a partner); instead, the QI's withholding agent or broker must file the form.

Reporting on Forms 1099

For payments of broker proceeds that are amounts realized from sales of PTP interests, Notice 2022-23 will not exempt QIs from the responsibility of primary Form 1099 reporting and backup withholding (as otherwise permitted in Section 3.05(C)), if the QI provides the broker with a valid withholding certificate indicating that the QI assumes primary withholding responsibility for the amount realized.

Transfer pricing

IRS will consider applying economic substance doctrine and related penalties more frequently in transfer pricing audits

Holly Paz, Acting Commissioner of the IRS's Large Business and International (LB&I) Division, was quoted as saying that the IRS will more frequently consider whether the economic substance doctrine applies in transfer pricing audits. Paz spoke at the American Bar Association Section of Taxation during its Philadelphia Tax Conference on 15 November 2022.

The economic substance doctrine, which is codified in Section 7701(o), considers a transaction to have economic substance only if: (i) the transaction has a meaningful economic impact other than federal income tax effects; and (ii) the taxpayer has a substantial purpose for entering the transaction other than for federal income tax purposes. If a transfer pricing transaction fails to have economic substance, the IRS may assert a 20% penalty under Section 6662(b)(6) or a 40% penalty under Section 6662(i).

Paz's statement follows an April 2022 memorandum changing IRS policy to no longer require IRS executive approval before raising the economic substance doctrine in audits. When Section 7701(o) was first enacted, Paz said, executive approval was required because the IRS was unfamiliar with the doctrine. Under the new policy, revenue agents only need approval from their direct supervisor before asserting a penalty under the economic substance doctrine (which is similar to the process for other assessable penalties).

The memorandum also listed the circumstances under which applying the economic substance doctrine may be appropriate. Examples include: (i) a transaction being highly structured; (ii) a transaction including unnecessary steps; (iii) an artificial limitation on gain or loss; and (iv) a transaction generating a deduction that is not matched by an equivalent economic loss or expense.

Another IRS official in November was also quoted as saying that taxpayers should expect more penalties to be asserted in transfer pricing cases. The official said the agency is continuing to review cases more closely, including those with transfer pricing documentation, to determine if penalties are warranted. An official earlier said the IRS hopes the increased penalties will result in taxpayer's providing better transfer pricing documentation reports.

IRS 2022–2023 Priority Guidance Plan includes transfer pricing projects similar to last year

The 2022–2023 IRS Priority Guidance Plan, released in the fall, lists the projects to which the IRS and Treasury will allocate resources for plan year 1 July 2022, through 30 June 2023. This year's plan includes transfer pricing-related projects similar to those listed in the 2021-2022 guidance plan.

The IRS and Treasury again included the transfer pricing project which would clarify the effects of group membership on arm's-length pricing (specifically for financial transactions) under the Section 482 regulations. This year's guidance plan also again includes updating (i) Revenue Procedure 2015-40, which provides procedures for requesting and obtaining assistance from the US competent authority under US tax treaties; and (ii) Revenue Procedure 2015-41, which provides procedures for requesting and obtaining Advance Pricing Agreements.

Any modifications to Revenue Procedures 2015-40 and 2015-41 will give taxpayers more guidance on the criteria governing acceptance into the Advance Pricing and Mutual Agreement Program and how to structure requests for advance pricing agreements and US competent authority assistance.

Like the 2021–2022 plan, the guidance plan listed regulations under Sections 367 and 482 under the transfer pricing section. The project, which appears to combine two projects from the 2021–2022 Priority Guidance Plan, includes (i) regulations addressing the changes to Sections 367(d) and 482 "on aggregation, realistic alternatives, and the definition of intangible property"; and (ii) regulations under Section 482 clarifying certain aspects of the arm's-length standard, including periodic adjustments.

Unlike the 2021–2022 plan, this year's guidance plan does not include parts of the project on Section 482 regulations concerning "coordination of the best method rule with guidance on specified methods for different categories of transactions" or "discretion to determine the allocation of risk based on facts and circumstances of transactions and arrangements."

The guidance plan also includes, as it did last year, the inbound transfer of intangible property subject to Section 367(d). If a US person transfers any intangible property to a foreign corporation in an exchange under Sections 351 or 361, the outbound transfer is generally governed by Section 367(d).

IRS may be more selective on APAs given availability of ICAP in transfer pricing disputes

The IRS is reviewing the Advance Pricing Agreement (APA) program and may become more selective in terms of acceptance of future APAs, according to an October 2022 statement by Jennifer Best, the IRS's Large Business and International Division Acting Deputy Commissioner. She said that the IRS is "reevaluating the APA program, which will probably become a bit more selective about what it takes in, going forward" and that "ICAP might be a greater interest going forward if the IRS becomes more selective." (ICAP is the acronym for the International Compliance Assurance Program.)

ICAP is a voluntary risk assessment and assurance program aimed at facilitating cooperative engagements between multinationals and tax authorities in their local jurisdictions. ICAP allows multinationals to present their tax position

to several tax administrations simultaneously in a more cooperative environment than a typical audit. In ICAP, the tax authorities determine that the multinational's tax positions are "low" risk or that such a finding is not possible.

As with the APA program, ICAP is intended to be part of the "toolkit for dispute prevention and resolution," the official said, which ultimately should reduce the number of disputes that require resolution through Mutual Agreement Procedure (MAP) cases.

If the IRS becomes more selective about which cases are accepted in the APA program, ICAP would become an increasingly important option in preventing transfer pricing disputes. ICAP does not have the same level of certainty that an APA does; it may, however, allow for a (i) faster path to multilateral, practical tax certainty for taxpayers; and (ii) resolution through the risk assessment phase, thus potentially reducing the number of requests for MAP assistance.

Additionally, for a transaction that requires further review (i.e., where it is not determined to be low risk), tax authorities may recommend that the multinational enter the APA program, which may lead to a more efficient APA process because the tax authorities have already reviewed the transaction and should have a more truncated due diligence review. Alternatively, the tax authorities may agree that a tax adjustment is needed and attempt to settle the issue informally outside of the MAP process where possible. Taxpayers who have participated in the ICAP process have reported positive experiences.

IRS to reconsider APA revenue procedure guidance

The IRS reportedly plans to reconsider its Advance Pricing Agreement (APA) revenue procedure guidance in light of the recent Sixth Circuit Court of Appeals decision in *Eaton Corp. & Subs. v. Commissioner*, which upheld the Tax Court's opinion. In August 2022, the Sixth Circuit ruled that the IRS had the burden of proving that there were grounds to cancel the APAs at issue under generally applicable contract-law principles and that the IRS failed to meet that burden. The Sixth Circuit also held the IRS could not impose Section 6662 penalties on Eaton Corporation's self-reported adjustments.

According to an IRS official in October 2022: "The Tax Court in its decision basically invited us to rewrite the revenue procedure if we want to achieve the result we want."

Sixth Circuit rules in favor of Eaton in appeal from Tax Court regarding APA cancellation

The Sixth Circuit Court of Appeals on 25 August 2022 held in *Eaton Corp. & Subs. v. Commissioner* that the IRS had the burden of proving that there were grounds to cancel the Advance Pricing Agreements (APAs) under generally applicable contract-law principles and the IRS failed to meet that burden.

The Sixth Circuit also held the IRS could not impose Section 6662 penalties on Eaton Corporation's (Eaton) self-reported adjustments. Eaton was thus eligible to claim relief from double taxation under Revenue Procedure 99-32.

The Sixth Circuit's opinion likely has limited applicability to other taxpayers. The Sixth Circuit relies on Eaton's unique facts within the confines of the APAs and the APA Revenue Procedures in effect during the years at issue.

Although the IRS very rarely cancels an executed APA, taxpayers must be careful not to apply the conclusions in this case to any scenario in which an APA is cancelled. The facts underlying each APA stand on their own. Even when a taxpayer makes a mistake that is discovered in an APA annual report, it is often able to agree to a resolution with the IRS while keeping the APA intact. This ruling, however, confirms that APAs are binding under contract-law principles and the IRS has the burden of proof to show the grounds supporting an APA cancellation.

Tax Court increases Medtronic royalty rate under unspecified TP method

The US Tax Court on 18 August 2022 issued its second opinion in *Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner* (Medtronic III). In this opinion, the Tax Court rejected the principal transfer pricing analysis of both the IRS and Medtronic Inc. (Medtronic US), instead applying an unspecified method proposed in the alternative by Medtronic to determine the royalty rate for license agreements between Medtronic US and its Puerto Rican subsidiary. Using this method, the Tax Court increased the wholesale royalty rate to 48.8% for devices and leads for years 2005 and 2006.

This decision comes after the Eighth Circuit Court of Appeals vacated the Tax Court's first opinion in *Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner* (Medtronic I). The Eighth Circuit, in Medtronic II, had concluded that the Tax Court failed to provide sufficient factual findings to enable the appeals court to evaluate the Tax Court's determination of the best transfer pricing method. As a result, the Eighth Circuit remanded the case to the Tax Court to make those findings.

The Tax Court's opinion in Medtronic III provides guidance for future related-party transactions. Transfer pricing cases are inherently factual, and each case stands on its own facts. The Tax Court's opinion shows that the Tax Court may utilize an unspecified method if the court determines that it is the most reliable method. The Tax Court gave credence to the industry-specific value of the products manufactured and the management of the risk.

Additionally, the Tax Court's analysis closely followed the comparability framework set forth in the transfer pricing regulations. When using a CUT method, the case indicates that courts will closely consider all facts and circumstances within the comparables when reviewing related-party relationships. In the wake of Medtronic III, taxpayers should put continued emphasis on best method selection and expect that the IRS will likely evaluate alternative methodologies.

Increased IRS funding from Inflation Reduction Act may increase scrutiny of transfer pricing cases

The *Inflation Reduction Act* (Act) allocates nearly $80 billion in new funding for the IRS. Of that $80 billion, more than $45 billion is for enforcement (including the determination and collection of "owed taxes"), more than $25 billion is for operations, nearly $5 billion is for systems modernization, and over $3 billion is for customer service, among other expenses.

The Congressional Budget Office estimates the enforcement-related funding will raise $204 billion in additional revenue, offsetting the cost of the Act's incentives for energy transition and renewable energy, as well as its extension of the expiration date for expanded premium tax credits under the *Affordable Care Act*.

The increased funding for IRS enforcement will likely shift the current audit landscape and significantly increase the IRS's scrutiny of transfer pricing cases. Accordingly, taxpayers should consider enhancing their transfer pricing documentation so they can support their intercompany tax positions.

Besides enhanced documentation, taxpayers should consider using tax dispute resolution tools, such as ICAP, Advance Pricing Agreements, and Mutual Agreement Procedures. With the IRS audit environment poised to change in the future, taxpayers need to prepare.

IRS issues annual APA report for 2021

The IRS Advance Pricing and Mutual Agreement (APMA) Program issued the 23rd annual Advance Pricing Agreement (APA) report on 22 March 2022, in Announcement 2022-7. The report discusses APMA, including its activities and structure for calendar year 2021, and gives useful insights into the operation of the APA Program.

The number of APA filings increased in 2021, with taxpayers filing 145 APA requests (up from 121 in 2020). The total number of APAs concluded, however, decreased from 127 to 124 and the median of time to finalize an APA increased from 32.7 months in 2020 to 35.1 months in 2021.

APAs with Japan represent more bilateral APAs than any other country at 40% of bilateral APAs executed in 2021. This is attributable to the maturity of the APA Programs in the United States and Japan and the negotiating experience of the APMA team and the competent authority team representing the National Tax Administration of Japan.

Canada is the third most frequently involved treaty partner in executed APAs in 2021 at 7%, as a result of its role as the third largest trading partner with the US (following China and Mexico) and the fact that it has been a US tax treaty partner for almost 80 years.

In addition, the number of India APA requests filed continues to increase steadily, in part as a result of the improved relationship between the IRS and India's tax authorities during the last several years. In 2021, India represented 16% of bilateral APAs filed, 22% of pending bilateral APAs and 5% of executed bilateral APAs (second only to Japan in all three categories).

BEPS 2.0 (US)

Congressional Republicans voice concerns over BEPS 2.0 Pillar Two undertaxed profits rule

In a 14 December 2022 letter to Treasury Secretary Janet Yellen, all Republican members of the Senate Finance Committee and House Ways and Means Committee as well as the ranking member of the Senate Foreign Relations Committee addressed the BEPS 2.0 Pillar Two undertaxed profits rule (UTPR): "Despite the United States being the only country to implement a global minimum tax, this Administration has agreed to allow foreign countries to impose additional tax on U.S. companies' U.S. profits under the UTPR."

The letter goes on to say that the Biden Administration "has routinely made commitments in the OECD negotiations it has no authority to fulfill. … The Administration cannot continue to ignore the fundamental problems with the [BEPS] Pillar Two Agreement. … While the Administration may treat these Rules as final, we do not."

House Republicans seek retention of BEPS Pillar One documents and communications

US House Ways and Means Committee ranking member Kevin Brady (R-TX) and committee member Kevin Hern (R-OK) wrote to Treasury Secretary Janet Yellen requesting the retention of all documents and communications related to the OECD BEPS 2.0 Pillar One Agreement.

In a letter that was released on 31 October 2022, the Republican committee members wrote: "The lack of a sufficient response and information from the Administration to date is disappointing and unacceptable." According to the lawmakers, Congress must know what companies "will be affected, what jurisdictions will be losing taxing rights, and what jurisdiction will be gaining taxing rights under the current proposals" so it can evaluate the impact of the proposal on the US fiscal position.

House Ways and Means Committee Republicans want Treasury information on BEPS 2.0 Pillar One impact

House Ways and Means Committee Republicans introduced a resolution dated 26 July 2022 that would require Treasury to produce documents showing the effects of the OECD BEPS 2.0 Pillar One rules. According to the resolution, the Treasury Secretary would be compelled to provide the House with "Pillar One tax revenue modeling data and reports" on the impact of the BEPS 2.0 Pillar One agreement on reallocation of taxing rights, as well as the overall economic effects of the Pillar One agreement.

Republican Senate Finance Committee members indicate concern over BEPS 2.0 negotiations

Addressing the BEPS 2.0 negotiations, Republican Senate Finance Committee members wrote to Treasury Secretary Janet Yellen on 16 February, highlighting their concerns and underscoring the need for bipartisan discussions with Congress over the plan.

The Republican committee members wrote that the BEPS Pillar Two global minimum tax model rules released in December 2021 apply "far more broadly and adversely" to US companies than foreign competitors. According to the letter, other countries appear to have "negotiated more successfully to protect their domestic tax laws and companies" to receive exemptions from a global minimum tax. The Senators wrote: "It is one thing for the Administration to advocate for higher taxes as part of its domestic tax agenda, but quite another to explicitly negotiate an international agreement that would subject U.S. companies to double taxation unless Congress acts accordingly."

House Ways and Means Committee Republicans warn congressional consent needed for BEPS 2.0 Pillar One and Pillar Two

Seventeen Republican members of the House Ways and Means Committee on 19 January 2022 wrote to Treasury Secretary Janet Yellen warning that Congressional consent is necessary in order for Pillar One and Pillar Two to have US domestic effect. The committee members wrote that both pillars implicate "core Congressional revenue-raising powers" and therefore "implementing legislation is required for either pillar to have domestic legal effect." The letter went on to say: "It is extremely troubling that the Administration has made promises to the world without sufficient bipartisan, bicameral consultation."

IRS forms

IRS extends deadline for unfiled 2019 and 2020 returns and provides penalty relief for certain 2019 and 2020 returns

The IRS on 24 August issued Notice 2022-36, automatically extending until 30 September 2022, deadlines for most individual and business taxpayers that did not file tax returns for tax years 2019 and 2020. The notice also provides penalty relief to taxpayers for certain failure-to-file penalties for tax returns for 2019 and 2020. The notice applies to certain information return penalties for: (i) tax year 2019 returns filed on or before 1 August 2020; and (2) tax year 2020 returns filed on or before 1 August 2021.

More specifically, penalty relief applies to the following international information returns if they were not timely filed: Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations) and Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business) when they are attached to a *late-filed* Form 1120 or Form 1065. The penalty relief does not apply to international information returns not listed in the notice, such as Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation) and Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships).

IRS releases FAQs on Schedules K-2 and K-3 transition relief

The IRS in February and April 2022 released Frequently Asked Questions (FAQs) on transition relief for certain domestic partnerships and S corporations completing new Schedules K-2 and K-3.

In January 2022, the IRS outlined changes to previously issued IRS instructions for Schedules K-2 and K-3 for the 2021 tax year IRS Form 1065, *U.S. Return of Partnership Income*. Schedules K-2 and K-3 are new reporting forms that pass-through entities generally must complete, beginning in the 2021 tax year. According to the IRS, the new schedules K-2 and K-3 "improve reporting by standardizing international tax information to partners and flow-through investors, making it easier for them to report these items on their tax returns."

The February FAQs on Schedules K-2 and K-3 provided details on additional transition relief to make it easier for those domestic partnerships and S corporations to prepare the schedules. An exception for tax year 2021 to file the Schedules K-2 and K-3 for certain domestic partnerships and S corporations may be available if certain requirements are met. For more information see the IRS press release.

Many partnerships must complete Schedules K-2 (detailing partners' total international distributive share items) and issue Schedules K-3 (detailing a partner's share of international income, deductions, credits, etc.) to their partners to report US international tax information. Partners use the information reported on Schedule K-3 to complete their US tax and information returns.

IRS changes to instructions for 2021 partnership Schedules K-2 and K-3 relevant to many partnerships, including private equity and private capital funds

On 18 January 2022, the IRS outlined changes to previously issued IRS instructions for Schedules K-2 and K-3 for the 2021 tax year IRS Form 1065, *U.S. Return of Partnership Income*. Schedules K-2 and K-3 are new reporting forms that pass-through entities generally must complete, beginning in the 2021 tax year.

Many partnerships must complete Schedules K-2 (detailing partners' total international distributive share items) and issue Schedules K-3 (detailing a partner's share of international income, deductions, credits, etc.) to their partners to report US international tax information. Partners use the information reported on Schedule K-3 to complete their US tax and information returns.

The revised instructions show how all relevant facts must be weighed to determine whether, and to what extent, the Schedules K-2 and K-3 must be completed for partners. The changes provide more exceptions from filing, and additional clarity as to when such filing exceptions apply.

Among other things, the new instructions clarify that with exceptions, a partnership with no foreign-source income must file Part II (foreign tax credit limitation) and Part III (information for preparing Forms 1116 or 1118) on Schedules K-2 and K-3 if their partners have items of international tax relevance. Also, in most instances, a

partnership does not need to attach its international IRS forms to each partner's Schedule K-3. The updated instructions further clarify that partnerships must determine whether they are obligated to report information on controlled foreign corporations and passive foreign investment companies based on their actual knowledge of their direct and indirect partners (i.e., a partnership is not generally required to affirmatively obtain information from its direct or indirect partners to determine if it needs to file each part of the Schedule K-2 or Schedule K-3).

The clarifications were welcome news for many partnerships, including private equity and private capital funds. The changes reduce the scope of reporting of non-US corporation distributions and income inclusions. They also resolve prior uncertainty, in certain respects, as to when partnerships that have solely domestic activities and US partners must file the Schedules K-2 and K-3.

Foreign Bank and Financial Accounts (FBAR)

FinCEN continues to extend certain signature authority reporting (FBAR, Form 114)

The Finance Crimes Enforcement Network (FinCEN) on 9 December released Notice 2022-1, further extending the filing deadline for certain individuals who previously qualified for an extension of time to file the Report of Foreign Bank and Financial Accounts (FBAR) regarding signature authority under Notice 2021-1 and previous guidance.

The Notice pertains only to individuals who were initially granted extensions of time to report signature authority under FinCEN Notices 2011-1 and 2011-2 (most recently extended by FinCEN Notice 2021-1). Under the Notice, individuals have until 15 April 2024, to file deferred FBARs, subject to any potential further extension. Any persons not covered by the Notice for 2022 will have until 17 April 2023 – automatically extended six months to 16 October 2023 – to file their FBARs for the 2022 calendar year.

In no case is an extension (beyond the automatic six-month extension) available for financial interest filing obligations.

FinCEN issues final rule, proposed rules on beneficial ownership

Treasury's Financial Crimes Enforcement Network (FinCEN) on 28 September 2022 issued a final rule requiring certain entities to file reports with FinCEN that identify two categories of individuals: (i) beneficial owners of an entity and (ii) individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. The new regulations implement Section 6403 of the *Corporate Transparency Act*, enacted in 2021.

FinCEN on 15 December 2022 released proposed regulations on beneficial ownership. The proposed rules would "implement the strict protocols on security and confidentiality required by the CTA [*Corporate Transparency Act*] to protect sensitive personally identifiable information reported to FinCEN."

Organizations that assist their officers, employees and agents with their personal FBAR responsibilities as related to the entities' accounts may consider whether to defer the 2022 filing in hopes that FinCEN issues new regulations containing the signature authority exemption. If the regulations, however, are finalized before the 2023 deadline, it is possible they could only apply to 2023 reports due in 2024.

US Supreme Court accepts FBAR filing case

The US Supreme Court on 21 June 2022 agreed to hear *Bittner v. United States*, a Fifth Circuit case on applying non-willful penalties for failure to report foreign financial accounts on FinCEN Form 114, otherwise known as an "FBAR" filing.

The Court will address whether the $10,000 penalty (as adjusted for inflation) imposed under 31 USC Section 5321 for non-willful violations of the statute applies per annual filing (i.e., a maximum of $10,000 per year as adjusted for inflation), or per account that should have been reported.

In *Bittner*, the Fifth Circuit held that a separate violation occurred for each foreign account not timely reported on an FBAR and imposed a penalty of $2.72 million over five years. *Bittner* argues the penalty should apply on a per-filing basis, which would reduce the penalty to $50,000, consistent with the Ninth Circuit's decision in *United States v. Boyd*. In *Boyd*, the appellate court held that the non-willful penalty applies on a per-filing basis, not on the number of foreign accounts.

Miscellaneous

IRS to request sponsoring entities to cancel their FATCA agreements if they fail to meet requirements

In a fall announcement in regard to the *Foreign Account Tax Compliance Act* (FATCA), the IRS indicated that it has identified "Sponsoring Entities that do not appear to have Sponsored Entities registered in the FATCA Registration System." A Sponsored Entity is a Sponsored Foreign Financial Institution (FFI) or a Sponsored Direct Reporting Non-Financial Foreign Entity (NFFE). Sponsoring entities perform the "the due diligence, withholding, and reporting obligations of one or more Sponsored FFIs, or the due diligence and reporting obligations of one or more Sponsored Direct Reporting NFFEs."

According to the IRS, it will begin requesting Sponsoring Entities to cancel their FATCA agreement if they fail to meet the requirements to be a Sponsoring Entity of Sponsored FFIs and/or Sponsored Direct Reporting NFFEs.

US Government officials offer update on future international projects

A Treasury official in May 2022 said the government was working on rules governing cross-border triangular reorganizations. The IRS earlier released Notices 2016-73 and 2014-32 on the topic. The official was quoted as saying the government is "actively working on putting those into regulations."

The official further noted that the government is also working on regulations under Section 367(d) dealing with situations when intangible property is transferred from the United States and then repatriated. The official noted that the present regulations do not address the issue "so the implication right now is that if you bring it back, you are still subject to the 367(d) regime." The future guidance, which is included in the 2021-2022 priority guidance plan, reportedly will be narrow in scope but broader than existing private letter rulings that address intangible property returning to the US.

Regulations under Section 897 (disposition of investment in US real property), including rules on the qualified foreign pension fund exception, are also expected "soon," according to that official.

Another IRS official said the IRS plans to issue new Section 382 proposed regulations on computing built-in gains and losses following an ownership change, instead of finalizing the 2019 proposed regulations. The official was quoted as saying that the IRS would issue a notice and review the comments before issuing another regulation package, adding "the re-proposal gives us a little bit more flexibility to be a little broader in what we want to approach."

Ukraine/Russia sanctions

Support Ukraine Through our Tax Code Act introduced in Senate

On 12 May 2022, Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Finance Committee Member Rob Portman (R-OH) released proposed legislation (S. 4218) that would disallow foreign tax credits for taxes paid to Russia or Belarus, and further disallow certain other US tax benefits. The *Support Ukraine Through Our Tax Code Act* closely follows the discussion draft released on 7 April 2022, with some important clarifications that center on the definition of persons in scope.

Senate proposal would disallow foreign tax credits, other US tax benefits connected with operations in Russia or Belarus

Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Finance Committee Member Rob Portman (R-OH) on 7 April 2022 released a discussion draft of proposed legislation that would disallow foreign tax credits for taxes paid to Russia or Belarus and would also disallow certain other US tax benefits.

US suspends tax information exchange with Russia

The press reported that the US Treasury officially suspended the exchange of tax information with the Russian Government "to bring additional pressure to bear on Russia." Treasury reportedly ceased exchanging tax information on 24 February 2022.

In particular, the proposal would amend Section 901(j) to deny foreign tax credits for taxes paid or accrued to Russia or Belarus. The proposal would also eliminate other US tax benefits for persons within the proposal's scope, including tax treaty benefits, benefits under Section 892, the trading safe harbor under Section 864(b) and the shipping exemption under Section 883.

According to Senators Wyden and Portman, the proposal was aimed at denying US tax benefits to persons that are "choos[ing] to keep doing business in Russia."

The proposal grants the Secretary of the Treasury considerable authority in the implementation of the rules. For example, the proposal does not provide any indication of the criteria to be used in determining whether the loss of US tax benefits is merited, leaving it to the Secretary to identify such persons.

Further guidance would also be required in order to determine those persons impacted by the proposal, as the draft language does not define some key terms used, including "control," "affiliate" and "related to." Depending on how these terms are defined, the scope of persons affected by the denial of the listed US tax benefits could be extensive.

Taxpayers should consider how the proposal might impact their structures and whether to engage with the legislative process, considering the uncertainty over whether and how quickly the proposal might progress and how it may be modified.

Senate Finance Committee Chairman supports tax sanctions for Russia, Belarus

Senate Finance Committee Chairman Ron Wyden (D-OR) in March 2022 issued a press release indicating he supports putting Russia and Belarus on the list of countries subject to Section 901(j) sanctions. Code Section 901(j) eliminates the preferential 10.5% GILTI (global intangible low-taxed income) tax rate and disallows foreign tax credits for income earned in countries that support terrorism or without US diplomatic relations. Chairman Wyden's proposal would put countries that are participating in or materially support the invasion of Ukraine on the list of countries subject to the sanction.

This latest proposal follows President Joe Biden's revocation of most favored nation status for Russia and some talk on Capitol Hill of terminating the US-Russia tax treaty.

The following articles are OECD BEPS-related developments over the period 1 January - 31 December 2022.

OECD

BEPS 2.0

OECD holds Tax Certainty Day addressing MAP developments, tax certainty under BEPS Pillars One and Two

The OECD on 22 November 2022 held its fourth annual OECD Tax Certainty Day. During the event, the OECD released the 2021 statistics on mutual agreement procedures (MAPs) and presented the 2021 MAP awards. There were also updates on other activities of the MAP Forum, the International Compliance Assurance Programme (ICAP) and the ongoing work on tax certainty under Pillars One and Two of the OECD/G20 project on addressing the tax challenges of the digitalization of the economy (the BEPS 2.0 project).

The OECD reported that MAP case inventory for new cases (post-2016) continues to rise. According to the organization, 2021 saw an increase of approximately 7% for all cases as compared with 2020. This consists of a 5% increase for new transfer pricing (TP) cases and a 10% increase for other new cases. There is a relatively even split between TP cases and other cases. In 2021, a high number of old cases (pre-2016) were closed; this resulted in a 25% decrease in the old cases in the MAP inventory. Taking old and new cases together, the overall MAP inventory stabilized for the first time in 2021.

Around 70% of total MAP cases are concentrated in the top 10 countries and around 40% in the top 5 countries (Germany, France, Italy, Spain, and India). In 2021, 77% of total MAP cases closed with resolution of the issue under dispute; no agreement was reached in only 2% of the MAP cases closed (including agreement to disagree).

The OECD also continues to be highly supportive and invested in ICAP, the voluntary risk assessment and assurance program, which has continued to grow following its initial pilots in 2018.

G20 Finance Ministers welcomed progress made on BEPS 2.0, called for swift implementation

On 12 and 13 October 2022, the G20 Finance Ministers and Central Bank Governors met in Washington, DC. The G20 Chair's summary issued at the conclusion of the meeting noted the G20 Finance Ministers' welcome of the progress made on the two-pillar project to address the tax challenges of the digitalization of the economy (the BEPS 2.0 project) and reaffirmed their commitment to swift implementation of the new rules.

In advance of the meeting, on 10 October 2022, the OECD released the Secretary-General's Tax Report to the G20 Finance Ministers and Central Bank Governors. It provided an update on activities with respect to the G20's international tax agenda, including updates on the BEPS 2.0 project, the work on tax policy and climate change and the OECD's other tax work. In parallel, the OECD released a report requested by the G20 providing an OECD/G20 Roadmap on Developing Countries and International Taxation that takes stock of progress since 2021 and a brief report from the OECD Secretary-General on the Establishment of the Inclusive Forum on Carbon Mitigation Approaches (the IFCMA Report)

The Report contained seven annexes encompassing recent OECD tax documents:

- Report on Automatic Exchange of Information (AEOI)
- Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One
- G20/OECD Roadmap on Developing Countries and International Taxation
- Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard
- Tax Incentives and the Global Minimum Corporate Tax
- Pricing Gas Emissions (forthcoming)
- OECD/G20 Inclusive Framework on BEPS Progress Report

OECD and UN | Tax Inspectors Without Borders publish Annual Report 2022

On 6 October 2022, the 2022 Annual Report on the Tax Inspectors Without Borders (TIWB) initiative was released at the 14th Meeting of the OECD/G20 Inclusive Framework on BEPS.

The Report takes stock of the work undertaken under the TIWB initiative, providing an update on TIWB's achievements from July 2021 to June 2022 and its objectives going forward.

G20 Finance Ministers reiterate commitment to BEPS 2.0 two-pillar implementation and call for action to finalize work

On 15-16 July 2022, the G20 Ministers of Finance and Governors of Central Banks met in Bali, Indonesia. The G20 Chair's summary issued at the conclusion of the meeting included a reiteration of the G20 Finance Ministers' ongoing commitment to implement the agreement on the G20/OECD BEPS 2.0 two-pillar international tax package.

The summary includes a call for action to finalize Pillar One, including by signing the Multilateral Convention in the first half of 2023, and to complete the negotiations that would allow the development of the Multilateral Instrument for implementation of the Subject to Tax Rule under Pillar Two. The summary was issued by the G20 Chair and it is not a joint statement.

In advance of the meeting, the OECD released the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, providing an overview of the latest international tax developments, including updates on Pillars One and Two.

OECD's Pascal Saint Amans to leave post

Pascal Saint-Amans, Director for the OECD Centre for Tax Policy and Administration, announced on 5 September 2022 that he would be leaving his position at the end of October after 15 years in the post.

OECD officials offer update on BEPS 2.0 Pillars One and Two

The OECD held its annual tax conference in Washington, DC, on 27-28 June 2022, following a pandemic-related hiatus since the June 2019 conference. The bulk of the discussion at the conference focused on developments with respect to BEPS 2.0 Pillars One and Two of the ongoing project on addressing the tax challenges of the digitalization of the economy. In addition, there were sessions on the OECD's work on global mobility of workers, tax and climate change, and tax certainty. Senior members of the OECD Secretariat participated in the conference, along with tax officials from several OECD and G20 countries who are responsible for their countries' participation in the tax work of the OECD.

At the opening of the conference, Fabrizia Lapecorella, who chairs the OECD Committee on Fiscal Affairs and is Director General of Finance for the Italian Ministry of Finance, provided her perspectives on the BEPS 2.0 project. In regard to Pillar Two, Lapecorella highlighted the ongoing work on the implementation framework to address the practical aspects of the implementation and operation of these new rules. She indicated that the work on the Subject to Tax Rule element of Pillar Two would be completed later this year. On Pillar One, Lapecorella referred to the challenging and complex negotiations that are ongoing in the Inclusive Framework and indicated that good progress is being made. Beyond BEPS 2.0, she highlighted the planned work on carbon mitigation, noting the vulnerabilities of fossil fuel reliance.

Pascal Saint-Amans, director of the OECD Centre for Tax Policy and Administration, acknowledged that the Multilateral Convention on Pillar One would not be ready for signature in July as was the target in the agreed timeline. However, he indicated that an enormous amount of work had been completed.

The OECD and government officials made clear that the Model Rules and related Commentary that have been released on the Pillar Two global minimum tax provide countries with what they need to begin to implement these rules into their domestic tax laws. John Peterson, Head of the Aggressive Tax Planning Unit in the OECD Centre for Tax Policy and Administration, commented on the work on development of the implementation framework for the Pillar Two GloBE rules. He noted that a peer review and tax certainty process will be set up to determine whether jurisdictions' GloBE and Domestic Minimum Tax rules are "qualified," as well as to address rule order and co-ordination.

BEPS 2.0 Pillar One

OECD releases public consultation document on Pillar One Amount A and Digital Services Taxes

The OECD Secretariat on 20 December 2022 released a consultation document on the Multilateral Convention (MLC) provisions on Digital Services Taxes (DSTs) and other relevant similar measures in connection with Amount A of Pillar One of the ongoing OECD/G20 BEPS 2.0 project.

The consultation document contains draft MLC provisions implementing the commitments with respect to DSTs and other relevant similar measures, including: (i) an obligation to withdraw the measures listed in an Annex to the MLC and stop applying them to any company; (ii) a definition of the measures that the parties to the MLC will commit not to enact in the future; and (iii) a mechanism that will eliminate Amount A allocations if this commitment is breached.

The consultation document is intended to illustrate the structure and operation of the provisions on the standstill and withdrawal commitment for DSTs and other relevant similar measures. It does not reflect the final views of the Inclusive Framework regarding the substance of the document.

The consultation document has been released by the OECD Secretariat to obtain input from stakeholders to assist the Inclusive Framework in further refining and finalizing the relevant provisions. Written comments are requested by 20 January 2023.

OECD releases public consultation document on Amount B of Pillar One on baseline marketing and distribution functions

The OECD Secretariat on 8 December 2022 released a consultation document on Amount B of Pillar One in connection with the ongoing OECD/G20 BEPS 2.0 project. Amount B is aimed at simplifying and streamlining the transfer pricing of in-country baseline marketing and distribution activities, while ensuring outputs consistent with the arm's-length principle.

It is important to note that there is no threshold proposed for multinational enterprises (MNEs) to be within scope of Amount B; this is in contrast to both Amount A of Pillar One and the global minimum tax rules under Pillar Two, where specified thresholds would apply for determining whether an MNE is within scope.

This consultation document outlines the main design elements of Amount B, addressing the following topics:

- Amount B mandate and goals
- Scope of Amount B
- Amount B pricing methodology
- Amount B documentation requirements including transitional issues
- Tax certainty with respect to Amount B

The consultation document is described as presenting work undertaken to date, which is viewed as having reached sufficient level of detail and stability that public comments would be appropriate and helpful, but it does not reflect the final views of the Inclusive Framework member jurisdictions.

The OECD Secretariat hosted a webinar on 8 December 2022, summarizing key points of the consultation document, topics still under discussion in the Inclusive Framework and specific areas for which comments are sought. During the webinar, the Secretariat indicated that the intention is for Amount B to be implemented effective in 2024.

OECD releases public consultation document on administration and tax certainty aspects of Amount A of Pillar One

On 6 October 2022, the OECD Secretariat released a Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One (the Report) in connection with the ongoing OECD/G20 BEPS 2.0 project.

The Progress Report is a consultation document that covers important building blocks not included in the Progress Report on Amount A of Pillar One released on 11 July 2022; namely the rules on the administration of the new taxing right and the tax certainty-related provisions. The Secretariat document does not represent the consensus views of the OECD/G20 Inclusive Framework on BEPS jurisdictions.

The Report was released by the OECD Secretariat in order to obtain further input from stakeholders on the administration and tax certainty aspects of Amount A.

The Report states that the work on Amount B will proceed with a view to completing it in the first half of 2023.

The Progress Report does not represent the final or consensus views of the Inclusive Framework jurisdictions, but it does provide an indication of the overall direction in which the administration and tax certainty for Amount A and Related Issues may develop.

OECD holds public consultation meeting on Progress Report on Amount A of BEPS Pillar One

On 12 September 2022, the OECD held a public consultation meeting on the *Progress Report on Amount A of BEPS Pillar One*, which had been released by the OECD Secretariat on 11 July 2022 in connection with the ongoing OECD/G20 BEPS 2.0 project. The Progress Report describes the proposed design for Amount A, reflecting the mechanics for the new nexus and profit allocation rules being developed under Pillar One with the aim of providing market jurisdictions with a greater share of the taxing rights over global business income.

During the public consultation, three panels discussed key elements of the proposed design for Amount A, including the marketing and distribution profits safe harbor, the approach for eliminating double taxation with respect to Amount A and other aspects of the rules.

Comments from the OECD Secretariat acknowledged that there is work still to be done, including, in particular, more work on revenue sourcing, the design of the marketing and distribution profits safe harbor and the design of the elimination of double taxation rules.

The importance of the commitments with respect to unilateral measures and the need for workable tax certainty processes was also stressed. At the same time, the Co-Chairs of the Tax Force on the Digital Economy emphasized the deadline for reaching signature of the Pillar One Multilateral Convention by mid-2023, which will require that the work advance quickly.

EY submitted extensive comments on the Amount A Pillar One Progress Report. (Earlier, the OECD released the public comments it had received on the Progress Report.) According to the comment letter submitted by EY, applying the complex mechanics for Pillar One that have been specified to date, it becomes clear that the overall result would be that a relatively small number of mature market jurisdictions would gain additional taxing rights, with the bulk of jurisdictions around the world likely receiving little benefit or seeing a reduction in their taxing rights. This outcome is largely due to the formulaic approach used to determine Amount A.

OECD releases Progress Report on Amount A of Pillar One of BEPS 2.0 project

The OECD Secretariat on 11 July 2022 released a *Progress Report on Amount A of Pillar One* (the Progress Report) in connection with the ongoing OECD/G20 project on *Addressing the Tax Challenges Arising from the Digitalisation of the Economy*. "Amount A" refers to a new taxing right over a portion of the profit of large, high-revenue enterprises for countries where their goods or services are supplied, or countries where their consumers are located.

The Progress Report was a consultation document that covered many of the building blocks with respect to Amount A and was presented in the form of domestic model rules. The Progress Report did not include the rules on the administration of the new taxing right, including the tax certainty-related provisions.

Together with the Progress Report, the OECD released a Cover Note by the OECD/G20 Inclusive Framework on BEPS providing a revised schedule for the work on Amount A. The OECD also released a Frequently Asked Questions document on Amount A and a Fact Sheet providing an overview of the structure of the Amount A rules. In addition, the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (G20 Tax Report) for their 15-16 July 2022 meeting was released at the same time.

The Progress Report and the accompanying Cover Note provided significant new information with respect to the possible design of Pillar One Amount A and reflected a new timeline for its planned implementation.

The documents made clear that the Amount A rules will not come into force in 2023 as had been reflected in the timeline agreed by the Inclusive Framework in October 2021. The Inclusive Framework sought written comments from stakeholders on the overall design of the Amount A rules reflected in the Progress Report by 19 August 2022, with plans to review the input received and seek to stabilize the rules at its October 2022 meeting.

When the Amount A rules are stabilized, they will be translated into provisions for inclusion in a Multilateral Convention (MLC), to be signed and ratified by Inclusive Framework members. The agreed schedule reflects the expectation that this work will be completed so that a signing ceremony for the MLC can be held in the first half of 2023, with the objective of enabling it to enter into force in 2024 once a critical mass of jurisdictions has ratified it.

OECD releases public consultation documents on tax certainty under Amount A for Pillar One

On 27 May 2022, the OECD Secretariat released two public consultation documents regarding the Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A for Pillar One of the OECD/G20 BEPS 2.0 project.

The Tax Certainty Framework set out in the first consultation document aimed to guarantee certainty to Multinational Enterprise Groups in relation to all aspects of the Amount A rules. To achieve this, the document proposed three mechanisms:

- A Scope Certainty Review (providing an out-of-scope Group with certainty that it is not in-scope of the rules for Amount A)
- An Advance Certainty Review (providing certainty on a Group's methodology for revenue sourcing (and potentially segmentation) under the Amount A rules for specified future Periods)
- A Comprehensive Certainty Review (providing binding multilateral certainty over the Group's application of all aspects of the Amount A rules for a Period that has ended)

Any disagreements that arise during these tax certainty mechanisms are to be resolved by a binding Determination Panel process. In addition, if a Group does not invoke these certainty mechanisms, the Framework includes the potential for tax administrations to agree to work together through a coordinated review.

The second consultation document on Tax Certainty for Issues Related to Amount A contained draft provisions setting out a mandatory binding mechanism to resolve transfer pricing and permanent establishment profit attribution disputes that are unable to be resolved through the Mutual Agreement Procedure (MAP) within two years of the presentation of the MAP case to the Competent Authorities.

The document included three draft provisions:

- Access to dispute resolution
- A mandatory binding dispute resolution mechanism for issues related to Amount A
- An alternative elective binding dispute resolution (applying instead of the mandatory binding dispute resolution mechanism) for disputes involving developing countries that meet specified criteria to be agreed

OECD releases public consultation document on Regulated Financial Services Exclusion under Amount A for Pillar One

The OECD on 6 May 2022 released a public consultation document regarding the Regulated Financial Services Exclusion under Amount A for Pillar One of the OECD/G20 BEPS 2.0 project.

The new taxing right established through Amount A applies only to those Multinational Enterprise Groups that fall within the defined scope of Amount A. The Regulated Financial Services Exclusion will exclude from the scope of Amount A the revenues and profits of a Regulated Financial Institution.

The consultation document provided a definition of Regulated Financial Services that includes seven types of Regulated Financial Institutions. The definition for each type of Regulated Financial Institution, except one (i.e., Regulated Financial Institution Service Entity) contains three elements, all of which must be met: (i) a licensing requirement; (ii) a regulatory capital requirement; and (iii) an activities requirement.

This consultation document covers Schedule [G] of the Model Rules which will govern the Regulated Financial Services Exclusion. Other parts of the Model Rules on Amount A, on which the corresponding provisions for the Regulated Financial Services Exclusion would be based, are pending finalization and therefore the Schedule for the Regulated Financial Services Exclusion provides a preliminary description and explanation of the envisaged draft rules.

OECD releases public consultation document on Extractives Exclusion under Amount A for Pillar One

On 14 April 2022, the OECD Secretariat released a public consultation document regarding the Extractives Exclusion under Amount A for Pillar One of the OECD/G20 BEPS 2.0 project.

The new taxing right established through Amount A only applies to those Multinational Enterprise Groups that fall within the defined scope of Amount A. The Extractives Exclusion will exclude from the scope of Amount A the profits from Extractive Activities. The definition of Extractives Activities contained two elements: (i) a product test; and (ii) an activities test. Both of these tests must be met for the revenues and profits to be excluded from the Amount A scope determination. This means that the exclusion applies where the Group derives revenue from the sale of Extractive Products *and* the Group has carried out the relevant Exploration, Development or Extraction.

This consultation document covered Schedule [F] of the Model Rules that will govern the Extractives Exclusion. Other parts of the Model Rules on Amount A, on which the corresponding provisions for the Extractives Exclusion would be based, are pending finalization and therefore the Schedule for the Extractives Exclusion provides a preliminary description and explanation of the envisaged draft rules. The consultation document did not include the Schedule on Segmentation or the Schedule that will govern the exclusion for Regulated Financial Services. These Schedules, as well as draft rules on other aspects of Amount A, will be released for public consultation later.

OECD releases public consultation document on draft rules regarding scope under Amount A for BEPS Pillar One

On 4 April 2022, the OECD Secretariat released a public consultation document with draft rules regarding scope under Amount A for Pillar One of the OECD/G20 BEPS 2.0 project.

The document included draft model rules that once finalized will be the basis for the substantive provisions of the Multilateral Convention, as well as a template for domestic legislation, through which Amount A will be implemented. The document also included footnotes with descriptions of additional information that will be included in the Commentary that will support the model rules.

The new taxing right established through Amount A only applies to those Multinational Enterprise Groups that fall within the defined scope of Amount A. The scope of Amount A is based on two threshold tests: (i) a global revenue test; and (ii) a profitability test. Both of these tests are to be met for a Group to be considered a Covered Group under the Amount A rules.

Based on the consultation document, the global revenue test requires a Group to have Total Revenues greater than €20 billion. The profitability test is a three-pronged test that is met if the Group's Pre-Tax Profit Margin is: (i) greater than 10% in the Period; (ii) in two or more of the four periods preceding the Period; and (iii) on Average across the Period and the four periods immediately preceding the Period.

The agreement by the Inclusive Framework on BEPS excludes extractives and regulated financial services. Furthermore, it was agreed that segmentation will occur only in exceptional circumstances where, based on the segments disclosed in the financial accounts, a segment meets the scope rules. The consultation document did not include the rules for the industry exclusions or for segmentation. These rules will be released for public consultation later as standalone documents.

If adopted, the application of the draft model rules would have significant implications for companies that are in scope of Pillar One Amount A, affecting the amount of profits to be re-allocated to market jurisdictions and leading to new compliance requirements including requiring a new calculation of a tax base separate from the entity-based domestic tax base calculations.

OECD releases Pillar One public consultation document on draft rules for tax base determinations

On 18 February 2022, the OECD Secretariat released a public consultation document with draft rules for tax base determinations under Amount A for Pillar One of the OECD/G20 BEPS 2.0 project.

The draft rules provided specifics on the calculation of the tax base, including book-to-tax adjustments, treatment of restatements, carryforward of losses and taking into account changes in the group structure.

The consultation document included footnotes describing the further explanation that will be provided in the commentary that will be issued to support the model rules.

OECD releases Pillar One public consultation document on draft nexus and revenue sourcing rules

On 4 February 2022, the OECD Secretariat released a public consultation document with draft rules on nexus and revenue sourcing in connection with Pillar One of the OECD/G20 BEPS 2.0 project.

Under the draft model rules included in the consultation document, nexus in a particular jurisdiction is determined based solely on revenue arising there and revenue is to be sourced on a transaction-by-transaction basis using a reliable indicator or, as a back-stop, a specified allocation key. Different sourcing rules, indicators and allocation keys are provided for the different categories of revenue that are identified in the draft rules (e.g., sale of finished goods, advertising services).

The consultation document included footnotes describing the further explanation that will be provided in the commentary that will support the model rules.

Application of the draft model rules would have significant implications for companies that are in scope of Pillar One Amount A, including with respect to the development or adaptation of information systems, and could create substantial uncertainty.

BEPS 2.0 Pillar Two

OECD releases consultation document on tax certainty for the Pillar Two GloBE rules

The OECD on 20 December 2022 released a consultation document on Tax Certainty for the GloBE Rules, in connection with the ongoing OECD/G20 BEPS 2.0 project. The document seeks input from stakeholders to inform the OECD/G20 Inclusive Framework's ongoing work on tax certainty for the Global Anti-base Erosion (GloBE) Rules.

As the GloBE rules are to be introduced by jurisdictions through domestic law, scenarios may arise where there are differences in interpretation or application of the GloBE Rules between two or more jurisdictions. The Inclusive Framework has begun work on possible mechanisms to ensure tax certainty under the GloBE Rules, which can be divided into two groups: (i) dispute prevention mechanisms and (ii) dispute resolution mechanisms.

With respect to dispute prevention mechanisms, the options discussed are:

- Relying on the Model Rules, Commentary and Administrative Guidance to be agreed by the Inclusive Framework and released in the future, such as a multilateral review process with respect to the qualified status of the rules implemented by jurisdictions and the possibility of referring issues to the Inclusive Framework for clarification
- Use of common risk assessment and coordinated compliance processes
- Use of binding certainty mechanisms such as Advance Pricing Arrangements (APAs)

With respect to dispute resolution mechanisms, the options discussed are:

- Developing a multilateral convention
- Relying on competent authority agreements under the Convention on Mutual Administrative Assistance in Tax Matters
- Relying on existing tax treaties
- Creating a dispute resolution provision in domestic law

The Consultation Document includes specific questions seeking further input from stakeholders, including input on other options that could be explored to achieve tax certainty for the GloBE Rules. Written comments should be submitted by 3 February 2023.

OECD releases consultation document on Pillar Two GloBE Information Return

The OECD Secretariat on 20 December 2022 released a consultation document on the Pillar Two GloBE Information Return as part of the ongoing work of the OECD/G20 Inclusive Framework on addressing the tax challenges arising from the BEPS 2.0 project. The development of a standardized *GloBE information return* is aimed at facilitating compliance with and administration of the GloBE rules.

The consultation document provides information on the development of a standardized *GloBE information return* and includes Annexes setting out identified data points that multinational enterprises are expected to need for Pillar Two compliance (including the calculation of their GloBE tax liability) as well as accompanying explanatory guidance.

EU Member States unanimously adopt Directive implementing Pillar Two Global Minimum Tax rules

On 15 December 2022, the Council of the EU (i.e., the EU Member States) unanimously adopted the Directive ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

The text in the adopted Directive is the version that was published by the Czech EU Presidency on 25 November 2022. The adopted version includes only editorial changes following a legal-linguistic review by EU institutions, as compared to the previous compromise text of 21 June 2022.

EU Member States have until 31 December 2023 to transpose the Directive into national legislation with the rules to be applicable for fiscal years starting on or after 31 December 2023, with the exception of the undertaxed profits rule which is to be applicable for fiscal years starting on or after 31 December 2024.

OECD/G20 Inclusive Framework releases document on safe harbors and penalty relief under Pillar Two GloBE rules

The OECD on 20 December 2022 released guidance on safe harbors and penalty relief under the BEPS 2.0 Pillar Two Global Anti-Base Erosion (GloBE) rules (the document), as approved by the OECD /G20 Inclusive Framework. This guidance follows an earlier public consultation on the GloBE Implementation Framework where stakeholders raised concerns about the complexity of the GloBE rules and called for safe harbors and simplifications.

The document includes the agreed terms of a transitional country-by-country reporting (CbCR) safe harbor that effectively removes the need to calculate the GloBE effective tax rate based on the GloBE rules for a multinational enterprise's (MNE) operations in certain lower-risk jurisdictions in the initial years. It also includes the framework for the development of permanent safe harbors based on simplified income and tax calculations.

Finally, it includes a common understanding among the Inclusive Framework member jurisdictions as to a transitional penalty relief regime for the initial years of application of the GloBE rules, which requires that jurisdictions give careful consideration as to the appropriateness of applying penalties or sanctions where an MNE has taken reasonable measures to ensure the correct application of the GloBE rules.

The document notes that the Inclusive Framework will continue to explore whether other safe harbors and simplifications can be developed at a future time, highlighting in particular the ongoing work on a qualified domestic minimum top-up tax (QDMTT) safe harbor that would provide compliance simplifications for MNEs operating in jurisdictions that have adopted a QDMTT.

OECD releases report on interaction of Tax Incentives and Pillar Two

On 6 October 2022, the OECD released the report *Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules* (the Report). Prepared at the request of the Indonesian G20 Presidency, the Report identifies considerations for jurisdictions when preparing for the implementation of Pillar Two. In particular, it addresses the current use of tax incentives in developed and developing jurisdictions in the context of the GloBE Rules and describes how key provisions of these rules may impact diverse types of tax incentives differently.

The Report suggests that the design of the GloBE Rules could provide new momentum for jurisdictions to engage in tax incentive reform. It recognizes that any such reforms require careful consideration in a Pillar Two environment, as the GloBE Rules would not affect all taxpayers or all tax incentives in the same ways and to the same extent. In particular, the OECD discourages the use of incentives that provide windfall gains to Multinational Enterprises (MNEs) without generating substantial tangible investment or jobs. The OECD expresses the view that expenditure-based tax incentives linked to payroll and/or tangible assets have proven to be most effective, while these would also be least affected by the GloBE rules due to the Substance Based Income Exclusion rule.

The Report suggests that tax incentives reform, with a focus on existing incentives that carry the greatest risk of resulting in MNEs being liable for Top-up Taxes under the GloBE Rules and that result in the largest revenue forgone for the jurisdiction, and the introduction of Qualified Domestic Minimum Taxes may be the most important first steps that a jurisdiction can take in preparing for the implementation of Pillar Two, in particular in developing countries.

The Report describes how the GloBE Rules would have a material impact on tax incentives worldwide, consequently affecting the taxation of in-scope MNEs and the operation of jurisdictions' tax policies.

OECD holds public consultation meeting on Implementation Framework for Pillar Two GloBE Rules

On 25 April 2022, the OECD held a public consultation meeting on the Implementation Framework for the Pillar Two Global Anti-Base Erosion (GloBE) Rules (the Implementation Framework). The four questions on which the OECD/G20 Inclusive Framework on BEPS was seeking input were outlined in the invitation to provide comments, which was released on 14 March 2022.

The meeting focused on the mechanisms necessary to ensure that tax administrations and Multinational Enterprises (MNEs) can implement and apply the GloBE Rules in a consistent and coordinated manner. Additionally, at the end of the session, the OECD Secretariat addressed some technical questions related to the GloBE Rules.

In total, 75 comments were provided by professional service providers, businesses, industry associations, and individuals. The EY comment letter submitted to the OECD can be found here.

OECD releases Commentary and illustrative examples on Pillar Two Model Rules

The OECD on 14 March 2022 released the Commentary to the Pillar Two Model Rules (the Commentary) as agreed by the OECD/G20 Inclusive Framework on BEPS. The Pillar Two Model Rules, released on 20 December 2021, define the scope and key mechanics for the Pillar Two system of global minimum tax rules, which includes the Income Inclusion Rule (IIR) and the Under Taxed Payments Rule (UTPR), referred to collectively as the "GloBE rules."

The 228-page Commentary referenced the role of the Model Rules and the Commentary in the context of the GloBE rules' status as a Common Approach, noting the need for consistency in the implementation and administration of the rules to avoid the risk of double or over-taxation. The GloBE Model Rules and Commentary do not have the force of law, but rather are model rules and model interpretative guidance that jurisdictions can use as a template for drafting their own domestic rules for implementing the Pillar Two approach to a global minimum level of tax.

The Commentary provided detailed technical guidance on the operation and intended outcomes of the Model Rules and clarified the meaning of certain terms. It also illustrated the application of the rules to various fact patterns. Together with the Commentary, the OECD also published a separate 50-page document with illustrative examples of the application of the Model Rules (the Examples document).

The commentary reconfirmed that there could be a top-up tax allocable under the UTPR when domestic income earned by a company in its headquarter jurisdiction has an effective tax rate as computed under the Pillar Two model rules that is below 15%. This raised concerns among many US companies that avail themselves of incentives and credits that are not qualified refundable credits as defined in the model rules under Pillar Two. In effect, this could mean that a top-up tax may be payable in other jurisdictions because certain credits and incentives were utilized in the US.

Also on 14 March 2022, the OECD announced a public consultation through 11 April 2022 in connection with the work to be done next to develop the GloBE Implementation Framework addressing administration, compliance and coordination matters related to Pillar Two (the public consultation). The Inclusive Framework members sought public input on the issues that should be addressed as part of this work.

OECD developing BEPS 2.0 Pillar Two corporate minimum tax implementation framework

An OECD official on 25 January 2022 was quoted as saying that the organization is developing a BEPS 2.0 Pillar Two corporate minimum tax implementation framework that would utilize the peer review process to determine if a country's existing tax provisions are compliant with the new BEPS rules.

The official indicated the implementation framework would address administration, compliance and coordination in regard to topics associated with Pillar Two, including identifying the existence of a qualified income inclusion rule (IIR) and undertaxed payments rule (UTPR) as well as minimum domestic taxes.

The official said: "We could envisage that that process will take place through some kind of peer review process whereby those countries that were involved in implementing these rules would assess the legislation of others to determine whether they are comfortable that these rules do, in fact, meet the criteria that they have agreed." According to the official, the results would be forwarded to tax administrations and multinational groups to determine those countries that have qualified global anti-base erosion (GLOBE) rules.

Transfer pricing

OECD's 2021 MAP statistics show US continues to decrease case inventory

Released statistics from the OECD on MAP show that the US mutual agreement procedure (MAP) program's inventory decreased in 2021. In addition, the US MAP program closed more cases (that were started on or after 1 January 2016) than it opened in 2021.

The 2021 statistics were released on 22 November 2022, at the OECD's fourth Tax Certainty Day. During the event, the OECD also released the 2021 MAP awards.

Along with the US statistics, the 2021 statistics include information from other members of the OECD/G20 Inclusive Framework on BEPS that joined the Inclusive Framework before 2022 and submitted their MAP statistics. The 2021 data covers almost all MAP cases worldwide. Separate statistics are provided for transfer pricing cases and "other" cases (i.e., non-transfer pricing cases) for 2021.

The 2021 MAP statistics also include the number of MAP cases that each jurisdiction has with each of its treaty partners. Moreover, each reporting jurisdiction's performance against key indicators for each type of case can be compared through an interactive tool. The MAP statistics demonstrate that the MAP found in most double tax treaties remains an effective way to eliminate double taxation and taxation not in accordance with a treaty.

OECD updates guidance on implementation of CbC Reporting

The OECD in October 2022 updated its publication *Guidance on the Implementation of Country-by-Country Reporting*. The updates to the Guidance provide clarifications on the following topics: (i) use of positive and negative figures in Table 1; (ii) reporting permanent establishment information in Table 2; and (iii) treatment of certain short accounting periods or long accounting periods.

OECD publishes Manual on Bilateral APAs

The OECD on 28 September 2022 published its Bilateral Advance Pricing Arrangement Manual as part of the ongoing tax certainty work of the OECD's Forum on Tax Administration. The Manual was approved by the Inclusive Framework on BEPS and all members of the OECD Forum on Tax Administration.

The Manual is intended to provide an effective guide on Bilateral Advance Pricing Agreements (BAPAs) for both tax administrations and taxpayers, setting out the objectives of BAPAs and obstacles currently faced, 29 Best Practices for engaging in BAPAs and providing practical resources (sample BAPA timelines, template agreements, etc.). The Best Practices do not impose a set of binding rules upon jurisdictions, nor provide or mandate a single and uniform BAPA process for all jurisdictions. Rather, they seek to:

- Increase transparency and collaboration between competent authorities and taxpayers
- Ensure symmetries in requested information between competent authorities
- Mitigate delays created by differences in individual jurisdiction's BAPA processes
- Ensure realistic expectations as to the resources requirements and expected timeframes

OECD publishes 2022 Transfer Pricing Guidelines

On 20 January 2022, the OECD released the 2022 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TP Guidelines).

The 2022 edition of the OECD TP Guidelines mainly reflects a consolidation of a number of reports resulting from the OECD/G20 BEPS Project. It incorporates the following three revisions of the 2017 edition:

- The report *Revised Guidance on the Application of the Transactional Profit Split Method*, published on 21 June 2018.
- The report *Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles*, published on 21 June 2018.
- The report *Transfer Pricing Guidance on Financial Transactions*, published on 11 February 2020.

It also includes some related changes for consistency.

Individual countries take different approaches with respect to whether and how they incorporate the OECD TP Guidelines into their domestic tax systems. For example, in some countries, the domestic rules explicitly refer to the approved OECD TP Guidelines so that updates are automatically incorporated, while in other countries it requires some form of administrative or other action to incorporate a new version of the TP Guidelines into their domestic law.

Companies are encouraged to understand and analyze the implications of this development for each jurisdiction in which they operate. For example, companies should review the amendments to the OECD TP Guidelines with respect to their global operations and their current transfer pricing policies and approaches. There will likely be increased scrutiny by tax authorities from OECD member countries and non-OECD member countries on the application of the concepts reflected in the amendments to cross-border intercompany transactions.

Peer review reports

OECD releases 2022 update on peer review of preferential tax regimes and no or only nominal tax jurisdictions

The OECD on 27 July 2022 released an update on the results of the peer reviews of jurisdictions' domestic laws under Action 5 (harmful tax practices) of the OECD/G20 BEPS Project. The results were approved on 7 June 2022 by the Inclusive Framework on BEPS.

The updated results cover new decisions on 12 preferential tax regimes. According to the press release, the total number of tax regimes that have been reviewed, or are under review, is 319. The reviews were undertaken by the Forum on Harmful Tax Practices (FHTP). Two regimes of Armenia and one of Pakistan were classified as "potentially harmful" and will be subject to further evaluation by the FHTP. The remaining nine regimes on which new decisions were announced have been abolished, are being amended, are under review or are considered to be "not harmful." The FHTP will continue its reviews and will provide periodic updates.

OECD releases ninth batch of Stage 2 peer review reports on dispute resolution

The OECD on 14 April 2022 released the ninth batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Andorra, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Faroe Islands, Macau (China), Morocco, and Tunisia (the assessed jurisdictions) of the BEPS Action 14 minimum standard on dispute resolution.

The outcomes of this batch of Stage 2 peer review reports generally demonstrate positive changes across the assessed jurisdictions. According to the peer review reports, Andorra, Bermuda, Faroe Islands, Macau (China), and Morocco addressed most of the deficiencies identified in the Stage 1 peer review. Bahamas, British Virgin Islands, Cayman Islands, and Tunisia addressed some of the identified deficiencies. The assessed jurisdictions have committed to continue working to resolve the remaining deficiencies identified during the peer review process.

OECD releases fourth annual peer review report on BEPS Action 6 relating to prevention of treaty abuse

In early April 2022 the OECD released the fourth annual peer review report on the implementation of the BEPS Action 6 minimum standard relating to prevention of treaty abuse.

The main findings show that compliant agreements concluded between members of the Inclusive Framework and covered by the Multilateral Instrument (MLI) have almost doubled from 350 to more than 650 between 2020 and 2021. Also, more than 960 additional agreements will become compliant under the MLI once all relevant signatories have ratified it. Moreover, nearly 70% of the agreements concluded among the members of the Inclusive Framework are being brought into compliance through the MLI.

OECD releases eighth batch of Stage 2 peer review reports on dispute resolution

The OECD on 24 January 2022 released the eighth batch of Stage 2 peer review reports relating to the outcome of the peer monitoring of the implementation by Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino, and Serbia (the assessed jurisdictions) of the BEPS Action 14 minimum standard on dispute resolution.

The Stage 2 reports include four main sections: (i) preventing disputes; (ii) availability and access to MAP; (iii) resolution of MAP cases; and (iv) implementation of MAP agreements. They cover any relevant developments from the assessed jurisdictions between 1 April 2019 and 31 December 2020.

The outcomes of this batch of Stage 2 peer review reports generally demonstrate positive changes across the assessed jurisdictions.

Cryptocurrency

OECD begins public consultation on crypto-asset reporting, CRS review planned

The OECD on 22 March 2022 initiated a public consultation titled "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard." The public consultation ran through 29 April. The OECD is developing a global tax transparency framework that would provide for standardization of the automatic exchange of information regarding crypto-asset transactions. The OECD is also proposing amendments to the Common Reporting Standard (CRS) to bring crypto-assets into scope. Finally, the OECD announced plans to launch a comprehensive review of the CRS to improve its operation.

Miscellaneous

OECD releases corporate tax statistics and the 2022 revenue statistics and consumption tax trends

The OECD on 17 November 2022 released the fourth edition of its annual Corporate Tax Statistics publication (the Corporate Tax report) together with an updated database. The OECD describes the database as intended to assist in the study of corporate tax policy and expand the quality and range of data available for the analysis of base erosion and profit shifting activity.

The database includes anonymized and aggregated country-by-country (CbC) reporting statistics, reflecting information for the year 2018 and including information from CbC reports filed in 47 jurisdictions, together with a list of Frequently Asked Questions on the anonymized and aggregated CbC reporting data. The database also includes information on 60 intellectual property regimes in 45 jurisdictions and withholding tax rate statistics for 112 jurisdictions, including withholding tax rates on dividends, interest and royalty payments that are applicable as of the 2022 fiscal year.

On 30 November 2022, the OECD released its 2022 Revenue Statistics report, showing that tax-to-GDP ratios increased in 24 of the 36 OECD countries for which 2021 data on tax revenues was available, declined in 11 and remained unchanged in one country. On the same date, the OECD also released its 2022 Consumption Tax Trends report, showing that consumption tax revenues have slightly decreased overall in 2020 to 9.9% of GDP in OECD countries on average, although consumption tax-to-GDP ratios increased in nine countries and one country saw no change in this ratio.

OECD releases report on strengthening tax cooperation

The OECD on 20 May 2022 issued a report for the G7 Finance Ministers and Central Bank Governors that provides recommendations to strengthen tax administrations' cooperation in the context of increasingly coordinated international rules, including the BEPS 2.0 project. The report considers the "need for a simple, collaborative, and digital administration of common rules," including how tax information exchange could evolve as well as improve "timeliness through real-time data availability and incorporating compliance by design."

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