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In this issue

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US Congress

2. House Ways and Means Republicans release tax package
2. Congressional JCT provides revenue estimates for BEPS 2.0 Pillar Two

Treasury and IRS news

3. IRS waives addition to tax for a corporation's failure to make estimated tax payments of its CAMT
3. IRS plans further IP guidance

Tax treaties

3. US Senate approval of US-Chile tax treaty brings treaty closer to entry into force

OECD developments

4. BEPS 2.0 Project enters critical stage
5. OECD releases 2023 update on peer review of preferential tax regimes

US Congress

House Ways and Means Republicans release tax package

The US House Ways and Means Committee on 13 June approved three separate tax packages: the *Tax Cuts for Working Families Act*, *Small Business Jobs Act*, and *Build It in America Act*, following a 10-hour markup. The three bills, combined into the *American Families and Jobs Act*, fulfill Chairman Jason Smith's (R-MO) commitment to develop a tax-based economic package. The tax package is expected to come before the House sometime after the 4 July holiday.

The bills are not expected to be enacted in their current form, given that the *Tax Creation and Jobs Act* "pre-cliffs" relating to expensing of R&D costs, interest deduction limitations under Section 163(j), and 100% expensing of manufacturing equipment remain stalled as Democrats insist on expanding the Child Tax Credit. Democrats also strongly oppose rolling back clean energy provisions from the *Inflation Reduction Act* that Republicans hope to use as revenue offsets for the released tax package.

There is some speculation that the proposed tax legislation could represent the House GOP's starting position for talks later this year aimed at putting together a year-end tax extenders package.

Congressional JCT provides revenue estimates for BEPS 2.0 Pillar Two

The staff of the Joint Committee on Taxation prepared an analysis of the potential revenue impact to the US Treasury of implementation of BEPS Pillar Two based on various US and global scenarios. The report includes projections showing a range of revenue implications, from a revenue loss over 10 years of as much as \$174.5 billion to a revenue gain of as much as \$224.2 billion.

The analysis was requested by House Ways and Means Committee Chairman Jason Smith (R-MO) and Senate Finance Committee ranking member Mike Crapo (R-ID).

The analysis begins with the assumption that all countries that have announced they will legislate Pillar Two this year do so. The analysis then includes five different forecasting scenarios, including whether the rest of the world enacts Pillar Two and the US does not, and whether the rest of the world enacts Pillar Two and the US does as well.

The JCT analysis notes that, "the range of revenue effects is significant and highlights the uncertain effect Pillar Two implementation may have on Federal tax receipts. In the lower bound, with US MNEs assumed to shift their low-tax profits to QDMTT [Qualified Domestic Minimum Top Up Tax] jurisdictions, any residual US tax on those profits is eliminated by the corresponding foreign tax credits. In the upper bound, with US MNEs assumed to shift their low-tax profits to the United States, there is significant increase in Federal tax revenues. The range of potential effects is meant to highlight the level of uncertainty here and is not meant to represent a likely outcome."

Senator Crapo initially released the report and issued a press release available [here](#).

US Supreme Court to hear case challenging validity of transition tax under Section 965

The Supreme Court announced in June 2023 that it granted the petition of *certiorari* on the appeal of *Charles G. Moore v. United States*, in which the taxpayer argues that the transition tax under Section 965 violates the Constitution's Apportionment Clause and the Due Process Clause of the Fifth Amendment because the transition tax was a direct tax on unrealized income. Shareholders of foreign corporations who were subject to the transition tax under Section 965 should monitor the *Moore* case and consider whether action is necessary to preserve their ability to take a position similar to the taxpayer in *Moore*.

Treasury and IRS news

IRS waives addition to tax for a corporation's failure to make estimated tax payments of its CAMT

The IRS issued [Notice 2023-42](#) on 7 June, waiving the addition to tax under Section 6655 for a corporation's failure to make estimated tax payments of its corporate alternative minimum tax (CAMT) under Section 55 for a tax year beginning after 31 December 2022, and before 1 January 2024 (covered CAMT year).

The IRS states that it is waiving the addition to tax under Section 6655 only for the CAMT liability under Section 55. The IRS action is an acknowledgement of the challenges in determining whether a corporation is subject to CAMT (i.e., an "Applicable Corporation" under Section 59(k)) and the amount of a corporation's CAMT liability under Section 55.

Although corporations will not be penalized under Section 6655 for failing to make CAMT estimated payments, other additions to tax could be imposed if a corporation fails to timely pay its CAMT liability when due. For example, Notice 2023-42 states that additions to tax could be imposed under Section 6651 if payment of the CAMT liability is not made by the due date (excluding extensions) of the corporation's return.

The IRS also will modify the instructions to Form 2220, "Underpayment of Estimated Tax by Corporations," to clarify it will not impose the addition to tax based on a corporation's failure to make estimated tax payments of its CAMT liability for a covered CAMT year. Corporations may exclude amounts attributable to CAMT from their calculation of the required annual payment.

Notice 2023-42 likely will be helpful to corporations that were expecting to make estimated tax payments for the second quarter by the 15 June 2023 due date. Though the Notice provides penalty relief, it does not clarify the application of the CAMT rules.

Rollinson nominated to be next IRS Chief Counsel

President Biden has nominated Marjorie Rollinson to be the next IRS Chief Counsel, one of only two IRS positions requiring Senate confirmation. Rollinson spent most of her career at EY, retiring as EY Deputy Director of National Tax, and has held several senior positions at the IRS including Associate Chief Counsel (International).

IRS plans further IP guidance

The IRS is planning to issue additional guidance regarding US inbound and outbound intellectual property (IP) transfers that will address issues not covered in recent proposed regulations.

Treasury and the IRS issued proposed regulations on 2 May 2023 that would apply new rules to "repatriations" of IP subject to Section 367(d). In certain circumstances, the proposed regulations would permit the annual inclusions that Section 367(d) and its regulations require, to cease. An IRS official in June was quoted as saying there will be "subsequent packages" or rules, one or more of which will relate to Section 367(d). The official did not offer a timeline.

Tax treaties

US Senate approval of US-Chile tax treaty brings treaty closer to entry into force

The US Senate on 22 June 2023 gave its advice and consent to ratification of the long-delayed 2010 US-Chile income tax treaty and accompanying protocol (Treaty). The Treaty's approval was subject to two reservations concerning the Base Erosion and Anti-abuse Tax (BEAT) and Article 23 (Relief from Double Taxation). The reservation on BEAT clarifies that the Treaty does not prevent the imposition of BEAT under Section 59A.

The Treaty's significant provisions include the following:

- ▶ Reduced withholding rates on dividends, interest and royalties
- ▶ A PE provision that deems a PE to exist from the provision of services under certain circumstances
- ▶ A Limitation on Benefits article that includes a "headquarters company test" and a triangular provision
- ▶ Provisions on the sale of shares or other rights in Chilean resident companies
- ▶ Provisions on the exchange of information between the tax authorities of the United States and Chile.

The Treaty generally follows the 2006 US Model Income Tax Convention, with certain distinctions.

The new convention is a significant development in the US tax treaty network, representing only the third tax treaty with a Latin American country. To complete the approval and ratification process in the United States, the president must now sign an instrument of ratification to the Treaty. For the Treaty to enter into force, the United States and Chile must also notify each other in writing, through diplomatic channels, that their respective ratification requirements for the Treaty have been satisfied.

The government of Chile undertook all the steps necessary to approve the Treaty in 2015. Although Chile has made no formal announcements about the Treaty to date, it is anticipated that the two reservations inserted by the Foreign Relations Committee would need to be reviewed and ratified by Chile's Senate before the Treaty could take effect in Chile.

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.

Though the date of the Treaty's entry into force remains uncertain, multinational companies should assess the Treaty's impact now on their activities in the United States and Chile. For example, companies should begin to model the anticipated impact of reduced withholding rates on dividends, interest and royalties when they become effective. Companies should also assess current or prospective activities in the United States and Chile in light of the inclusion of the "services PE" provision and the shortened time frame for certain activities to constitute a PE, as well as the capital gains provisions.

OMB's Office of Information and Regulatory Affairs will no longer review tax regulations

Treasury in mid-June announced in a [Memorandum of Agreement](#) (MOA) that tax regulations would no longer be reviewed by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs, a practice established under the Trump Administration.

In April 2018, a [prior MOA](#) created a new framework for the review of certain tax regulations (above \$100 million annual non-revenue economic impact) that was intended to increase economic analysis and review of tax rules. That added level of review established a new layer of input in the regulatory process.

OECD developments

BEPS 2.0 Project enters critical stage

Significant developments are anticipated in the next few weeks on both BEPS Pillar One and Pillar Two. While a multilateral convention to implement Pillar One is targeted for finalization by July 2023, it is not clear whether policy makers will solve all outstanding technical and political issues in the time that remains. In any case, the Inclusive Framework will meet shortly before the G20 Finance Ministers meet in Gandhinagar on 14-15 July. This is expected to be a key meeting to reach an important milestone in the Pillar One project.

The meeting may also be an opportunity to formalize agreement on a number of outstanding issues and workstreams in relation to Pillar Two. For example, the Inclusive Framework members have been negotiating for some time on the method and criteria for Pillar Two peer reviews. Additional administrative guidance for Pillar Two is also expected.

OECD releases 2023 update on peer review of preferential tax regimes

The OECD on 21 June 2023 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 Inclusive Framework on BEPS approved the results on 9 June 2023.

The updated results cover new decisions on five preferential tax regimes. According to the [press release](#), a total of 319 tax regimes have been reviewed, or are under review by the Forum on Harmful Tax Practices.

This latest review reflects that three regimes have been abolished (one for Aruba and two for San Marino). Additionally, a regime for Jordan has been amended to align with the standard and is now considered nonharmful, and a regime for Albania is currently in the process of being amended. No regimes are identified as currently under review.

The updated results of the review of preferential tax regimes reflect the continuing focus of the Inclusive Framework on jurisdictions' implementation of the BEPS Action 5 minimum standard. These results will also shape the assessments conducted by the EU Code of Conduct Group, potentially impacting taxpayers through updates to the EU list of non-cooperative jurisdictions. The next update of the EU assessment is scheduled for October 2023.

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