

## Report on recent US international tax developments - 8 February 2019

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A United States (US) Treasury official has offered the US Government's position on the ongoing digital debate following the Organisation for Economic Co-operation (OECD)'s 29 January release of a [Policy Note](#) on its work on *Addressing the Tax Challenges of the Digitalisation of the Economy*. As reported in the tax press last week, the official said the US is engaged in the OECD process "out of the very deep concern that the longstanding international consensus around the allocation of taxing jurisdiction is breaking down." He pointed to the increasing trend of unilateral actions by various countries over the past five years, including:

- ▶ Various diverted profits taxes, some of which were enacted only weeks after the Base Erosion and Profit Shifting (BEPS) consensus was secured
- ▶ Certain advances by the European Commission in State aid cases
- ▶ Internal Revenue Code<sup>1</sup> Section 59A (BEAT), enacted as part of the 2017 US tax reform legislation, which departs from the arm's-length standard and denies deductions for "very real" payments and "very real" economic functions
- ▶ Proposals around both European Union-wide and unilateral Digital Services Taxes (DST) that are to be levied on gross revenues, and that have the potential to create double taxation

According to press reports, the official acknowledged there is broad political dissatisfaction around the world with the tax planning outcomes that are possible under existing international rules, adding that the unilateral measures in response are highly politicized. Consequently, he said, the process is no longer a purely technical exercise, and that the US Government hopes that with increased involvement, a broad political consensus can be reached at the OECD level as to how taxing jurisdiction can be allocated between different countries with different taxation models.

The Treasury official was also quoted as saying that the US would not sign-on to any consensus in the digital sphere that narrowly defines digital platforms. Rather, the US position continues to be that a common solution must look “far beyond how to tax search engines and social media.” The official said he was optimistic that the OECD’s effort to achieve consensus will be successful: “If this effort fails,” he reportedly said, “the world risks an accelerating trend towards unilateral actions that would jeopardize the coherence of the international tax system.”

In Internal Revenue Service (IRS) news, an official this week said there are no plans to ease restrictions included in the final anti-corporate inversion regulations released in July 2018. The official was quoted as saying that Congress could have rolled back the inversion rules when it enacted the *Tax Cuts and Jobs Act*, but declined to do so. The official suggested there remains strong policy concerns regarding corporate inversions.

The IRS this week also published the final Section 965 transition tax regulations in the Federal Register. The final regulations clarify that Form 965-A or 965-B must only be filed with a transfer agreement if the eligible Section 965(h) transferor or eligible Section 965(i) transferor was required to file the form. Because guidance is lacking, in regard to the due date for transfer agreements to be filed, the transition rules have been updated to provide that if a triggering or acceleration event occurs on or before 5 February 2019, the transfer agreement must be filed by 7 March 2019 in order to be considered timely filed.

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## Endnote

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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