Report on recent US international tax developments – 31 May 2019

The Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) released a digital taxation work program on 31 May, titled *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*. The workplan is expected to guide the OECD's technical work on the identified issues and reportedly will be presented to the G-20 finance ministers at their 8-9 June meeting in Japan. The Inclusive Framework group has set an aggressive timeline, noting in the report: "For a solution to be delivered in 2020, the outlines of the architecture will need to be agreed by January 2020." This outline will include a determination of the nature of, and interaction between Pillar 1 and Pillar 2, and will have to reduce the number of options to be pursued under Pillar One.

Recall that in the Policy Note *Addressing the Tax Challenges of the Digitalisation of the Economy* approved earlier this year, the Inclusive Framework grouped proposals into two pillars which could form the basis for consensus: Pillar One focuses on the allocation of taxing rights, and profit allocation and nexus rules; Pillar Two focuses on the remaining BEPS issues, including two integrated global anti-base erosion rules.

Going forward, Working Parties will meet in June and July 2019 and then through the remainder of the year to consider relevant technical issues related to the work program. According to the program released by the OECD, during

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2020, the Inclusive Framework, Steering Group and Working Parties will "work on agreeing the policy and technical details of a consensus-based, long-term solution to the challenges of the digitalisation of the economy and will deliver a final report by the end of 2020."

The Office of Management and Budget Office of Information and Regulatory Affairs (OIRA) spring agenda for US Treasury Department regulations was recently released, showing a December 2019 target date for the release of many high-profile international *Tax Cuts and Jobs Act* final regulations, including: hybrid dividends and payments; the Base-erosion and Anti-abuse Tax (BEAT) under Internal Revenue Code[1] Section 59A; and two on foreign tax credits. Final Global Intangible Low-taxed Income (GILTI) regulations and a separate proposed regulation relating to GILTI are still listed as being under OIRA review and are expected out in June 2019. OIRA completed its review of proposed regulations regarding the insurance company exception to the passive foreign investment company rules under Section 1297; their release is expected soon.

Internal Revenue Service (IRS) Commissioner Charles Rettig this week was quoted as saying that guidance on cryptocurrency could be released within 30 days or less. The Commissioner told a Washington audience that the guidance would include both a revenue ruling and a revenue procedure. The only IRS guidance in this area to have been released to date is Notice 2014-21.

The Treasury Inspector General for Tax Administration (TIGTA) issued a report on 28 May on the IRS's implementation of the Section 965 deemed repatriation tax on post-1986 accumulated earnings and profits of foreign corporations. The TIGTA found that in issuing 965 guidance, the IRS initially failed to address the circumstances when "taxpayers made payments in excess of the Section 965 portion of their Tax Year 2017 income liability immediately due." The IRS also did not clearly inform taxpayers of the implications of making these excess remittances.

The report found that at least 115 taxpayers paid $2.8 billion in excess of their initial Section 965 installment payment obligation for the 2017 tax year. The IRS took the position that the Internal Revenue Code prevented it from refunding any excess remittances until the entire Section 965 liability was paid, even if the taxpayer had elected to pay the liability in installments.

The TIGTA recommended that if the IRS is unable to refund excess remittances to taxpayers because the entire income tax liability was not overpaid, "it should take steps to inform taxpayers that their excess remittances were applied to the deferred Section 965 portion of their income tax liability and inform them of the status of the liability, including when the next installment payment is due." The IRS agreed with the recommendations and has initiated corrective action.

Endnote

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

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