

## Report on recent US international tax developments - 14 June 2019

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The United States (US) Senate Foreign Relations Committee is expected to hold a hearing next week on a number of pending tax treaties and protocols that have languished since 2011. The tax press is quoting Foreign Relations Committee Chairman James Risch as saying he hopes to schedule a treaty hearing the week of 17 June, although not all of the agreements may go through at the same time. There are currently three pending US tax treaties with Chile, Hungary, and Poland, and four pending protocols to tax treaties with Japan, Luxembourg, Spain and Switzerland, all of which have been approved by the committee in the past. A 2015 tax treaty with Vietnam has not received committee approval.

Committee member Senator Rand Paul has generally been seen as the impediment to the proposed treaties and protocols receiving US Senate approval due to his concern that the seven agreements do not adequately protect US taxpayers' privacy rights.

One potential wrinkle remains for Senate action on the proposed tax treaties and protocols, however. Foreign Relations Committee ranking member Robert Menendez has indicated he has certain outstanding questions regarding Treasury's request to include reservations with regard to at least some of the tax agreements.

In a 11 June 2019 letter to US Treasury Secretary Steven Mnuchin, Senator Menendez requested clarification as to a “brand-new novel and complex reservation” to some of the treaties relating to the *Tax Cuts and Jobs Act’s* (TCJA) Base Erosion and Anti-abuse Tax (BEAT). Senator Menendez said the last-minute reservation to the proposed treaties with Chile, Hungary, and Poland, but not the proposed protocols, raises certain questions including whether the US treaty partners have agreed to the reservations. Treasury originally had requested that BEAT reservations also be included for the protocols with Spain, Switzerland, Luxembourg, and Japan, but amended the reservation language and indicated that it was only necessary with respect to the aforementioned proposed tax treaties.

Following their 8-9 June meeting in Japan, G20 finance ministers issued a communique approving the Organisation for Economic Cooperation and Development’s (OECD) 31 May 2019 work plan detailing a planned approach for addressing the digitalization of the economy that was agreed to by the 129 jurisdictions participating in the OECD/G20 Inclusive Framework on BEPS. The workplan covers the two pillars described in OECD documents on addressing the tax challenges of digitalization of the economy that were released earlier this year.

A senior OECD official this week said during an OECD webcast that an initial economic impact assessment of the pillar proposals will result in an intermediate report by October or November 2019, with a “more final format [report] towards

the year-end or thereabouts.” The economic assessment is meant to provide countries with an understanding of the proposals’ impact on revenue, investment, and growth in order to help achieve political consensus. The OECD is aiming to achieve political agreement on a tax framework by the end of this year, with a long-term solution by the end of 2020.

The Circuit Court of Appeals for the District of Columbia on 11 June 2019 affirmed the US Tax Court’s decision in *Grecian Magnesite Mining, Industrial & Shipping Co. SA v. Commissioner*, and rejected the government’s appeal. New Internal Revenue Code<sup>1</sup> Section 864(c)(8), enacted by the TCJA, effectively overruled the holding in *Grecian*. Section 864(c)(8) treats the portion of gain (or loss) from the sale or exchange of an interest in a partnership that is engaged in a US trade or business as effectively connected income (ECI), to the extent the gain (or loss) from the sale or exchange of the underlying assets held by the partnership would be treated as ECI allocable to such partner.

And a reminder that the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) on 6 June completed its review of the final Global Intangible Low-taxed Income (GILTI) regulations. A senior Treasury official recently was quoted as saying they are on track for release before 22 June. OIRA also completed review of proposed regulations relating to GILTI and Section 951(b) and interim final regulations and proposed regulations relating to Section 245A.

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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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