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Global Tax Alert

Report on recent US international tax developments – 28 June 2019

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The United States (US) Senate Foreign Relations Committee on 25 June, approved by voice vote protocols amending US tax treaties with Japan, Luxembourg, Spain and Switzerland. The four protocols are among agreements that have been awaiting action in the Senate for nearly a decade and held up over Committee member Rand Paul's concerns over information sharing provisions. Senator Paul reportedly offered an amendment to the Spain protocol to require a higher standard for information sharing, which was rejected.

No timetable regarding Senate consideration is available. The Senate is out of session next week for the US Independence Day recess. Following the vote, Foreign Relations Committee Chairman Jim Risch was quoted as saying he would be "very surprised" if the Senate adjourned for the August recess without approving the protocols. Senate Majority Leader Mitch McConnell reportedly highlighted the tax agreements during a floor speech on 25 June, calling them "extremely important" to a number of businesses.

The Committee did not act on new tax treaties with Hungary, Chile and Poland, which may require reservations to account for enactment of the *Tax Cut and Job Act's* Base Erosion and Anti-abuse Tax (BEAT) in 2017. The protocols approved by the committee are more narrow in scope and unaffected by the BEAT, so no reservations were required for them.

Building a better working world

Senate Finance Committee Chairman Chuck Grassley and ranking member Ron Wyden this week urged Treasury Secretary Steven Mnuchin to intensify efforts to convince France not to enact a unilateral digital services tax while the Organisation for Economic Co-operation and Development continues efforts to find a multilateral solution to the digital taxation conundrum. In a 24 June letter to the Secretary, the senators called on the Administration to "consider all available tools under US law to address such targeted, discriminatory taxation," including the imposition of Section 891. That provision allows for the doubling of rates of tax on citizens and corporations of certain foreign countries if the President finds that US citizens or corporations are being subjected to discriminatory or extraterritorial taxes. The US Government's position is that various proposed unilateral digital taxes under consideration are targeted at US companies operating overseas.

A senior Internal Revenue Service official this week was quoted as saying that the proposed effective date for the "high taxed exclusion" in the proposed Global Intangible Low-taxed Income (GILTI) regulations was meant to provide taxpayers with the opportunity to assess how it would operate in practice. The proposed GILTI regulations would generally allow taxpayers to elect a narrow "high-tax exception" that would exclude from a US shareholder's GILTI inclusion items of income of its controlled foreign corporations that would otherwise be part of the GILTI inclusion. The exception would apply if the items are subject to foreign income tax at an effective rate that is greater than 90% of the maximum income tax rate under Internal Revenue Code Section 11 (currently 21%, so a foreign effective tax rate greater than 18.9%). The proposed GILTI regulations, which were released alongside the final GILTI regulations on 14 June, would apply prospectively to tax years of a foreign corporation beginning on or after the date final regulations are published in the Federal Register.

The official was quoted as saying the proposed GILTI regulations would be finalized "pretty expeditiously."

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP, International Tax Services, Washington, DC

- Arlene Fitzpatrick arlene.fitzpatrick@ey.com
- Joshua Ruland joshua.ruland@ey.com

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