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Legislation

US Congress to take up appropriations bills, consider US-Taiwan tax relationship

Congress ends its August recess after Labor Day with the Senate scheduled to return to Washington on 5 September and the House returning on 12 September. Much of September is still expected to be taken up by passage and subsequent reconciliation of appropriation bills that must be enacted before the government's fiscal year-end on 30 September.

The House Ways & Means Committee-passed *American Families and Jobs Act* from June - which addresses the *Tax Cuts and Jobs Act* "pre-cliffs" on Section 174 R&D expensing, Section 163(j) interest deduction limitations, and 100% expensing - is considered to be House Republicans' negotiating position for talks later this year if a year-end tax package materializes.

Congress may also look to upgrade the US tax relationship with Taiwan when it returns from the August recess, following up on the enactment of a trade agreement in early August.

President Biden signed the *United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act* (H.R. 4004) on 7 August 2023. The legislation stipulates that the United States Trade Representative must send negotiating texts to the relevant congressional committees during trade negotiations, and Congress must approve any trade agreements. This follows on-going dialogue between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office to enhance economic and commercial ties.

Separately, there are several legislative tax proposals in relation to Taiwan that are not mutually exclusive.

Senate Finance Committee Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) announced that the Finance Committee will meet in September to mark-up tax legislation to strengthen the US economic relationship with Taiwan. Senator Wyden and Senator Crapo, along with House Ways & Means Committee Chairman Jason Smith (R-MO) and Ranking Member Richard E. Neal (D-MA) on 12 July released a discussion draft of legislation for a US-Taiwan tax agreement.

In addition, the Senate Foreign Relations Committee on 13 July approved the *Taiwan Tax Agreement Act* (S. 1457), which would authorize the President to negotiate and enter into a tax agreement.

IRS news

IRS proposes updating regulations on consolidated returns, discarding unnecessary guidance

The IRS on 4 August 2023 released proposed regulations ([REG-134420-10](#)) for corporations that file US federal consolidated income tax returns. The proposed rules would update guidance under Section 1502 for statutory changes made over the last 50 years, modernize and clarify language, and facilitate taxpayer compliance. The proposed regulations would also partially or completely withdraw certain notices of proposed rulemaking and temporary regulations that are no longer necessary.

Most of the proposed changes would result in cleaning up the current regulations to remove references to inapplicable provisions, incorporate current provisions, and modernize the language.

Senate Finance Committee hearing on new IRS Chief Counsel planned

A Senate Finance Committee aide in late August week confirmed that a hearing on the Biden Administration's nomination of Marjorie Rollinson to be the next IRS Chief Counsel will be on the committee's agenda when the Senate returns from the August recess. Rollinson, a former IRS Associate Chief Counsel (International) was EY's Deputy Director of National Tax among other senior EY positions. No date for a hearing has yet been set.

To account for recent statutory changes, the proposed regulations would modify the definition of the term “tax” in Reg. Section 1.1502-5 for purposes of computing estimated taxes to add a reference to the corporate alternative minimum tax (CAMT) under Section 55(a) and the Base Erosion and Anti-abuse Tax (BEAT) under Section 59A. The proposed regulations did not, however, make conforming modifications in Reg. Section 1.1502-2 for purposes of computing the “tax liability” of a consolidated group.

The proposed regulations would also revise (1) Reg. Section 1.1502-9 to incorporate changes made by the foreign tax regulations (TD 9882) that provided guidance for the *Tax Cuts and Jobs Act* statutory changes and (2) Reg. Sections 1.1502-4 and -79(d) to reflect changes to the foreign tax credit carryover and carryback rules enacted since 1966.

The one substantive change proposed by the regulations would withdraw proposed regulations from 2001 (REG-137519-01) as being unnecessary to prevent duplicative stock basis reductions. The 2001 proposed regulations would have clarified that Section 358 does not reduce stock basis for the assumption of certain liabilities described in Section 357(c)(3) in intercompany Section 351 transactions despite the general inapplicability of Section 357(c) to these transactions under Reg. Section 1.1502-80(d). As a result, there would have been a single, subsequent stock basis reduction under Reg. Section 1.1502-32 when the assumed liability generated a deduction.

The preamble of the proposed regulations indicates that the withdrawal of the 2001 proposed clarification appears to shift the single stock basis reduction up front, by allowing Section 358 to reduce the basis at the time of the Section 351 transaction and prevent the subsequent investment adjustment under generally applicable, existing anti-duplication rules in Reg. Sections 1.1502-32(a)(2) and -80(a)(2).

IRS issues proposed regs on broker reporting requirements for digital asset sales and exchanges

The IRS on 25 August 2023 released proposed regs ([REG-122793-19](#)) that would require brokers, including digital asset trading platforms, digital asset payment processors and certain digital asset hosted wallets, to file information returns on certain sales or exchanges of digital assets. Brokers would also have to provide payee statements to customers on a new Form 1099-DA to inform them of the transactions being reported to the IRS.

The 282-page regulations would apply to sales or exchanges of digital assets that take place on or after 1 January 2025. In addition, the proposed regs would require brokers to include gain or loss and basis information for certain sales that take place on or after 1 January 2026. Written comments on the proposed regs must be submitted by 30 October 2023; a public hearing has been scheduled for 7 November.

The IRS notes that digital assets have grown in popularity both as a payment method and as an investment or trading asset. According to a GAO report cited in the preamble, limits on third-party information reporting to the IRS generally are an important factor contributing to the tax gap (the difference between taxes legally owed and taxes actually paid.)

Cryptocurrency stakers must include rewards in gross income upon gaining control

The IRS in August 2023 published [Revenue Ruling 2023-14](#), announcing that taxpayers using the cash-method of accounting must include the rewards from cryptocurrency staking in gross income in the year they gain control of the rewards.

IRS extends FATCA penalty relief for certain dividend equivalent payments

On 25 August, the IRS updated the Frequently Asked Questions on the FATCA webpage ([FAQ 23 \(Q23\)](#)), extending penalty relief for the 2022, 2023, and 2024 calendar years in limited situations where a withholding agent is reporting dividend equivalent amounts on transactions involving covered partnerships.

As background, holders of cryptocurrency native to a proof-of-stake blockchain can receive rewards of newly-created units of that cryptocurrency by participating in a proof-of-stake consensus mechanism, where the holders “stake” their holdings and validate new blocks on the blockchain.

The IRS concluded that cash-method taxpayers that stake cryptocurrency native to a proof-of-stake blockchain, either personally or through a cryptocurrency exchange, and receive rewards of additional units of cryptocurrency must include the fair market value of the rewards in their gross income in the tax year in which they gain dominion and control over those rewards.

Revenue Ruling 2023-14 is broadly consistent with the IRS’s position in Notice 2014-21 that those earning cryptocurrency as payment for goods or services (e.g., mining) must include the fair market value of the cryptocurrency as of the date that the virtual currency was received when computing gross income.

The ruling does not address the significant cross-border issues involving staking rewards, such as whether receipt is subject to withholding or how the income is characterized in the hands of a controlled foreign corporation.

Tax treaties

Russia suspends US-Russia, other tax treaties

Russia on 8 August 2023 reportedly suspended certain double tax treaty benefits with countries that Russia designates as “unfriendly states.” According to press reports, Russian President Putin signed a decree on 8 August suspending certain provisions in tax treaties with 38 countries, including the United States, Canada, the United Kingdom and Australia.

Press reports also indicate that the suspension will remain “until foreign states eliminate the violations they have committed of the legitimate economic and other interests of the Russian Federation, the rights of its citizens and legal entities.”

OECD news

Progress reported on BEPS Amount A, Pillar One, further work on Pillar Two safe harbors

The OECD Director of the Centre for Tax Policy and Administration said in mid-August that certain open issues related to Amount A in Pillar One (new nexus/taxing right) in the upcoming Multilateral Convention (MLC) are expected to be resolved by early fall. Manal Corwin said during a public podcast that “there are a small number of discrete technical points that involve a few jurisdictions, and when those are resolved, that will put us in a position to then finalize the text of the MLC.”

Earlier, an OECD official said that work will begin in September to address arbitrage tax planning that reportedly aims to “leverage” BEPS 2.0 Pillar Two safe harbors “beyond what was anticipated or expected.”

A US Treasury official further elaborated that the OECD Working Party No. 11 is well aware of planning and will be issuing anti-arbitrage guidance “as soon as possible.” Working Party No. 11 was established with responsibility under the BEPS project for developing recommendations

IRS offers electronic request for relief for certain late-filed international documents, forms

The IRS announced in August that taxpayers that are not under examination will now have a better option to electronically request relief for certain late-filed international documents and forms. The new option, part of the IRS’s paperless processing initiative, will allow for eFax filings and will apply to [Relief for Gain Recognition Agreements](#), [Late Filing Relief for Dual Consolidated Losses](#), and [Relief for Partnership Gain Deferral Contributions](#).

Global minimum tax filing simplification possible, OECD official says

A senior OECD official at the end of August 2023 was quoted as saying that it is “certainly possible and likely” that there will be simplifications made to how companies file global minimum tax information used to determine minimum tax liabilities. The [GloBE Information Return](#) was finalized this summer and includes a transitional framework for simplified reporting on a jurisdictional, rather than entity, basis, in addition to specifying how the information is to be shared among jurisdictions that implement the GloBE Rules.

United Nations

UN releases final report on international tax cooperation

The United Nations (UN) in late August released a final [report](#) (dated 26 July 2023) suggesting alternative options to promote international tax cooperation. The report offers an analysis of the existing arrangements in international cooperation and provides other options to “make such cooperation fully inclusive and more effective and outlines potential next steps.”

According to the report, enhancing the UN's role “in tax-norm shaping and rule-setting, with full consideration of existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective.” As in an earlier released draft, the final report identifies three options to be considered, including a tax multilateral convention, a framework convention on international tax cooperation, and a framework for international tax cooperation.

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

| | | | |
|--------------------------|------------------------------|--------------------------|-------------------------------|
| ▶ Craig Hillier | craig.hillier@ey.com | ▶ Ted Clabault | ted.clabault@ey.com |
| ▶ Colleen O'Neill | colleen.oneill@ey.com | ▶ Robert Contreras | robert.contreras@ey.com |
| ▶ Tyler Arbogast | tyler.arbogast@ey.com | ▶ Heather Gorman | heather.gorman@ey.com |
| ▶ Stephen Bates | stephen.bates@ey.com | ▶ Anna Moss | anna.moss@ey.com |
| ▶ Doug Chestnut | douglas.chestnut@ey.com | ▶ Tanza L. Olyfveldt | tanza.olyfveldt@ey.com |
| ▶ Arlene Fitzpatrick | arlene.fitzpatrick@ey.com | ▶ Deborah Tarwasokono | deborah.tarwasokono@ey.com |
| ▶ Revital Gallen | revital.gallen@ey.com | ▶ Carlos J Vaca Valverde | carlos.j.vaca.valverde@ey.com |
| ▶ Liz Hale | elizabeth.hale@ey.com | ▶ Jeshua Wright | jeshua.wright@ey.com |
| ▶ Lena Hines | lena.hines@ey.com | | |
| ▶ Enrica Ma | enrica.ma@ey.com | | |
| ▶ Oren Margulies | oren.margulies@ey.com | | |
| ▶ Carlos Mallo | carlos.mallo@ey.com | | |
| ▶ Marla McClure | marla.mcclure@ey.com | | |
| ▶ Mike McDonald | michael.mcdonald4@ey.com | | |
| ▶ Martin Milner | martin.milner@ey.com | | |
| ▶ John Morris | john.morris@ey.com | | |
| ▶ Chris Ocasal | chris.ocasal@ey.com | | |
| ▶ Al Paul | al.paul@ey.com | | |
| ▶ Stephen Peng | stephen.peng@ey.com | | |
| ▶ Tom Ralph | thomas.ralph@ey.com | | |
| ▶ Joshua Ruland | joshua.ruland@ey.com | | |
| ▶ Craig Sharon | craig.sharon@ey.com | | |
| ▶ Daniel Sosna | daniel.sosna@ey.com | | |
| ▶ Raymond Stahl | raymond.stahl@ey.com | | |
| ▶ Allen Stenger | allen.stenger@ey.com | | |
| ▶ Matthew Stevens | matthew.stevens@ey.com | | |
| ▶ Zach Pouga Tinhaga | zach.pouga.tinhaga@ey.com | | |
| ▶ Julia Tonkovich | julia.tonkovich@ey.com | | |
| ▶ Mathew Urbina | matthew.urbina@ey.com | | |
| ▶ Thomas Vidano | thomas.vidano@ey.com | | |
| ▶ Tim Wichman | timothy.wichman@ey.com | | |
| ▶ Michael Yaghmour | michael.yaghmour@ey.com | | |
| ▶ Jason Yen | jason.yen@ey.com | | |
| ▶ Adam P Becker | adam.p.becker@ey.com | | |

International Tax and Transaction Services

Global ITTS Leader, **Jeffrey Michalak**, *Detroit*

Global Transfer Pricing Leader, **Tracee Fultz**, *New York*

ITTS Director, Americas, **Craig Hillier**, *Boston*

ITTS NTD Leader, **Colleen O'Neill**, *New York*

Transfer Pricing Leader, Americas, **Katherine Pinzon**, *Houston*

ITTS Markets Leader, Americas, **Jonny Lindroos**, *McLean, VA*

ITTS Regional Contacts, Ernst & Young LLP (US)

West
Sadler Nelson, *San Jose, CA*

East
James Keim, *New York*

Central
Aaron Topol, *Atlanta*

Financial Services
Chris J Housman, *New York*

Canada - Ernst & Young LLP (Canada)
Warren Pashkowich, *Calgary*

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