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Legislation

House passes tax package, Senate action uncertain

The US House of Representatives on 31 January 2024 approved the \$78 billion *Tax Relief for American Families and Workers Act of 2024* ([H.R. 7024](#)) in a 357-70 vote. The legislation includes changes to the Child Tax Credit and TCJA business provisions plus the *US-Taiwan Expedited Double-Tax Relief Act*, disaster relief, and housing provisions.

More specifically, the approved bill would restore Section 174 expensing for domestic R&D (but not foreign R&D) and the prior Section 163(j) interest deductibility parameters, retroactive to 2022 (with elections) and extended through 2025. The legislation also would extend 100% bonus depreciation and increase the Section 179 small business expensing amount. The bill is nearly paid for with Employee Retention Credit enforcement provisions.

The House-approved bill moved to the Senate, where Republicans have expressed a desire to amend the bill as well as other reservations. The Senate was scheduled to be in session in the first full week in February, after which it is out from 12-23 February for the two-week Presidents Day recess.

Congress approves CR to fund government until early March

The House and Senate in mid-January approved a continuing resolution (CR) to extend government funding beyond the 19 January and 2 February deadlines, until 1 March and 8 March, respectively. Appropriators now have until March to agree to the full slate of 12 appropriations bills.

IRS news

IRS signals new Section 367(d) guidance in 2024 on repatriation of intangible property

At the 2024 DC Bar Tax Conference on 10 January 2024, an IRS official said that the IRS hopes to finalize proposed regulations under Section 367(d) in the first half of 2024 that would “turn off the application of that specific code section to avoid excessively taxing income in the US made from repatriated intangible property.”

Senate Budget Committee holds hearing on TCJA’s international, other provisions

The Senate Budget Committee held a hearing on 17 January titled, “The Great Tax Escape: Closing Corporate Loopholes that Reward Offshoring Jobs and Profits.”

The hearing offered differing views of the international and other provisions of the 2017 TCJA, comparisons of the TCJA with laws enacted during the Biden Administration, and perspectives on how the tax system should be changed in conjunction with the expiration of TCJA provisions for individuals and small businesses in 2025.

According to the official, the IRS would like to address the issue of basis of intangible property (IP) under Section 367(d), but the work is “all very preliminary.”

Under Section 367(d), a US transferor that transfers certain IP is treated as having sold the IP in exchange for payments that are contingent upon the IP’s productivity, use or disposition. A US transferor is treated as receiving amounts that reasonably reflect the amounts that would have been received annually in the form of such payments over the useful life of the IP (an annual inclusion). In May 2023, the IRS released proposed regulations ([REG-124064-19](#)) under Section 367(d) that would terminate continuing annual inclusions if (1) the transferee foreign corporation repatriated the previously-outbounded IP to a qualified domestic person; and (2) the original US transferor complied with certain reporting requirements.

The IRS is also reportedly working on updating Notice 2012-15 on certain transfers of foreign stock in exchange for foreign property under Section 304 and Notice 2012-39 on certain outbound asset reorganizations under Section 367(d).

With the US corporate tax rate at a globally competitive 21% and the potential for lower effective tax rates under Section 250, the Section 367(d) regulations are important to many US companies, as they may have an incentive to simplify their operating models by repatriating IP. Uncertainty around the consequences of repatriating previously-outbounded IP subject to Section 367(d) complicates any re-evaluation of operating models in light of global developments.

US officials provide regulatory update

Treasury and IRS officials at an American Bar Association Tax Section meeting in San Francisco in January 2024 provided an update on some pending regulatory projects. Government officials continued to say that proposed regulations on the 1% stock buy-back excise tax and the corporate alternative minimum tax (CAMT) are close to release, in that order. In regard to the pending CAMT package, a Treasury official was quoted as saying the proposed regulations would address a controlled foreign corporation's disposition of stock in the context of CAMT computations.

The government also hopes to issue final cloud computing regulations in 2024, although no timeline was given. Proposed cloud computing regulations were released in 2019. A Treasury official said the government is also considering releasing a companion notice to the final regulations addressing the issue of cloud computing sourcing.

Addressing the long-awaited previously taxed earnings and profits (PTEP) regulations, an official was reported as saying the first portion of the project will include the "nature and general structure" of the PTEP rules, including accounting rules for both the foreign corporation and the US shareholder. Taxpayers can also expect the first tranche of PTEP regulations to cover foreign currency gains and losses, the treatment of credits under Section 960(b), Section 961(c) basis, as well as some partnership issues. The second tranche of PTEP guidance reportedly will include further partnership issues and nonrecognition transactions.

IRS broadens PLR's scope

The IRS issued [Revenue Procedure 2024-1](#) and [Revenue Procedure 2024-3](#), significantly broadening the scope of available "comfort letter" rulings relating to certain issues under Sections 332, 351, 355, 368 and 1036. Revenue Procedure 2024-1 also provides that issues involving the Section 4501 stock buyback excise tax fall within the jurisdiction of the Associate Chief Counsel (Corporate).

The new IRS Associate Chief Counsel (Corporate) last fall had indicated the office would expand the scope of available letter rulings.

Finally, Treasury hopes to finalize the proposed regulations on currency gains or losses for qualified business units (QBUs) in 2024. Treasury and the IRS issued proposed regulations on 9 November 2023. According to a Treasury official, finalization of the regulations in 2024 would mean their application to calendar-year taxpayers in 2025.

IRS announces cryptocurrency transactions not required to be reported until regulations issued

The IRS in [Announcement 2024-4](#) clarified that "at this time, digital assets are not required to be included when determining whether cash received in a single transaction (or two or more related transactions) meets the reporting threshold." Consequently, cryptocurrency transactions covered by Section 6050I will not have to be reported until regulations are issued.

Abbott petitions Tax Court to redetermine deficiencies, including IP royalty income, stock-based compensation

Abbott Laboratories has petitioned the Tax Court to redetermine deficiencies of almost \$417 million, which the IRS assessed for the 2019 tax year (*Abbott Laboratories v. Commissioner*, No. 20227-23 (Dec. 22, 2023)). Abbott is asking the Tax Court to find, among other things, that the IRS erred in (1) adjusting Abbott's royalty income for IP licensing transactions; (2) including stock-based compensation in the taxpayer's cost-sharing arrangement or the cost base of controlled services transactions; and (3) disallowing amortization deductions authorized under Section 197 when computing Abbott's global intangible low-taxed income (GILTI) under Section 951A.

User fee for APAs increases effective 2 February 2024

The IRS has increased the user fee to apply for an advance pricing agreement (APA) beginning on 2 February 2024.

In [Revenue Procedure 2024-1](#), which is the annual update for procedures for filing letter rulings, determination letters and information letters, the IRS increased the user fees for APAs as follows:

- ▶ Original APA: \$121,600 (from \$113,500)
- ▶ Renewal APA: \$65,900 (from \$62,000)
- ▶ Small Case APA: \$57,500 (from \$54,000)
- ▶ APA Amendment: \$24,600 (from \$23,000)

Under the dollar-file-request option in [Revenue Procedure 2015-41](#), APA requests are considered filed by a particular date if (1) the correct user fee is paid by the applicable date, and (2) a complete APA request is filed within 120 days of that date (with a 30-day extension for good cause and the request is made within the 120-day period).

OECD developments

US official offers BEPS Pillar One insights

Treasury official in January 2024 provided further insights on the US position with regard to BEPS 2.0 Pillar One. The official was quoted as saying the US has three requirements in order to sign the Multilateral Convention (MLC). Specifically, the US needs to have Puerto Rico treated as part of the United States for purposes of the Pillar One Amount A rule and there needs to be agreement among all countries on the technical issues, including withholding, and adoption by countries of a draft MLC text.

The last condition is that the US government wants Pillar One Amount B “to be robust.” The official said it needs to “clearly apply to real taxpayers that have real transactions, and it needs to provide meaningful tax certainty.” Amount B is aimed at simplifying and streamlining the transfer pricing of in-country baseline marketing and distribution activities, while ensuring outputs consistent with the arm’s-length principle.

EY releases 2024 international tax and transfer pricing survey

EY in January launched its [2024 International Tax and Transfer Pricing Survey](#), with an overwhelming majority of respondents saying they face a moderate or significant risk of double taxation as a result of the OECD Inclusive Framework on BEPS project. According to the annual survey, 84% of respondents said they face a moderate or significant risk of double taxation due to the BEPS Pillar One and Pillar Two initiatives, and 82% said tax rate stability will have a moderate or significant impact on their global transfer pricing (TP) policy over the next three years. In addition, 71% of survey respondents said global minimum taxes will have a moderate or significant impact on their TP policy.

As a result, respondents expressed more interest in advance pricing agreements (APAs) and similar controversy programs than at any other time in the 30-year history of the survey. For instance, 61% said bilateral APAs and 59% said multilateral APAs will be “very useful,” up from 34% and 30%, respectively, in 2021.

Interestingly, 59% indicated that unilateral advance pricing agreements will be “very useful” in managing TP-related controversy over the next three years, more than double the 2021 proportion of 29%. Taxpayers will also be looking at mutual agreement procedure (MAP), according to the survey, with 46% saying MAP will be “very useful,” up from 33%. Finally, 41% of respondents said the [International Compliance Assurance Program \(ICAP\)](#) will be “very useful,” up from 27%.

OECD releases updated estimates of the economic impact of Pillar Two

The OECD on 9 January 2024 released a working paper titled "[The Global Minimum Tax and the taxation of MNE profit](#)" which members of the OECD Secretariat discussed during a [webinar](#) held the same day. The working paper estimates the economic impact of the global minimum tax using new data on worldwide activity of multinational enterprises (MNEs) and building on new OECD estimates of global low-taxed profit.

The working paper has four main findings. First, the global minimum tax is estimated to reduce tax-rate differentials across jurisdictions. Second, profit shifting is estimated to be reduced by about half as a result of the global minimum tax. Third, the global minimum tax is estimated to reduce the global amount of MNE profit taxed below the 15% minimum effective tax rate by about 80%. Fourth, the global minimum tax is estimated to increase corporate income tax (CIT) revenues by \$155 billion-19\$2 billion on average per year, which represents between 6.5%-8.1% of current global CIT revenues.

Importantly, the January 2024 working paper acknowledges the limitations in the data used, noting that the analysis is based on assumptions in areas where features are yet to be agreed upon or impacts that depend specifically on the extent to which countries throughout the world implement the new rules.

The working paper does not represent the official views of the OECD or of its member countries. The opinions expressed and arguments employed are those of the authors.

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