



Building a better
working world

Washington Dispatch

May 2024, Volume 28, Issue 5

EY's weekly and monthly US international tax podcasts are available on Apple Podcasts and ey.com:

- ▶ [Listen and subscribe to the weekly podcast on Apple Podcast](#)
 - ▶ [Listen and subscribe to the monthly podcast on Apple Podcast](#)
 - ▶ [Access all podcasts on EY's Tax News Update: Global Edition tool](#)
-

In this issue

Legislation

2. House Republicans prepare for TCJA 'cliffs'
2. White House official previews President Biden's tax policy if he wins second term
2. US House Ways and Means Chairman, Treasury Secretary spar over TJCA, BEPS 2.0
3. US will not sign BEPS Pillar One MLC without India, China TP resolution

IRS news

3. IRS provides further transitional relief under Section 871(m) for treatment of dividend equivalents
4. IRS to defer applicability date of some provisions in Sections 59A and 6038A regs for qualified derivative payments

4. New updated procedures for Section 355 transaction PLRs released
4. CAMT regs in advanced stage, Treasury official says
5. Final crypto reporting rules coming in 2024
5. IRS proposed regulations would expand guidance on foreign trusts and large foreign gifts

OECD developments

6. More OECD BEPS 2.0 GloBE guidance coming
6. BEPS Pillar One MLC on track for signature in June, official says

Legislation

House Republicans prepare for TCJA 'cliffs'

US House Republicans have begun the process to flesh out their tax positions in respect to the looming expiration of the *Tax Cuts and Jobs Act* (TCJA) at the end of 2025.

House Ways and Means Committee Chairman Jason Smith (R-MO) in early May was quoted as saying some Republican caucus members may favor increasing the corporate tax rate and may join Democrats on the issue.

According to the Chairman: "There are people on both sides of the aisle that believe that the corporate tax rate is not enough." Another major issue that will need to be addressed within the Republican Party when the TCJA is revisited in 2025 will be whether "pay-fors" will be necessary. According to Chairman Smith, "Without a doubt one of the biggest challenges that will be discussed, debated, and decided in 2025 is: Should taxes be paid for or should they not be paid for?"

He added that whether Congress acts through reconciliation or in a bipartisan approach, every tax provision will be on the table with the expiration of the TCJA. "Nothing is permanent," he reportedly said.

Further preparing for the expiring TCJA cliffs, the Ways & Means Committee on 21 May [announced](#) that, in conjunction with the formation of Republican Tax Teams, the Committee has launched a new [public comment portal](#).

According to W&M Republicans, the purpose of the portal is to give stakeholders and members of the public the ability to share information on the impact of higher taxes on families, businesses and communities resulting from the expiration of the TJCA. Comments will be accepted through 15 October 2024.

W&M Republicans in late April announced the formation of 10 tax teams, at least two of which are directly related to the international tax area: Supply Chains and Global Competitiveness.

The Congressional Budget Office (CBO) also in May released forecasts that show the cost of extending TCJA individual and passthrough provisions at the end of 2025 has increased from last year's CBO estimate, to roughly \$4 trillion over 10 years. The higher price tag is detailed in this year's version of the report on [Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues](#).

White House official previews President Biden's tax policy if he wins second term

White House National Economic Advisor Lael Brainard offered more insights into the Biden Administration's position on tax policy in a 10 May [speech](#) on the "Tax Debate Ahead."

The Administration official not only called for paying for TCJA tax cuts that are extended but also recommended using the "2025 tax debate as an opportunity to meet our national needs by raising revenue overall" through tax increases on the wealthy and large corporations. Reiterating prior Administration statements, Brainard listed proposals to increase the corporate tax rate to 28%, the corporate alternative minimum tax rate to 21%, and the stock buyback tax to 4%. Brainard also restated the President's pledge for no tax increases on those earning less than \$400,000.

The National Economic Advisor further pointed to the Administration's support for the OECD/G20 Inclusive Framework global tax agreement, saying it "will finally address the race to the bottom in corporate taxes, while enabling businesses to compete and allocate capital based on workforce talent and market factors instead of tax minimization strategies." She added, "Many of the world's largest economies are implementing this transformational agreement. It is critical that we join them in 2025."

US House Ways and Means Chairman, Treasury Secretary spar over TJCA, BEPS 2.0

The US House Ways and Means Committee held a hearing on 30 April at which Treasury Secretary Janet Yellen testified on the expiration of the *Tax Cuts and Job Act* (TJCA) at the end of 2025 and the OECD BEPS 2.0 two-pillar global tax agreement.

Committee Chairman Jason Smith's (R-MO) opening statement lauded the positive economic results of the 2017 TCJA, underscoring his view the legislation "reversed the decades-long trend of American companies picking up and moving their jobs, factories, and money overseas." Secretary Yellen suggested that the TCJA, including the corporate tax rate cut, disproportionately benefited the wealthy and large corporations and enriched corporate shareholders.

Addressing the BEPS 2.0 project, the W&M Chairman said: "The OECD global tax deal the Administration is trying to negotiate would surrender America's tax revenue and jobs to foreign countries. Congress writes the laws, not bureaucrats negotiating behind closed doors. This deal has no path forward in Congress."

Former President Trump promises tax cuts if elected

Former President Trump offered a contrasting vision to President Biden's tax increase proposals if he wins a second term as president. The 2024 presumptive Republican nominee said, "Instead of a Biden tax hike, I'll give you a Trump middle class, upper class, lower class, business class big tax cut."

Committee Republicans expressed concern about process issues regarding the global tax agreement and the projected cost to the US, citing the June 2023 Joint Committee on Taxation (JCT) estimate that, under one scenario and set of assumptions, the cost would be \$122 billion over 10 years if the rest of the world enacts Pillar Two in 2025 and the US does not. A March 2024 JCT estimate found that Pillar One could result in a revenue loss of between \$100 million and \$4.4 billion.

Chairman Smith asked if Treasury would "commit to reject any OECD profit reallocation plan that disproportionately impacts American companies or allows US tax revenues to be stolen away by foreign governments." Secretary Yellen responded that the Biden Administration had "worked very closely with Congress to inform and get input on Congress's priorities to guide these negotiations over the last three-and-a-half years and will continue to do that."

Chairman Smith also repeated concerns about the nonrefundable R&D tax credit not being exempted from determining a company's US effective tax rate under the OECD Pillar Two agreement. The Treasury Secretary reiterated earlier comments by government officials that the US is currently negotiating with other countries to "to try to get favorable treatment to the R&D tax credit."

On Pillar One, Secretary Yellen said Treasury agrees with concerns that certainty over Amount B is important, as well as the need to establish clear definitions regarding Digital Services Taxes. The Treasury Secretary said these are redlines the Biden Administration is focused on resolving in the final months of negotiations. Pillar One Amount B is intended to simplify and streamline the application of the arm's-length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries.

US will not sign BEPS Pillar One MLC without India, China TP resolution

Treasury Secretary Janet Yellen said the United States will not sign the Pillar One multilateral convention (MLC) until India and China agree to certain unresolved issues surrounding transfer pricing. Speaking on the sidelines of a 25 May Group of Seven meeting in Italy, the Treasury Secretary was quoted as saying: "India, in particular, has been a holdout and China has not really engaged very much in these negotiations at all."

The Pillar One Amount B provisions are intended to simplify and streamline the application of the arm's-length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries (Amount B approach). The OECD published the [final report](#) on Pillar One Amount B on 19 February 2024.

IRS news

IRS provides further transitional relief under Section 871(m) for treatment of dividend equivalents

In [Notice 2024-44](#), the IRS extended for two more years the additional time provided by Notice 2022-37 for broker/dealers to comply with the Section 871(m) regulations and the Qualified Derivatives Dealer (QDD) provisions in the Qualified Intermediary (QI) Agreement, generally through the end of 2026.

Notice 2024-44 also includes a statement that Treasury and IRS "will consider" a QDD to satisfy its obligations under the QI Agreement for years preceding 2027 where the QDD makes a good faith effort to comply with the 2023 QI Agreement. Notice 2024-44 is nearly identical to Notice 2022-37.

According to Notice 2024-44, the anti-abuse rule will continue to apply during the extension and good-faith periods. The anti-abuse rule allows the IRS to treat a payment as a dividend equivalent if the taxpayer acquires or disposes of one or more transactions with a principal purpose of avoiding Section 871(m). It appears that the IRS wants to emphasize that the anti-abuse rule trumps any relief provided by Notice 2024-44 and prior notices. Financial institutions should use the additional time to review their internal processes and procedures to confirm compliance with the anti-abuse provisions.

It is noteworthy – and indicative of the complexity of the rules – that this is the fifth time that Treasury and the IRS have delayed the implementation of various aspects of Section 871(m). This provision was first enacted as part of the *Hiring Incentives to Restore Employment Act of 2010*. Final regulations were first published in September 2015, and then again in January 2017 and December 2019. Treasury and the IRS provided transition relief for certain aspects of Section 871(m) in Notice 2017-42, Notice 2018-72, Notice 2020-2 and Notice 2022-37.

While some of the prior Notices were released close in time to the upcoming effective date of the regulations, Treasury and the IRS have helpfully issued Notice 2024-44 more than six months before the regulations were scheduled to be effective. As in Notice 2022-37, the delay of two years (as opposed to one year in certain prior Notices) is crucial given that it typically takes withholding agents at least 18 months to build new withholding systems, especially one as complex as will be required for Section 871(m).

IRS to defer applicability date of some provisions in Sections 59A and 6038A regs for qualified derivative payments

The IRS issued [Notice 2024-43](#) on 22 May, announcing that Treasury and the IRS intend to amend the regulations under Sections 59A and 6038A to defer the applicability date of certain provisions of the regulations relating to the reporting of qualified derivative payments (QDP) until tax years beginning on or after 1 January 2027.

In 2022, Notice 2022-30 announced an extension of the transition period through tax years beginning on or after 1 January 2025, while Treasury and the IRS study the interaction of the QDP exception with a number of other provisions and reporting requirements. Notice 2024-43 explains that Treasury and the IRS are continuing to study the issues and have determined that it is appropriate to further extend the transition period.

New updated procedures for Section 355 transaction PLRs released

The IRS released [Revenue Procedure 2024-24](#) on 1 May, providing updated procedures for taxpayers requesting private letter rulings (PLRs) on Section 355 transactions. The latest guidance modifies Revenue Procedure 2017-52, the general revenue procedure on requesting Section 355 PLRs and supersedes Revenue Procedure 2018-53 on procedures for requesting Section 355 PLRs relating to the assumption or satisfaction of debt of a distributing corporation.

The changes to the prior revenue procedures significantly modify prior IRS ruling policy regarding retentions and delayed dispositions of stock of a controlled corporation. Revenue Procedure 2024-24 also imposes new standards on the assumption of distributing corporation liabilities by the controlled corporation as part of a Section 355 transaction.

Revenue Procedure 2024-24 requires more substantiation of the representations required to be submitted and offers less flexibility to deviate from the standard representations. Revenue Procedure 2024-24 was also accompanied by [Notice 2024-38](#), which describes Treasury's and the IRS's views and concerns relating to the matters addressed in Revenue Procedure 2024-24 (see previous article).

CAMT regs in advanced stage, Treasury official says

A senior Treasury official said at a 4 May American Bar Association (ABA) Tax Section meeting that proposed regulations on the Corporate Alternative Minimum Tax (CAMT) – at least on the corporate side – are in a very advanced stage. He suggested further work is needed, underscoring how the corporate provisions will interact with tax accounting, international tax, and partnerships in the broad-based package.

The official further said Treasury is running through how potential pitfalls will interact from a policy perspective. Once the package is proposed, he said the government will seek comments on how the rules fit together. According to the official, the collective notices issued over the past year and a half have built a cohesive package that incorporates many past comments. The package will be further improved after proposed regulations are issued and additional comments are received, he said.

US opposes global wealth tax on billionaires

Treasury Secretary Janet Yellen in May 2024 was quoted as saying that the US government opposes an annual global wealth tax imposed on billionaires. A recently floated proposal calling for a 2% annual tax has received the support of some G20 Finance Ministers. President Biden has proposed a 25% tax on total income, including unrealized capital gains, for taxpayers with wealth exceeding \$100 million.

Also in regard to the CAMT, other US officials in early May were quoted as saying the recent penalty waiver for companies that fail to make their CAMT quarterly payment could be further extended.

The IRS issued [Notice 2024-33](#) in April, waiving the penalty under Section 6655 for a corporation's failure to pay estimated tax payments attributable to a portion of a corporation's CAMT due on or before 15 April 2024, or 15 May 2024 (for fiscal-year taxpayers whose tax year begins in February 2024). This was the second time the IRS has waived the penalty. In June 2023, the IRS waived the penalty for the 2023 tax year.

Final crypto reporting rules coming in 2024

Final crypto reporting regulations under Section 6045 are expected to be issued later this year, according to an IRS official. The final rules reportedly will provide further clarification, including in regard to transfer statements.

Treasury and the IRS published proposed regulations on digital asset reporting ([REG-1122793-19](#)) in August 2023 to implement changes to Section 6045 made by the *Infrastructure Investment and Jobs Act* in 2021. The package adopted many of the longstanding concepts and terms that apply to sales of securities, including the reporting of a customer's tax basis and gross proceeds from a sale; it also redefined key terms and introduced new standards that apply uniquely to digital assets

IRS proposed regulations would expand guidance on foreign trusts and large foreign gifts

The IRS on 7 May released proposed regulations ([REG-133850-13](#)) providing its interpretation of the statutes governing information reporting for foreign gifts and foreign trusts. The proposed regulations largely draw from Notice 97-34, the last major piece of administrative guidance issued on the subject.

The IRS, however, clarified or expanded key areas that require close attention by tax practitioners, especially as these regulations would impact the preparation of Forms 3520, *Annual Return to Report Transactions With a Foreign Trust and Receipt of Certain Foreign Gifts*, and 3520-A, *Annual Information Return of Foreign Trust With a US Owner*.

The proposed regulations would address the following sections of the Internal Revenue Code:

- ▶ Section 643(i), which treats any loan of cash or marketable securities from a foreign trust as a distribution (potentially resulting in taxable income), if the loan is made to a US person who is either the grantor or beneficiary, or related to the grantor or beneficiary, of a foreign trust
- ▶ Section 679, which treats a US person who transfers property to a foreign trust as the owner of the portion of the trust attributable to the property transferred to the trust if there is a US beneficiary of any portion of the trust
- ▶ Section 6039F, which requires a US person to report the receipt of large gifts or bequests from foreign trusts (failure to properly report permits the IRS to recharacterize the gift or bequest as income)
- ▶ Sections 6048 and 6677, which require a US person to report transactions with foreign trusts and impose penalties on any taxpayer that fails to do so

The regulations would apply to transactions with foreign trusts and the receipt of foreign gifts in tax years beginning after the date the final regulations are published in the Federal Register.

Taxpayers, however, may rely on the proposed regulations for any tax year ending after 8 May 2024, and beginning on or before the date the final regulations are published in the Federal Register, provided they apply the proposed regulations in their entirety and in a consistent manner.

OECD developments

More OECD BEPS 2.0 GloBE guidance coming

Two more rounds of OECD administrative guidance regarding BEPS 2.0 global anti-base erosion (GloBE) are expected in 2024. Speaking at a Washington conference on 30 May, a Treasury official was quoted as saying the guidance “will include certain administrative simplifications and also some key structural rules which should generally be favorable” for US multinationals. He said that future administrative guidance is expected to cover issues addressed in past guidance, including the qualified domestic minimum top-up tax (QDMTT) safe harbor rules and hybrid anti-arbitrage arrangements.

The official also offered insight into other ongoing Pillar Two-related projects including the [GloBE information return](#) that is expected to be exchanged between relevant jurisdictions in 2026. Other areas of discussion include advance tax certainty mechanisms and a new multilateral convention for addressing global anti-base erosion disputes.

BEPS Pillar One MLC on track for signature in June, official says

The OECD Inclusive Framework on BEPS still plans to open the Pillar One multilateral convention (MLC) for signature in June, according to Manal Corwin, the director of the OECD Centre for Tax Policy and Administration.

Speaking at a conference in Washington, D.C. on 17 May, Corwin said that although some technical issues remain outstanding, “there has been significant progress on closing the gaps on those issues.” Underscoring the progress, Corwin added that the co-chairs of the Inclusive Framework steering group have forwarded proposed text changes to the OECD Task Force on the Digital Economy for comment.

Work is also continuing to finalize Pillar One Amount B provisions, she said. Amount B is intended to simplify and streamline the application of the arm’s-length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries (Amount B approach). The OECD published the [final report](#) on Pillar One Amount B on 19 February 2024.

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

▶ Craig Hillier	craig.hillier@ey.com	▶ Adam P Becker	adam.p.becker@ey.com
▶ Colleen O'Neill	colleen.oneill@ey.com	▶ Ted Clabault	ted.clabault@ey.com
▶ Tyler Arbogast	tyler.arbogast@ey.com	▶ Robert Contreras	robert.contreras@ey.com
▶ Stephen Bates	stephen.bates@ey.com	▶ Heather Gorman	heather.gorman@ey.com
▶ Doug Chestnut	douglas.chestnut@ey.com	▶ Anna Moss	anna.moss@ey.com
▶ Arlene Fitzpatrick	arlene.fitzpatrick@ey.com	▶ Tanza L. Olyfveldt	tanza.olyfveldt@ey.com
▶ Revital Gallen	revital.gallen@ey.com	▶ Giancarlo A Serrato	giancarlo.serrato@ey.com
▶ Liz Hale	elizabeth.hale@ey.com	▶ Deborah Tarwasokono	deborah.tarwasokono@ey.com
▶ Lena Hines	lena.hines@ey.com	▶ Carlos J Vaca Valverde	carlos.j.vaca.valverde@ey.com
▶ Enrica Ma	enrica.ma@ey.com	▶ Jeshua Wright	jeshua.wright@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		

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*

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

prepared by Ernst & Young LLP's Washington International Tax Services summarizing recent developments and "inside-the-beltway" news pertinent to multinational companies. For additional information, please contact your local international Tax professional.

© 2024 EYGM Limited.
All Rights Reserved.

EYG no. 005305-24Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com