The Republican Congress continued its forward momentum on tax reform this week, with the House Ways and Means Committee voting out of committee the Tax Cuts and Jobs Act (TCJA) and the Senate Finance Committee releasing a detailed summary of its initial version of a tax reform bill, albeit with major differences from the House bill. Although both versions contain a reduction in the corporate tax rate to 20%, the Senate bill would delay the rate cut until 2019; the House corporate rate cut would be effective in 2018. House Speaker Paul Ryan earlier had left open the possibility that implementation of the proposed 20% corporate tax rate could be delayed by one year. Office of Management and Budget Director Mick Mulvaney was quoted as saying the Trump Administration supports both versions of the Republican corporate tax cut – either starting in 2018 or 2019.

The Ways and Means Committee on 9 November approved its version of the reform bill on the fourth day of the Committee’s markup. It is expected to be considered by the full House next week. Committee approval followed adoption of Chairman Kevin Brady’s manager’s amendment to the bill, including changes to both the corporate and international tax provisions. Chairman Brady said the amendment would bring the bill within the US$1.5 trillion reconciliation limit, and a Joint Committee on Taxation estimate showed that, as amended, the bill would add $1.44 trillion to the deficit over 10 years.
The original bill called for a mandatory inclusion of the accumulated foreign earnings of a controlled foreign corporation (CFC) and other foreign corporations with a 10% domestic corporate shareholder (a 10/50 company), collectively referred to as specified foreign corporations, or “SFCs.” The mandatory inclusion would be implemented by increasing the Subpart F income of the specified foreign corporation (treating a 10/50 company as a CFC solely for this purpose) in its last tax year beginning before 1 January 2018, by its “accumulated post-1986 deferred foreign income” determined as of 2 November 2017, or 31 December 2017, whichever amount is greater. An amendment to the bill sets the mandatory toll charge on tax-deferred foreign earnings at 14% on earnings held in liquid assets (cash) and 7% on earnings held in non-liquid assets; the original version of the measure set the rates at 12% and 5%, respectively.

The TCJA, as approved by the committee, retains the excise tax on amounts paid by domestic corporations to related foreign corporations. The excise tax provision remains either a 20% tax on the gross amount of the payment made, or via an election into the effectively connected income (ECI) regime, a 20% tax on the amount of the payment with a reduction equal to the deemed expenses amount. Chairman Brady’s original amendment earlier in the week attempted to soften the impact of the excise tax provision by increasing the deemed expenses amount and allowing a portion of foreign tax credits (FTCs) to be used. The amendment adopted on 9 November removed the increase to the deemed expense amount and revised the FTC allowance. The provision now allows a foreign corporation to credit 80% of the foreign taxes paid or accrued by the foreign corporation with respect to the related-party payment.

On the Senate side, the Finance Committee on 9 November released a detailed summary of its version of the TCJA. As noted earlier, the soon-to-be-released bill contains major differences from the Ways and Means Committee bill. Although it delays implementation of the corporate tax cut until 2019, the corporate alternative minimum tax (AMT) would be eliminated beginning in 2018, the same as in the House bill. Similar to the House bill, the Senate bill would move the United States to a territorial tax system and impose a one-time transition tax on deferred foreign earnings, but it would be calculated differently than under the House bill. It would also repeal the DISC and IC-DISC regimes.

The Finance Committee will begin its markup of the bill on 13 November. Chairman Hatch said he hopes to report out legislation by the end of next week.

In Internal Revenue Service (IRS) news, the Large Business and International (LB&I) Division released 11 more compliance initiatives this week, including several in the international tax area. The latest campaigns add to the original 13 compliance initiatives announced last winter. At that time, an IRS official was quoted as saying the goal of the program was to “identify and articulate what the specific compliance risks are,” rather than responding to risk during examinations with individual taxpayers. The international compliance initiatives announced this week include: Form 1120-F Chapter 3 and Chapter 4 Withholding campaign, Direct Foreign Tax Credit (Internal Revenue Code2 Section 901) campaign, and the Section 956 Avoidance campaign. More compliance campaigns are expected to be announced in the coming months.

On 6 November 2017, the Organisation for Economic Co-operation and Development (OECD) published updated Transfer Pricing Country Profiles (TPCPs) for 31 participating countries describing their existing transfer pricing legislation and practices. The updated profiles, prepared by means of questionnaires filled out by the member countries, focus on the domestic legislative measures based on major transfer pricing issues. The TPCPs also compare the state of the countries’ domestic legislation with the OECD Transfer Pricing Guideline to reflect on the extent to which the countries are following the guidelines.

Endnotes
1. Currency references in this Alert are to US$.
2. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
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
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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. For more information about our organization, please visit ey.com.

© 2017 EYGM Limited.
All Rights Reserved.

EYG no. 06395-171Gbl
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, or other professional advice. Please refer to your advisors for specific advice.

ey.com