

19 July 2019

Global Tax Alert

Report on recent US international tax developments - 19 July 2019

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

On 16 and 17 July 2019, following the recommendation of the United States (US) Senate Foreign Relations Committee, the US Senate gave its advice and consent to approve the following four protocols:¹

- ▶ Luxembourg - 2009 Protocol to amend 1996 Treaty (Luxembourg Protocol)
- ▶ Switzerland - 2009 Protocol to amend 1996 Treaty (Swiss Protocol)
- ▶ Japan - 2013 Protocol to amend 2003 Treaty (Japanese Protocol)
- ▶ Spain - 2013 Protocol to amend 1990 Treaty (Spanish Protocol)

Efforts to have those agreements approved by the Senate had been stalled for several years. In particular, Senator Rand Paul had expressed concerns about privacy issues associated with the exchange of information provisions in the agreements. Senator Paul offered amendments to the Spanish Protocol that would have created a higher standard for information sharing and modified the effective date of its provisions; both amendments were defeated. Before these agreements are considered to have entered into force, a few additional steps must be taken in the US, including drafting the instruments of ratification, which must be signed by the President. It is expected that there would be an announcement to indicate when the agreements have officially entered into force. The date of entry into force for the provisions in each agreement may vary.

On 16 July, the Internal Revenue Service (IRS) announced ([IR-2019-128](#)) the release of additional information to assist taxpayers in meeting filing and payment obligations for the Internal Revenue Code² Section 965 transition tax on untaxed foreign earnings. The IRS provided [answers to questions](#) on Section 965 to address questions that do not specifically relate to the 2017 and 2018 tax returns, including how to make subsequent installment payments when the transition tax is paid over eight years.

Separately, at the conclusion of the G7 Finance Minister and Central Bank Governors group on 18 July in Chantilly, France issued a Chair's Summary of the discussion at the meeting.³

The Chair's Summary includes a section on international taxation, which focuses on the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework project to address the tax challenges of the digitalization of the economy through revisions to existing profit allocation and nexus rules (Pillar 1) and development of new global minimum tax rules (Pillar 2). The Chair's Summary indicates that the G7 Finance Ministers agreed that addressing these challenges is urgent and supported a two-pillar solution to be developed through the OECD workplan. The Chair's Summary reflects G7 agreement to move forward with both pillars. It also reflects G7 discussions aimed at bridging the gap between alternative proposals for new profit allocation and nexus rules that have been advanced by the United States on the one hand, and the United Kingdom, France and other European countries on the other hand, in order to focus the work on one proposed approach. The Chair's Summary notes that the new rules to be developed should be administrable and simple and that mandatory arbitration must be a component of this global solution.

The 2019 United Nations (UN) tax treaty negotiation manual was updated to reflect changes in the 2017 UN Model Treaty to include changes that resulted from the OECD's base erosion and profit-shifting project. The *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* which covers entitlement to treaty benefits was finalized and adopted during the 18th session of the UN Committee of Experts on International Cooperation in Tax Matters in New York, on 23-26 April. Changes to the manual include the following:

- ▶ Section II has been expanded and revised to better cover the process of negotiating and concluding tax treaties (e.g., how to prepare a model, how to assign roles to the members of the negotiating team).
- ▶ Section III summarizes the main policy and drafting issues arising during the negotiation of the typical provision of tax treaties.
- ▶ Section IV on improper use of tax treaties was amended to reflect the substantial number of anti-abuse rules.

Speaking at the annual transfer pricing symposium for the National Association for Business Economics this week, IRS officials noted that completing the advance pricing and mutual agreement program's (APMA's) functional cost diagnostic model (FCDM) is a detailed process and taxpayers may want to submit the model form only in complex cases. One government official stated that "the model's generic profit-split analysis is intended to help competent authorities resolve particularly difficult issues - often involving the development, enhancement, maintenance, protection, and exploitation of intangibles - that arise in mutual agreement procedures and bilateral advance pricing agreement negotiations." Another government official noted that "[w]e will be very cautious and judicious about when we ask" taxpayers to complete the workbook.

In February 2019, APMA announced it has developed the FCDM that taxpayers may be requested to complete as part of a Mutual Agreement Procedure or bilateral Advance Pricing Agreement negotiation. The model is an excel spreadsheet structured as a residual profit-split method analysis leaving empty excel cells for taxpayer costs. The FCDM is intended to allow APMA to "better understand the controlled taxpayers' contributions to the proposed covered transactions including the respective contributions each controlled taxpayer makes to the exercise of control over the economically significant risks surrounding the proposed covered transactions," according to the IRS manual on the model.

Endnotes

1. See EY Global Tax Alert, [US Senate approves four protocols updating the existing bilateral tax treaties with Luxembourg, Switzerland, Japan and Spain](#), dated 18 July 2019.
2. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.
3. See EY Global Tax Alert, [G7 Finance Ministers support OECD two-pillar project to develop new rules for taxing multinational businesses](#), dated 18 July 2019.

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.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 003420-19Gbl

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