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# Global Tax Alert

## Report on recent US international tax developments - 22 March 2019

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The Organisation for Economic Co-operation and Development (OECD) on 13-14 March held its eagerly-anticipated public consultation on possible solutions to the global tax challenges of digitalization. The groundwork for the meeting was the OECD consultation document, [Addressing the Tax Challenges of the Digitalisation of the Economy](#) that was released in February 2019. Participants emphasized that the effort is in the early stages, with plenty of future opportunities for public input. EY submitted a [comment letter](#) and a global team of EY representatives participated in the consultation.

A debriefing with the Task Force on the Digital Economy was to take place after the meeting, before moving to the work of the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS). Grace Perez-Navarro, Deputy Director of the OECD Centre for Tax Policy and Administration, described a number of steps that will take place between now and 2020, the timeline for reaching consensus on a coordinated global approach. She said the consultation will be followed by a more thorough analysis of the comments, a meeting of the steering group of the IF on BEPS in April, and discussions at the margins of the World Bank/ International Monetary Fund spring meetings (12-14 April).

A work program for technical working groups will be developed and presented to the IF at the end of May for approval. The work program will then be presented to G20 Finance Ministers at the beginning of June, and then to G20 leaders at the end of June. Beyond June is when the hard technical work will be carried out with further opportunities for more input.

A United States (US) Treasury official this week was quoted as saying that proposed previously taxed income (PTI) regulations will be released in late summer or early fall, a delay from previous indications the regulations would be released this spring.

Treasury and the Internal Revenue Service (IRS) last December released Notice 2019-01, announcing that the Government intended to issue regulations addressing certain issues arising from the *Tax Cuts and Jobs Act* with respect to foreign corporations with previously taxed earnings and profits (PTEP). The notice described regulations that Treasury intended to issue, including: (i) rules relating to the maintenance of PTEP in annual accounts and within certain groups; (ii) rules relating to the ordering of PTEP upon distribution and reclassification; and (iii) rules relating to the adjustment required when an income inclusion exceeds the earnings and profits of a foreign corporation.

It was anticipated that the regulations announced in the notice would apply to taxable years of US shareholders ending after the date of release of the notice and to taxable years of foreign corporations ending with or within such taxable years. In addition, the Notice provides that taxpayers may rely on the regulations for certain earlier periods (including the Internal Revenue Code<sup>1</sup> Section 965 transition year) if they and certain related persons apply the rules consistently.

The IRS issued final *Foreign Account Tax Compliance Act* (FATCA) regulations ([T.D. 9852](#)) under chapter 4 (Sections 1471 through 1474) on 21 March 2019 that provide compliance requirements and verification procedures for sponsoring entities of foreign financial institutions (FFIs) and certain non-financial foreign entities,

trustees of certain trustee-documented trusts, registered deemed-compliant FFIs, and financial institutions that implement consolidated compliance programs. The regulations are effective 25 March 2019. Among other things, to follow industry practice, the final regulations expand the definition of the term “responsible person” with respect to a sponsoring entity to include “an officer of an entity that establishes and maintains policies and procedures for, and has general oversight over, the sponsoring entity, provided such individual has sufficient authority to fulfill the duties of a responsible officer.”

The Indian Government on 15 March 2019 announced that agreement had been reached with the United States on a bilateral agreement for the exchange of country-by-country (CbC) reports. According to the announcement, the agreement was expected to be signed sometime on or before 31 March 2019. The Indian news release states that the new agreement will enable both countries to exchange CbC reports filed by ultimate parent entities of international groups in the respective jurisdictions, for financial years beginning on or after 1 January 2016. Therefore, Indian constituent entities of US headquartered international groups that have already filed CbC reports in the United States would not be required to file CbC reports locally in India.

The OECD on 20 March 2019 released a new [beneficial ownership toolkit](#), the purpose of which is to help governments implement the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) standards. The toolkit is meant to ensure that tax administrations have access to reliable information on a company’s or other legal entity’s ultimate beneficial owners. The toolkit is particularly aimed at developing countries.

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## Endnote

1. 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](mailto:arlene.fitzpatrick@ey.com)
- ▶ Joshua Ruland          [joshua.ruland@ey.com](mailto:joshua.ruland@ey.com)

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