Briefing

International review for April

Speed read

Biden's tax agenda dominates this month's headlines following proposals which, among other things, would increase the taxation of corporations, both at a national and an international level; however, given the Democrats' narrow majority in Congress, compromises may be needed on some of the measures, including the proposed 28% corporation tax rate. Notably, the Biden administration has also thrown its weight behind a multilateral solution for a global minimum tax rate and put forward new proposals for international reform to the OECD. Meanwhile, progress has been made on tax transparency; there have also been updates on the EU mandatory disclosure rules; and the OECD has provided an update on treaty shopping and announced a consultation on proposed changes to the commentary on article 9 of the Model Tax Convention. Finally, one year on from the outbreak of the pandemic, tax rises are increasingly on the horizon for many countries.

Tim Sarson
KPMG
Tim Sarson is a tax partner at KPMG in the UK. He has worked in the international tax and transfer pricing field since 1998, in both practice and industry. Email: tim.sarson@kpmg.co.uk; tel: 020 7694 4831.

Biden announces major business tax proposals

President Biden's corporate tax agenda has dominated the US headlines over the past month. At the end of March, Biden announced an ambitious American jobs plan, setting out an eight-year $2.25 trillion plan to rebuild the US's infrastructure. The cost will be covered over a 15-year period with increased corporate tax rates.

The *Made in America tax plan* report sets out these corporate tax rate increases, promising to 'fix the corporate tax code'. The plan sets out a number of well trailed proposals from Biden's presidential campaign. These include an increase to the statutory corporate tax rate from 21% to 28%, a new corporate minimum tax of 15% on global book income of large corporations, and an increase in the global intangible low-taxed income (GILTI) rate from 10.5% to 21%.

Other measures announced included an increase of the US tax authority's corporate enforcement budget, the replacement of the current anti-profit shifting rules with new minimum taxation rules (more on that below) and the repeal of incentives for foreign-derived intangible income (FDII).

It should not be forgotten, though, that with only a narrow margin of control in the Congress, the successful implementation of these proposals is unlikely to be plain sailing and we may see amendments made as the legislation progresses. The proposed 28% corporation tax rate, while lower than the 35% rate in place from 1986 to 2017, has attracted some criticism, including from the Democrats. Biden has said he is 'willing to negotiate' on this so, while a corporation tax rise is inevitable, Congress may ultimately settle on a compromise rate – perhaps in the region of 25%.

Global minimum taxation and a return to multilateralism

Staying with the US, on the eve of the spring meetings of the IMF and the World Bank, US Treasury Secretary Janet Yellen threw her support behind a global minimum tax rate for large corporations. In a speech to the Chicago Council on Global Affairs, she appealed for other countries to join the US in supporting the measure to 'make sure the global economy thrives based on a more level playing field' and end a '30-year race to the bottom'. Yellen also used her speech to emphasise the new US administration's commitment to multilateral solutions, commenting that 'America first must never mean America alone'.

The US's commitment to a minimum tax rate is evident from its *Made in America tax plan*. The plan proposes the repeal of the US BEAT (base erosion and anti-abuse tax) rules, replacing them with SHIELD ('stopping harmful inversions and ending low-tax developments'). The SHIELD would deny multinational corporations US tax deductions for payments made to related parties that are subject to a low effective rate of tax. It is proposed that 'low effective rate of tax' will be defined by reference to the minimum rate agreed upon through the OECD's work on BEPS 2.0. If no consensus is reached at OECD level by the time SHIELD is implemented, the 'low effective rate of tax' will instead be the new tax rate proposed on GILTI of 21%.

Despite the increased commitment to working multilaterally, the US remains keen to protect its own tax base. As has been widely reported in the media, this month the US put forward new proposals to the OECD and its member governments, which build on the OECD's pillar one and pillar two blueprints. (As a reminder, very broadly pillar one is a solution for taxation of the digitised economy and pillar two is a global minimum tax rate.)

The US is pushing for a 21% global minimum rate, so that it does not lose out from US multinationals being taxed in other lower tax jurisdictions. If adopted, this could also increase tax revenues from multinationals operating in lower tax jurisdictions (such as the Republic of Ireland where the rate is currently 12.5%); however, those governments are likely to be concerned about the detrimental impact on their competitiveness as an investment location.

Turning to pillar one, the US proposes to tax the very largest multinationals according to where they derive revenue and profit. The US wants new global rules to be applied to non-digital businesses as well as those in the digital sphere, so as to ensure that US-based tech giants are not disadvantaged.

As the OECD's summer 2021 deadline for reaching an agreement looms, it will be interesting to see how negotiations develop in light of this curve ball. The US's renewed commitment to an agreement is clearly a step in the right direction. The OECD itself and a number of other countries appear to have welcomed the new US proposals, with Pascal Saint-Amans, the OECD's head of tax administration, describing them as 'very positive' and as having 'a chance to succeed'. However, they may not be welcome to everyone. A 21% minimum tax rate is likely to be seen by some countries as being as too high, and it may prove challenging to agree which multinational enterprises should be in scope.

Digital service tax investigations

At the end of March, the Office of the US Trade Representative (USTR) set hearing dates and requested comments on potential actions in connection with its investigations into the digital services taxes in Austria, India, Italy, Spain, the UK and Turkey. A public hearing covering all six jurisdictions is to be held on 3 May 2021, followed by individual virtual headings from 4 to 11 May 2021.

The USTR has however, terminated its investigations in respect of the prospective digital services taxes under

consideration by Brazil, the Czech Republic, the EU and Indonesia as these jurisdictions did not adopt or implement a digital services tax during the course of the investigations.

Tax transparency

Increasing tax transparency is a priority for many tax administrations. April saw steps taken in respect of the OECD's tax transparency agenda as 12 'no tax' or 'only nominal tax' jurisdictions made their first exchanges of information on the substance of entities under the FHTP global standard on substantial activities. The 12 countries are Anguilla, the Bahamas, Bahrain, Barbados, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey, the Turks and Caicos Islands and the UAE. The information, to be exchanged annually, includes identity, activities and beneficial ownership details. The information will certainly be helpful to other tax authorities, in particular when applying their controlled foreign company and transfer pricing rules.

The OECD also advanced its work on the design for a new tax reporting framework for cryptoassets, such as bitcoin, addressing the tax compliance risks and the role played by intermediaries in the market. The framework will undoubtedly be of interest to many tax administrations who are considering how cryptoassets fit into their own tax systems. The OECD expects to deliver a proposal to the G20 later in 2021.

Meanwhile in the EU, progress was made on the implementation of the EU mandatory disclosure rules (MDR). The Spanish government approved the regulations which give effect to the Spanish MDR from 8 April 2021, with the first reporting deadline on 13 May 2021. Meanwhile, Cyprus's law to implement MDR entered into force on 31 March 2021 with effect as of 1 January 2021 and retrospective effect for certain reportable cross-border arrangements concluded on or after 25 June 2018. Finally, the German Federal Ministry of Finance published its final MDR guidance in a decree, with only minimal changes compared to the last draft issued in July 2020.

Double tax treaties

The OECD recently published its third peer review report on treaty shopping. Treaty shopping broadly involves persons who are residents of a third state attempting to access the benefits of a treaty between two contracting states, for example through the interposition of an intermediary resident in one of the relevant contracting states to obtain a more favourable tax outcome. The OECD has sought to combat this predominantly through implementation of its multilateral instrument (MLI), which allows governments to modify existing tax treaties efficiently to implement tax treaty measures developed as part of the BEPS project. The MLI has been used by the vast majority of jurisdictions that have sought to implement the minimum standard on treaty shopping.

Unsurprisingly, the OECD's report finds that the success of jurisdictions in implementing the minimum standard on treaty shopping is often related to whether or not the multilateral instrument (MLI) has been signed or ratified by that jurisdiction. Jurisdictions that have not signed or ratified the MLI have generally been found to have made little progress on meeting the minimum standard. The report notes that the MLI covers 94 jurisdictions and will implement the minimum standard in over 1,700 agreements once it is fully in effect (i.e. after a period once it has been ratified by all signatories), however a number of gaps in implementation remain and the OECD has consequently pledged to provide support to countries with this.

On the subject of tax treaties, the OECD has proposed changes to the commentary on article 9 of its Model Tax Convention upon which many treaties are based. Article 9 requires international transactions between related parties to be priced, for tax purposes, in accordance with the arm's length principle. Commentary alongside this provides useful guidance on applying this principle to practical situations. The main change proposed relates to the commentary on the application of Article 9 to financial transactions which can be particularly complex. The changes are essentially integrating and aligning the commentary with the OECD's work in this area, as described in the OECD's February 2020 *Transfer pricing guidance on financial transactions* paper.

The OECD invites comments on the changes by 28 May 2021.

Covid-19: one year on

Finally, it has now been at least a year since many jurisdictions began to implement tax and other support measures in response to the covid-19 pandemic. There has, over time, been a decided shift away from the provision of emergency relief towards more targeted relief measures intended to stimulate economic recovery. Tax rises are also on the horizon.

This month, the IMF joined calls for wealth taxes and suggested the implementation of a temporary recovery contribution levied on high incomes or wealth as one way in which governments could raise cash following the pandemic. As I mentioned last month, wealth taxes are being considered by a number of countries in Latin America where there is already precedent. In its federal budget on 19 April, the Canadian government took a slightly different approach to taxing wealth proposing a tax on luxury goods including yachts, personal aircraft and cars. This measure is estimated to generate $604m over five years. A tax on spending is more politically palatable than a dry tax charge on assets such as property which, while holding value, are not necessarily generating cash. Taxes on spending can therefore be an attractive option raising revenues; however, governments are mindful that spending stimulates economic growth, so this is a delicate balancing act.

Looking forward, the OECD secretary general's April 2021 tax report highlighted the importance of tax measures for providing additional stimulus to economies as they reopen, noting that these should be well-timed, temporary and coordinated with other policies and longer-term environmental, health and social objectives. The impact will no doubt be felt for years to come. Post-pandemic tax trends are very likely to include green taxes designed to encourage taxpayers to become more environmentally friendly. Given that covid-19 has been first and foremost a health crisis, we could also see the expansion of taxes aimed at improving public health. The extension of sugar tax on drinks, which has been implemented by a number of countries, to junk food could be a tempting revenue raiser for governments, albeit not necessarily a popular one. ■

For related reading visit www.taxjournal.com

- News: Made in America (14.4.21)
- What next for US tax policy? (D Korb & A Solomon, 21.1.21)
- Self's assessment: signs of a ceasefire in the digital trade war? (H Self, 15.4.21)
- News: Global minimum corporate tax rate on the cards? (7.4.21)
- The multilateral convention to implement tax treaty related measures to prevent BEPS (S Bhogal & K Swanson, 18.1.17)