In this month’s article, my final of the year, I review some of 2021’s key international tax developments and consider what’s in store for these next year. 2021 has been a significant year for global implementation of DAC 6 reporting. However, US tax reform, challenges due to the political reality in both the House and Senate. The Democrats narrow margin of control has resulted in substantial changes to a number of tax provisions and the removal of a number of proposals favoured by some Democrats. The political and tax landscape could change further due to the 2022 midterm elections. Lastly, in a perhaps underwhelming year for green tax developments, the EU’s fit for 55 proposals include some reforms, but there is still scope for further development in this area.

Global

BEPS 2.0

2021 has seen significant progress be made on the OECD’s BEPS 2.0 project which proposes modernisation of the global tax rules to better fit an increasingly digital economy. The proposals are based on two pillars: reallocation of multinationals’ profits and a global minimum tax rate. On 1 July 2021, in an historic agreement, 130 countries approved a statement providing a framework for reform. In the months that followed early holdouts such as Estonia, Hungary and Ireland also signed up. In October, 136 jurisdictions approved a new statement which updated the previous Inclusive Framework statement from July and provided some additional details on both pillars, as well as a detailed implementation plan. Although there are still substantial hurdles to overcome these developments form a valuable foundation which will hopefully allow wide-spread adoption in all major economies.

With 2023 being slated as the implementation date for both pillar one and pillar two, 2022 is expected to be a significant year in respect of BEPS 2.0 developments, with most rules implemented throughout 2022 in the expectation of them applying from 1 January 2023. It is an ambitious timeline, given the details yet to be agreed and the legislative timelines. It is expected that the OECD will publish detailed model rules the end of November 2021 for pillar two. It is expected pillar one detailed rules and multilateral convention (MLC) will have to be developed and ratified for release by mid-2022, with the MLC signing happening shortly afterwards. Furthermore, pillar two administration requirements are expected to be finalised in December 2022. Significant progress has been made throughout the last few months on the pillars to date, but as we reach the end of 2021 it remains clear that there is still significant work required in order to implement in 2023 as planned. The current uncertainty surrounding US tax reform also casts a potential shadow across the process.

European Union

Public country by country reporting

After several years stalled in political deadlock, the EU’s public country by country reporting (CbC) regime, first proposed in 2016, has finally passed the final hurdle. A significant breakthrough was achieved in February 2021 in the Council of the EU after some countries changed their original positions and agreed to support the initiative. On 11 November 2021, the European Parliament formally adopted a directive for public CbCR, without amendments, which is the last step in the Directive’s adoption process.

The Directive will require multinational groups (both EU and non-EU headquartered) with total consolidated group revenue of at least €750m to publish certain tax, financial and functional information on a country-by-country basis for each EU member state that the group is active in, as well as for countries on the EU lists of non-cooperative and monitored jurisdictions. While multinationals will already be comfortable with providing CbC reports to tax authorities, public disclosure will bring a whole new level of tax transparency with greater public scrutiny.

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At the time of writing, the Directive is expected to be published in the Official Journal of the European Union shortly and will enter into force 20 days after publication. Member states will then have 18 months to implement and transpose the Directive into domestic law.

If the Directive comes into force in December 2021, as currently expected, the deadline for transposition by EU member states could be during June 2023, with the rules being applicable from June 2024. However, it is important to note that member states have the ability to apply the rules earlier than the set deadline. Businesses should therefore monitor further developments closely on a jurisdiction by jurisdiction basis as some member states may choose to implement the rules before the 18-month deadline, resulting in earlier first reporting. Taxpayers will also have to monitor how different jurisdictions decide to implement specific provisions of the Directive, including:

- the implementation of the so-called ‘safeguard clause’, under which member states can choose to allow in-scope groups to defer the disclosure of commercially sensitive information for a maximum of five years – with the exception of data related to jurisdictions on the EU list of non-cooperative jurisdictions (Annex I and II);
- penalties for non-compliance, which the Directive leaves up to the member states to lay down.

Notably, in a press release issued before the vote, one Parliament negotiator stated that the rules were a stepping
stone in respect of tax transparency and that the rules could be strengthened in the future once the Commission carries out its review of the impact of the legislation. In the years ahead, it will be interesting to see whether further requirements will be implemented as tax transparency continues to gain traction worldwide, and whether public CbCR will be adopted by other jurisdictions.

**DAC 6**
Finally, the implementation of the EU mandatory disclosure rules (DAC 6), which require mandatory disclosure of certain types of cross-border tax arrangements to relevant tax administrations, was delayed by a number of jurisdictions in 2020 due to the covid-19 pandemic. On 1 January 2021, reporting began for all EU states (except for Germany, Finland, Poland and Austria, which had decided against delaying reporting to 2021). However, following on from the Free Trade Agreement (FTA) negotiations between the UK and EU, the UK announced a significant reduction in scope of DAC 6 in the UK, with reporting only required for arrangements that fall under Hallmark D. It is likely that DAC 6 will be replaced by new ‘UK MDR’ rules in the near future, but the scope of these rules and how they may interact with other UK disclosure regimes remains unclear. The UK government has indicated it will open a consultation on these rules, and it will be interesting to see how these develop.

**EU fit for 55**
While climate change has been at the forefront of many government’s agendas lately, particularly in light of November’s 26th UN Climate Change Conference, ‘green’ tax developments, such as taxes on plastics/carbon emissions or incentives for environmentally friendly technologies, have largely been conspicuous by their absence. This is something we may begin to see more of over the coming year, particularly as public pressure to tackle climate change grows. From a tax perspective, among 2021’s more notable environmental announcements was the EU’s ‘fit for 55’ proposals.

As part of the EU’s broader aim of making Europe the first climate-neutral continent by 2050, on 14 July 2021, the European Commission adopted ‘fit for 55’ – a set of policy proposals which aims to reduce greenhouse gas emissions by at least 55% by 2030. Included in this package is a focus on specific topics that need particular attention, including a carbon border adjustment mechanism. Other proposals include the introduction of tax rates based on the energy content and environmental impact of energy products instead of volume, as well as widening the tax base to include energy contents and processes that were previously not included.

**United States**
**US tax reform**
With Joe Biden winning the US presidency in November 2020 and the Democrats winning (albeit narrow) control of both the US House of Representative and the Senate, it was expected that the tax landscape would change significantly as the Democrats pursued US tax reform.

President Biden’s agenda originally involved passing a ‘build back better’ plan, a Bill which not only proposed significant spending on areas such as education, childcare and green energy/climate change, but also proposed significant tax reform. The initial proposals included increasing the US Federal corporate income tax rate from 21% with a graduated rate structure, to a maximum of 26.5%. However, over the last year, the expected US tax reform has evolved significantly as political challenges have collided with President Biden’s agenda. The ‘build back better’ plan has undergone significant modifications since its inception. The modifications are largely the result of the narrow Democratic majority and by universal Republican opposition to the plan.

This month, the US House of Representatives released new text of the proposed tax legislation as part of the Build Back Better Act (BBBA) legislative effort. The House has not voted on the Bill yet. Instead, the vote has been postponed until the Congressional Budget Office (CBO) publishes its estimates for the Bill’s spending and revenue effects. The administration estimates that the revenue raised by the bill would fully offset the costs of the bill. However, the CBO estimates may differ from the administration’s estimates, which could result in further negotiations and modifications to the Bill.

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The tax revenue provisions in the House Bill differ significantly from previous proposals that were approved by the Ways and Means Committee in September. Importantly, the pending House Bill does not include the increase in corporate, individual or capital gains tax rates. Furthermore, the pending Bill does not include the proposed ‘billionaires tax’, a mark-to-market regime for very high income individuals, trust and estates, which had been raised by some Democrats. However, some proposals have been included in the pending Bill, such as:

- a 1% excise tax on the value of stock repurchased by publicly traded corporations; and
- modifications of the tax rates for GILTI (15%), FDII (15.8%) and BEAT (12.3% for 2023, 15% for 2024 and 18% for 2025 and thereafter).

At the time of writing, the House has yet to vote. If the Bill passes in this vote, it will move to the Senate. As the Senate is split 50/50, with the vice president acting as a tie-breaking vote, the Democrats cannot afford to lose a single vote. It is therefore possible further changes could be made by the Senate, in which case further action by the House will be required. It is only once the House and the Senate approve an identical version of the BBBA will the legislation be sent to the president. We may see further changes to the BBBA and corresponding tax provisions over the next few months as a result of this. Looking even further ahead, the US midterm elections will be held on 8 November 2022. This is expected to be a challenging election for Democrats. It is possible that control of both the Senate and the House will transfer to the Republicans, significantly changing the political and tax landscape.