



Tax

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The Organisation for Economic Cooperation and Development (OECD) on October 5 released the 2015 Final Reports on the G20/OECD Base Erosion and Profit Shifting (BEPS) project.

[URL: http://www.oecd.org/tax/beps-2015-final-reports.htm](http://www.oecd.org/tax/beps-2015-final-reports.htm)

These reports cover the seven topics that were the subjects of the “2014 Deliverables” approved last fall and finalize subsequent discussion drafts on the remaining eight “actions.” The BEPS package also includes an Explanatory Statement that provides a useful, and very brief, introduction to the 1000-plus pages of the final reports.

The 2015 final reports recommend changes to domestic laws, the OECD Model Tax Convention, and the OECD Transfer Pricing Guidelines. In addition, they propose to accelerate the incorporation of recommended treaty changes into existing bilateral treaties through a multilateral convention to be entered into by interested countries.

Details on the reports are available in this alert from Deloitte Tax LLP’s International Tax Group.

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151006_1suppA.pdf](http://newsletters.usdbriefs.com/2015/Tax/TNV/151006_1suppA.pdf)

No direct US legislative response currently expected

Congress has not been directly involved in the BEPS process, and to this point has not indicated whether it will consider legislation in response to the BEPS project (although the release of the final reports and subsequent actions by other nations may create a motivation to act that has not been evident to date).

Protecting congressional prerogatives: Certain key lawmakers have raised specific concerns during the BEPS process, however. In June, as the OECD prepared to convene its annual international tax conference in Washington, Senate Finance Committee Chairman Orrin

Hatch, R-Utah, and House Ways and Means Committee Chairman Paul Ryan, R-Wis., sent a letter to Treasury Secretary Jack Lew reminding him to keep Congress informed on the details of the BEPS project to ensure that the United States gets a good outcome from the process. Hatch and Ryan emphasized that no matter what Treasury agrees to in the BEPS discussion, taxwriting authority remains with Congress and US tax reform efforts will not be hamstrung by the OECD.

URL:

http://waysandmeansforms.house.gov/uploadedfiles/hatch_ryan_call_on_treasury_to_engage_congress_on_oecd_international_tax_project.pdf

The letter also called into question some of the negotiations surrounding the issue of country-by-country information reporting. Hatch and Ryan noted that they are troubled by the prospect that foreign governments might be able to obtain companies' "master files" – which they contend will contain sensitive and nonpublic information – with little assurance of confidentiality or the express need for the information. They also questioned the ability of Treasury and the IRS to implement country-by-country reporting and some other transfer-pricing-related actions from the BEPS project.

Hatch and Ryan requested that Treasury and the IRS supply the taxwriting committees with the legal basis for the IRS collecting the information and agreeing to allow foreign governments to directly collect such information from US multinationals. They cautioned that if a legal basis was not provided Congress would "consider whether to take action to prevent the collection of the [country-by-country] and master file information."

Hatch and Ryan followed up with an August 27 letter to Treasury in which they further questioned whether the administration has the authority to require country-by-country reporting.

URL: <http://www.finance.senate.gov/download/?id=EA598636-51BE-4E06-A02C-E34C4B7434D9>

Impetus for US patent box, international tax reform proposal: Although Congress currently appears unlikely to pursue a specific legislative response to the BEPS project, the expectation that the final recommendations would include nexus-related limitations on patent box regimes has in recent months led to calls by some taxwriters for the development of a US patent box. (Specifically, some lawmakers have been concerned that the anticipated changes under BEPS would create incentives for domestic businesses to redirect their R&D spending and other activities overseas to take advantage of other countries' regimes.)

House Ways and Means Committee members Charles Boustany, R-La., and Richard Neal, D-Mass., released a discussion draft proposal for a so-called "innovation box" in July that, among other things, would provide corporations an effective tax rate as low as roughly 10 percent on certain income generated from patents and a broad range of other intellectual property. That proposal was never intended to move through Congress on its own, however. Rather, it was expected to be part of a more expansive international tax reform plan being developed by Ways and Means Committee Chairman Ryan that also would move the US toward a territorial tax system, impose a deemed repatriation levy on previously untaxed foreign-source income of US multinationals, and use certain one-time revenue generated from the reform provisions to pay for a long-term extension of the Highway Trust Fund. (For additional discussion, see

Innovation boxes, international tax reform, and infrastructure spending: The pillars of this fall's legislative debate from Deloitte Tax LLP's Tax Policy Group.)

[URL: http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-innovation-box-pov-secured.pdf?id=us:em:na:tnv:eng:tax:100615](http://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-innovation-box-pov-secured.pdf?id=us:em:na:tnv:eng:tax:100615)

Ryan was expected to release his plan the coming weeks and has been working with Senate Finance Committee members Charles Schumer, D-N.Y., and Rob Portman, R-Ohio, in an effort to craft his proposal in a way that could win support in that chamber. (Portman and Schumer co-chaired the Finance Committee's working group on international tax reform and generally support the concept of an innovation box and a shift to territoriality.) However, recent disagreements between Ryan and Schumer over the level of highway funding to be included in the package have led to a stalemate that appears to have diminished the prospects for action on international tax reform in the near term. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 33, Oct. 2, 2015.)

[URL: http://newsletters.usdbriefs.com/2015/Tax/TNV/151002_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/151002_1.html)

BEPS reports highlight need for international tax reform, Ryan says: In a statement issued October 5, Ryan argued that the release of the BEPS report underscores the urgency for Congress to act on international tax reform.

"While the details still require close review, this proposal will only increase the pressure for American businesses to move overseas," Ryan said. "Ultimately, the solution is to bring our tax code into the 21st century, allowing companies to bring back their earnings without penalty and making our tax rates more competitive with the rest of the world. There is never going to be a perfect time to fix the tax code, but stalling for so long got us into this problem. We can't afford to wait any longer."

Special edition Dbrief webcast set for October 9

The final reports will be the focus of a special edition Dbriefs webcast at 2:00 p.m. Eastern Standard Time on Friday, October 9, with special guest Robert Stack, Deputy Assistant Secretary for International Tax Affairs in the Office of Tax Policy at the US Department of the Treasury.

Register for the Dbriefs webcast.

[URL: http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-beps-update-release-of-final-package.html?id=us:em:na:tnv:eng:tax:100615](http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-beps-update-release-of-final-package.html?id=us:em:na:tnv:eng:tax:100615)

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