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Despite US-French truce on DSTs, prospects for broader OECD tax pact remain uncertain

The gathering of heads of state and finance ministers at this week’s World Economic Forum in Davos, Switzerland, provided an opportunity for negotiations and some movement on issues related to unilateral digital services taxes (DSTs) and the broader project at the Organisation for Economic Co-Operation and Development (OECD) to revise international tax rules. The result at the end of the week appeared to be a ratcheting down of tensions between the US and France – along with an unflinching position from the UK regarding its own proposed DST in the face of new retaliatory tariff threats from the US, as well as mixed signals about the resuscitation of the OECD’s Pillar 1 proposal.

US and France stand down – for now

French and American leaders arrived in Davos hoping to defuse a conflict that began last year when France imposed a 3 percent DST on large – and mostly US-based – technology companies and the US in turn threatened harsh tariffs on French products. (For prior coverage, see Tax News & Views, Vol. 21, No. 2, Jan. 17, 2020.) While no official documents have been released, days of discussions between Treasury Secretary Steven Mnuchin and his French
counterpart, Bruno Le Maire, as well as between President Donald Trump and French President Emmanuel Macron, reportedly culminated in a provisional truce. According to Le Maire, France will suspend its collection of the DST until the end of the year, and the US will hold off imposing its proposed tariffs.

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200117_2.html

"The spring payment [of the DST] will be suspended until we reach an agreement at the OECD level," a French finance ministry official told reporters January 20. "If we don’t, then the French digital tax will prevail."

France implemented its tax last fall, retroactive to January 1, 2019, and it collected first-year payments from the impacted companies this past November. The next payment was due to be collected this coming April.

In response to Le Maire’s comments, Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking Democrat Ron Wyden of Oregon said in a joint statement that “[i]f reports are accurate, we’re pleased that the United States and France have come to an agreement that would postpone a discriminatory tax on American technology companies until the multilateral process is complete. We urge other countries that have proposed digital services taxes to follow suit. The multilateral OECD process offers the greatest potential for long-term success in resolving complex tax issues created by digitalization. We will continue to support that effort.”

**Treasury official: ‘The United States has not changed its position’**

This reported pause in action is intended to allow the broader OECD work to continue throughout 2020, with a goal of consensus by year-end among the 130-plus participating nations on new international tax rules that take into account the difficulty of applying old approaches to taxation to the digital economy. In support of this effort, Le Maire announced that the US had agreed to back off its position that a proposed new allocation of taxing rights – known as Pillar 1 – should be optional for companies. (For prior coverage, see Tax News & Views, Vol. 20, No. 39, Dec. 5, 2019.)


"We found an agreement with Steven Mnuchin on this question,” Le Maire told reporters January 23. "We have withdrawn the words ‘optional taxation’ that [were previously part of] the basis of negotiation at the OECD."

A day earlier, Le Maire had insisted that optional participation “would not be credible,” and Sandy Radmanesh, senior tax counselor for the German Embassy in Washington, this week characterized such a push by the US as “a slap in the face.”

However, while Le Maire’s announcement was initially perceived by those closely watching this situation as a move by the US that could reset the OECD process – making it still a challenging endeavor but taking it off deathwatch – a Treasury Department official’s clarification later the same day threw cold water on that view.

“The United States has not changed its position on this issue,” said Chip Harter, Treasury’s deputy assistant secretary for international tax affairs, at an event hosted by the DC Bar.

Harter said Le Maire’s announcement that the phrase “optional taxation” would not be included in the OECD plan is “reasonably precise,” but he said the US still backs a “safe harbor,” which was the phrase Mnuchin used in his December letter to OECD Secretary General Angel Gurría.


"Secretary Mnuchin concluded that, yes, we’re making progress, but he was still concerned that there’s not sufficiently broad support among US stakeholders for new nexus thresholds or mandatory allocations to market jurisdictions of more than would be required by the arm’s-length standard,” Harter said.

He added that Mnuchin believes that “if we offered the Pillar 1 package as a safe harbor that taxpayers could avail themselves of to get this greater administrability and certainty around the world in exchange for paying modestly more tax in the market jurisdictions, many would do so. And thus a substantial portion of the goals of Pillar 1 could be achieved on that basis and it would make it much more feasible to get Congress to approve a multilateral agreement.”

**Taxing cars instead of champagne?**: Meanwhile, the UK’s chief finance minister, Chancellor of the Exchequer Sajid Javid, insisted during a January 22 Davos panel that the UK still plans to introduce its own DST in April, despite the threat of retaliatory US tariffs. Javid’s comments came in response to Mnuchin’s warning during the same panel that
the US will retaliate against other countries that implement such taxes – specifically with new tariffs on the auto industry.

"We think the digital tax is discriminatory in nature," Mnuchin said. "If people want to just arbitrarily put taxes on our digital companies, we will consider arbitrarily putting taxes on car companies."

James Slack, spokesman for UK Prime Minister Boris Johnson, told reporters in London January 22 that the UK wants a global tax solution on digital services but that progress at the OECD has been too slow. He called the UK's planned DST "targeted, proportionate, and temporary," saying that it will be repealed when a global tax is in place. Slack added that discussion about DSTs is not currently part of talks between the US and the UK about a potential free trade agreement in the post-Brexit world, but Trump administration officials and congressional tax and trade leaders (including the Senate Finance Committee's Ron Wyden) warned last summer that implementation of a DST by the UK would imperil a US-UK trade pact.

Next steps at the OECD: The Inclusive Framework, as the representatives of countries participating in the OECD project are known, will next meet January 29-30 and will deliver an update for the G-20 finance ministers' February meeting. OECD Secretary General Angel Gurría has been involved in many of this week's discussions among various finance ministers, urging jurisdictions to hold off on unilateral DSTs while stakeholders try to reach a broader agreement.

Ways and Means schedules hearings on infrastructure funding, paid family leave

House Ways and Means Committee Chairman Richard Neal, D-Mass., announced this week that the panel will hold separate hearings in the next few days to consider approaches to funding and financing infrastructure investments as well as legislative proposals for paid family and medical leave.

Infrastructure funding

The hearing on infrastructure funding, which is scheduled for January 29 at 10:00 a.m., comes as House Speaker Nancy Pelosi, D-Calif., prepares to release an infrastructure spending package by the end of this month.

Pelosi has provided no details on the scope of the proposal or how it would be paid for, but Majority Leader Steny Hoyer, D-Md., stated in a recent interview with CQ Rollcall that it would be completely offset. (For prior coverage, see Tax News & Views, Vol. 21, No. 2, Jan. 17, 2020.)

Decisions about specific pay-fors – such as user fees (for example, increasing the federal gasoline tax or implementing a vehicle-miles-traveled tax) or possibly even nontransportation funding sources like a hike in the corporate tax rate – are the province of the Ways and Means Committee and, in certain circumstances, the House Transportation and Infrastructure Committee.

In a related development, Neal told reporters this week that he intends to meet with Treasury Secretary Steven Mnuchin sometime during the week of January 27 in hopes of laying the groundwork for a possible bipartisan infrastructure deal with the White House.

Congressional Democratic leaders and President Trump attempted to pursue an agreement on a $2 trillion infrastructure package in 2019; but that effort broke down after the president said he would refuse to work with Democrats while they continued to investigate him and his administration. (For prior coverage, see Tax News & Views, Vol. 20, No. 18, May 24, 2019.) Despite that outcome, Neal nonetheless appeared optimistic about the prospects for striking a deal this year.
“We need to agree on some numbers and proceed on the basis that the country badly needs it, and I think that it is doable,” Neal said.

**Paid family and medical leave**

The committee’s hearing on legislative proposals for paid family and medical leave is set for January 28 at 10:00 a.m. Neal’s announcement did not mention specific proposals that might be discussed.

At a hearing on the issue last May, there was bipartisan consensus that lack of access to paid family and medical leave benefits makes it more difficult for businesses to retain qualified employees and creates economic uncertainty for workers – particularly those at the lower end of the income scale – who are facing personal health issues or family caregiving responsibilities. But taxwriters split along party lines when the discussion turned to how to make those benefits available more widely. Generally, Democrats called for enacting a national mandate that would be funded by employment taxes while Republicans favored tax incentives to encourage more businesses to offer paid leave (such as a permanent extension of the employer credit under section 45S, which was enacted in the GOP’s 2017 tax code overhaul and renewed through end of this year as part of the tax-and-spending deal signed into law last month) and incentives to encourage individuals to save for family-life expenses. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 16, May 10, 2019.)


**No witness lists yet**

Witness lists for the two hearings were not available at press time.

— Michael DeHoff  
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**Trump promises ‘Tax Cuts 2.0’ plan within 90 days but details remain scarce**

President Trump said this week that the White House will release within the next 90 days a middle-class tax relief proposal that would build on the provisions of the GOP’s signature 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97). But exactly what the president intends to include in that package remains unclear.

‘Fairly substantial’

In an interview with *The Wall Street Journal* January 21, the president spoke of the forthcoming proposal – dubbed “Tax Cuts 2.0 – only in very broad terms, calling it a fairly substantial…middle-class tax cut.” (Treasury Secretary Steven Mnuchin likewise offered few specifics during a January 23 interview with CNBC in which he said the proposal would provide "additional tax cuts that fuel the economy.")

Trump noted that the proposal’s release would dovetail with the April 15 federal tax filing deadline; but he also acknowledged that it will not move through Congress this year and will instead serve primarily to provide talking points for Republicans in the run-up to the 2020 congressional and presidential elections.

According to the president, its enactment would "be subject to taking back the House and obviously keeping the Senate and keeping the White House."

National Economic Council Director Larry Kudlow first divulged the administration’s plans to pursue a second round of tax cuts in an interview with CNBC January 15. At the time, though, Kudlow said the proposal would "come out sometime later during the [presidential] campaign."
Previous ‘2.0’ efforts

Kudlow noted in his CNBC interview that the new plan is being developed in consultation with Ways and Means Committee ranking member Kevin Brady, R-Texas, who chaired the panel when the TCJA moved through Congress and was signed into law. In the fall of 2018, while Republicans still controlled the House and Brady held the Ways and Means gavel, Brady advanced his own version of Tax Cuts 2.0 legislation – a trio of bills that would have permanently extended the TCJA’s temporary tax cuts for individuals, pass-through entities, and estates (all of which are currently scheduled to expire at the end of 2025) and provided new incentives to promote retirement and family savings and encourage the formation of start-up businesses. (For details, see Tax News & Views, Vol. 19, No. 30, Sep. 14, 2018.)


Those bills cleared the House but were never taken up in the Senate, as they lacked the Democratic support necessary to secure the 60-vote supermajority required to overcome procedural hurdles in that chamber – although a number of the retirement savings provisions that Brady proposed are similar to those that were incorporated into the House version of the SECURE Act in the 116th Congress and made their way into the tax deal (H.R. 1865) that was signed into law last December. (For details on the retirement provisions other tax provisions in H.R. 1865, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

For its part, the White House last summer floated the idea of providing tax relief to the middle class through a temporary payroll tax cut although it never introduced a formal proposal.

And at various points in 2018 and 2019, the administration explored the possibility of taking regulatory action to index capital gains to inflation; however, the president appeared to back off of that idea after determining it would not sufficiently benefit middle-class taxpayers. (For prior coverage, see Tax News & Views, Vol. 20, No. 29, Sep. 13, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190913_2.html

— Michael DeHoff
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IRS to return sequestered corporate AMT funds to businesses affected by OMB determination

The Internal Revenue Service announced January 16 that it will return sequestered funds to businesses that were affected by a recent Office of Management and Budget (OMB) determination regarding the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.


The IRS indicated it will restore any amounts sequestered since 2013 under section 168(k)(4), as OMB has determined that the refundable corporate minimum tax credit claimed under sections 53 and 168(k)(4) is not subject to sequestration.

The Service explained that it has a complete list of all taxpayers affected, so taxpayers do not need to take any action. Funds plus applicable interest will be sent out during fiscal year 2020, though funds will be used to offset current tax liabilities first. Fewer than 1,000 businesses were affected by the OMB determination.

The Service indicated that it will provide additional information on the timing and process for these reimbursements when it is available.

— Michael DeHoff
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IRS provides refund guidance for newly repealed ‘church parking’ tax

The Internal Revenue Service on January 21 explained the process by which tax-exempt organizations can seek refunds of previously paid taxes on their qualified transportation fringe benefits, a levy that was nixed in legislation enacted late last year.

Prior section 512(a)(7)

The tax code under prior section 512(a)(7) required tax-exempt organizations – including churches – to include as unrelated business taxable income any amounts paid or incurred for qualified transportation fringes. It had been enacted as part of the 2017 tax code overhaul known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) as a way of putting such fringe benefits in the nonprofit sector on a level playing field with similar transportation benefits in the for-profit realm which, under the TCJA, are (and remain) nondeductible.

Unpopular from the get-go, the so-called “church parking” tax was retroactively repealed (that is, for amounts paid or incurred after December 31, 2017) as part of sweeping appropriations legislation (H.R. 1865) signed into law at the end of 2019. (H.R. 1865 also incorporated several long-stalled tax priorities – such as extensions of expired and expiring tax provisions, repeal of some revenue provisions enacted in the Patient Protection and Affordable Care Act of 2010, retirement security measures, other fixes to certain policy changes made by the TCJA, and tax relief for victims of certain federally declared natural disasters. For prior coverage, see Tax News & Views, Vol. 20, No. 42, Dec. 19, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

Get your refund

In guidance posted on its website, the IRS explains that affected exempt organizations can file for refund of previously paid tax under now-repealed section 512(a)(7) by amending Form 990-T, Exempt Organization Business Income Tax Return, subject to the time limitations for refund claims laid out in section 6511 (generally, three years from the time the return was filed or two years from the time the tax was paid, whichever is later).

URL: https://www.irs.gov/forms-pubs/how-to-claim-a-refund-or-credit-of-unrelated-business-income-tax-ubit-or-adjust-form-990-t-for-qualified-transportation-fringe-amounts

The relatively speedy release of the IRS guidance comes in the wake of pressure from lawmakers, including House Ways and Means Committee Chairman Richard Neal, D-Mass., for the agency to quickly lay out the process by which nonprofits can seek refunds. Neal and fellow House taxwriter John Lewis, D-Ga., had recently requested prompt IRS action in a January 8 letter to IRS Commissioner Charles Rettig. (For prior coverage, see Tax News & Views, Vol. 21, No. 1, Jan. 10, 2020.)

URL: http://newsletters.usdbriefs.com/2020/Tax/TNV/200110_1.html

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