Americas tax policy update

Q3 2021

Country

Argentina

- As Argentina will have legislative elections on 14 November 2021, we would expect some kind of tax reform after that, possibly an increase in personal taxes.
- During the third quarter, the Argentine Supreme Court of Justice (ASCJ) issued the following significant rulings:
  - The ASCJ held that a taxpayer could not deduct interest from negotiable bonds issued by an Argentine entity to refinance liabilities obtained to acquire shares of another Argentine entity ("INC SA (TF 24.746 – I) c/ DGI," 15/7/2021).
  - The ASCJ upheld a lower court decision, ruling that the Municipality of Quilmes could collect a hygiene and health tax from an oil company. The ASCJ rejected the oil company's appeal, questioning the taxable base of the tax ("Esso Petrolera Argentina S.R.L. y otro c/ Municipalidad de Quilmes s/ acción contencioso administrativa," 2/9/2021).
  - The ASCJ held the Federal Tax Administration could impose income tax on dividends that a Chilean subsidiary distributed to its Argentine parent entity. The Argentine parent entity had determined that it was not subject to tax in accordance with the Argentina-Chile double tax treaty. The ASCJ disagreed, finding the Argentine parent entity's determination was "treaty abuse" ("Molinos Rio de la Plata S.A. c/Dirección General Impositiva s/recurso directo de organismo externo," 2/9/2021).
- The Argentine Central Bank (BCRA) issued Communique A 7,348 (Communique), which allows certain entities to access the foreign-exchange market without prior authorization from the BCRA. Under the Communique, entities are not required to obtain the BCRA's prior authorization to access the foreign-exchange market to pay for imports of goods and services outstanding as of 30 June 2021, if they (1) enter the foreign-exchange market, (2) settle new financial debt, and (3) have a certificate issued by the financial institution with which they have entered and settled the funds of the new financial debt. For more information, see Tax Alert 2021-1612.

Brazil

- The House of Deputies (Lower House) in Brazil passed a revised version of the income tax reform bill. The bill would make the following significant changes to the taxation of corporations:
  - Reduce the corporate income tax from 34% to 27% (potentially 26%, subject to meeting certain budgetary targets)
  - Establish a 15% withholding tax on dividends (currently there is no dividend withholding tax)
  - Eliminate the interest on net equity deduction
  - Subject domestic intra-group transactions to arm's-length documentation (disguised distribution of profits rules), which will require applying principles similar to those of the Organisation for Economic Co-operation and Development (OECD) to domestic intra-group transactions
  - Require taxpayers to carry out capital reductions at fair market value only (currently allowed at book value/tax free)
- The bill now goes to the Senate for consideration. If approved by the Senate, these changes would be effective 1 January 2022. All taxpayers with Brazilian operations need to consider the possible impact to their financing, repatriation and holding-company structures. They will also need to complete a transfer pricing analysis. As there are no transition rules, taxpayers need to act quickly to assess the impacts of the bill and consider next steps. For more information, see Tax Alert 2021-1600.
- The Brazilian government published Decree 10,797/21, increasing the financial transactions tax (IOF) on domestic loans from 20 September 2021 to 31 December 2021. The new IOF credit rates for entities apply to domestic loans with pre-determined principal amounts at a maximum rate of 2.42% per year (0.38% upon grant, plus 0.00559% per day on the principal, limited to 2.04%, bringing the total to 2.42%). For more information, see Tax Alert 2021-1706.
- On 15 July 2021, the National Congress converted into law Provisional Measure 1034/2021, which amends the social contribution on net profit (CSLL) rates for financial institutions. Consequently, the following CSLL rates provided by Provisional Measure 1034/2021 are:
  - 20% until 31 December 2021 and 15% from 1 January 2022 for private insurance companies, capitalization companies, leasing companies and credit card administrators
  - 25% until 31 December 2021 and 20% from 1 January 2022 for banks
  - 9% for other legal entities
- In Private Letter Ruling No. 138 of 20 September 2021, the Brazilian tax authority provided welcome guidance as it ruled that, under the rules of the Brazil-Norway double tax treaty, withholding tax does not apply to insurance premiums paid to a Norwegian insurance company without a permanent establishment in Brazil. A Brazilian resident vessel charter company paid professional liability insurance premiums to an insurance company that was resident in Norway and had no permanent establishment in Brazil. The Brazilian company requested this ruling to determine whether it had to withhold tax on the premium payments. The Brazilian tax authority noted that professional liability insurance is characterized as the provision of a service and that such service is of a non-technical nature. Therefore, the Brazilian tax authority concluded that Articles 5 (Permanent establishment) and 7 (Business profits) of the double tax treaty applied to the case at hand, not Article 12 (Royalties). For more information, see Tax Alert 2021-1771.

Canada

- Bill C-30, *Budget Implementation Act, 2021, No.1*, received Royal Assent on 29 June 2021. Bill C-30 implements certain tax measures announced in the 2021 federal budget, the 30 November 2020 federal fall economic statement, and the 2019 federal budget, as well as other previously announced tax measures. It also contains the tax measures that were included in the notice of ways and means motion tabled on 28 April 2021, with one notable addition dealing with the Canada Emergency Wage Subsidy. For more information, see Tax Alert 2021-1338.
- A distributed investment plan (DIP) that is a selected listed financial institution (SLFI) is required to make a written request to obtain certain information from its investors by 15 October 2021. A DIP generally includes mutual fund trusts and certain partnerships. The information provided by the investors is used to calculate the DIP's provincial attribution percentage (PAP) and the DIP's net tax liability/refund for goods and services tax/harmonized sales tax and the Quebec sales tax. If a DIP does not request this information by 15 October 2021, certain investors may be deemed to be residents of the highest rate province (i.e., 15%) and, as a result, the DIP may have higher tax liabilities or lower refunds. For more information, see Tax Alert 2021-1558.
- Significant changes to the taxation of employee stock options first proposed in 2019 received Royal Assent on 29 June 2021 and are now law. The new rules introduce a $200,000 annual limit on employee stock options that may qualify for the 50% stock option deduction. This limit will generally not apply to stock options granted by Canadian-controlled private corporations (CCPCs) or non-CCPCs with annual gross revenue of $500 million or less. The changes apply to stock options granted on or after 1 July 2021. The new rules impose significant additional notification and tracking requirements on companies and will further complicate the process of withholding and reporting on the exercise of options. For more information, see Tax Alert 2021-1356.

- The Supreme Court of Canada (SCC) released its decision in *The Queen v. Canada North Group Inc.*, 2021 SCC 30 on 28 July 2021, dismissing the Crown's appeal of an order made under the Companies' Creditors Arrangement Act (CCAA). The SCC rejected the position that court-ordered super-priority charges (or "priming charges") could not take priority over the deemed trust for unremitted source deductions created by subsection 227(4.1) of the Income Tax Act (ITA). A narrow majority of the SCC agreed with the taxpayer that the priming charges prevailed over the deemed trust, finding that a court-ordered super-priority charge under the CCAA was not a security interest within the meaning of subsection 224(1.3) of the ITA, and that subsection 227(4.1) did not create a proprietary interest in a tax debtor's property. A concurring decision reasoned that the broad discretionary power under section 11 of the CCAA permitted a court to rank priming charges ahead of the Crown's deemed trust for unremitted source deductions. For more information, see Tax Alert 2021-1557.
- On 15 August 2021, the Governor General, at the recommendation of the Prime Minister, dissolved the 43rd Parliament and a federal general election was called for 20 September 2021. By convention, during the time between when the election writ is dropped by the Chief Electoral Officer and the election is held, the Cabinet and the professional Public Service of Canada operate in so-called "caretaker mode," so no new policy announcements are made other than those that are urgent and in the public interest. The main political parties have all released election campaign platforms that include tax policy changes.

Chile

- No tax policy developments to report.

Colombia

- Colombia enacted Law 2155 (the Social Investment Act), which includes the 2021 tax reform, as well as rules to increase social expenditures, reduce public expenditures and adjust the 2021 budget. Specifically, the law:
  - Increases the corporate income tax to 35% as from 1 January 2022 (currently, the corporate income tax rate is 31% for 2021 and would have decreased to 30% for 2022). This rate generally applies to Colombian entities, permanent establishments in Colombia and foreign taxpayers with Colombian-source income that must file income tax returns in Colombia.
  - Establishes a new normalization tax (i.e., tax amnesty) applicable to income taxpayers that did not declare certain assets or claimed non-existent liabilities for tax purposes, as of 1 January 2022. The normalization tax rate is 17% (the previous normalization tax rate was 15%).
  - Establishes an income tax invoicing mechanism. Colombian tax authorities may issue an income tax invoice based on information reported by third parties. The invoice will be deemed an official assessment of the taxpayer's income tax liability. The law authorizes Colombian tax authorities to enforce the payment of income tax invoices. Taxpayers that disagree with the assessment included in the income tax invoice may file an income tax return within two months of the publication of the invoice on the Colombian tax authorities' web page.
- The law was enacted and went into effect 14 September 2021. For more information, see Tax Alert 2021-1698.
- On 10 July 2021, Colombia enacted and published in the Official Gazette Law 2099, modifying the tax incentives applicable to non-conventional renewable energy (NCRE) projects. Specifically, the law establishes that the tax benefits currently available for NCRE projects will also apply to power storage, smart metering systems and power management for NCRE, as well as investments in goods, machinery and equipment used in the manufacturing, storage, packaging, distribution, re-electrification, research, and final use of green and blue hydrogen. For more information, see Tax Alert 2021-1388.
- Colombia's Council of State (the highest tax court) annulled an opinion by the Colombian Tax Authority (Official Opinion No. 005739 of 2019) that denied income tax deductions for interest on loans used to acquire shares in a company. The Council of State's interpretation of the general requirements for interest deductibility may allow taxpayers to claim deductions for interest expense on loans used to acquire shares. To claim those deductions, however, taxpayers will need to demonstrate compliance with the general deductibility requirements based on the specific facts and circumstances of their case. For more information, see Tax Alert 2021-1512.
- The OECD released the Stage 2 peer review report on Colombia relating to the outcome of the peer monitoring of the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 on improving tax dispute resolution mechanisms. Overall, the report concludes that Colombia addressed most of the shortcomings identified in its Stage 1 peer review report. For more information, see Tax Alert 2021-1551.
- On 1 July 2021, Colombia enacted Law 2095, approving the double tax agreement between Colombia and Japan, for the elimination of double taxation with respect to corporate income tax and the prevention of tax evasion and avoidance. In addition to cooperation procedures for the consultation and exchange of tax information, the agreement establishes:
  - Dividends: Withholding tax rate of 0% when the beneficiaries of the dividends are pension funds, 5% when they are entities holding at least 20% of the voting rights of the company for at least six months, 10% in all other cases. If the distributed income is not subject to tax at the company level, the applicable rate will be 15%.
  - Interest: Withholding tax rate of 0% when the beneficiary is one of the two States, a state entity, financial institution, banks, or pension funds. 10% in all other cases.

    - Royalties: Withholding tax rate of 2% when the payment is made for the use or the right to use industrial, commercial or scientific equipment. 10% in all other cases.
    - Sale of shares: The sale of shares will be taxed in the source country when (i) the transferor directly or indirectly owns a participation of 10% or more in the capital of the entity and (ii) the shares' value is verified at any time during the 365 days before the date of transfer.

  The law is pending review from Colombian Constitutional Court and will only enter into force once the court has determined its constitutionality.

- The Colombian Government enacted Law 2105, which modifies the tax treaties signed bilaterally between Colombia, Chile, Mexico and Peru. The main modifications are focused on interest payments and capital gains received by pension funds located in these countries.
- Colombia enacted Law 2130, which establishes tax benefits for individuals and entities that make donations to scholarship programs that finance the education of public forces (e.g., police, military, navy). In particular, the law establishes a tax credit equal to 25% of the value of the donations made through the Colombian Institute of Educational Credit (also called *ICETEX* in Colombia) to scholarship programs that finance the education of public force members who live in areas classified as strata 1, 2 and 3 (which represent the areas with the most financial need). Additionally, the donation will be deductible for corporate income tax purposes.

Costa Rica

- Congress resumed discussions about Bill No. 22.166, "Law for the Inclusion of Worldwide Income in the Costa Rican Tax System," which would modify some sections of the Income Tax Law to change Costa Rica's tax system from a territorial income to worldwide income tax system. If the bill is approved, it would be enacted and effective upon its publication in the Official Gazette.
- The Government published a draft resolution on 4 August 2021 for public comment. The draft resolution would modify Resolution No. DGT-R-058-2019 to clarify the procedure for taxpayers to report whether their capital income will be taxed under the ordinary income tax provisions of the Income Tax Law, instead of the capital income tax provisions. Additionally, the draft resolution would include an option for the taxpayer to remain voluntarily in the ordinary income tax regime for at least one year.
- Law No. 10008, "Law to Attract International Remote Workers and Service Providers," was published in the Official Gazette and enacted on 1 September 2021. The law establishes various tax incentives for foreign taxpayers that comply with the established requirements. Those incentives include an income tax exemption and an import tax exemption for basic personal computer equipment, information technology, telecommunications or other similar items that are necessary for foreign taxpayers to render services.

Dominican Republic

- On 24 August 2021, the Government published the new General Customs Law 168-21, which modifies the customs regime for new transport technologies, logistics and the distribution of goods and international standards. New definitions are added for multilateral environmental agreements, "green" customs, types of documentary and physical capacity, cold chain, international transport, and economic customs regimes. The law also adds international trade vocabulary in accordance with the "incoterms." Additionally, it: (1) incorporates the use of electronic or digital signatures, (2) adds the payment of customs duties through banks, (3) allows for the electronic reporting of documentation to Customs before the arrival or the departure of the merchandise and (4) accepts the Sea Waybill as a physical or electronic shipping document. The law also includes measures on money laundering via trade in goods, following the recommendations of the Latin American Financial Action Task Force (GAFILAT) and the OECD, among other organizations.
- The Dominican Republic enacted Law No. 163-21, which encourages the placement and trading of publicly offered securities on the Dominican Republic Stock Exchange by offering tax incentives. The tax incentives include a:
    - Reduced capital gains tax rate on capital gains derived from shares that are traded on the stock exchange and are part of a public offering
    - Capital gains tax exemption for capital increases resulting from public offerings of shares
- The law went into effect 9 August 2021 and applies throughout the national territory with various applicability dates. For more information, see Tax Alert 2021-1575.
- The tax authorities issued Resolution DDG-AR1-2021-00 007, informing taxpayers that the amounts used to calculate the excise tax on cigarettes and alcoholic beverages will be adjusted quarterly by the rate of inflation according to figures published by the Central Bank of the Dominican Republic from 1 July to 30 September 2021.
- The tax authorities issued a draft "General Rule on Inventory Disposal of Perishable Goods and Establishing the Ordinary Procedure for Other Non-Inventory Disposal." The draft rule would establish the procedure for disposing of inventory that consists of perishable goods. It also would establish the requirements taxpayers must meet so that the disposed inventory does not trigger a taxable event for income tax and value-added tax (VAT).
- In Resolution DDG-AR1-2021-00 008, the tax authorities:
    - Set the inflation adjustment multiplier to 1.0932 for the tax year that closed on 30 June 2021
    - Establish that taxpayers must use the exchange rates set by the Central Bank of the Dominican Republic (RD$1 /US $56. 8787 and RD$1 /EUR 67. 5946) to realize the exchange rate differences for the tax year that closed on 30 June 2021

- Set the table of multipliers for the years 1980-2021, which will serve as the basis for determining the adjusted value of capital assets for the tax year ended 30 June 2021
  - List the countries not considered by the Dominican Republic as jurisdictions with preferential tax regimes, low- or no-taxation jurisdictions or tax havens
- The tax authorities issued a draft "General Provision Establishing the Procedure for the Certification of Suppliers for Electronic Invoicing Services," which would establish the procedure for issuers of electronic tax proofs (e-CF) to be certified by the tax authorities as providers of electronic invoicing services. They also issued a draft "General Rule on Country-by-Country Reporting," which would establish the content of the country-by-country report and the procedure for submitting the report.

Ecuador

- The Government announced forthcoming tax reform, but there are no specific details yet. It is expected, however, to include a progressive reduction of the outflow tax rate. Currently, a 5% outflow tax applies to remittances abroad of any kind made with or without the intermediation of financial entities and, in general, any other mechanism for extinguishing obligations (except for offsetting).
- The President of Ecuador issued an oil and gas policy aimed at promoting investments and exports. The policy requires the Ministry of Energy and Nonrenewable Natural Resources to modify the model used for oil and gas contracts and renegotiate current contracts. Additionally, the Government reduced customs tariffs on 667 items as of 1 August 2021. For more information, see Tax Alert 2021-1392.

El Salvador

- On 15 September 2021, the General Directorate of Treasury published the average interest rate that will be applicable to the late payment of taxes, during the period from 1 August 2021 to 31 January 2022. The rate is 6.77% per annum, and after 60 days following the due date of the obligation, the interest rate increases to 10.77% per annum.

Guatemala

- The Constitutional Court, through Constitutional Action No. 2503-2021, provisionally suspended the section, "Detail of local vendors (Tax Credit) of table 5 and 6" contained in Form SAT-2237, "Monthly Value-Added Tax Return." As a result, taxpayers do not need to complete that section and attach a list of their top 10 local vendors.
- The tax authorities issued Institutional Tax Criterion No. 05-2021, titled "Banking operations (known as "Bancarización" in Spanish) applied to payments to suppliers through third parties or payments made directly by third parties." In the Institutional Criterion, the tax authorities concluded that, when performing a tax audit involving an inappropriately taken VAT credit and non-deductible expenses claimed by the taxpayer, the tax authorities must focus on the traceability and substance of the transaction over its form. The Institutional Criterion also states taxpayers may have third parties make payments to suppliers, provided the payments are traceable to the taxpayers. An institutional criterion is not considered as enforceable law. However, it provides guidance on the tax authorities' position on certain tax issues not expressly stated in the law.
- The Tax Administration issued Institutional Tax Criterion No. 06-2021, titled "Application of article 11 from Decree number 7-2019, Regularization through the payment on behalf of third parties, in Income Tax payment." In the past, the tax authorities took legal action against taxpayers for tax fraud involving the use of documents issued by non-local suppliers or documents with inconsistencies to claim a tax credit. In 2019, the Congress issued Congress Decree No. 7-2019, which allowed taxpayers to pay the VAT directly or on behalf of third parties if their supporting documentation for the tax credit contained inconsistencies or if the suppliers that issued the documents were not located in Guatemala. Under this criterion, once a taxpayer complies with the VAT payment requirements through a payment on behalf of third parties and verifies compliance with the requirements for claiming a VAT credit, the tax authorities state they will issue a report that describes the taxpayer's compliance with the legal requirements along with the VAT payments and indicates that the paid bills support the costs and expenses of the sold or exported products. Therefore, the exporter or acquirer may deduct from its income tax the costs and expenses related to the exports. Even if a taxpayer complies with Congress Decree No. 7-2019, it could still be criminally responsible for any fraud discovered during a tax audit.

Honduras

- No tax policy developments to report.

Mexico

- Mexico's President submitted to Congress the economic proposal for 2022 on 8 September 2021. The proposal would require taxpayers to prove they have a valid business purpose for restructurings, mergers and spin-offs. The proposal also would modify the requirements nonresidents must satisfy for electing to be taxed on a net basis, including the requirements for appointing a legal representative. In addition, the Proposal would: (1) expand the information auditors must include in tax audit reports; (2) subject certain taxpayers to additional reporting requirements; and (3) clarify that a VAT credit would only apply for the importation of goods if the importation documents were in the taxpayer's name. For more information, see Tax Alert 2021-1643.
- On 1 August 2021, Mexican tax authorities (SAT) released on their website a list of the expected effective tax rates for large taxpayers that engaged in various activities from 2016 through 2019. The list, which follows a list released 13 June 2021 for other economic activities or industries, includes rates for 84 economic activities/industries. They include transportation services, engineering and construction, food and beverage services, hoteling, mining, and retail and wholesale, among others. For more information, see Tax Alert 2021-1463.

Nicaragua

- On 20 August 2021, Nicaragua's National Assembly approved Law 1035, "Law on Amendment to Law 698, the General Law of Public Registries and Commercial Code of the Republic of Nicaragua," which prevents using legal entities for money laundering or to finance terrorism. Under Law 1035, commercial companies have 30 calendar days from the date of their registration in the Commercial Registry to declare the information related to the final beneficiary. This registry will be online, and commercial companies must update the basic information and the final beneficiary information by filling out a form that is available on the National Registry System's website. Additionally, commercial companies are required to update the information reported in the registry. Every 12 months, companies may (1) make ordinary changes to the basic information, including the final beneficiary, (2) declare that there are no changes or (3) confirm the information reported. Companies also may modify the information in the registry when there is a change to the incorporation agreement that affects the basic information and identification of the final beneficiary.

Panama

- Panama's Ministry of Economy and Finances issued Executive Decree 164 of 2021, which lists the reportable jurisdictions for which Common Reporting Standard reports must be filed in 2021 for tax year 2020.
- The tax authorities issued Resolution 201-6704 of 2021 establishing the criteria for compliance bonds required for authorization to operate as a "Qualified Authorization Provider" (PAC for its acronym in Spanish) within the electronic invoicing system. The Resolution establishes that the value of the compliance bond must be at least USD 250,000 and must be payable to the Panamanian National Treasury. A licensed insurer authorized by the Superintendence of Insurance and Reinsurance of Panama must issue the bond. The resolution also establishes the offenses that may result in the suspension or revocation of the authorization to operate as a PAC in Panama. An Annex to the resolution contains a model with wording for the compliance bond and the minimum requirements it must contain.
- Resolution 201-5761 of 2021 amends the form for filing the affidavit for capital gains tax to obtain benefits under double tax treaties.
- Panama's Ministry of Economy and Finances issued Executive Decree 173 of 2021 amending Article 19 of Executive Decree 84 of 2005, which regulates the VAT. Specifically, the Executive Decree reduces the minimum amount of annual local purchases of goods and services a taxpayer must have to be considered as a VAT withholding agent to USD 3,000,000, from USD 5,000,000. Additionally, the tax authorities issued Resolution 201-7951 of 2021, which contains the list of new VAT withholding agents for tax year 2022 and thereafter.

Paraguay

- General Resolution No. 95 establishes that taxpayers that are part of the Integrated National Electronic Billing System (SIFEN) pilot program must begin issuing electronic tax documents (e.g., sales receipts, invoices and credit notes) on 1 January 2022. The resolution also expands the list of electronic billers authorized for the "voluntary adhesion" phase. Those taxpayers will be authorized to issue and receive electronic documents. However, they may continue to issue sales receipts and other tax documents through other means until 1 April 2022, when they must begin issuing all electronic tax documents. Taxpayers that want to qualify as electronic billers under SIFEN on or after 1 April 2022 must follow the procedures established by the tax authorities.

Peru

- Peru enacted Law No. 31343, creating a new tax-free zone in Peru – Zona Franca de Cajamarca (ZOFRACAJAMARCA) in the district of San Ignacio, Cajamarca (northern Peru). Under the law, certain activities (e.g., manufacturing, industrial activities) conducted in the new tax-free zone will not be subject to taxes. For more information, see Tax Alert 2021-1537.
- Peru enacted Law 31313, "Sustainable Urban Development Law," which promotes the construction of "social housing" for low-income people, development of organized cities and the appropriate management of urban land. The law includes a new municipality tax that is triggered when the commercial value of land increases as a result of urban development, such as the expansion of roads and other investments in infrastructure.

Puerto Rico

- The Puerto Rico Treasury Department (PRTD) has clarified (Administrative Determination (AD) 21-08) prior guidance in AD 21-05 on submitting transfer pricing studies. In AD 21-05, the PRTD stated that taxpayers had to file Form 6175, "Certification of Compliance with Sections 1033.17(a)(16) and (17) of the Code," within 30 calendar days of a request. AD 21-08 clarifies that the transfer pricing study, not Form 6175, must be submitted to the PRTD within 30 days of a request. The PRTD also clarifies in AD 21-08 that the certification must be signed by the taxpayer; the guidance in the original determination required the signature to be from the same person who signs the return. For more information, see Tax Alert 2021-1770.
- The Puerto Rico Department of State extended the due date from 20 September 2021 (see Tax Alert 2021-0747) to 22 November 2021 for corporations that had requested the extension to 20 September to file 2020 corporate annual reports. For more information, see Tax Alert 2021-1769.

United States

- **Legislative developments.** As it worked to address a looming debt ceiling, the US Congress continued its consideration of major tax policy changes and tax increases to help fund infrastructure legislation. Two different infrastructure bills were proceeding through Congress, a smaller bipartisan bill passed by the Senate that contains no significant tax changes, and a larger $3.5 trillion infrastructure bill passed by the House. The larger bill, which aims to address health care, climate change, caregiving, education and income inequality, is moving through the budget reconciliation process, which allows for passage with a simple majority in the Senate instead of the usual 60 votes. It would be partly paid for with tax increases approved by the House Ways and Means Committee in its Build Back Better Act, approved by the committee on 15 September, or with other types of tax increases under consideration. Among the potential changes are increases in the top corporate income tax rate, some significant international tax changes, an increase in the top individual income tax rate and other increases affecting high-income taxpayers, as well as tax changes affecting retirement and executive compensation income. It remains to be seen which specific tax increases Congress might ultimately approve.
- **TCJA updates.** The US Treasury Department issued the following significant TCJA guidance:
  - Corrections (86 FR 42716 and 86 FR 42715) (the August 2021 corrections) to the final qualified Opportunity Zone regulations (TD 9889), addressing the working capital safe harbor for Qualified Opportunity Zone Businesses. See Tax Alert 2021-1519.
  - A revenue procedure allowing taxpayers to obtain automatic consent to change accounting methods to comply with final regulations under IRC Section 451. See Tax Alert 2021-1572.
- **Other updates.**
  - On 22 September, the Senate confirmed the nomination of Lily Batchelder to be Assistant Secretary of the Treasury for Tax Policy. Batchelder served as Deputy Director of the White House National Economic Council and Deputy Assistant to the President from 2014 to 2015 under President Obama. See Tax Alert 2021-1728.
  - On 9 September, the IRS released its 2021-2022 Priority Guidance Plan, which includes 193 guidance projects, including some addressing certain important accounting method, transaction cost and similar issues. The Treasury and IRS are seeking to complete the projects in the plan by 30 June 2022. See Tax Alert 2021-1699.
  - The IRS updated (Notice 2021-53) the Form W-2 reporting requirements that apply to qualified COVID-19 sick and family leave wages paid in 2021. See Tax Alert 2021-1669.
  - The IRS extended (Fact Sheet 2021-12) until 31 December 2021, certain e-signature relief that was first introduced on a temporary basis during the COVID-19 pandemic. See Tax Alert 2021-1606.
  - The IRS clarified (Revenue Procedure 2021-28) how to shorten the depreciation recovery period – from 40 years to 30 years – for certain residential rental property placed in service before 2018. Specifically, the Revenue Procedure explains how a taxpayer may change its method of computing depreciation to retroactively provide a 30-year recovery period under the IRC Section 168(g) alternative depreciation system (ADS) for residential rental property placed in service before 2018 and held by an electing real property trade or business. See Tax Alert 2021-1343.
  - The IRS explained (Notice 2021-49) how its previous guidance applies to employee retention credits (ERCs) as they were modified and extended to the end of 2021 by the American Rescue Plan Act of 2021. The Notice also gives additional guidance in response to practitioner questions on ERCs. See Tax Alert 2021-1489.
  - A new IRS safe harbor (Revenue Procedure 2021-33) allows taxpayers to exclude certain items from gross receipts under IRC Sections 448(c) and 6033, solely for determining eligibility for the ERC. The excludable items are: (1) the forgiven portion of a Paycheck Protection Program (PPP) loan; (2) a shuttered venue operators grant; and (3) a restaurant revitalization grant. See Tax Alert 2021-1529.
  - The IRS announced (Notice 2021-51) that it will amend the regulations under IRC Section 1446(a) and IRC Section 1446(f) to defer the applicability date of certain provisions by one year to 1 January 2023. The affected provisions relate to withholding: (1) on transfers of interests in publicly traded partnerships (PTPs), (2) on distributions made with respect to PTP interests and (3) by non-publicly traded partnerships on distributions to transferees who failed to withhold properly. See Tax Alert 2021-1565.

Uruguay

- The Uruguayan Tax Authority issued the procedure for taxpayers to recover corporate income tax and net wealth tax paid from January to June 2021, in light of the enactment of Law No. 19,956, which established exemptions for the advanced payments of corporate income tax and of net wealth tax accrued from January to June 2021. The procedure sets out options for taxpayers to recover the payments, including having those payments applied to another tax liability. For more information, see Tax Alert 2021-1547.

- The Uruguayan Tax Authority has issued a new Form 1050 for filing the affidavit of corporate income tax, net wealth tax and corporate control tax for medium-sized or large taxpayers. Form 1050 replaces Form 2149. Taxpayers with tax years ending July 2021 and thereafter must use the new Form 1050. For previous tax periods, taxpayers must continue to use Form 2149. For more information, see Tax Alert [2021-1539](#).
- With the aim of increasing mobility, increasing the number of international flights from and to Uruguay, and complying with international quality standards, Uruguay's Executive Power established tax incentives for public concession companies (i.e., companies chosen by the Government to do a certain job) that invest in aeronautical infrastructure projects. The incentives include exemptions from corporate income tax, net wealth tax and VAT. For more information, see Tax Alert [2021-1543](#).
- The Government Accountability Bill for 2020 and the Budget Execution Balance are expected to take effect on 1 January 2022. The Budget Execution Balance:
    - Creates a graduated tax regime for individual taxpayers
    - Authorizes the Executive Branch to modify the tax-per-liter rate of the excise tax on the first assignment, and own use, of gasoline by manufacturers and/or importers, with the tax based on the per ton of carbon dioxide (CO_2) emitted
    - Exempts radio and television broadcasting companies from all taxes, provided their income for the year does not exceed 2,000,000 indexed units (approximately USD 235,000)
    - Exempts insurance and reinsurance covering fire and weather risks for poultry and swine production stables from VAT
    - Modifies the tax treatment applicable to special donations by allowing 70% of the amount donated to be computed as a tax credit and the remaining 30% to be considered as a deductible expense
- Because of the COVID-19 pandemic, Uruguay extended to 30 September 2021 the VAT reduction equivalent to 9 percentage points for certain activities related to tourism.
- The Uruguayan Government modified the incentive regime for the construction of large economic projects. Specifically, it modified the percentage of the area an investment project must have for common use and extended until 31 December 2022 the deadline for submitting investment projects to the Nomination Committee of the Economy and Finance Ministry.
- The Executive Branch proposed a new bill that would extend to certain taxpayers the exemption for advanced payments of corporate income tax and net wealth tax made from 1 July 2021 to 30 October 2021.

Venezuela

- Venezuela published Decree No. 4,552, which will exempt the following items, among others, from the import tax, VAT and customs duties until November 30, 2021:
    - Imports of tangible movable property, classified under the tariff codes indicated in the decree, by corporations in the automotive sector
    - Imports of tangible movable property, classified under the tariff codes indicated in the decree, by the agencies and entities of the National Public Administration to stop the spread of the COVID-19 pandemic
    - Imports of new movable capital assets and computer and telecommunications assets, as well as their parts, pieces and accessories, not produced, or with insufficient production, in Venezuela, that are identified as capital goods (BK) or information technology and telecommunications goods (BIT) in the Customs Tariff Code, under the terms and conditions provided in the respective "Certificate of Exemption of BK or BIT," will be VAT exempted. However, depending on the type of asset, customs authorities will apply a customs tariff of 2% or 0% ad valorem.

  To qualify for the exemption, the beneficiaries must satisfy the general and specific requirements established in the decree.
- Venezuela published Decree No. 4,553, establishing a new monetary expression for Venezuelan currency beginning 1 October 2021. Under the decree, one unit of the new currency expression equals 1 million bolivars of the current currency expression, meaning all amounts expressed in the national currency must be converted by dividing by one million (1,000,000). Once the conversion is done, the bolivars should be divided by 100 cents and will continue to be represented by the symbol "Bs." As of 1 October 2021, obligations in currency, as well as prices, wages and other social benefits, taxes and other amounts contained in financial statements, other accounting documents or credit instruments must be expressed in accordance with the new expression of the bolivar.

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