EUROFISCUS NEWSLETTER

Newsletter by Eurofiscus Transfer Pricing Consultants

In this newsletter we briefly touch on the new US tax proposals made by the Biden administration and discuss the single billing entity as a compliant beneficial distribution model. We hope that you appreciate the newsletter and please feel free to provide us with your comments, observations and questions via the following email address: **info@eurofiscus.com**

" You don't pay taxes, they take taxes"

Chris Rock
Actor

Eurofiscus is a transfer pricing advisory firm located in the oldest city of The Netherlands, Maastricht.

We are specialised in transfer pricing compliance, operational hands-on transfer pricing support, tax technology, value chain analysis and transfer pricing audit support.

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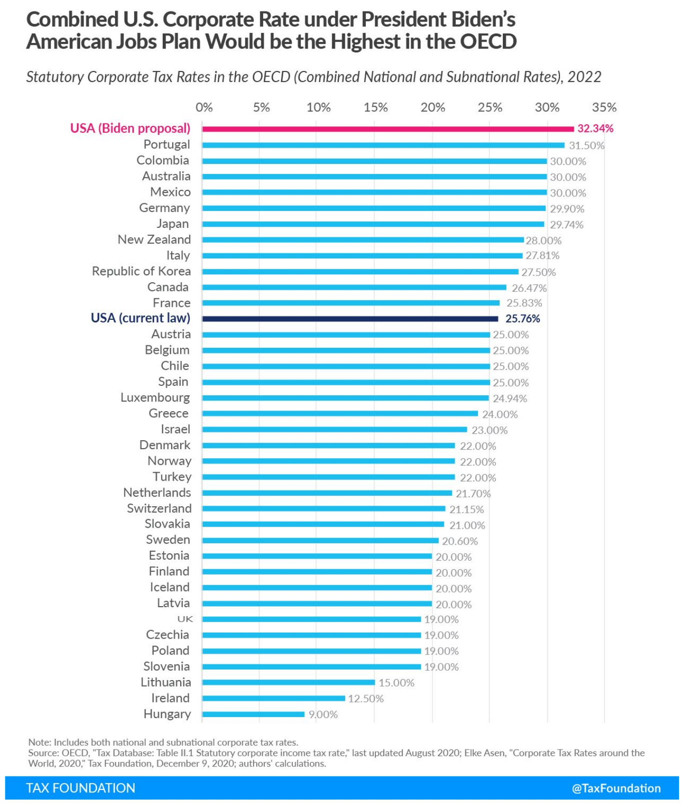
The new US tax proposals

President Biden surprised many with his new tax proposals. It is expected that the republicans will put a fight to prevent these plans from become reality.

One of the proposals is to increase the corporate income tax rate from 21% to 28%. The U.S will then have the highest statutory corporate income tax rate in the world. It will create a minimum tax of 15% for U.S corporations with a book profit of min. $100 million or higher.



Another proposal is to introduce a 10% surtax on "offshore manufacturing and service jobs to foreign nations in order to sell goods or provide services back to the American market." This surtax would raise the effective corporate tax rate on this activity up to 30.8 percent.

President Biden also announced that he supports a global minimum tax to combat base erosion and profit shifting. 21% is a rate that is not explicitly mentioned, but insiders expect it might be 21%. Countries like Ireland with a 12.5% statutory rate are very anxious and fear this will mean an end to their very competitive rate. US investments into Ireland will surely dry up if the minimum rate of 21% will be implemented.

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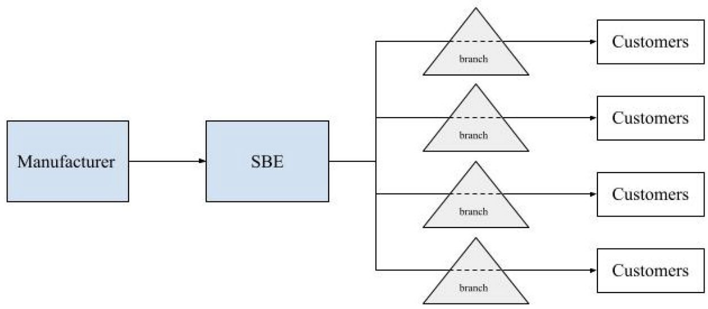
The Single Billing Entity (SBE)

A Single Billing Entity (SBE) is a very efficient distribution model. An SBE sells its products directly to its local customers in different markets through its various sales branches. From an organisational perspective, this setup centralises the key sales employees in the SBE. The branch, on the other hand, has the local sales and marketing support staff on its payroll. The sales should actually be managed out of the SBE.



The manufacturer sells directly to the SBE. The SBE sells directly to customers in the different countries, supported by local sales and marketing supporting branches. This setup reduces the amount of intercompany invoices. The SBE will be VAT registered in the different countries. Due to regulatory restrictions, it might be advisable to setup local legal entities, instead of branches, to support the SBE in the different markets.

The SBE creates a taxable presence in the country where the branch is set up if the branch is deemed a sales or marketing supporting branch. When the SBE is deemed to have such a taxable presence, it means the SBE is considered to have a permanent establishment in the branch's country of residence. The taxable base is relatively low because this type of branch has a limited functionality, uses hardly any assets or none and bears minimal business risks. In practice, the costs of the branch will be charged to the SBE with a markup (cost-plus). The markup will have to be in line with the high value-adding functions performed. In the OECD Guidelines, "*sales, marketing and distribution services*" are regarded as high value-adding services. In practice, this means the markup will likely be around between 8-12%. This obviously depends on the specific industry and the added value provided by the branch. A benchmark study will provide the necessary information to determine an appropriate markup.

The benefits of using an SBE as part of a distribution setup are numerous: because the SBE sells directly to its local customers, the SBE is constantly building up its marketing intangibles, as they own the client base / client list. Applying the SBE setup in combination with branches will free-up capital that would otherwise be blocked in local legal entities. Setting up a branch can have knock-on effects on an administrative level as well, e.g. by leading to fewer transactions in the ERP system. Take SAP for example; the "plants abroad functionality" enables the administration to set up a single company code in SAP with one plant per branch. Because the sales are managed and conducted in a single legal entity (the SBE), margins will improve due to the increased clarity provided and thereby lead to better pricing decisions. If the SBE is established in a low tax country, the overall effective tax rate will go down because the tax base in the branch's countries (close to the customer) will be low.

In summary, the single billing entity could be an efficient compliant distribution solution for certain companies. It does require a lot of change management, new legal agreements and a redesign of the ERP system. A set up, however, that can provide a lot of benefits and - if properly setup- is compliant and will survive tax authority scrutiny.