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OECD guidance provides new details on implementing Pillar Two and determining if local implementation is 'qualified'

The OECD/G20 Inclusive Framework on BEPS (OECD Inclusive Framework or IF) published further administrative guidance on June 17 that addresses the implementation of the Pillar Two global minimum tax rules and provides details of the processes for determining that jurisdictions' respective plans for local implementation of the Pillar Two rules are "qualified."
URL: https://www.oecd.org/tax/beps/about/
URL: https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf

Pillar Two overview

To date, more than 140 members of the OECD Inclusive Framework have agreed to the Pillar Two global minimum tax rules. Jurisdictions are in the process of implementing rules in domestic legislation, which apply starting in January 2024.

Components of the Pillar Two rules: The IF's Pillar Two model rules, applicable to large multinational groups with annual consolidated group revenue of at least €750 million, will result in "top-up" tax amounts to bring the overall tax on profits in each jurisdiction where a group operates up to a 15 percent minimum effective tax rate. The key components are: qualified domestic minimum top-up taxes, which allow jurisdictions to charge any top-up taxes due in respect of local profits; the income inclusion rule, under which parent company jurisdictions apply the top-up tax rules on a top-down basis; and the undertaxed profits rule, which will apply as a secondary (backstop) rule where the other rules have not been fully applied.

New guidance: The new administrative guidance will be incorporated into the OECD's commentary to the model rules at a future date. There are also a number of additional examples which will be included in the OECD's published examples illustrating the application of the model rules.
URL: https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm
URL: https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-globe-rules-pillar-two-examples.pdf

The new guidance covers the following distinct areas: recapture of deferred tax liabilities; divergences between Pillar Two basis and accounting carrying values; allocation of cross-border current taxes; allocation of cross-border deferred taxes; allocation of profits and taxes in groups including flowthrough entities; and treatment of securitization vehicles.

Find out more: A new alert from Deloitte Tax LLP provides an overview of the guidance.
URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/dttl-tax-alert-us-25-june-2024.pdf

Treasury officials, GOP taxwriter discuss Pillar Two implementation

In other Pillar Two developments, Treasury Department officials—including Acting Deputy Assistant Secretary (International Affairs) Scott Levine and Acting Assistant Secretary (Tax Policy) Aviva Aron-Dine—this week called on Congress to make the legislative changes necessary to implement Pillar Two in the US as part of a 2025 tax bill.

Treasury officials tout revenue impact: In comments at a conference sponsored by the OECD and the US Council for International Business, the Treasury officials said Pillar Two would raise sufficient revenue to justify its implementation, and that the US needs to have Pillar Two in place in order to turn off other countries' undertaxed profits rules, which will begin coming into force in 2025.

Addressing longstanding complaints from stakeholders that Pillar Two provides more favorable treatment for refundable tax credits, which are more common in jurisdictions outside the US, over nonrefundable credits—including the research credit—which are more prevalent in the US, the officials emphasized that the issue is on the front burner amid ongoing negotiations and that they are "actively developing" a solution but are "not prepared to share details at this time."

Hern decries lack of consultation with Congress: Speaking at the same conference, House Ways and Means Committee member Kevin Hern, R-Okla., repeated criticisms advanced by a number of GOP taxwriters over the last several years that the Biden Treasury Department has been negotiating the OECD's global tax agreements—Pillar One as well as Pillar Two—without sufficiently consulting Congress and vowed that lawmakers will block their implementation.

Hern called it a "fool's errand" for the administration to negotiate any global tax agreements without bipartisan congressional buy-in. He added that he is not convinced that the US can fairly compete under Pillar Two as currently drafted, arguing that other countries will bend the rules to their benefit and that China will never play by them.

The US "will not lay down in the face of discriminatory taxes," he said.

Hern leads the Ways and Means Committee's tax team on global competitiveness—one of 10 Republican-only teams convened by Chairman Jason Smith, R-Mo., to give GOP taxwriters an opportunity to develop legislative approaches to address significant tax policy issues affecting families, workers, and businesses as Congress contemplates the possibility of a broad tax bill in 2025.
URL: https://waysandmeans.house.gov/ways-means-chairman-smith-and-tax-subcommittee-chairman-kelly-announce-tax-teams-to-avert-2025-tax-cliff/

The global competitiveness team is set to hold a field hearing in Atlanta on August 8 to hear from stakeholders on issues under its purview. Additional details about that hearing, including witnesses, have not yet been announced.

Members of the public interested in sharing information with any of the tax teams may submit comments to RepublicanTaxTeams@mail.house.gov. Comments will be accepted through October 15, 2024.
URL: mailto:RepublicanTaxTeams@mail.house.gov

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