

Global Tax Reform Takes a Major Step Forward as 136 Nations Sign on to OECD BEPS 2.0 Framework

Legal Alert
October 19, 2021

On Friday October 8, 2021, the Organization for Economic Cooperation and Development (OECD) [announced](#) that *136 Nations, including the United States and the rest of the G20*, have signed on to the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (commonly known as “BEPS 2.0”).

Under the current law, multinational enterprises (MNEs) may elect to locate in lower-corporate tax jurisdictions in an attempt to minimize their tax burdens. This occurs as a result of the vastly different corporate tax rates imposed by different nations. By locating an MNE in a lower-corporate tax jurisdiction, the MNE may treat more (or all) of its profits as “sourced” to that country, reducing its effective tax rate.

This leads to increased tax revenues to nations with lower tax rates and decreased revenues in countries with higher rates. These tax strategies are often referred to as “profit shifting,” which results in “base erosion” in those countries with higher corporate tax rates. In response, many countries (including many G20 countries) have imposed “digital services taxes” on the revenue (rather than profit) of major technology firms in an attempt to recapture some of that lost tax revenue. However, this system is generally seen as inefficient by both nations and MNEs.

The OECD’s intent in BEPS 2.0 is to solve this problem by increasing the minimum corporate tax rates and simultaneously removing digital services taxes. The OECD [describes](#) BEPS 2.0 as a “Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.” The first pillar attempts to equitably apportionment the right to tax profits among countries in which the MNE does business. It applies only to very large MNE groups with total global revenue of more than €20

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Billion (roughly \$23 Billion). The second pillar is the implementation of a global minimum effective corporate tax rate of 15 percent on MNE groups with total global revenue more than €750 Billion (roughly \$850 Billion). This implementation is consistent with [Action 13](#) (Country by Country Reporting or “CbCR”) of the BEPS 1.0 framework, by permitting nations (under certain circumstances) to impose tax on profits deemed to be “undertaxed” in the MNE group’s country of formation (known as the subject to tax rules or “STTR”); imposing a “top-up” tax on “undertaxed” income of an MNE group; and permitting nations to deny certain deductions to tax MNE groups at the minimum rate (known as the undertaxed payment rule or “UTPR”).

The apportionment calculation under Pillar One is complex, as are the STTR and UTPR rules. Along with CbCR, the rules are intended to ensure a more equitable global tax system, but will require complex tax planning decisions and analysis by attorneys and accountants. While BEPS 2.0 only applies directly to large MNE groups, it is anticipated that BEPS 2.0 will result in additional significant national tax changes affecting small- and medium-sized enterprises that operate internationally, as nations are implementing the framework. This is likely to occur throughout the G20 (and other nations). Small- and medium- sized enterprises should carefully review their current structure and consider changes to the tax laws of jurisdictions in which they operate to ensure that those changes do not inadvertently affect them negatively.

For more updates regarding domestic tax changes, Larry Brant and I published an article on [Larry’s Tax Law](#) analyzing the key changes to U.S. tax law, which are ultimately included in the infrastructure bills under consideration in Congress.