KPMG

Tax alert

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BEPS 2.0 – U.S. Congress passes 15% alternative minimum tax

Introduction

In a historic agreement reached at the G20 Rome Summit in October 2021, the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) committed to reforms that aim to make the international tax system fairer and address tax challenges in a digitalised and globalised world economy.

The 2021 statement released by the Organisation for Economic Cooperation and Development (OECD) sets out the agreed core rules, as endorsed by 137 out of 141 IF members.

In recent weeks progress has been made in the Asia Pacific region with Korea and Malaysia releasing announcements on their implementation of the Pillar Two framework under BEPS 2.0. However, many observers have been more focused on recent developments on the United States' Alternative Minimum Tax (AMT).

The AMT resurfaced as a key tax proposal after Democrats were unable to reach an agreement on the Build Back Better Act, which included proposed US tax law changes to align with the Global Anti-Base Erosion (GloBE) Model Rules. On 7 August 2022, Senate Democrats passed the Inflation Reduction Act which imposes an AMT of 15% on the adjusted financial statement income of large corporate groups. All 50 Senate Democrats voted for the bill, while all 50 Republicans voted against it. Vice President Harris cast the tie-breaking vote in favour of the legislation.

The Act quickly passed the House on 12 August and was signed into law by President Biden on 16 August 2022. It will apply to tax years commencing after 31 December 2022.

The AMT is estimated to raise approximately US$222 billion over 10 years.

Alignment with the OECD's BEPS rules

It is noteworthy that the US has signed on to the OECD's common approach as an IF member, but the introduction of the US AMT seems to deviate from the agreed common approach. While the AMT shares similarities with the Pillar Two GloBE Effective Tax Rate (ETR) calculation methodologies — both use financial statement income as the starting point for the 15% ETR calculation — the scope and technical design of the AMT differs from the OECD architecture in material ways.

Given the differences summarised on the next page, it seems unlikely the AMT would be considered a Qualified Domestic Minimum Top-Up Tax or Qualified Income Inclusion Rule.

This raises many new issues and considerations that may result in unexpected complexities.

However, it is possible that the AMT may be treated as a Controlled Foreign Corporation (CFC) Tax Regime under GloBE rules — to the extent that the AMT taxation is imposed in relation to the overseas profits of a US multinational enterprise. This is subject to a Pillar Two peer review process that has yet to be agreed upon. Furthermore, there is currently no agreed GloBE rule allocation methodology for how one jurisdiction's CFC tax liability would be reallocated to a different jurisdiction. Using a CFC allocation methodology, yet to be developed under GloBE rules, may add further complexity when computing country-by-country ETRs.

Differences between the AMT and Pillar Two GloBE rules

Threshold

With respect to scope, the AMT uses a US$1 billion threshold test which is based on an average annual adjusted financial statement income (AFSI) test over a consecutive three-year period. Conversely, Pillar Two GloBE rules use a 750 million-euros threshold in two out of four years. Furthermore, the US$1 billion AFSI threshold test is modified if the corporation is a member of a foreign-parented multinational group. There are also apparent differences between excluded entities under GloBE rules and 'applicable corporations' under AMT rules.

Timing

The application date for the AMT is 2023, whereas the GloBE rules are scheduled to apply from 2024 in major jurisdictions based on the latest information available.

Calculation methodology

The AMT calculation methodology deviates from the OECD's common approach (i.e. agreeing to a consistent set of rules) to aid overall compliance. For example, the AMT allows for various US domestic tax credits, while GloBE rules treat nominated credits as a reduction to covered taxes. The OECD adopted this approach to ensure consistency in ETR determination across foreign jurisdictions with different tax credit and tax offset regimes.

Another significant difference is how GloBE rules utilise deferred tax accounting numbers in the ETR numerator to deal with potential ETR volatility from temporary differences. By contrast, the AMT determines taxes without any reference to deferred tax accounts. There are also significant differences with the way carryforward tax losses are utilised.

The new US AMT is a globally blended calculation methodology that mixes high-tax and low-tax jurisdictions. This is fundamentally different to the calculation methodology adopted under the GloBE rules.

As a result of these differences and variation in calculation methodologies, AMT taxpayers could incur an ETR lower than 15% and thus be exposed to the IIR and/or the Undertaxed Payments Rule under the GloBE rules.

Click here for a comprehensive summary of the abovementioned rules.

If you would like to discuss the topics above or BEPS 2.0, please contact your local KPMG representative. You may also reach out to Dean Rolfe, Head of International Tax, Asia Pacific.

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