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Legislative update: Ways and Means Republicans reintroduce OECD Pillar Two reciprocity bill

Republican members of the House Ways and Means Committee yesterday reintroduced the “Unfair Tax Prevention Act,” which would increase the U.S. base erosion and anti-abuse tax (BEAT) where foreign countries adopt Pillar Two’s undertaxed profits rule (UTPR).

A bill with the same title was introduced by Republican Ways and Means Committee members in July 2023. Read *TaxNewsFlash*

According to the related press release, the bill would:

- Define “foreign-owned exterritorial tax regime entities” (FETR entities) as foreign-controlled entities connected with entities operating in jurisdictions with extraterritorial taxes aimed at U.S. business operations, including the UTPR
- Strengthen anti-avoidance rules in the BEAT by eliminating the 3% base erosion percentage floor and the $500 million gross receipts test for FETR entities
- Revoke the ability of FETR entities to disregard certain service payments and payments subject to withholding taxes
- Treat 50% of cost of goods sold as a base erosion tax benefit
- Accelerate the scheduled BEAT rate increase and tax credit changes for FETR entities

Note that Republican members of the Ways and Means Committee in May 2023, and again in January 2025, introduced another bill entitled the “Defending American Jobs and Investment Act” also intended to respond to the OECD Pillar Two initiative. That bill would impose a 5% addition to the tax rate each year for four years on the U.S income of individuals and entities located in a foreign jurisdiction that imposes a discriminatory or extraterritorial tax, such as a UTPR or digital services tax (DST). After four years, the cumulative 20% additional tax would be imposed each year the targeted tax remains in effect. Read *TaxNewsFlash*

Background

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which involves more than 140 countries, released in December 2021 model rules for implementation of the Pillar Two global minimum tax of 15% for multinational enterprises (MNEs) with annual revenue of at least €750 million. The adoption of the new rules is based on a “common approach” which means that jurisdictions are not required to adopt the rules, but if they choose to do so, they must implement the rules consistently with the model. The rules include an income inclusion rule (IIR) and a UTPR, which is a backstop to the IIR. The UTPR, which could allow foreign jurisdictions to impose additional tax on U.S. multinationals with an effective rate below 15%, has been an area of concern previously cited by House Ways and Means Committee Chairman Jason Smith (R-MO) and Senate Finance Committee Chairman Mike Crapo (R-ID). This could be the case in a number of instances, including, for example, material research and development (R&D) credit usage, and material foreign-derived intangible income (FDII) deductions.

The European Union approved a directive in December 2022 requiring EU Member States to implement and apply the UTPR from 2025. Australia, New Zealand, South Korea, and Thailand have also implemented the UTPR from 2025, and Indonesia has implemented the UTPR from 2026. A number of other major economies (including Canada, Mexico, and Japan) also have announced plans to implement the UTPR.

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