

TAX ALERT: Global Deal Reached on 15% Minimum Tax, but Hurdles Remain

On Friday, October 8, 2021, the Organization for Economic Cooperation and Development (OECD) announced a historic agreement among 136 of its member nations, including the United States, establishing a global corporate minimum tax rate of 15%. The accord ends “the race to the bottom on corporate taxation,” in the words of US Treasury Secretary Janet Yellen, ensuring multinational corporations will pay a minimal tax regardless of where they establish headquarters or operations. The deal also would assess taxes on large technology companies such as Amazon based on where their customers are located, irrespective of whether they have a physical presence in those countries.

The OECD had been working for years to come to a cross-continental agreement aimed at preventing “tax haven shopping,” where corporations shift locations around the globe in search of the lowest effective tax rates. However, significant hurdles remain. While signatories to the deal have indicated their overall acceptance of its terms, the OECD has no authority to bind

member nations to the agreement. Rather, each individual country will need to change its tax laws to fall into compliance, and the OECD has indicated they expect action on the agreement in its member nations by 2023. In the United States, full activation of the agreement will require an act of Congress, and will necessitate significant ancillary changes to the existing Internal Revenue Code. As one primary example, US corporations with a foreign subsidiary currently pay tax at a 10.5% rate on foreign profits—a lower rate enacted during the last round of federal tax reform in 2017, designed in part to incentivize corporations to repatriate their foreign earnings rather than keep them offshore. To align with the OECD agreement, this rate would need to be increased to at least 15%.

Details of the agreement will continue to emerge in the coming weeks and months, with full ratification sure to become a political hot-button issue in 2022 and beyond. We will keep you updated on further developments as they occur.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss US or international tax law, please contact Aaron Kriss at (617) 350-6800 or email him at aaron.kriss@gesmer.com.



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