

The Impact and Challenge of the “Global Minimum Tax System” on International Tax Law

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Abstract

The Organisation for Economic Co-operation and Development (OECD) released the “Base Erosion and Profit Shifting (BEPS) Action Plan” including 15 actions in 2015, which made an important contribution to the prevention of base erosion and profit shifting but is still not enough to end the phenomenon of multinational enterprises moving profits to low-taxed countries. To overcome this problem, OECD has put forward two main “Pillars” for tax system adjustments, of which “Pillar Two” hopes that countries can reach a consensus on the global minimum tax that multinational enterprises should pay for profits they make. This aims to avoid profit shifts within multinational groups and simultaneously curbs the tax competition among countries to competitively offer low taxes.

However, the implementation of the global minimum tax system has planted a fuse that is prone to creating a conflict of interest between industrialized countries, developing countries, and newly industrialized economies. Moreover, the “income inclusion rule” violates the “separation principle”, and the “undertaxed payments rule” violates the “objective net value principle”. Additionally, both lack legitimate and constitutional reasons, and both have a common deficiency; namely that, complex rules have to be added to achieve compatibility or integration with the US Tax Law. This not only significantly

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increases the compliance cost of multinational enterprises, but also, the application of both the rules could easily cause the risk of double taxation.

As far as the law of Taiwan is concerned, although the “income inclusion rule” and the “tax system of controlled foreign companies” are similar, the result of applying both concurrently is not helpful to solve the above problem. On the contrary, after the readjustment of the “income inclusion rule”, its reintegration into the “tax system of controlled foreign companies” should be a possible option for Taiwan to carefully consider in future planning for the tax system.

Keywords: Global Minimum Tax, Global Anti-Base Erosion, Base Erosion and Profit Shifting, Pillar Two, Income Inclusion Rule, Switch-Over Rule, Undertaxed Payments Rule, Subject to Tax Rule, Controlled Foreign Company, Global Intangible Low-taxed Income