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TaxNewsFlash

Canada

U.S. Bill Proposes Additional Tax on Foreign Jurisdictions

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Individuals and entities located outside of the United States should be aware that the House Ways and Means Committee Chairman, along with every Ways and Means Committee Republican, has introduced a legislative bill that proposes to impose additional tax on U.S. income of individuals and entities in certain foreign jurisdictions that impose a "discriminatory or extraterritorial tax". In particular, this tax appears to be targeted at jurisdictions that have enacted a tax such as an undertaxed payments rule (UTPR) or a digital services tax (DST). According to the House Ways and Means Committee Chairman, the introduction of this bill is intended to reinforce a new U.S. executive order to inform the Organization for Economic Cooperation and Development (OECD) that any commitments made by the previous administration to its two-pillar approach "have no force or effect" in the United States.

The Canadian Parliament enacted a DST in 2024, and the Canadian government has released draft legislation that would apply a UTPR as of December 31, 2024.

Background

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which involves more than 140 countries, released model rules in 2021 for countries to implement the Pillar Two global minimum tax of 15% for 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 may allow foreign jurisdictions to impose additional tax on multinationals with an effective rate below 15%.

For further details on Canada's commitment to the OECD's two-pillar solution, see *TaxNewsFlash-Canada* 2024-28, "Large Businesses — Digital Services Tax Now in Effect", *TaxNewsFlash-Canada* 2023-31, "Multinationals — Act Now to Meet Pillar Two Obligations" and *TaxNewsFlash-Canada* 2024-27, "Canada Enacts Bundle of Outstanding Tax Measures".

Proposed tax

Under this proposal, the United States 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 DST. After four years, the cumulative 20% additional tax would be imposed each year the targeted tax remains in effect.

This bill is similar to a previous U.S. tax bill that the House Ways and Means Committee Chairman introduced in May 2023 but now provides that individuals and entities located in a foreign jurisdiction imposing a targeted tax would also be denied the benefit of reduced withholding tax rates under any treaty obligation of the United States. Thus, under the revised bill, the additional tax would be imposed on top of the 30% withholding tax imposed on U.S.-source passive income (or 15% on dispositions of interests in U.S. real property).

For further details, see a report by KPMG's member firm in the U.S., "Legislative update: Ways and Means Chairman reintroduces bill to impose additional tax if foreign jurisdiction adopts discriminatory or extraterritorial tax".

We can help

Your KPMG adviser can help you monitor and assess the effect of these new developments. For more details, contact your KPMG adviser.