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No. 2022-024
February 18, 2022

KPMG report: Initial impressions of draft rules for tax base determinations under Pillar One Amount A

The Organisation for Economic Cooperation and Development (OECD) today issued a **release** seeking comments on a **public consultation document** [PDF 1MB] setting out draft rules for tax base determinations under Amount A of Pillar One—part of the ongoing work of the OECD/G20 Inclusive Framework on base erosion and profit shifting (BEPS) in implementing the two-pillar solution to address the tax challenges arising from the digitalisation of the economy. Read ***TaxNewsFlash***

The OECD noted in today's release that ". . . the draft rules do not reflect consensus regarding the substance of the document." Rather, the public consultation document is a working document that is being shared to obtain public comments before 4 March 2022.

The definition of tax base is another important building block of Amount A because it is what will be used to determine the amount that may be subject to reallocation under Pillar One.

As anticipated based on the "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy" released by the OECD's Inclusive Framework on 8 October 2021, the draft rules measure relevant profit and loss using the consolidated financial statements of the ultimate parent entity, with minimal adjustments to account for book-to-tax differences and restatements, although the proposed adjustments under Pillar One are not as extensive as they were for purposes of the rules under Pillar Two.

There are still a number of unresolved issues and policy decisions that will need to be addressed, however, as noted by footnotes throughout the document. For example, while the draft rules incorporate the political agreement to allow losses to be carried forward, the document notes that there is still discussion within the Task Force on the Digital Economy (TFDE) on whether pre-Amount A regime losses will be recognized, and whether the introduction of time limits for the carry-forward of losses should be introduced.

The draft rules also do not provide rules on the averaging mechanism for the scope criteria and do not provide tax base rules that would apply to certain business segments disclosed in the financial accounts.

There are also requests for stakeholder input on, among other issues, scope of the category of reorganizations that should be taken into account for purposes of transferring losses among groups; how groups that do not apply a qualifying financial account standard should compute their tax base; and whether gain and losses associated with the disposition of equity interests from controlling interests should be excluded from Amount A tax base.