KPMG

# TaxNewsFlash

United States

No. 2023-186
May 25, 2023

# House Ways and Means Chairman Smith introduces bill that would impose additional tax on foreign jurisdictions with undertaxed payments rule (UTPR)

House Ways and Means Committee Chairman Jason Smith (R-MO), along with every Ways and Means Committee Republican, today introduced H.R. 3665, the “Defending American Jobs and Investment Act,” which would impose an additional 5% tax rate each year for four years, on the U.S income of individuals and entities located in foreign jurisdictions that impose an undertaxed payments rule (UTPR). After the four years, the cumulative 20% additional tax would be imposed each year as long as the UTPR remained in effect in the relevant foreign jurisdiction.

Chairman Smith released a statement on the introduction of the bill, in which he stated:

> *We urge our global trading partners to reject all unfair taxes aimed at Americans, and we encourage countries, the OECD, and multinational companies to work toward solutions that will protect American sovereign taxing rights and avoid escalating tax and trade countermeasures.*

In order for the bill to become law, the bill would have to be approved by the Democratically controlled Senate and be signed by President Biden.

**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 an undertaxed payments rule (UTPR), which is a backstop to the IIR. The UTPR, which could allow foreign jurisdictions to impose additional tax on US multinationals with an effective rate below 15%, has been an area of concern previously cited by Chairman Smith and Ranking Member Crapo. This could be the case in a number of instances, including, for example, material R&D credit usage, and material FDII deductions.

The European Union approved a directive in December 2022 that requires EU Member States to implement and apply the UTPR from 2025. South Korea has already implemented the UTPR in its domestic law, with a 2024 effective date. A large number of other major economies have released officials plans to implement the UTPR.

A summary of the expected timing of the UTPR, by jurisdiction, is available in KPMG Pillar Two Implementation Tracker [PDF 855 KB] (updated May 25, 2023)

**Documents**

- Read text [PDF 66 KB] of the bill
- Read Chairman Smith's press release on the bill
- Read a press release on the bill of Senate Finance Committee Ranking Member Mike Crapo (R-ID)
- Read a press release on the bill of Senate Finance Committee Chair Ron Wyden (D-OR)



The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.