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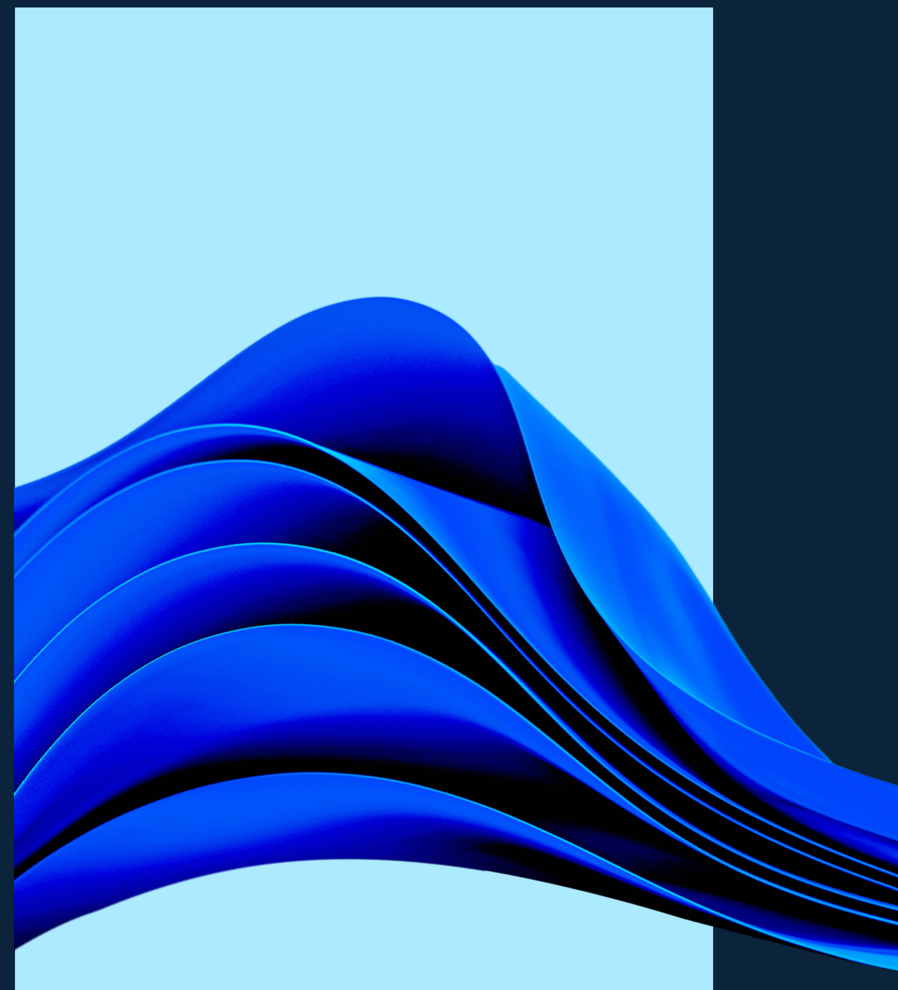
Private Enterprise

The rising tide of global taxation

Could private companies, family offices and private holding structures be caught in the international taxation net?



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In a recent KPMG Private Enterprise Tax article "A delicate balancing act between economic impact and taxation", we continued to make the case for governments to achieve the right balance between increased taxation and incentives that boost innovation, productivity and growth.

As tax professionals, we are continuing to promote the case for global economic opportunities beyond taxation, especially in those areas where private companies, family offices private holding structures and family trusts have proven to be important contributors to the economic, environmental and social health of their countries. Every citizen and organization has an obligation to pay their taxes, but achieving the right balance between new taxation and incentives designed for growth will be critical for sustaining the long-term societal and economic performance in countries, territories and jurisdictions everywhere.

And so, with the implementation of the OECD's BEPS 2.0 — Pillar Two Model Rules as early as January 1, 2024 in some jurisdictions (referred to as the "Global Anti-Base Erosion" or "GloBE" Rules), important questions need to be answered. How might these new rules — and the potentially complex multi-jurisdictional reporting requirements that accompany them — affect private companies, family offices, private holding structures and trusts, for example.

Are private companies, family offices and family trusts that have a foreign presence included in the 'multinational enterprise' definition?

Could these entities be caught unwittingly in the international taxation net?

So far, the answers have been missing in the international taxation discussion.

"To date the details regarding Pillar Two have primarily been focused on multinational publicly traded companies that have consolidated global gross revenues of more than € 750 million, and it's likely that many private businesses, family offices and other private wealth management structures will not fall within that scope.

However, many companies, groups and associated concerns that may not think of themselves as large multinationals may, in fact, find themselves caught in the new international taxation net if the total income arising from all the jurisdictions in which they operate is above the € 750 million threshold. In that case, the 15 percent global minimum corporate tax rate will also likely apply.

This is why we're opening up the discussion to raise awareness on the potential impact of BEPS Pillar Two among private companies, family offices and trusts, and to begin considering the steps that should be taken now to prepare for what may come."

Mike Linter
Global Head of KPMG Private Enterprise Tax
KPMG International Partner,
KPMG in the UK

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The potential impact of Pillar Two on private companies, family offices and trusts

The Pillar Two rules are intended to address the aggressive tax planning of multinational enterprises that have been able to reduce their overall global tax rate by capitalizing on the differences in tax laws in the jurisdictions where they operate. These have generally been publicly traded companies with extensive multinational operations, and the Pillar Two rules are a step towards ensuring that they all pay their fair share of taxes.

In late 2021, 137 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS agreed to the Pillar Two Model Rules.[1] With a few exceptions, the rules will apply to *all* multinational enterprises that have generated consolidated global revenue of more than € 750m across their group in the two preceding years.

However, because it has been assumed that the Pillar Two rules — and the global minimum tax rate — will apply primarily to large, public multinationals, the specific application of the scoping rules and how they may be applied to large privately owned businesses, family offices and trusts is not yet clear.

Could these entities be among the few 'multinational enterprise' exceptions?

Are private companies, family offices and family trusts that have a foreign presence included in the BEPS 2.0 'multinational enterprise' definition? Could these entities be caught unwittingly in the international taxation net?

Given that the rules may begin to be implemented in certain countries and territories in early January of 2024, it's more than appropriate for family offices and private holding structures to be asking this question in the event that some jurisdictions may already be planning to apply the rules to them.

As KPMG Private Enterprise and Family Office advisers, our immediate concern is, 'what actions can family offices, trusts and private companies take *now* to anticipate and prepare for what may be coming down the road?'

"I now believe Pillar Two may become a real game changer — especially in the current zero and nominal tax jurisdictions that will likely introduce some form of domestic top-up tax. The whole landscape has completely changed because of Pillar Two. Over the past few months, several tax neutral jurisdictions — including Jersey, Guernsey, Isle of Man, Bahamas, Bermuda, Barbados, Hong Kong China (SAR), UAE and Mauritius — have announced that they too will embrace Pillar Two and introduce some form of domestic top-up tax. That was unthinkable in the past, but now it's potentially the new reality.

I think it's essential for family offices and private companies to gain a deep understanding of this international landscape and determine whether they will be included. Even if they aren't included immediately in Pillar Two, now is the opportunity to pause, think about their structure and whether it will continue to be appropriate in the jurisdictions where they operate. What worked yesterday may not work tomorrow. So, this is a great time to stop and reconsider that structure."

John Riva
Partner and Head of Tax, KPMG Crown Dependencies

[1] OECD/G20 Base Erosion and Profit Shifting Project, "The Pillar Two Rules in a Nutshell", July 2023 Update.

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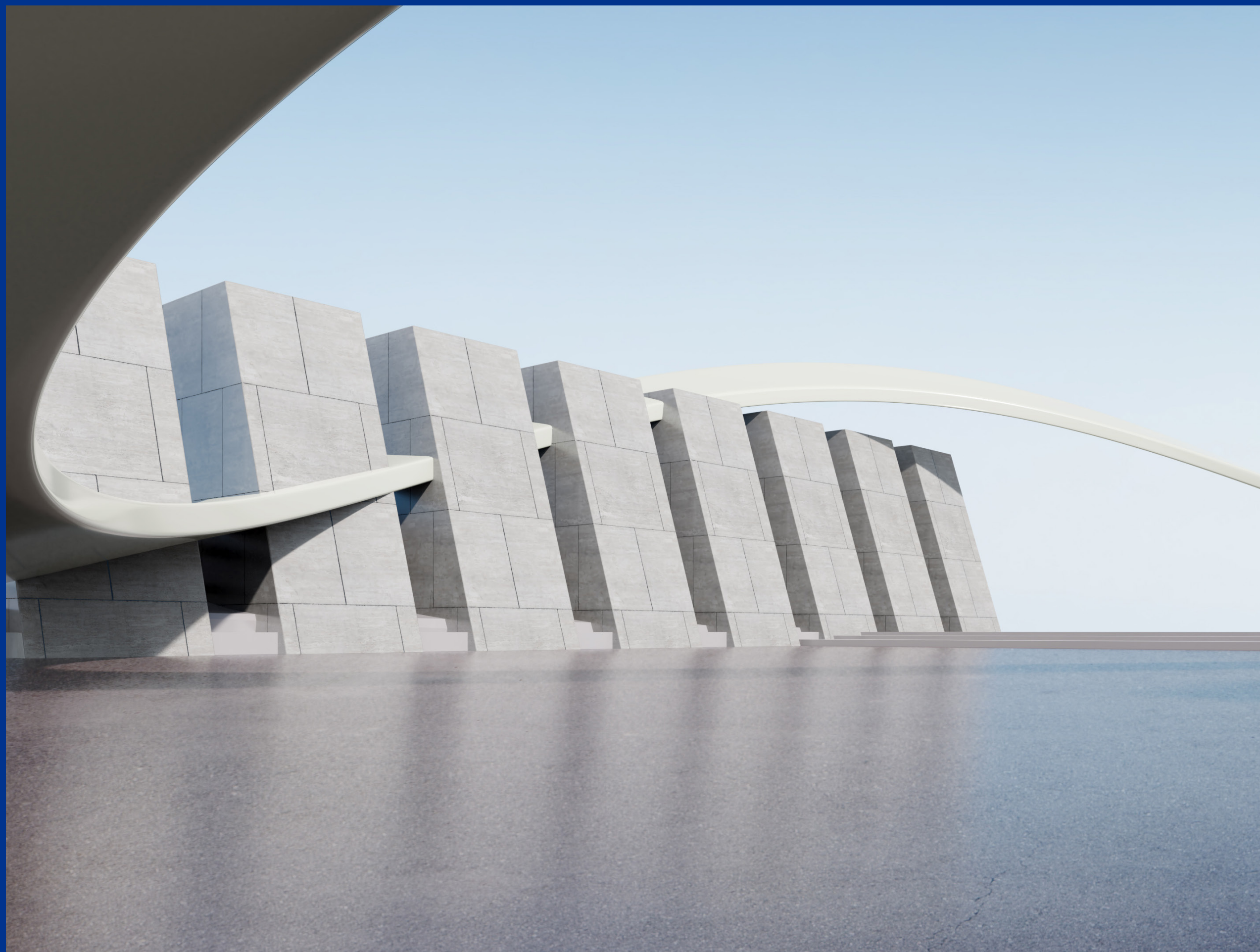
Is your current structure appropriate in an international tax environment?

There likely will be many variations in the application of the Pillar Two rules in each jurisdiction. And so, wherever they have a foreign presence, it's essential for family offices, family trusts and private companies to be fully aware of the rules and how the laws may be applied to them.



"The current tax approach for private wealth management structures varies from jurisdiction to jurisdiction. In the case of trusts, these differences can be quite substantial. In some cases, they are treated as transparent entities. In others, they're opaque. For certain taxes, some jurisdictions even treat them as both. It's complex and can be confusing.

But there are also many non-tax-related reasons for private companies, family offices and trusts to locate and operate offshore. I don't believe the advancement of Pillar Two will stop them from using the locations they're familiar with. However, those that are close to the target turnover levels of their accounts will need to prepare themselves for change.

I'm hopeful that some of that change will be for the good, leading to greater uniformity and a better understanding of the tax treatment of family offices, trusts and other private wealth management structures. But some of the changes are also likely to create new challenges and will lead to a need for greater compliance and potentially greater disclosure."

Greg Limb
Global Head of Family Office and Private Client, KPMG International Partner, KPMG in the UK

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Now is the time to act

Between now and the beginning of January 2024, when the Pillar Two rules may begin to be implemented, there is an opportunity to take a step back and consider whether the current operating structure of your business and your family office will continue to be appropriate in a rapidly evolving international tax environment and how accounting principles will apply to these types of structures.

1. Do the capabilities and structure of your family business, family office and family trust continue to provide what is required?
2. Are you happy with the jurisdictions where you currently operate?
3. What are the long-term prospects in those jurisdictions?
4. Do your current systems and capabilities provide you with the information you'll require for more extensive, multi-jurisdictional data collection and reporting in the future?

We recognize that there are many variations in private wealth and family office structures. And what worked well structurally yesterday may not work or be appropriate tomorrow in a new multi-jurisdictional tax environment. In structures that represent an organic business group, the identity of the group and the application of Pillar Two global revenue consolidation rules is clear. What is not yet clear, however, is how the global revenue consolidation rules in Pillar Two may apply to the foreign interests of a trust that is above the designated € 750m consolidated revenue threshold.

And while additional taxation across jurisdictions is one issue for private companies, family offices, private holding structures and trusts, other operational issues may also be disclosed through the increased Pillar Two annual reporting requirements, particularly for those who are not accustomed to reporting across multiple jurisdictions and are not set up to do so.

Preparing for what may come

A structural and systems review before the legislation is enacted is an important first step, followed by a detailed planning exercise to ensure that a privately owned business, family office or trust will continue to be compliant in an international tax environment.

It's also an opportunity to look inside the operations of the organization to review existing reporting mechanisms, compare them to the information that is likely to be required by the Pillar Two rules. This is the time to identify the actions that can be taken over the next several months to make sure the organization is able to produce the enhanced Pillar Two reporting that is going to be required.

In an increasingly complex disclosure and reporting environment, the reputational risks are important considerations as they relate to how certain activities may be perceived in different jurisdictions. What's viewed as unacceptable tax planning in one jurisdiction may be completely satisfactory in another or not connected to tax planning at all in the eyes of the Ultimate Beneficial Owner or family in certain circumstances such as succession planning.

All are scenarios that privately owned companies, family offices, private holding structures and trusts may need to prepare for.

> “What worked yesterday may not work today. What is fine from a tax point of view in one jurisdiction may not be in another. It will be important for family businesses and other privately owned companies to understand the reputational risks they may encounter in different jurisdictions; to create their own tax profile in terms of how they want to be perceived; and to actively manage their reputational risk when it comes to tax.
>
> This is also an opportunity for them to stop, look at their structure and their operations, and consider whether or not they want to continue 'as is' or make changes in how they operate to make it more efficient and resilient.”
>
> **Shay Menuchin**
> Global Tax Policy Lead, KPMG Private Enterprise,
> KPMG International

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Keeping pace with the changing tax landscape

It's important to keep in mind that the rules are merely a template that the participating jurisdictions will translate and implement independently into their own domestic legislation.

And so, with January 1, 2024 fast approaching, the time for determining the applicability and adoption of the rules in each jurisdiction and among different types of multinational organizations is extremely short. First and foremost, it's important to understand that BEPS Pillar Two is an evolving tax landscape, and the rules are continuing to be a work in progress.

It will be necessary to actively monitor this process to flag any inconsistencies in how the rules may be applied. There may be some jurisdictions that decide to apply only some of the rules, but not all. And that will have an impact on the structures in each of these jurisdictions.

As the OECD continues to issue publications on the interpretation and application of the Pillar Two Model Rules, it is our hope that future publications will include references to how the rules will apply to private companies and structures involving family offices and family trusts. In the meantime, family office structures — particularly those involving trusts — are likely to be subject to greater uncertainty regarding the application of the rules and how the entity's consolidated revenue may be determined.

We expect to see many changes along the way, and it will be important to follow the legislation process and the rules and guidelines that are being developed in all of the relevant countries where you have operations.

Laying the groundwork

If your business, family office or trust *is* in scope with the new rules, the consequences of more detailed reporting requirements and the need for new approaches to your tax strategies may be significant. The next four to six months will likely be critical for you and your tax advisers to develop a clear picture of the approach and actions that may be required.

Even for those family offices that may not be included immediately in the scope of BEPS 2.0, there is a lot of groundwork to be laid in order to anticipate and prepare for further changes and reporting requirements in a rising tide of international taxation.

Across the world, organizations are operating in a very dynamic tax environment, and we will provide regular updates on the potential impact of BEPS 2.0 — Pillar Two on private companies, family offices and trusts. We welcome your views and questions regarding these and other emerging tax-related issues that may impact your business, family office, private holding structure or family trust.

For more detailed technical information on BEPS 2.0 and updates on the current state of the rules and proposals, we encourage you and your tax professionals to refer to the KPMG Private Enterprise Global Tax & Legal document "BEPS 2.0: State of play". It provides a high-level overview of the administrative and legislative developments related to the implementation of BEPS 2.0 in jurisdictions around the world.

Please contact us at privateenterprise@kpmg.com or your local KPMG Private Enterprise Tax & Legal professional to share your views and keep the dialogue open regarding the impact of international tax changes on private companies, family offices, private holding structures and trusts across the world.

> "We are likely to see transitional rules coming from the OECD that are similar to the transitional Safe Harbour document that was released in early August of 2023. We are also expecting to see more guidance and updates on the method of reporting and the structure of the design of the GloBE reports from the OECD and from participating jurisdictions who will enact their corresponding domestic legislation.
>
> Most of the attention will likely continue to be focused on large multinationals and we will adapt it to private enterprise and family office structures as much as possible as the rules progress."
>
> **Shay Menuchin**
> Global Tax Policy Lead
> KPMG Private Enterprise
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About KPMG Private Enterprise Tax

With private companies around the world facing a number of opportunities and challenges as a result of geopolitical shifts, technological innovation, globalization, new business and consumer demands, and more, the need for sound tax advice is now more crucial than ever. You know KPMG, you might not know KPMG Private Enterprise Tax. Our advisers in member firms around the world are dedicated to working with you and your business, no matter where you are in your growth journey.

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