INTERNATIONAL TAX DESIGN FOR THE 21ST CENTURY: EVALUATING BEPS AND LOOKING TO THE FUTURE

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The Global Impact of BEPS Reforms

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REVENUE IMPACTS OF "BEPS 2.0"

- Estimates overall
  - OECD 2020: with US GILTI $60-100 b (at a 12.5 percent min tax); $42-70b w/o GILTI
  - OECD now: $150b (with new assumptions presumably including 15 percent…other?)
  - Oxford 2020: assuming 10 percent minimum effective rate = $32 b without GILTI
- Is that a lot?
  - 2020 OECD estimate range = 1.7 to 2.8 percent of global CIT
  - Global CIT = about 3 percent of global GDP
  - So, no…

REVENUE IMPACTS (CONT.)

- Where does this come from?
  - Pillar One, Amount A: no revenue impact; shift around about $125 b in corporate profits among [large?] countries
  - Pillar One, Amount B (marketing and distribution safe harbor; aims at non-OECD) hasn't been modeled by OECD
  - Pillar Two: the main event
- Who gets it?
  - Directly—HQ countries (large…)
  - Indirectly—reduction in profit shifting: OECD therefore estimated comparable gains across all country income categories
- Who loses?
  - IMF 2020: investment hubs/low tax

PILLAR ONE

- Scope
  - MNEs with global turnover greater than Euro 20 b and profitability greater than 10 percent (= largest 100 ish MNEs)
  - Exclude extractives and regulated financial services
  - Nexus rule: MNE must derive at least Euro 1 million from jurisdiction; but (compromise for dev cos.) if GDP less than Euro 40 b, nexus set at Euro 250 thousand
- Impact?
  - Reallocate 25 percent of profit above 10 percent of revenue
  - OECD estimates that low income countries will get "[some ->]" But, mainly, reallocate among advanced countries
    - Oxfam—"52 dev cos will get 0.025 percent of their collective GDP under P. One"

PILLAR ONE (CONT.)

- Significance?
  - More in the ground-breaking precedents: formulary/unitary allocation; shift to market jurisdictions…
  - Elimination of DSTs! A (the?) goal of the US
    - Agreement to halt so far from 8 major jurisdictions, latest India
    - Stop (pause?) trade wars

PILLAR TWO

- What was/is the goal?
  - Halt tax competition, OR
  - Major MNEs pay at least some minimum total corporate tax somewhere
  - Both?
- The “Substance Carve Out”
  - Allow tax incentives still? (a compromise)
  - Tax residual profits, v. minimum tax on all profits
  - Impact on tax competition depends on how structured—but reduces the impact

PILLAR TWO (CONT.)

- Who gets the "top ups?"
  - Oxfam: G7/EU two-thirds of new tax; poorest countries less than 3 percent
  - This is the direct take: results from primacy of IIR over UTPR
  - Will STTR have a significant effect for LICs? (Also not yet modeled by OECD…refusal to extend to various service payments, may indicate that's where the money is…)
- Tax competition
  - What should low tax countries do? Indirect effects allow higher CITs? But see, competition…
  - Ireland (eg) proposing to apply 15 percent rate to in-scope MNEs; keep 12.5 percent rate for all other corporations

IMPLICATIONS OF/FOR US

- Current legislative proposals:
  - Pillar Two: move GILTI to jurisdictional approach in line with OECD—increases revenue above TCJA version
    - General agreement can be done through "reconciliation" (simple majorities)
    - Failed to increase rate above 15
  - Pillar One: a different story
    - Large proportion of in-scope MNEs are US resident headquartered (roughly half)
    - Weight of opinion that treaty changes required, which means 2/3 of senate
    - What if US doesn't adopt?....