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The Global Minimum Tax Agreement: An End to Corporate Tax Havens?

Colleen Essid*

Tax havens bring to mind images of tropical islands, secret Swiss bank accounts, and news headlines à la *The Panama Papers*.¹ A tax haven is a country with a favorable tax structure, such as a system of low to zero corporate tax rates or other advantageous tax laws for companies subject to its jurisdiction.² For years, multinational corporations have been able to take advantage of legal tax havens by structuring their legal entities or overseas headquarters in tax haven countries to benefit from such low rates, a phenomenon known as “base erosion and profit shifting.”³ Tax competition among global economies and current international tax law have led to countries like Ireland to entice companies such as Google and Apple to relocate their European headquarters within its borders⁴ but often at the expense of tax revenue that could be generated in countries where the companies’ digital footprint or market presence is arguably greater.⁵

The G-7 countries are attempting to change the status quo in a big way by approving a landmark agreement on June 5, 2021 that could rewrite global

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¹ See Nicolas Shaxson, *Tackling Tax Havens*, 56 FIN. & DEV. 6, 7–8 (2019), <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm>.

² Will Fitzgibbon & Ben Hallman, *What is a Tax Haven? Offshore finance, Explained* (Apr. 6, 2020), <https://www.icij.org/investigations/panama-papers/what-is-a-tax-haven-offshore-finance-explained/>.

³ OECD, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT: ADDRESSING THE TAX CHALLENGES ARISING FROM THE DIGITALISATION OF THE ECONOMY 4 (2021), <https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf> (hereinafter OECD report).

⁴ Liz Alderman, *Ireland’s Days as a Tax Haven May Be Ending, but Not Without a Fight*, N.Y. TIMES (July 8, 2021), <https://www.nytimes.com/2021/07/08/business/ireland-minimum-corporate-tax.html>.

⁵ Shaxson, *supra* note 1, at 7.

tax rules and eliminate tax havens altogether.⁶ The agreement is part of a larger project spearheaded by the Organisation for Economic Co-operation and Development (OECD), the “rich-country. . . standard-setter for international tax matters,” which has attempted to modernize international corporate tax law in response to the increasingly globalized and digitalized world economy.⁷ As part of “the most significant changes to the international tax rules in over a century,”⁸ the OECD Global Tax agreement’s two-pillared approach purports to “address the tax challenges arising from the digitalisation of the economy.”⁹ Part of the impetus for such an agreement is the “tax leakage” resulting from differences in tax structures and effective tax rates to the tune of \$100 billion to \$240 billion a year in tax revenue.¹⁰

The OECD Global Tax Agreement, negotiated by a group of about 140 countries designated the “Inclusive Framework,”¹¹ notably will attempt to set a global minimum tax rate (GMT) of 15% for large multinational corporations, which is higher than Ireland’s current 12.5% corporate tax rate and the zero corporate tax rates of territories such as the Cayman Islands.¹² By requiring all countries to have a tax rate floor of 15% – enforced by the ability to “top up” corporate tax rates in the home country of the parent entity in instances where the subsidiary entity’s country has a lower effective tax rate¹³ – the theory is that multinational corporations

⁶ See June 5, 2021, communiqué at the G-7, later approved by the G-20 on July 9, 2021, *G7 Finance Ministers & Central Bank Governors Communiqué* (June 5, 2021), at 3, ¶ 16, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991640/FMCBGs_communique_-_5_June.pdf (hereinafter *G-7 Communiqué*).

⁷ Shaxson, *supra* note 1, at 8–9.

⁸ OECD, *supra* note 3, at 8.

⁹ *Id.* at 4.

¹⁰ Anshu Khanna, *Global Minimum Tax Rate: A Strategy in the Tax Collection Battle*, BLOOMBERG TAX (Aug. 25, 2021), <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/>.

¹¹ *G-7 communiqué*, *supra* note 6, at 3, ¶ 16.

¹² Khanna, *supra* note 10.

¹³ OECD report, *supra* note 3, at 6.

would no longer have any incentive to shift profits to low tax countries.¹⁴ Eliminating the competitive advantage of tax haven countries in the tax “race to the bottom”¹⁵ could spell the end of the tax haven phenomenon.

The big question is whether worldwide consensus can be reached in light of a tax agreement that is diametrically opposed to the interests of tax haven countries. In order for the OECD Global Tax Agreement and 15% GMT to be adopted as law, individual countries who sign on to the agreement would need to pass legislation in their respective legislatures amending their tax laws.¹⁶ Additionally, countries would need to adopt new tax treaties and adjust conflicting tax policies.¹⁷ As of August 31, 2021, Togo became the 134th country to sign the agreement, following the tax haven island of Barbados.¹⁸ The current timeline calls for the agreement to be finalized by October 2021 and implemented in 2023,¹⁹ at which point the individual countries would involve their legislative bodies.²⁰ Unlike smaller countries, such as Barbados, European holdouts including Ireland, Hungary, and Estonia still threaten to derail the agreement, as the European Union requires unanimous support of the agreement by its twenty-seven member states in order to officially adopt its rules and guidelines.²¹

¹⁴ Khanna, *supra* note 10.

¹⁵ Shaxson, *supra* note 1, at 8.

¹⁶ Khanna, *supra* note 10.

¹⁷ Daniel Bunn, *What’s New in the Global Tax Agreement?*, TAX FOUND. (July 1, 2021), <https://taxfoundation.org/global-tax-agreement/>.

¹⁸ Michael Rapoport, *Togo Becomes Latest Country to Back the Global Tax Agreement*, BLOOMBERG TAX (Aug. 31, 2021), <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/>.

¹⁹ *Id.*

²⁰ Khanna, *supra* note 10.

²¹ William Horobin & Peter Flanagan, *Macron Says It Would Make Sense for Ireland to Join Tax Deal*, BLOOMBERG TAX (Aug. 26, 2021), <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/>.

Ireland is likely to remain in the spotlight in the weeks leading up to the final accord, leveraging its position in the EU in order to salvage some sort of competitive advantage for its tax regime, which currently brings in billions of euros and thousands of jobs from Irish-based corporations seeking to avoid tax on overseas profits.²² The agreement could additionally impact the large technology corporations based in Ireland, as another provision would require corporations to pay taxes in the market jurisdiction rather than where the corporation is headquartered, with clear implications for digital service providers such as Google.²³ Given the optics of tax havens' stance on the issue – profiting from tax competition at the expense of other global economies²⁴ – Ireland is most likely to relent and agree to a compromised deal, as indicated by Ireland's Finance Minister, Paschal Donahue, in early August.²⁵

Notwithstanding that a final deal is reached by the Inclusive Framework countries in October, the participation of the United States appears far from certain despite warm overtures from President Biden and Treasury Secretary Janet Yellen.²⁶ In order to move forward with the deal, the U.S. Congress would need to back Biden's domestic tax agenda – an outcome that is doubtful in the polarized House and Senate and with the slim majority the Democrats currently enjoy.²⁷

The likelihood of a global minimum tax rate is therefore highly tenuous, and the allure of Caribbean beaches and tech-savvy Dublin as attractive

²² Alderman, *supra* note 4.

²³ *Id.*

²⁴ *Id.*

²⁵ David Wainer, *Ireland's Donahue Says Global Tax Deal 'More Likely Than Ever,'* BLOOMBERG TAX (Aug. 4, 2021), <https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/>.

²⁶ See Melissa Geiger, *Global Minimum Tax: An Easy Fix? Exploring the Impacts of a Global Minimum Tax Regime*, KPMB, <https://home.kpmg/xx/en/home/insights/2021/05/global-minimum-tax-an-easy-fix.html> (last visited Sep. 3, 2021).

²⁷ *Id.*

overseas headquarters locations will likely remain the reality for the foreseeable future.

Edited by Alex Beezley