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Trump Administration Disavows the OECD Global Tax Deal

Tax Talks on **January 22, 2025**

On January 20, 2025, the White House issued a memorandum (the "Memorandum")[1], announcing that the "Organization for Economic Co-operation and Development (OECD) Global Tax Deal" (the "Global Tax Deal") has "no force or effect in the United States" and disavowing "any commitments" previously made by the United States with respect to the Global Tax Deal, absent an act of Congress. The Memorandum also directs the Secretary of the Treasury to develop and present to the President a list of "protective measures or other options" towards foreign countries that are either "not in compliance with any tax treaty" with the United States or have (or are likely to have) tax rules that are "extraterritorial or disproportionately affect American companies".

While the Memorandum does not specifically reference previously published Internal Revenue Service ("IRS") guidance with respect to aspects of the Global Tax Deal, it is unclear whether some or all of such guidance would be considered a "commitment" of the United States that is repudiated by the Memorandum. Additionally, the Memorandum specifically calls on the Secretary of the Treasury to consider whether U.S. tax treaty partners are in compliance with their obligations under tax treaties. All potentially affected multinational enterprises and their related stakeholders should monitor closely U.S. tax policy developments related to the issues set forth in the Memorandum. The balance of this blog post provides background on the Memorandum and summarizes its provisions.

Background and Summary of Provisions

The Global Tax Deal, in very basic terms, is the outcome of over a decade of negotiation by various members of the OECD and other countries to address the perceived abuses of "base erosion and profit shifting" ("BEPS") by multinational corporations to reduce their overall effective tax rate. An important element of the Global Tax Deal is an agreement to impose a global minimum tax of 15% on corporate profits through very complicated mechanics, including by granting countries in certain circumstances the ability to impose a "top-up tax" on very large multinational groups to ensure that profits derived in that country are subject to the global minimum tax – even if that multinational would not otherwise be subject to tax on those profits in that country (either by application of a treaty or under the general corporate tax laws of that country).

While the Memorandum does not address this global minimum tax specifically (or any other particular provision of the Global Tax Deal), the Memorandum characterizes the Global Tax Deal as allowing "extraterritorial jurisdiction over American income" (presumably, for example, by allowing the imposition of a top-up tax by another country), as well as limiting the ability of the United States to enact "tax policies that serve the interests of American businesses and workers" (presumably, for example, policies that might allow American multinationals to achieve an effective tax rate below the BEPS global minimum tax rate, such as R&D credits). The Memorandum further asserts that American companies might be subject to "retaliatory international tax regimes" if the U.S. does not comply with "foreign tax policy objectives". The Memorandum explicitly states the Administration's view that American "economic competitiveness" and "sovereignty" are enhanced by clarifying that the Global Tax Deal has "no force or effect in the United States". Section 1 of the Memorandum instructs the Secretary of the Treasury and the Permanent Representative of the United States to the OECD to (i) notify the OECD that any commitments made by the "prior administration" on behalf of the United States in respect of the Global Tax Deal have no force or effect, absent an act of Congress adopting the relevant provisions of the Global Tax Deal and (ii) otherwise take "all additional necessary steps" to otherwise implement the findings of the Memorandum. Left unclear by the Memorandum is whether the Trump Administration intends for the Secretary to withdraw prior published guidance by the IRS (e.g., Notice 2025-4), or what the effect of those components of OECD BEPS authority incorporated by reference in published guidance does, or does not, still have.

Additionally, the Memorandum instructs the Secretary to investigate, in cooperation with the United States Trade Representative, whether "any foreign countries" are either "not in compliance with any tax treaty" with the U.S. or have (or are likely to have) tax rules that are "extraterritorial or disproportionately affect American companies". While the Memorandum does not single out any particular country and does not specify what might fall within the scope of an "extraterritorial" or "disproportionate" tax rule, these tax rules likely include both rules implementing the global minimum tax describe above, as well as various "digital services taxes" that have been proposed or implemented by various non-U.S. jurisdictions, including certain U.S. tax treaty partners. The Memorandum further instructs the Secretary to develop "protective" measures or actions that may be taken in response to those tax treaty noncompliance or tax rules. The Secretary is instructed in the Memorandum to deliver findings and recommendations to the President within 60 days.

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[1] Available at https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/, last visited January 21, 2025.

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