OECD weaves net to stop Google, FB shifting profit

Proposes rules that would provide jurisdictions with a right to 'tax back'

DILASHA SETH
New Delhi, 9 November

Digital companies such as Facebook, Google, and Netflix will soon find it difficult to shift profits to low- or no-tax jurisdictions, with the Organization of Economic Cooperation and Development (OECD) proposing measures to ensure they pay a minimum level of tax.

The Paris-headquartered organisation on Friday released a consultation paper proposing rules that would provide jurisdiction with a right to tax back where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.

India has been leading the global effort to rework the traditional international tax system to make digital firms pay taxes regardless of their physical presence or measured profits in a country.

Base erosion and profit shifting (BEPS) refers to exploiting gaps and mismatches in tax rules to shift profits by multinational companies to low-tax regimes. Internet companies operate out of low-tax jurisdictions, but do business in several others, without having a physical presence and end up avoiding taxes.

The Consultation on Pillar 1 approach was released last month dealing with re-allocation of profit and revised nexus rules. It explores potential solutions for determining where tax should be paid and on what basis (nexus), as well as what portion of profits could or should be taxed in the jurisdictions where clients or users are located (profit allocation).

The OECD secretariat has sought public comments by December 2 on three specific aspects to GloBE — use of financial accounts as starting point to determine tax base, the extent to which a multinational company can combine income and taxes from different sources in determining effective tax rate, carve-outs and thresholds that may be considered.

Internet companies operate out of low-tax jurisdictions, but do business in several others without having a physical presence and end up avoiding taxes

The OECD's Pillar Two or GloBE proposals could lead to significant changes to the overall international tax rules under which multinational businesses currently operate, said Rajendra Nayak, partner, EY India.

The proposals would, through changes to domestic law and tax treaties, provide jurisdictions with a right to tax back where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of taxation, he added.

The proposals are intended to advance a multilateral framework that achieves a balanced outcome, limiting the distortive impact of direct taxes on investment and business location decisions, said Nayak.

A public consultation meeting on the GloBE proposal will be held on December 9.

Rakesh Nangia, chairman, Nangia Andersen Consulting, said pursuant to receipt of proposals from the stakeholders, one can expect the OECD to issue the final consensus based solution to tax this new version of world economy.

Addressing the tax challenges of a digitalised economy may give options to treaty partners and like multilateral instruments, the matching concept may prevail, said Nangia.

Under Pillar 2, four rules are being discussed — the income-inclusion rule, the undertaxed payments rule, the switch-over rule, and a subject-to-tax rule.

The income-inclusion rule aims to tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate. The undertaxed payments rule would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax) for a payment to a related party if that payment was not subject to tax at or above a minimum rate.

MNC Digital Cos May Face a Minimum Level of Tax

OECD unveils plan for taxation of digital cos for public consultation

Our Bureau

New Delhi: Multinational technology and digital companies may have to cough up a minimum level of corporate tax, bringing an end to the popular practice of lowering or avoiding taxes by setting up entities in low-tax jurisdictions.

The Organisation for Economic Co-operation and Development (OECD) on Friday unveiled for public consultation a proposal on taxation of digital companies. It seeks to use financial accounts as a starting point for determining the tax base and provide guidance on the extent to which an MNC can combine income and taxes from different sources in determining the effective tax rate on such income.

Experts say this plan could radically change the tax landscape globally as it deals with the issue of multinationals setting up intermediary operations in a low-tax jurisdiction before they set up base in any country to reduce the tax outgo.

"The OECD's Pillar Two, or Global Anti-Base Erosion Proposal (GloBE), proposals could lead to significant changes to the overall international tax rules under which multinational businesses currently operate," said Rajendra Nayak, tax partner & national leader-international tax services, at EY India.

The scope of the GloBE proposals is not limited to highly digitalised businesses, Nayak said, adding that these would, through changes to domestic law and tax treaties, provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of taxation.

"The proposals are intended to advance a multilateral framework that achieves a balanced outcome, limiting the distortive impact of direct taxes on investment and business location decisions," he said.

An entity-blending approach, proposed in the document, would require a multinational enterprise to determine the income and taxes of each entity in the group as well as the income of domestic entities that was attributable to a foreign branch and be subject to tax under the GLoBE proposal where the effective tax rate of a foreign entity (or foreign branch) was below the minimum rate.

This is the second part of the proposal on digital taxation, called Pillar Two. The first part, or Pillar One, was released in October.

"Pursuant to receipt of proposals from the stakeholders, we can expect the OECD to issue the final consensus-based solution to tax this new version of world economy," Nangia Andersen Consulting chairman Rakesh Nangia said.

OECD proposes minimum tax for global firms

ENS ECONOMIC BUREAU
NEW DELHI, NOVEMBER 8

The suggestion implies that not only tech companies, but also most multinationals, which have intangible assets as profit drivers, would be covered under the tax ambit

PUTTING FORWARD the right for jurisdictions to "tax back" where other jurisdictions have not exercised their primary taxing rights, the Organisation for Economic Co-operation and Development (OECD) has floated a consultation paper for Global Anti-Base Erosion (GloBE) proposal under Pillar Two, proposing a minimum rate of tax for all internationally operating businesses.

This implies that not only tech companies, but also most multinationals, which have intangible assets as profit drivers, would be covered under the tax ambit.

Comments for the tax proposals under Pillar II, which won't be limited only to digital companies, have been invited till December 2, following which a public consultation meeting would be held on December 9.

"A minimum tax rate on all income reduces the incentive for taxpayers to engage in profit shifting and establishes a floor for tax competition among jurisdictions. In doing so, the GloBE proposal is intended to address the remaining BEPS challenges linked to the digitalisation of the economy, but it goes even further and addresses these challenges more broadly...depending on its design, the GloBE proposal may shield developing countries from pressure to offer inefficient tax incentives. The GloBE proposal is based on the premise that, in the absence of a co-ordinated and multilateral solution, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all jurisdictions," the OECD paper said.

The public consultation document on Pillar II of BEPS 2.0 project, that broadly contains four main proposals for global minimum taxation is in addition to proposals under Pillar I, which were circulated a few weeks ago and were related to the allocation of taxing rights between jurisdictions considering various proposals for new profit allocation.

"The Programme of Work for Pillar Two specifies that the GloBE proposal will operate as a top-up to an agreed fixed rate. The determination of the actual rate of tax to be applied under the GloBE proposal will be discussed once other key design elements of the GloBE proposal are fully developed," the OECD paper said.

Rajendra Nayak, tax partner and national leader-international tax services, EY India, said the GloBE proposals could lead to significant changes to the international tax rules under which multinational businesses currently operate. "The scope of the GloBE proposal is not limited to highly digitalised businesses. The proposals would, through changes to domestic law and tax treaties, provide jurisdictions with a right to 'tax back' where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of taxation."

The proposal includes income inclusion rule that would tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate. Rakesh Nangia, chairman, Nangia Andersen Consulting said taxing digitalised economy is the priority for nations worldwide.

MNCs, international businesses may face minimum level of corporate tax under OECD's new proposal

Stakeholder comments invited for the proposal

K.R. SRIVATS

New Delhi, November 11

OECD has come up with a new proposal that could end up ensuring that profits of internationally operating businesses — including tech and digital giants — are subjected to a minimum rate of corporate tax.

A minimum corporate tax rate, if and when implemented, on all income would reduce the incentive for taxpayers around the world to engage in profit shifting and establish a floor for tax competition among jurisdictions, say tax experts.

The new proposal — the Global Anti-Base Erosion (GloBE) proposal under Pillar two of BEPS 2.0 project aimed at addressing the tax challenges of the digitalisation of the economy — represents a substantial change to the international tax architecture, they said. The Paris-headquartered Organisation for Economic Cooperation and Development (OECD) has now come out with a public consultation document for GloBE proposal, which seeks to develop rules that would provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.

The new proposal represents a substantial change to the international tax architecture, according to tax experts.

Shifting tax burden

The GloBE proposal postulates that global action is needed to stop a harmful race to the bottom on corporate taxes, which risks shifting the burden of taxes onto less mobile bases and may pose a particular risk for developing countries with small economies.

Stakeholders comments have now been invited on three specific technical design aspects of the GloBE proposal — the use of financial accounts as a starting point for determining the tax base; the extent to which an MNE can combine income and taxes from different sources in determining the effective (blended) tax rate on such income; and finally stakeholders' experience with, and views on, carve-outs and thresholds that may be considered as part of the GloBE proposal.

The comments provided is expected to assist members of the 'Inclusive Framework' (on BEPS) in the development of a solution for its final report to the G20 in 2020.

Depending on its design, the GloBE proposal may shield developing countries from pressure to offer inefficient tax incentives.

This GLoBE proposal is in addition to proposals under Pillar One, which were circulated a month back. Pillar One addresses the allocation of taxing rights between jurisdictions and considers various proposals for new profit allocation and nexus rules.

Experts' take

Rajendra Nayak, Tax Partner & National Leader- International Tax Services, EY India, said the OECD's Pillar Two or GloBE proposals could lead to significant changes to the overall international tax rules under which multinational businesses currently operate.

"The scope of the GloBE proposal is not limited to highly digitalised businesses. The proposals would, through changes to domestic law and tax treaties, provide jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of taxation," he said.

The proposals are intended to advance a multilateral framework that achieves a balanced outcome, limiting the distortive impact of direct taxes on investment and business location decisions, he said.

Co-ordinated rules

Rakesh Nangia, Chairman, Nangia Andersen Consulting Pvt Ltd, said that GLoBE is for development of a co-ordinated set of rules to address ongoing risks from structures that allow multinational enterprises to shift profit to jurisdictions where they are subject to no or very low taxation.

Though it will be a hard task to prepare a 'one fits all' solution for the global business world, a faster pace of OECD in this direction is definitely promising, he said.

The final solution addressing the tax challenges of digitalised economy may give options to treaty partners and like Multilateral Instrument (MLI) the matching concept may prevail, Nangia added.