



AGREEMENT OF PROFIT REALLOCATION TO ADDRESS DIGITALISATION OF ECONOMY

136 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (<https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-october-2021.pdf>) have agreed as of 8 October on a plan to reallocate part of the tax revenue from the largest and most profitable businesses to countries where they make sales.

A Pillar One of the plan would apply to multinational enterprises (MNEs) with more than EUR 20 billion revenues and a profit margin above ten per cent. For those companies, a portion of their profits would be taxed in jurisdictions where they have sales; 25 per cent of profits above the 10 per cent margin may be taxed.

A Pillar Two consists of an Income Inclusion Rule (IIR), which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity and an Undertaxed Payment Rule, which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR (together the Global anti-Base Erosion Rules, GloBE). The minimum tax rate used for purposes of GloBE will be 15 per cent. The GloBE will provide a carve-out that will exclude an amount of income that is five per cent of the carrying value of tangible assets and payroll.

The GloBE will apply to MNEs that meet the EUR 750 million threshold as determined under the country-by-country reporting rules.

The plan is expected to be implemented through a multilateral convention that will also require parties to remove all digital service taxes and other relevant similar measures and to commit not to introduce such measures in the future.

Azerbaijan does not participate in the Framework: <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>. It remains to be seen whether this is an indication that Azerbaijan will implement unilateral measures to tax global tech firms among others.

ATTORNEY'S FREEDOM TO REPRESENT

Cases Restricting Withdrawal from Performance of Legal Service

Various legal provisions restrict an attorney's (advocate's) right of withdrawal from performance of attorneys' duties.

Pursuant to Section 20 of Law, *On Advocates and Advocating* (the "Law"), an attorney rendering legal aid at the expenses of the State to a detained person whose financial condition does not allow him/her to assign an attorney, shall not withdraw from executing the obligations. Furthermore, Section 16 of the Law excludes an attorney's refusal of an accepted obligation of defence while performing professional activity. Likewise, under Sub-Section 92.10 of the Criminal Procedure Code, defence counsel is prohibited from refusing to defend or cease functions as defence counsel.

Contrary to attorneys, law gives to customers the right to terminate the functions of the appointed attorney at any time. A person instructing an attorney may restrict or terminate the attorney's functions assigned to

him/her under contractual terms without a prior notice. This person may at any time turn down the attorney rendering legal aid at the expense of the State and make a contract with another attorney at his/her choice.

Although, based on the above, attorneys rendering legal aid at the expense of the State are obliged to accept an assignment/instruction, and those having accepted an instruction to act as defence counsel in the criminal proceeding are prohibited from withdrawing, other attorneys are free to accept or withdraw from execution of any instruction.

Freedom of Contract

Pursuant to Section 5 of the Law, “advocating is performed on the basis of voluntary relationship between an advocate and persons applying for legal aid [assistance] and with the observation of the attorneys’ ethics.... Participation of an attorney in court proceedings is exercised on the basis of an agreement made between a person applying for legal assistance and an attorney or an attorney’s office.” Parties are free to determine the terms for contractual termination as they are at the moment of making an agreement.

Attorney’s Reasonable Right to Withdraw

Pursuant to Sub-Section 114.1 of the Criminal Procedure Code, participation of defence counsel, representative of victim, civil plaintiff, civil defendant, and witness in the criminal proceeding can be terminated on the basis of a reasonable objection, including cases of conflict of interests and lack of relevant rights.

Pursuant to Sub-Section 3.9 of *Regulations of Attorneys Rules of Conduct*, an attorney shall withdraw from execution of cases where legal assistance is rendered or had been rendered within the same case to the persons having interests adverse to the interests of other represented persons. An attorney may refuse to represent or, if he/she accepted representation, cease discharging representation until the payments provided in Sub-Section 2.1 of Agreement for Provision of Legal Assistance (https://barassociation.az/uploads/attachments/huquqi_yardimin_gosterilmes_i_haqqinda_muqavile.docx) approved by resolution, dated 23 April 2018, of the Presidium of the Bar Association, are made.

Partial Flexibility of Law Related to Attorney’s Right to Withdraw: France

In France, pursuant to Section 419 of the Civil Procedure Code, it is sufficient for a representative/attorney to inform the client, judge, and the other party of an intention to withdraw in order to be discharged from carrying out the functions. In the presence of obligatory representation, an attorney is considered being discharged from performance of the functions from the date of replacement by another attorney appointed by the client, or otherwise the head of the Bar Association or the Disciplinary Chamber.

Upon a mandatory representation, the rules for termination of the attorney’s functions are more rigid. After sending the registered letter informing the customer of the attorney’s intention to cease intervention, the representation is terminated on the date when another attorney is appointed. Otherwise, the attorney may not withdraw – this paradox can be explained by the need for mandatory representation.

The French Supreme Court states, in its decision, dated 15 February 2005, that an attorney shall continue the execution of functions, until he/she is terminated in a clear and non-equivocal manner.

Attorneys’ Regulated Right of Withdrawal from Legal Service: Great Britain

Under the SRA Code of Conduct 2011, an attorney was not entitled to cease acting for a client without a good reason and a prior reasonable notice. Although this rule does not appear in the SRA Standards and

Rules replacing the SRA Code of Conduct 2011 and bringing more flexibility to standards of professional conduct, it is still being referred to by other legal sources and case law. As a rule, a solicitor may withdraw in case of incompetency and conflict of interests, including the cases provided by both parties in their agreement.

Solicitors are free to conclude agreements with customers.

Regarding the barristers (court attorneys), the latter are not completely free to decline any instruction or turn down a client, this being possible in the circumstances and for the reasons provided in the Barristers' Code of Conduct. At the same time, if a barrister wishes to withdraw after having accepted an instruction, such withdrawal shall meet the requirements provided for such cases in the Code of Conduct. The requirements include, among others, the customer's refusal to allow attorney to make the disclosures to the court, which duties to the court require him to make, the attorney's professional conduct being called into question, and conflict of interests.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
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