

Peter Barnes Comments on OECD Super Treaty with Bloomberg BNA

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Nations will soon have a new tool to combat tax avoidance, but some tax professionals worry that authorities will take advantage of its ambiguities to challenge some of multinational companies' favorite business structures.

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The ambiguities in the PPT might encourage a range of interpretations, said Peter Barnes, a tax law professor at Duke University and Of Counsel at Caplin & Drysdale.

"The PPT itself is just a flexible tool," Barnes said. "The result is in the eye of the beholder. Any country doing an audit can look and say, you structured that way to save taxes, and therefore I'm going to tax you differently than the way you reported. To me, that's overbroad."

Barnes said the PPT "opens up an argument" for governments to say companies were making business decisions driven primarily by consideration of tax treaties benefits. The PPT's effect on multinationals depends on how source countries choose to apply it, Barnes said. "Some are going to be literal, others will be more contextual."

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The application of the PPT may not have as much of an impact on the largest multinationals, Barnes said. Global pressures to crack down on tax avoidance starting in the early 2000's already pushed many companies to start explaining to tax authorities what they're doing in a particular jurisdiction, so complying with the PPT might not be a big change.

In this new environment, Barnes said, multinationals have grown used to being "disciplined" about being able to justify all of their subsidiaries: "Why do I have it? Can I explain why? Should I be embarrassed that I have it, or is there a story that's fully understandable and fully tax-compliant about this affiliate?" Barnes asked.

"I'd say that discipline has been followed for more than a decade now, and is followed as companies deal with the PPT or any of the other issues under the MLI," he added. "So, I don't think this is new."

For the full article, please visit *Bloomberg BNA's* website (subscription required).

Excerpt taken from the article "OECD Super Treaty Could Impact Holding Company Structures" by Isabel Gottlieb for Bloomberg BNA.

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