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OECD GLOBAL MINIMUM TAX (PILLAR 2) "SIDE-BY-SIDE PACKAGE": KEY CONTENTS AND IMPACT ANALYSIS

On January 5, 2026, the OECD Inclusive Framework (OECD IF) announced the "Side-by-Side Package," a reform plan for the Global Minimum Tax (Pillar 2). This reform materializes the agreement reached between the U.S. and other G7 Finance Ministers on June 28, 2025. Key components include the establishment of a coexistence framework with the U.S. (Side-by-Side), preferential treatment for substance-based tax incentives, and the simplification of Global Minimum Tax calculations. This newsletter analyzes the key details of the reform package and its implications for companies engaged in international investment.

I. BACKGROUND OF THE "SIDE-BY-SIDE PACKAGE"

The Global Minimum Tax (Pillar 2) is a global tax regime born out of an agreement among OECD IF member jurisdictions in 2021, designed to ensure that multinational enterprises (MNEs) with consolidated revenues of EUR 750 million or more bear a minimum Effective Tax Rate (ETR) of 15% regardless of where they operate. While the EU, UK, Korea, and Japan implemented this from 2024, the United States has maintained its unique system for taxing foreign income, known as the Global Intangible Low-Taxed Income (GILTI) regime.

In July 2025, the U.S. passed the "One Big Beautiful Bill Act (OBBBA)," reforming the existing GILTI regime into the **Net CFC Tested Income (NCTI)** regime. The NCTI regime applies an effective tax rate of 12.6% (up to 14% including foreign tax credit effects) and utilizes a "global blending" approach, aggregating worldwide income for taxation. In contrast, the OECD IF's Pillar 2 is designed based on a "jurisdictional blending" approach, ensuring a minimum ETR of 15% in each specific jurisdiction.

Due to these structural differences between Pillar 2 and the U.S. system, U.S.-headquartered MNEs faced the risk of being subject to Pillar 2 Top-up Taxes—specifically the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR)—in other jurisdictions, despite paying NCTI in the U.S. To address this, the U.S. Congress initially included a retaliatory tax provision (Section 899) in the OBBBA draft against countries imposing Pillar 2 taxes on U.S. companies. However, fearing a sharp decline in foreign investment in the U.S. stock market, U.S. Treasury Secretary Bessent negotiated with G7 Finance Ministers to withdraw this provision in exchange for securing an exemption from Pillar 2 Top-up Taxes for U.S. MNEs. To operationalize this agreement, the OECD released the "Side-by-Side Package" in January 2026, establishing a framework for the parallel operation of the OECD IF's Global Minimum Tax and the independent minimum tax regimes of specific nations (such as the U.S.).

II. KEY CONTENTS OF THE "SIDE-BY-SIDE PACKAGE"

1. Side-by-Side Safe Harbour

If a specific jurisdiction operates a **"Qualified Side-by-Side Regime"** (i.e., meets the major requirements in the table below), MNE Groups with their Ultimate Parent Entity (UPE) located in that jurisdiction will have their Top-up Tax deemed as zero for the purposes of the Income Inclusion Rule (IIR) and the Under-taxed Payment Rule (UTPR).

<Table 1> Major Requirements for a Qualified Side-by-Side Regime

Category	Major Requirements	U.S. Regime Example
1) Qualified Domestic Tax System	• Corporate income tax at a nominal rate of at least 20% • Minimum tax based on financial accounting income with a nominal rate of at least 15% • Absence of material risk of ETR falling below 15%	• Corporate Income Tax Rate (Nominal): 21% • Corporate Alternative Minimum Tax (CAMT): 15%
1. Qualified Worldwide Tax System	• Comprehensive taxation on CFC income • ETR of at least 15% • Mechanisms to prevent BEPS	• NCTI (Net CFC Tested Income) • ETR: 12.6% ~ 14%
2. Qualified Foreign Tax Credit System	• Allowance of Foreign Tax Credit (FTC) for Qualified Domestic Minimum Top-up Tax (QDMTT)	• Allowed via IRS Notice in 2023

The U.S. is currently listed in the OECD Central Record as a jurisdiction that has adopted a Qualified Side-by-Side Regime. This reformed system applies to Fiscal Years beginning on or after January 1, 2026.

2. UPE Safe Harbour

For MNE Groups where the UPE is located in a jurisdiction that meets only the **"1) Qualified Domestic Tax System"** requirement among the Side-by-Side criteria, only the UTPR Top-up Tax arising in that jurisdiction is deemed zero. It is important to note that **the IIR remains applicable** in this scenario.

Since Korea has a nominal tax rate exceeding 20% and introduces a Domestic Minimum Top-up Tax from 2026, it is highly likely to qualify for the **UPE Safe Harbour**. However, the exemption will be finalized only after passing the OECD's peer review (scheduled for the first half of 2026).

3. Substance-based Tax Incentive (SBTI) Safe Harbour

Many countries currently provide various tax incentives to promote R&D investment, facility investment, and clean energy production. Previously, such tax credits reduced the ETR, thereby increasing the burden of Top-up Tax under the IIR/UTPR. With this

reform, **Qualified Tax Incentives (QTI)** linked to tangible investment are treated as an addition to **Adjusted Covered Taxes** when calculating the ETR, rather than a reduction.

<Table 2> Requirements for Qualified Tax Incentives (QTI)

Category	Requirement	Note
Incentive Type	**Expenditure-based** (e.g., R&D, Facility Investment) **Production-based** (e.g., Clean Energy Production)	Income-based incentives (e.g., reduced tax rates on IP income) are generally excluded.
Limitation	Must be within the **Substance Cap**	Excess amounts do not receive SBTI benefits.

The **Substance Cap** is calculated based on payroll costs and tangible assets within the jurisdiction.

- **Standard Method:** Max [Eligible Payroll Costs × 5.5%, Eligible Tangible Asset Depreciation × 5.5%]
- **Alternative Method (Elective):** [Carrying Value of Eligible Tangible Assets × 1%] (Fixed for 5 years). The carrying value method may be advantageous during early stages of large-scale facility investments.

According to a recent press release by the Ministry of Economy and Finance, the Korean government first proposed including refundable tax credits in QTI during this reform process and successfully persuaded IF members. As a result, the tax burden on Korean companies investing in the U.S. (e.g., secondary batteries, EVs) is expected to be significantly alleviated.

4. Extension of Transitional CbCR Safe Harbour

The existing Transitional CbCR Safe Harbour, originally scheduled to apply until 2026, has been **extended by one year to 2027** to allow companies to prepare for the new Simplified ETR Safe Harbour. In this case, the 17% ETR test criterion is maintained for the 2027 Fiscal Year.

5. Introduction of Simplified ETR Safe Harbour

To mitigate the complexity of existing Pillar 2 calculations, a simplified ETR calculation method based on **Consolidated Financial Statements** has been permanently introduced. Consequently, jurisdictions with a Simplified ETR of 15% or more, or those generating a loss, will have their Top-up Tax deemed zero. In principle, this safe harbour applies to Fiscal Years beginning on or after January 1, 2027, but jurisdictions may opt to apply it from January 1, 2026.

- **Calculation Structure:**
  - Simplified ETR = Simplified Taxes / Simplified Income

- **Simplified Income:** Calculated by adjusting Consolidated Financial Statement Profit Before Tax (PBT) for key items required to be excluded under GloBE Rules (e.g., dividends, equity method gains/losses).
- **Simplified Taxes:** Starts from Income Tax Expense (Current + Deferred) in Consolidated Financial Statements, performing only essential adjustments such as removing Uncertain Tax Positions (UTP) and simplified reflection of deferred tax assets/liabilities.

- **Re-entry Rule:** Even if the safe harbour is not applied in a specific year, a company can re-enter the safe harbour if it proves that no Top-up Tax liability arose in that jurisdiction for the subsequent **24 consecutive months (2 years)**.

<Table 3> Summary of the SbS Package

Category	Side-by-Side Safe Harbour	UPE Safe Harbour	Substance-based Tax Incentive (SBTI) Safe Harbour	Simplified ETR Safe Harbour
Target	MNE Groups headquartered in Qualified SbS Regime jurisdictions (e.g., U.S.)	UPEs in jurisdictions with Qualified Domestic Tax Systems	All MNEs undertaking substance-based investment	MNEs in high-tax jurisdictions based on Consolidated Financial Statements
Exemption Scope	**IIR & UTPR Exemption** (Worldwide Subsidiaries)	**UTPR Exemption** (UPE Jurisdiction Income)	**Protects Tax Amounts equivalent to QTI** (Top-up Tax treated as 0)	**IIR & UTPR Exemption** (Applicable Jurisdiction)
Key Requirements	Domestic (20%/15%) + Worldwide (15%) + QDMTT Credit	Domestic (20%/15%) Requirement Met	Qualified Incentive (Expenditure/Production) + Within Substance Cap	Simplified ETR ≥ 15% or Simplified Loss
Impact on Korean MNEs	N/A	**Likely Applicable**	Prevents foreign UTPR on domestic income; Protects incentives like US IRA credits	Reduces compliance costs for overseas subsidiaries
Caution	**QDMTT is NOT exempted** (Local taxing right takes priority)	IIR still applies	No benefit for amounts exceeding the cap	Applicable from 2026/2027; 24-month re-entry restriction

III. IMPACT ON U.S. COMPANIES OPERATING IN KOREA

With the U.S. clearly recognized as operating a Qualified Side-by-Side Regime, U.S. companies are shielded from IIR or UTPR attacks regarding their worldwide subsidiaries, including those in Korea. For instance, assume U.S. Company A (Parent) owns Korean Subsidiary B and another Subsidiary C in Germany. Under the previous regime, if B's ETR in Korea was 12%, German Subsidiary C would have been liable to pay a Top-up Tax of 3% (=15%-12%) to German tax authorities under the UTPR, even if A paid NCTI in the U.S.

However, following the reform, the U.S. regime is recognized as a Qualified SbS Regime under the OECD IF Global Minimum Tax. Therefore, the IIR/UTPR Top-up Tax regarding Korea is deemed zero, meaning German Subsidiary C has no additional tax burden.

However, **Korea enforces a Qualified Domestic Minimum Top-up Tax (QDMTT) from January 1, 2026.** Thus, Korea can impose a Top-up Tax of 3% (the difference between the 15% minimum rate and B's 12% ETR). In this scenario, the QDMTT paid by B in Korea is treated as foreign income tax attributable to CFC income when U.S. Parent A applies U.S. NCTI or Subpart F rules, allowing for a **Foreign Tax Credit** under U.S. tax law (Refer to IRS Notice 2023-80, released Dec 11, 2023).

IV. IMPACT ON KOREAN COMPANIES OPERATING ABROAD

The primary concern for Korean companies expanding into the U.S. was that large-scale credits received under the **Inflation Reduction Act (IRA)**, such as the Advanced Manufacturing Production Credit (AMPC), would be treated as "tax reductions" under Global Minimum Tax calculations. This would lower the ETR, paradoxically resulting in Top-up Tax liabilities for the Korean headquarters.

With the introduction of the **SBTI Safe Harbour**, IRA AMPC is now treated as **"Taxes Paid (an addition to Covered Taxes)"** rather than a tax reduction. Consequently, tax credits that function as subsidies received in the U.S. are not clawed back by the Global Minimum Tax in Korea and are fully preserved as corporate net profit. This is expected to drastically improve the profitability of U.S. investments and resolve financial uncertainty.

[Example] Impact on a Korean Company Investing in the U.S. *Assumption: Korean Company E owns U.S. Subsidiary F. F receives KRW 100 billion in IRA AMPC for battery production. F's corporate tax liability before the credit is KRW 160 billion.*

1) Existing Method (Qualified Refundable Tax Credits - QRTC)

- **Principle:** QRTC is treated as income (added to the denominator) and is *not* deducted from taxes (numerator) (treated as taxes paid).
- **GloBE Income:** 1,000 billion + 100 billion = 1,100 billion (Denominator increases).
- **Adjusted Covered Taxes:** 160 billion (Pre-credit tax amount maintained).
- **ETR:** 160 billion ÷ 1,100 billion = **14.55%** → **Top-up Tax liability arises in Korea.**

2) New Method (Applying QTI Safe Harbour)

- **Principle:** QTI is *not* added to income but is added to taxes (treated as taxes paid), provided it is within the Substance Cap.
- **Assumption:** The 100 billion KRW is within F's Substance Cap in the U.S.
- **GloBE Income: 1,000 billion** (Credit amount is not added to income → Denominator does not change).
- **Adjusted Covered Taxes:** 60 billion (Cash Tax) + 100 billion (Added via QTI) = **160 billion** (Maintained).
- **ETR:** 160 billion ÷ 1,000 billion = **16.0%** → **No Top-up Tax liability (ETR ≥ 15%).**

This QTI framework may apply to companies operating in countries other than the U.S. as well. Therefore, companies entering foreign markets must carefully review whether local tax incentives qualify as QTI. If they do, active application of this reformed rule can maintain the jurisdictional ETR.

While the Side-by-Side Safe Harbour currently appears applicable only where the UPE is located in the relevant jurisdiction (as of Jan 2026), specific application timing for each country must be judged individually based on local legislative amendments and fulfillment of requirements.

V. Conclusion and BKL Recommendations

The "Side-by-Side Package" demonstrates the OECD's effort to maintain the effectiveness of the Global Minimum Tax while achieving (i) coexistence with the U.S., (ii) protection of substance-based tax incentives, and (iii) simplification of calculations. Companies should respond with the following considerations:

1. **Korean Companies in the U.S.:** Utilize the **SBTI Safe Harbour** to mitigate Top-up Tax burdens in Korea arising from incentives like the IRA. Continuously monitor whether Korea is recognized as having a Qualified Side-by-Side Regime.
2. **U.S. Companies in Korea:** While the Side-by-Side Safe Harbour exempts IIR/UTPR, verify the applicability of **Korea's QDMTT** and analyze its impact starting Q1 2026.
3. **All MNEs:** Prepare for the **Simplified ETR Safe Harbour** (expected 2027) by establishing calculation systems based on Consolidated Financial Statements and implementing a system to monitor jurisdictional ETRs.

BKL's Korea International Tax & Investment Center closely tracks developments in the Global Minimum Tax and delivers tailored strategies to help clients optimize their tax position and ensure compliance.

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