

# Principles for a Solution in the OECD's Project for Addressing the Tax Challenges of the Digitalization of the Economy

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The OECD's project to address the tax challenges of the digitalization of the economy represents a critical opportunity to ensure a stable, cohesive global tax system. The continued proliferation of unilateral tax measures – including digital services taxes – presents more uncertainty than ever in our international tax system and further necessitates a global solution. The technology sector has long agreed that the OECD's process is the best venue to realize this solution and urges negotiators to adhere to the following principles for the overall solution, as well as specific recommendations for the designs of Pillar One and Pillar Two.

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- 1** We continue to be very committed to the OECD project as the best venue for multilateral discussions that can produce a stable, consensus-based solution to our international tax challenges.
- 2** We remain deeply concerned about proposals that would ring-fence the digital economy. A successful agreement must respect the fact that the entire economy is becoming digitalized, and avoid arbitrary distinctions based on the digitalization of business models that are not grounded in data or tax policy principles.
- 3** The agreement must result in a coherent system that avoids a menu of options for countries to choose from.
- 4** Countries must agree to remove unilateral digital services taxes and other discriminatory or destination-based measures (including Diverted Profits Taxes or the UK Offshore Receipts Tax), and refrain from enacting new measures, once an agreement is reached.
- 5** The agreement should be based on long-standing and well-founded underlying principles of international taxation including taxation of net income, and should not codify tax measures that are discriminatory – either de facto or de jure. Efforts should be made to enhance, rather than depart from, these principles – including nexus, permanent establishment, and the arms-length principle.
- 6** The principles outlined here should apply equally in the context of a safe harbor for aspects of Pillar One.
- 7** Strong, predictable, and timely dispute prevention and resolution mechanisms must be included under both Pillars. Mandatory and binding dispute prevention and resolution processes with commitments to deploy appropriate resources to address the issues that are bound to result from implementing a complex new system must be incorporated into an agreement.

## Pillar One

### **1 The scope of Amount A must be clear, and lines of business covered must be principled and based on sound, rational, and consistently-applied tax policy objectives.**

- a) Companies must have the certainty to determine whether or not they are required to reallocate a portion of their profits under Pillar One, and from where the profits are to be reallocated, along with appropriate de minimis safeguards to ensure the appropriate characterization of activities.
- b) Certainty should be provided on the amount to be allocated by ensuring all countries in the Inclusive Framework agree to the same allocation approach and formula, which should be based on net income.
- c) Activities or lines of business should be included or excluded based on rational and consistently-applied tax policy objectives and the scope should be tailored to achieve specific policy goals.
- d) Thresholds and segmentation proposals should not be discriminatory or create distortions.

### **2 Double taxation must be avoided.**

- a) It must be clear that income can only be categorized into a single category for purposes of Pillar One, to avoid double counting.
- b) Rules for sourcing must be harmonized, so the same income is not taxable in multiple countries.
- c) Where countries are agreeing to reallocate profits, it must be clear which are the surrendering countries and there must be clear surrender mechanisms for that country to accept correlative adjustments in respect of the reallocated profits to prevent the double economic taxation of companies.
- d) The mechanism for relieving double taxation should be a reduction in taxable income, rather than using existing foreign tax credit systems, which, due to their limitations, cannot effectively and consistently achieve double tax relief.

### **3 The new nexus standard must be appropriately limited.**

- a) Any new nexus standard must be standalone and only apply for purposes of allocating Amount A – not for any other direct or indirect tax or for non-tax purposes.
- b) Domestic and foreign companies should be treated equally, including the applicable tax rate applied to allocated income.

### **4 Any proposal must be reasonably administrable, and aligned with both existing business realities and sound tax policies.**

- a) Any business line segmentation proposals must be based on bona fide segmentation included in companies' financial statements for the applicable year and not subject to relitigation or modification by individual countries.
- b) If a business line or regional reporting segmentation is applied, corporate overhead and Selling, General, and Administrative (SG&A) costs not otherwise reported in the company's segmented financial statements should be appropriately allocated across the reported segments to determine the profit to be allocated.
- c) A single designated country, such as a company's home country, should serve as a one-stop shop for company filings under Pillar One and be responsible for ensuring the auditing of a company's compliance with the new regime.
- d) Appropriate consideration should be given where companies already have a physical presence and book revenues in a jurisdiction where their customers are located, including to ensure that Pillar One does not ultimately reallocate additional residual returns to markets over and above the amount that would otherwise be allocated.
- e) Amount A must be modest, and Amounts B and C must be clear in their applicability and consistent with the current arms-length principle. The Amounts must be agreed-upon, easily calculated to ensure certainty, based on sound economics, and sufficiently coordinated so as to prevent double counting and avoid inadvertently reallocating routine returns or returns from trade intangibles.

## Pillar Two

- 1** The minimum tax proposal must use a global aggregated (“worldwide blending”) approach to avoid eliminating the ability of countries to establish substance-based, appropriate policies to incentivize investment and growth.
- 2** A company subject to a qualified income inclusion regime in its parent country must not be subject to additional tax, disallowed deductions or other tax burdens in other countries – the order of the rules must apply Pillar One, then the minimum tax proposal before the undertaxed payment or subject to tax rules.
- 3** The United States’ “Global Intangible Low-Taxed Income” (GILTI) provision must be deemed as a compliant minimum tax and U.S. firms (and their subsidiaries and branches) must not be subjected to a second global minimum tax or the application of the undertaxed payments rule.
- 4** If a jurisdictional blending approach is adopted, appropriate consideration should be given to exclude companies that are already paying a high global effective tax rate.
- 5** The undertaxed payment rules should only apply to companies that generate global revenue above the Action 13 Country-by-Country Reporting threshold, and should include reasonable carve-outs, such as for R&D incentives, substance-based carveouts for payments of interest and royalties, depreciation and amortization of assets, and non-routine transactions such as the disposition of a business line. Additionally, the rules should only apply to related-party cross-border payments.