OECD GLOBAL PARLIAMENTARY NETWORK
SPECIAL SESSION ON TAX: UPDATE ON
ADDRESSING THE TAX CHALLENGES OF THE
DIGITALISATION OF THE ECONOMY

Pillar 1: Allocation of MNE Income

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OUTLINE OF THE ARCHITECTURE OF A UNIFIED APPROACH ON PILLAR ONE
Outline of the Architecture of a Unified Approach on Pillar One

Section 1: Introduction

Section 2: Overview

Section 3: The New Taxing Right (Amount A)
  • 3.1. Scope and nexus
  • 3.2. Quantum of Amount A
  • 3.3. Elimination of double taxation
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Outline of the Architecture of a Unified Approach on Pillar One

Section 5: Tax Certainty: Dispute Prevention and Resolution:

- 5.1. A new framework for dispute prevention and resolution for Amount A
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- 6.2. Further consideration of alternative global safe harbour system

Annex A. Programme of Work to Develop a Consensus Solution to Pillar One Issues

Annex B. MNE Groups Impacted by Amount A
The New Taxing Right (Amount A): Scope (section 3.1)

Automated digital services
- Provision of automated digital services that are provided on a standardised basis to a large population of customers or users (online search engines, social media platforms, cloud computing services, etc.)

Consumer facing business
- Businesses that generate revenue from the sale of goods and services of a type commonly sold to consumers (e.g. personal computing products, clothes, branded foods, franchise models, automobiles)
- Intermediate products and components - out of scope (with possible exception)

Specific considerations
- Extractive industries, commodities, financial services sector, and international traffic
The New Taxing Right (Amount A): Scope (section 3.1)

Thresholds

- Limited to MNE Groups that meet a certain gross revenue threshold. This threshold could, for instance, be the same as for CbC reporting (i.e. MNE groups with gross revenue exceeding EUR750M)

- Consideration will be given to:
  - aggregate in-scope revenue threshold
  - *de minimis* threshold
The New Taxing Right (Amount A): Nexus (section 3.1)

Significant and sustained engagement with market

- Local in-scope revenue threshold over a period of years
- Commensurate with the size of a market (but with a minimum level)
- For automated digitalised businesses, the revenue threshold will be the only test (scale without mass)
- For consumer facing business: additional factors to be considered

Design and simplification option

- To be designed to eliminate (or limit to a bare minimum) any filing and other tax related obligations.
- Exploration of simplified reporting and registration-based mechanisms (such as a “one stop shop”)

A formula based allocation mechanism

- Based on a formula designed to identify the portion of residual profit allocated to market jurisdictions – consolidated group financial accounts
- Amount A only applies to the portion of profit exceeding a certain level of profitability – Profit Before Tax the preferred measure to assess this
- Allocation key of sales for allocation of Amount A to market jurisdictions

Further technical work

- Business line and regional segmentation to be explored
- The quantum of Amount A could be weighted for different degrees of digitalisation
- Specific revenue sourcing rules to be consider for different business models
The New Taxing Right (Amount A): Elimination of Double Taxation (section 3.3)

Identify the entity/entities liable

- Entities earning the relevant deemed residual profits

Apply the most effective double tax relief method

- Exemption / credit / corresponding adjustment

Further work required

- Determining the relieving entity(ies)
- Methods for allocating Amount A liabilities
The New Taxing Right (Amount A): Interactions and potential for double counting (section 3.4)

Interactions between A and B

- No significant interaction between Amounts A and B

Interactions between Amounts A and C

- Identifies potential interactions between Amounts A and C
- Notes that no double counting should give rise to double taxation given the application of the mechanism to eliminate double taxation
Amount B: Fixed Return (section 4)

Fixed Return under the Arm’s Length Principle

- Fixed return based on the ALP for “baseline” or routine marketing or distribution activities performed in a market jurisdiction
- The fixed return would consider differences in region and industry
- Treaty changes will not be required to implement Amount B

Further technical work

- Definition of baseline activities / profit level indicator / fixed % at an agreed profit / benchmarking studies / industry or region differentiation
Tax certainty (section 5)

Dispute prevention and resolution

• Tax certainty is an essential element of the unified approach and is a fundamental part of the design of Pillar One

Dispute prevention and resolution under Amount A

• Disputes will likely affect the taxation of Amount A in multiple jurisdictions
• Agreement that a new effective and binding dispute prevention and resolution mechanisms is required for amount A
Dispute prevention and resolution under Amounts B and C

- Core of the work on tax certainty and dispute prevention and resolution for \textbf{Amounts B} will be to limit disputes by using fixed rates of return on baseline distribution and marketing activities.

- \textbf{Amount C} will involve:
  - exploring innovative approaches to dispute resolution
  - reaching agreement on the breadth of the application of new enhanced dispute resolution is critical and IF members agree to return to the matter as part of arriving at a consensus-based solution in 2020
  - also enhancing MAP and domestic measures
Implementation and administration (section 6)

General implementation aspects

- New multilateral convention for coordinated, consistent and effective implementation
- Compliance and administrative costs, novel compliance requirements, transition rules
- Commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions

Alternative Global Safe Harbour Approach

- Electing MNE group would agree, on a global basis, to be subject to Pillar One
Annex A: Revised Programme of Work

1. Scope of Amount A
2. New nexus and related treaty considerations for Amount A
3. Tax base determinations
4. Quantum of Amount A
5. Revenue sourcing rules under Amount A
6. Elimination of double tax under Amount A
7. Interactions between Amounts A, B and C and potential risks of double counting
8. Features of Amount B
9. Dispute prevention and resolution for Amount A
10. Dispute prevention and resolution for Amounts B and C
11. Implementation and administration