This document sets out the Statement which has been discussed in the OECD/G20 Inclusive Framework on BEPS. 137 member jurisdictions have agreed to it as of 4 November 2021. It is noted that not all Inclusive Framework members have joined as of today.

OECD/G20 Base Erosion and Profit Shifting Project

Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

8 October 2021

Introduction

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) has agreed a two-pillar solution to address the tax challenges arising from the digitalisation of the economy. The agreed components of each Pillar are described in the following paragraphs.

A detailed implementation plan is provided in the Annex.

Pillar One

Scope

In-scope companies are the multinational enterprises (MNEs) with global turnover above 20 billion euros and profitability above 10% (i.e. profit before tax/revenue) calculated using an averaging mechanism with the turnover threshold to be reduced to 10 billion euros, contingent on successful implementation including of tax certainty on Amount A, with the relevant review beginning 7 years after the agreement comes into force, and the review being completed in no more than one year.

Extractives and Regulated Financial Services are excluded.

Nexus

There will be a new special purpose nexus rule permitting allocation of Amount A to a market jurisdiction when the in-scope MNE derives at least 1 million euros in revenue from that jurisdiction. For smaller jurisdictions with GDP lower than 40 billion euros, the nexus will be set at 250 000 euros.

The special purpose nexus rule applies solely to determine whether a jurisdiction qualifies for the Amount A allocation.

Compliance costs (incl. on tracing small amounts of sales) will be limited to a minimum.

Quantum

For in-scope MNEs, 25% of residual profit defined as profit in excess of 10% of revenue will be allocated to market jurisdictions with nexus using a revenue-based allocation key.

Revenue sourcing

Revenue will be sourced to the end market jurisdictions where goods or services are used or consumed. To facilitate the application of this principle, detailed source rules for specific categories of transactions will be developed. In applying the sourcing rules, an in-scope MNE must use a reliable method based on the MNE's specific facts and circumstances.

Tax base determination

The relevant measure of profit or loss of the in-scope MNE will be determined by reference to financial accounting income, with a small number of adjustments.

Losses will be carried forward.

Segmentation

Segmentation will occur only in exceptional circumstances where, based on the segments disclosed in the financial accounts, a segment meets the scope rules.

Marketing and distribution profits safe harbour

Where the residual profits of an in-scope MNE are already taxed in a market jurisdiction, a marketing and distribution profits safe harbour will cap the residual profits allocated to the market jurisdiction through Amount A. Further work on the design of the safe harbour will be undertaken, including to take into account the comprehensive scope.

Elimination of double taxation

Double taxation of profit allocated to market jurisdictions will be relieved using either the exemption or credit method.

The entity (or entities) that will bear the tax liability will be drawn from those that earn residual profit.

Tax certainty

In-scope MNEs will benefit from dispute prevention and resolution mechanisms, which will avoid double taxation for Amount A, including all issues related to Amount A (e.g. transfer pricing and business profits disputes), in a mandatory and binding manner. Disputes on whether issues may relate to Amount A will be solved in a mandatory and binding manner, without delaying the substantive dispute prevention and resolution mechanism.

An elective binding dispute resolution mechanism will be available only for issues related to Amount A for developing economies that are eligible for deferral of their BEPS Action 14 peer review[1] and have no or low levels of MAP disputes. The eligibility of a jurisdiction for this elective mechanism will be reviewed regularly; jurisdictions found ineligible by a review will remain ineligible in all subsequent years.

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[1] The conditions for being eligible for a deferral of the BEPS Action 14 peer review are provided in paragraph 7 of the current Action 14 Assessment Methodology published as part of the Action 14 peer review documents.

Amount B

The application of the arm's length principle to in-country baseline marketing and distribution activities will be simplified and streamlined, with a particular focus on the needs of low capacity countries. This work will be completed by the end of 2022.

Administration

The tax compliance will be streamlined (including filing obligations) and allow in-scope MNEs to manage the process through a single entity.

Unilateral measures

The Multilateral Convention (MLC) will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future. No newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC. The modality for the removal of existing Digital Services Taxes and other relevant similar measures will be appropriately coordinated. The IF notes reports from some members that transitional arrangements are being discussed expeditiously.

Implementation

The MLC through which Amount A is implemented will be developed and opened for signature in 2022, with Amount A coming into effect in 2023. A detailed implementation plan is set out in the Annex.

Pillar Two

Overall design

Pillar Two consists of:

- two interlocking domestic rules (together the Global anti-Base Erosion Rules (GloBE) rules): (i) 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 (ii) an Undertaxed Payment Rule (UTPR), 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; and
- a treaty-based rule (the Subject to Tax Rule (STTR)) that allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The STTR will be creditable as a covered tax under the GloBE rules.

Rule status

The GloBE rules will have the status of a common approach.

This means that IF members:

- are not required to adopt the GloBE rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent with the outcomes provided for under Pillar Two, including in light of model rules and guidance agreed to by the IF;
- accept the application of the GloBE rules applied by other IF members including agreement as to rule order and the application of any agreed safe harbours.

Scope

The GloBE rules will apply to MNEs that meet the 750 million euros threshold as determined under BEPS Action 13 (country by country reporting). Countries are free to apply the IIR to MNEs headquartered in their country even if they do not meet the threshold.

Government entities, international organisations, non-profit organisations, pension funds or investment funds that are Ultimate Parent Entities (UPE) of an MNE Group or any holding vehicles used by such entities, organisations or funds are not subject to the GloBE rules.

Rule design

The IIR allocates top-up tax based on a top-down approach subject to a split-ownership rule for shareholdings below 80%.

The UTPR allocates top-up tax from low-tax constituent entities including those located in the UPE jurisdiction. The GloBE rules will provide for an exclusion from the UTPR for MNEs in the initial phase of their international activity, defined as those MNEs that have a maximum of EUR 50 million tangible assets abroad and that operate in no more than 5 other jurisdictions.[2] This exclusion is limited to a period of 5 years after the MNE comes into the scope of the GloBE rules for the first time. For MNEs that are in scope of the GloBE rules when they come into effect the period of 5 years will start at the time the UTPR rules come into effect.

ETR calculation

The GloBE rules will operate to impose a top-up tax using an effective tax rate test that is calculated on a jurisdictional basis and that uses a common definition of covered taxes and a tax base determined by reference to financial accounting income (with agreed adjustments consistent with the tax policy objectives of Pillar Two and mechanisms to address timing differences).

In respect of existing distribution tax systems, there will be no top-up tax liability if earnings are distributed within 4 years and taxed at or above the minimum level.

Minimum rate

The minimum tax rate used for purposes of the IIR and UTPR will be 15%.

Carve-outs

The GloBE rules will provide for a formulaic substance carve-out that will exclude an amount of income that is 5% of the carrying value of tangible assets and payroll. In a transition period of 10 years, the amount of income excluded will be 8% of the carrying value of tangible assets and 10% of payroll, declining annually by 0.2 percentage points for the first five years, and by 0.4 percentage points for tangible assets and by 0.8 percentage points for payroll for the last five years.

The GloBE rules will also provide for a *de minimis* exclusion for those jurisdictions where the MNE has revenues of less than EUR 10 million and profits of less than EUR 1 million.

[2] An MNE is considered to operate in a jurisdiction if that MNE has a Constituent Entity in that jurisdiction as defined for purposes of the GloBE rules.

Other exclusions

The GloBE rules also provide for an exclusion for international shipping income using the definition of such income under the OECD Model Tax Convention.

Simplifications

To ensure that the administration of the GloBE rules are as targeted as possible and to avoid compliance and administrative costs that are disproportionate to the policy objectives, the implementation framework will include safe harbours and/or other mechanisms.

GILTI co-existence

It is agreed that Pillar Two will apply a minimum rate on a jurisdictional basis. In that context, consideration will be given to the conditions under which the US GILTI regime will co-exist with the GloBE rules, to ensure a level playing field.

Subject to tax rule (STTR)

IF members recognise that the STTR is an integral part of achieving a consensus on Pillar Two for developing countries.[3] IF members that apply nominal corporate income tax rates below the STTR minimum rate to interest, royalties and a defined set of other payments would implement the STTR into their bilateral treaties with developing IF members when requested to do so.

The taxing right will be limited to the difference between the minimum rate and the tax rate on the payment.

The minimum rate for the STTR will be 9%.

Implementation

Pillar Two should be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024. A detailed implementation plan is set out in the Annex.

[3] For this purpose, developing countries are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of USD 12 535 or less in 2019 to be regularly updated.

Annex. Detailed Implementation Plan

This Annex describes the work needed to implement the two-pillar solution described in the body of the Statement. It also sets out a timeline for that process, including the key milestones for the Inclusive Framework (IF) going forward, noting that bespoke technical assistance will be available to developing countries to support all aspects of implementation. IF members recognise the ambitious nature of the timelines contained in this implementation plan and are fully committed to use all efforts within the context of their legislative process in achieving that goal.

Pillar One

Amount A, the removal of all Digital Service Taxes and other relevant similar measures on all companies, and Amount B will be implemented under the Pillar One solution, as described below.

Amount A

Amount A will be implemented through a Multilateral Convention (MLC), and where necessary by way of correlative changes to domestic law, with a view to allowing it to come into effect in 2023.

Multilateral Convention

In order to facilitate swift and consistent implementation, an MLC will be developed to introduce a multilateral framework for all jurisdictions that join, regardless of whether a tax treaty currently exists between those jurisdictions. The MLC will contain the rules necessary to determine and allocate Amount A and eliminate double taxation, as well as the simplified administration process, the exchange of information process and the processes for dispute prevention and resolution in a mandatory and binding manner between all jurisdictions, with the appropriate allowance for those jurisdictions for which an elective binding dispute resolution mechanism applies with respect to issues related to Amount A, thereby ensuring consistency and certainty in the application of Amount A and certainty with respect to issues related to Amount A. The MLC will be supplemented by an Explanatory Statement that describes the purpose and operation of the rules and processes. Where a tax treaty exists between parties to the MLC, that tax treaty will remain in force and continue to govern cross-border taxation outside Amount A, but the MLC will address inconsistencies with existing tax treaties to the extent necessary to give effect to the solution with respect to Amount A. The MLC will also address interactions between the MLC and future tax treaties. Where there is no tax treaty in force between parties, the MLC will create the relationship necessary to ensure the effective implementation of all aspects of Amount A.

The IF has mandated the Task Force on the Digital Economy (TFDE) to define and clarify the features of Amount A (e.g., elimination of double taxation, Marketing and Distribution Profits Safe Harbour) and develop the MLC and negotiate its content, so that all jurisdictions that have committed to the Statement will be able to participate. The TFDE will seek to conclude the text of the MLC and its Explanatory Statement by early 2022, so that the MLC is quickly open to signature and a high-level signing ceremony can be organised by mid-2022. Following its signature, jurisdictions will be expected to ratify the MLC as soon as possible, with the objective of enabling it to enter into force and effect in 2023 once a critical mass of jurisdictions as defined by the MLC have ratified it.

Removal and Standstill of All Digital Services Taxes and Other Relevant Similar Measures

The MLC will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future. A detailed definition of what constitutes relevant similar measures will be finalised as part of the adoption of the MLC and its Explanatory Statement.

Domestic Law Changes

IF members may need to make changes to domestic law to implement the new taxing rights over Amount A. To facilitate consistency in the approach taken by jurisdictions and to support domestic implementation consistent with the agreed timelines and their domestic legislative procedures, the IF has mandated the TFDE to develop model rules for domestic legislation by early 2022 to give effect to Amount A. The model rules will be supplemented by commentary that describes the purpose and operation of the rules.

Amount B

The IF has mandated Working Party 6 and the FTA MAP Forum to jointly finalise the work on Amount B by end of 2022. The technical work will start by defining the in-country baseline marketing and distribution activities in scope of Amount B. Working Party 6 and the FTA MAP Forum will then jointly develop the rest of Amount B components, with a view of releasing Amount B final deliverables by end of 2022.

Pillar Two

Model rules to give effect to the GloBE rules will be developed by the end of November 2021. These model rules will define the scope and set out the mechanics of the GloBE rules. They will include the rules for determining the ETR on a jurisdictional basis and the relevant exclusions, such as the formulaic substance-based carve-out. The model rules will also cover administrative provisions that address an MNE’s filing obligations and the use of any administrative safe-harbours. The model rules will further include transition rules. The model rules are supplemented by commentary that explains the purpose and operation of the rules, and addresses the need for a switch-over rule in certain treaties and in circumstances that otherwise commit the contracting parties to the use of the exemption method.

A model treaty provision to give effect to the STTR will be developed by the end of November 2021. The model treaty provision will be supplemented by commentary that explains the purpose and the operation of the STTR. A process to assist in implementing the STTR will be agreed.

A multilateral instrument (MLI) will be developed by the IF by mid-2022 to facilitate the swift and consistent implementation of the STTR in relevant bilateral treaties.

At the latest by the end of 2022 an implementation framework will be developed that facilitates the coordinated implementation of the GloBE rules. This implementation framework will cover agreed administrative procedures (e.g. detailed filing obligations, multilateral review processes) and safe-harbours to facilitate both compliance by MNEs and administration by tax authorities. As part of the work on the implementation framework, IF members will consider the merits and possible content of a multilateral convention in order to further ensure co-ordination and consistent implementation of the GloBE rules.

Consultations

Within the constraints of the timeline set forth in this implementation plan, the work will continue to progress in consultation with stakeholders.