OECD TAX TALKS

CENTRE FOR TAX POLICY AND ADMINISTRATION

9 October 2019
14:00 – 15:00 (CEST)

OECD

INTRODUCTION

Speakers

- **Pascal Saint-Amans**
  Director, OECD Centre for Tax Policy and Administration
- **Richard Collier**
  Tax Treaty, Transfer Pricing & Financial Transactions Division
- **Sophie Chatel**
  Head of Tax Treaty Unit
- **Achim Pross**
  Head of International Co-operation and Tax Administration Division
- **Åsa Johansson**
  Head of Structural Policies Surveillance Division, Economics Department

Topics

- Introduction
- Pillar 1: Secretariat Proposal for a “Unified Approach”
- Pillar 2: GloBE Proposal
- Economic Analysis & Impact Assessment
- Next steps/Conclusion

Background

2015 — BEPS Action 1 Report

2018 — March: Interim report

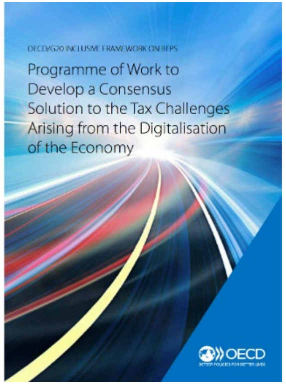
2019 — January: Policy Note

2019 — February/ March: Public consultation

2019 — Programme of Work (PoW) approved by the Inclusive Framework on 28 May 2019

"Consistent with the analytical framework of both the Action 1 Report and the Interim Report, there is agreement to examine proposals involving two pillars which could form the basis for consensus"

Over 2,000 pages of comments and 400 participants



Where are we today?

Tensions in the system

- Aggressive audits & tax disputes
- Unilateral measures
- Dissatisfaction focused on highly digitalized MNEs and allocation of taxing rights

Three proposals from IF members

- No single proposal has reached consensus in isolation

High level of political commitment

- G20 and G7 support
- IF commitment (2018 Interim Report, 2019 PoW)

Secretariat Proposal

Economic analysis and Impact Assessment

Pillar One

Proposal of the Secretariat for a "Unified Approach"
Multiple-tier approach

New nexus rule
Unconstrained by physical presence

Profit allocation rules

Amount A
Portion (%) of deemed residual profit

Amount B
Fixed return for distribution functions

Amount C
Additional return based on TP analysis

Pillar Two

Global Anti-Base Erosion (GLOBE) proposal

Consensus-based long-term solution by the end of **2020**

PILLAR 1: SECRETARIAT PROPOSAL FOR A "UNIFIED APPROACH"

The "Unified Approach"

Objective

Design a solution that would:

- address the nexus and profit allocation for large MNE groups
  - highly digitalised and consumer facing businesses
- allocate new taxing rights to market/user jurisdiction, unconstrained by physical presence
- achieve least complexity
- coexist with Arm's Length Principle (ALP) and limit disruptions
- avoid double taxation and tax disputes
- lead to a consensus

The "Unified Approach"

Scope
Large digital and consumer facing businesses

New nexus rule
MNE group level, unconstrained by physical presence

New profit allocation rules
Formulaic, MNE group level, beyond the ALP

A
B
C

Elimination of double taxation

Robust tax disputes prevention and resolution

Scope

Large size MNE group/business

- Possible indicator: global revenue

Digital and consumer-facing businesses

- Enterprises likely to derive meaningful value from interactions with consumers/users in markets
- Highly digitalised business models (e.g. intermediation platform, online advertisement)
- Consumer facing businesses – include B2C and some B2B (e.g. as sales of consumer products through intermediaries)

Further exclusions and carve-outs

- Such as extractive industries, commodities – to be determined

Nexus

New nexus rule unconstrained by physical presence

- In an increasingly digitalised economy, large businesses conduct consumer and/or user facing activities remotely
- New nexus rule would measure an MNE group sustained and significant involvement in the economy of a market
- Indicators would look at
  - a revenue threshold, with adaptations to take into consideration the size of the market
  - a time threshold
  - potentially other indicators of in-scope activities carried on in the market
- In a standalone provision to avoid spill over effects

Profit Allocation

Model based on three separate returns to the market/user jurisdiction

Amount A	Amounts B & C
• New taxing right to market/user jurisdiction • Independent of physical presence • Formulaic approach based on group/business line profits • No links to ALP	• No new taxing right – merely a modified operation of the ALP • Follows the separate entity approach

Profit Allocation
Amount A – new taxing right

Step 1: Determination of total profit

- MNE group or business-line calculations

Step 2: Exclude "deemed" routine profit to define residual

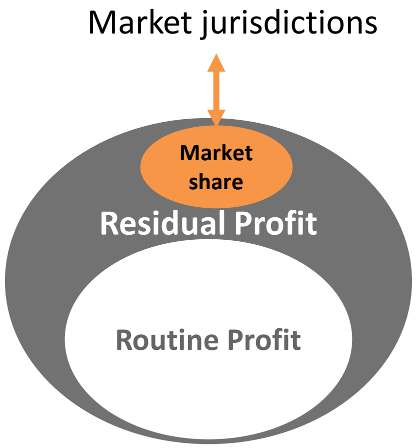
- Profitability threshold (i.e. fixed percentage(s))

Step 3: Allocate a portion of "deemed" residual profit

- Formulary (i.e. fixed percentage(s))

Step 4: Allocate the relevant portion of the deemed residual among market jurisdictions

- Agreed allocation key (e.g. sales)



Profit Allocation
Amounts B and C

Amount B

Objective

- Reduce disputes
- Achieve greater certainty

Method

- Fixed return for “baseline” or routine marketing or distribution activities in market

Amounts C

Objective

- Retain market jurisdiction right to tax profit above baseline activity
- Prevent double counting of Amount A

Method

- Apply current ALP to activities beyond baseline
- Introduce effective and binding dispute resolution mechanisms

Ongoing work

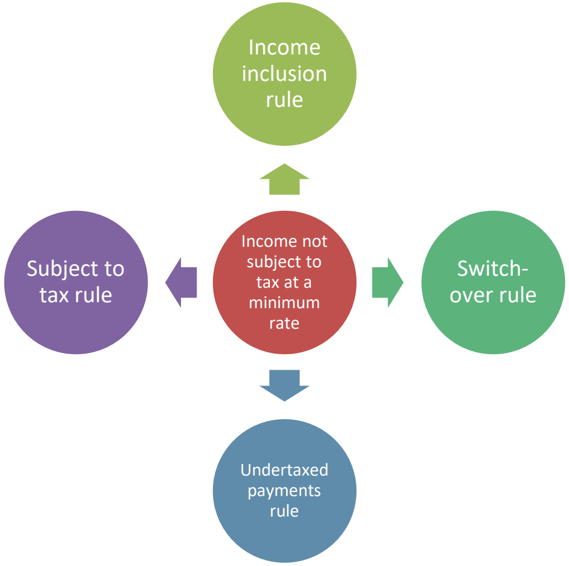
- Definitions and quanta
- Differentiation for business models
- Use of financial accounting and business line segmentation
- Elimination of double taxation (incl. double counting)
- Treatment of losses
- Implementation and administration

PILLAR 2: UPDATE ON THE GLOBE PROPOSAL

Rationale of the GloBE proposal

Rationale Given for Pillar Two

- Ensuring that all internationally operating businesses pay a minimum level of tax
- Address remaining BEPS issues
- Multilateral solution to avoid uncoordinated rules, increased complexity and risk of over-taxation
- Reduce pressure on developing countries to grant tax incentives
- Address profit shifting risk from intangibles but not ring-fenced to digital economy
- Recent tax policy developments (e.g. GILTI)



Overview of the GloBE proposal

- Income inclusion rule
- Switch-over rule
- Undertaxed payments rule
- Subject to tax rule

Selected key issues currently under discussion

Design of switch-over and subject to tax rules

Design of income inclusion rule and undertaxed payments rule

- Effective tax rate test and exploration of simplifications including the use of financial accounts
- Different forms of blending
- Possible carve-outs

Coordination rules

- Rule order among different rules
- Rule order where the same rule may otherwise be applied multiple times

Consultation on some of these key design issues in December (public consultation document to be released in November)

ECONOMIC ANALYSIS & IMPACT ASSESSMENT

Revenue and Investment Implications (1)

The combined effect of Pillars 1 and 2 would lead to a significant increase in global tax revenues

- Pillar 1 involves a significant change to the way taxing rights are allocated among jurisdictions and it would also lead to a modest increase in tax revenues
- Low and middle income economies tend to gain relatively more revenue than advanced economies from Pillar 1
- Investment hubs tend to experience significant losses in tax base
- MNEs in digital-oriented and intangible-intensive sectors would be significantly impacted by both pillars

Revenue and Investment Implications (2)

Overall, the package would not adversely affect the investment environment

- Overall impact on forward looking effective tax rates is generally modest
- Both Pillars would reduce the dispersion of tax rates across jurisdictions and reduce incentives for MNEs to engage in profit shifting
- In contrast, inaction could lead to a further increase in tax uncertainty and a deterioration in the business and investment environment

NEXT STEPS

Next steps

17 Oct 2019	• G20 Finance Ministers' meeting
21-22 Nov 2019	• Public consultation under Pillar One
Dec 2019	• Public consultation under Pillar Two
Jan 2020	• Inclusive Framework meeting

THANK YOU