

OECD announces renewed commitment of participating countries to reach consensus on new international tax rules under BEPS 2.0 project in 2020

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Executive summary

On 31 January 2020, the Organisation for Economic Co-operation and Development (OECD) released a Statement by the Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy (the [Statement](#)). According to the Statement, members of the Inclusive Framework - which currently includes 137 jurisdictions - have affirmed their commitment to reach an agreement on new international tax rules by the end of 2020.

Attached to the Statement are more detailed documents, including an outline of the architecture and a revised workplan for Pillar One, relating to revised nexus and profit allocation rules, and a progress update on Pillar Two, relating to new global minimum tax rules. With respect to Pillar One, the Inclusive Framework has endorsed a unified approach as the basis for the ongoing negotiation of a consensus-based solution. With respect to Pillar Two, the Inclusive Framework has welcomed the progress that has been achieved to date.

A comprehensive Global Tax Alert on these developments will be issued shortly.

Detailed discussion

The Statement

The Statement and its more detailed annexes released on 31 January 2020 by the OECD reflect the outcome of the plenary meeting of the Inclusive Framework, where the 137 participating jurisdictions reached agreement on plans to move ahead with work on the two-pillar approach for addressing the tax challenges of digitalization. The Statement reports that the members of the Inclusive Framework have affirmed their commitment to reach an agreement on a consensus-based solution by the end of 2020. To reach this objective, the Statement indicates that it is intended that the Inclusive Framework at its next meeting in early July 2020 will reach agreement on the key policy features of the solution that would form the basis for a political agreement.

With respect to Pillar One on revised nexus and allocation rules, the Statement indicates that the Inclusive Framework has endorsed a unified approach as the basis for the ongoing negotiation of a consensus-based solution. In this regard, the Statement emphasizes the need for the new rules to provide improved tax certainty and minimize complexity. The Statement also notes that there are technical challenges involved in developing workable rules and highlights the critical policy differences among countries that must be resolved, including:

- ▶ The US proposal for implementation of Pillar One on a “safe harbor” basis and the concerns expressed by many other Inclusive Framework members about this proposal
- ▶ The extent of the binding nature of dispute prevention and resolution mechanisms, as well as the scope of such mechanisms
- ▶ The suggestion by some members regarding digital differentiation in the quantum of Amount A (the profits to be specially allocated to market jurisdictions)
- ▶ The suggestion by some members regarding regional differentiation in computing and allocating Amount A
- ▶ The concerns expressed by some members, as well as businesses, about the continued application of digital services taxes

With respect to Pillar Two on new global minimum tax rules, the Statement indicates that the Inclusive Framework has welcomed the significant progress that has been achieved to date on the technical design of new rules. The Statement also notes that more work needs to be done.

Finally, the Statement references the progress on the ongoing work on economic analysis and impact assessments of Pillars One and Two. In connection with the release of the Statement, the OECD Secretariat announced a webcast focused on the economic analysis and impact assessment work to be held on 13 February 2020.

The Statement is accompanied by annexes that provide more detailed discussion of the work on both Pillars:

- ▶ Annex 1 is an Outline of the Architecture of a Unified Approach on Pillar One (the Pillar One Outline). The Outline has two annexes:
 - Annex A is a Programme of Work to Develop a Consensus-based Solution to Pillar One Issues (the Revised Pillar One PoW), which replaces the previous OECD workplan adopted in May 2019
 - Annex B is a flowchart diagram illustrating the types of multinational enterprise (MNE) Groups Impacted by Amount A
- ▶ Annex 2 is a Progress Note on Pillar Two (the Pillar Two Progress Note)

The Pillar One Outline

The Pillar One Outline provides further details on the unified approach endorsed by the Inclusive Framework. The approach draws heavily on the OECD Secretariat proposal that was released in October 2019 for comment by stakeholders¹ and was discussed during a public consultation hosted by the OECD in November 2019.² The Pillar One Outline also identifies key areas where there are pending questions on which further work will be required to achieve a political agreement.

The Revised Pillar One PoW

The Revised Pillar One PoW organizes the remaining work to be undertaken to further develop the unified approach into eleven workstreams, which address the scope of and basis for the new taxing right, the mechanics of the new profit allocation rules, the new dispute prevention and resolution mechanisms, and the overall implementation and administration of the Pillar One solution.

The Revised Pillar One PoW also sets forth a timeline under which the Inclusive Framework will continue working toward reaching an agreement on the key policy features of a consensus-based solution by July 2020 and producing a final report setting out the technical details of the consensus-based solution by the end of 2020. In order to achieve this

objective, the Revised Pillar One PoW notes that aspects of the work will need to be completed in June 2020 to support a decision on the relevance and feasibility of key features. Examples of work to be done by June 2020 are the definition of the categories of business activities falling within the scope of the new taxing right and the determination of the appropriate thresholds for the percentage or percentages of profit that will be reallocated under the new taxing right. The Revised Pillar One PoW notes that other aspects of the work that support the technical design and implementation of the solution will be completed in November 2020, including for example the identification of tax treaty changes required to remove barriers to implementation of the new taxing right.

The Pillar Two Progress Note

The Pillar Two Progress Note provides an update on the global anti-base erosion (GloBE) proposal that was described in a document released by the OECD in November 2019 for comment by stakeholders³ and was discussed during a public consultation hosted by the OECD in December 2019.⁴ The Pillar Two Progress Note identifies a series of technical and design issues that remain under discussion in the Inclusive Framework. It notes that work is advancing at a fast pace but that significant work remains. It also notes that the Inclusive Framework appreciates the input received so far and looks forward to continued close engagement.

Next steps for the OECD

A report from the OECD Secretary General on the ongoing work on the BEPS 2.0 project will be delivered in advance of the next meeting of G20 finance ministers and central bank governors in Riyadh, Saudi Arabia, on 22-23 February 2020.

Implications

The agreement reached in the Inclusive Framework means that work on the BEPS 2.0 project is continuing to move forward. The complex issues underlying the Pillar One and Pillar Two work will be the subject of policy and technical discussions among the Inclusive Framework jurisdictions throughout 2020. The Statement and its annexes underscore that the international tax changes contemplated with these Pillars will have implications well beyond digital businesses and digital business models. The ongoing project, with the participation of 137 jurisdictions, could lead to fundamental changes in the global international tax system under which multinational businesses operate and could have significant consequences in terms of both the overall tax liabilities of businesses and the tax revenues of countries.

It is important for companies to follow these developments closely as they unfold in the coming months. Companies may want to consider engaging with the OECD and policymakers on both the national and multilateral levels on the business implications of these proposals. Companies should also begin to evaluate the potential impact of these changes on their business models.

A comprehensive Global Tax Alert on these developments will be published shortly.

Endnotes

1. EY Global Tax Alert, [The OECD takes next step on BEPS 2.0 - Proposal for a "unified approach" for additional market country tax](#), dated 10 October 2019.
2. See EY Global Tax Alert, [OECD hosts public consultation on proposed "unified approach" under Pillar One of BEPS 2.0 project](#), dated 27 November 2019.
3. See EY Global Tax Alert, [BEPS 2.0 - Pillar Two: the OECD issues consultation document on design of global minimum tax rules](#), dated 8 November 2019.
4. See EY Global Tax Alert, [OECD hosts public consultation on global anti-base erosion \(GloBE\) proposal under Pillar Two of BEPS 2.0 project](#), dated 13 December 2019.

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