

## OECD Inclusive Framework political leaders promote global consensus following OECD's public consultation on Pillar One and Two Blueprints

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### Executive summary

On 27 and 28 January 2021, the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) held a public meeting to provide an update on its ongoing international tax work. The agenda included discussion of the future of international taxation in connection with the ongoing G20/OECD project titled "Addressing the Tax Challenges of the Digitalisation of the Economy" (the BEPS 2.0 project). At the meeting, finance ministers from six jurisdictions stressed the importance of reaching a consensus solution by mid-2021 and expressed their confidence that a positive outcome will be achieved.

The meeting followed the public consultation meeting hosted by the OECD on 14-15 January 2021 on the Pillar One and Pillar Two Blueprints. These Blueprints were released<sup>1</sup> by the OECD on 12 October 2020 to reflect the progress made on both elements of the BEPS 2.0 project.

The public consultation meeting, which was held virtually, focused on the key questions posed in the [consultation document](#) and addressed in the written comment submissions that were received from stakeholders as part of the consultation process. Representatives from business, labor groups, non-governmental organizations (NGOs), academia and other interested parties participated in the consultation to discuss their perspectives. EY submitted a [comment letter](#) and a global team from EY participated in the consultation.

## Detailed discussion

### Background

On 12 October 2020, the OECD released a series of major documents in connection with the BEPS 2.0 project. These documents included the Pillar One<sup>2</sup> and Pillar Two<sup>3</sup> Blueprints that were the subject of the public consultation. The OECD also released a lengthy Economic Impact Assessment that was prepared by the OECD Secretariat.<sup>4</sup> The cover statement accompanying the Blueprints indicates that while the 130+ members of the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) did not reach a consensus agreement in 2020, which had been the target,<sup>5</sup> they have agreed to keep working to swiftly address the remaining issues with a view to bringing the process to a successful conclusion by mid-2021.

With the release of the Blueprints, the OECD also released a consultation document requesting written comments from stakeholders on all aspects of the Blueprints, which included questions of particular interest, and indicated that it would hold a public consultation session to discuss the comments. The OECD has made available [on its website](#) the public comments that were submitted.

### Plenary meeting of the Inclusive Framework on 27-28 January

On 27 and 28 January 2021, the 11th plenary meeting of the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework meeting) was held virtually and was open to the public for the first time.

A key agenda item for the Inclusive Framework meeting was a discussion of how to address the tax challenges arising from the digitalization of the economy, including an update and debriefing on the public consultation on the Pillar One and Pillar Two Blueprints. The centerpiece of this discussion was a panel of six finance ministers from Inclusive Framework countries, who all indicated that there is wide political support for reaching an agreement on both Pillar One and Pillar Two by mid-2021. While they acknowledged the existence of different views among countries, they indicated that there is a clear need for compromise and that a global consensus agreement is the only way forward. The focus of the panel discussion was mainly on digital tax issues, with several of the panelists noting that the views on minimum taxes are less divergent and that the Pillar Two work is farther along.

Olaf Scholz, Minister of Finance of Germany, expressed his support for a global agreement and highlighted that he is confident that the new US administration is very much willing to make the reform happen by the agreed deadline. He expressed the view that it will not be difficult for the United States (US) to agree on Pillar Two, but more work is needed to find common ground on Pillar One. He concluded by indicating that there are encouraging signals from the US and thus good reason to be optimistic.

Chrystia Freeland, Deputy Prime Minister and Minister of Finance of Canada, expressed the view that highly digital companies are clear winners in the pandemic and that the Canadian voters are increasingly focused on those companies not being taxed fairly. She expressed that Canada very much supports a global solution but indicated that if negotiations fail then Canada will be forced to move ahead on its own. She urged that 2021 be the year for rebuilding multilateral cooperation.

Nigel Clarke, Minister of Finance and the Public Service of Jamaica, acknowledged that there are pressing challenges to resolve. He indicated that Jamaica prefers a multilateral solution over unilateral measures. He noted that the majority of developing countries share concerns that the current rules may unfairly allocate taxing rights in favor of residence jurisdictions. He expressed the view that this issue needs to be addressed urgently and consistent with principles of fairness, equity and sustainability, particularly in light of the effects of the pandemic. He also highlighted the need for effective dispute resolution mechanisms that are simple to administer. He called for a voluntary binding arbitration mechanism to be triggered based on a mutual agreement among competent authorities.

Sri Mulyani Indrawati, Minister of Finance of Indonesia, stated that, once countries reach an agreement, Indonesia intends to focus on implementation when it assumes the G20 Presidency in 2022. She also called for the creation of a multilateral convention to easily implement the solution in a coordinated manner.

The United Kingdom (UK) is one of the countries that have moved forward with unilateral action by introducing a Digital Services Tax (DST). Rishi Sunak, UK Chancellor of the Exchequer, made clear that the UK plans to withdraw its DST once a global agreement is reached. He also highlighted that all countries will need to find ways to accommodate each other in order to find a consensus-based solution, and he indicated that he is optimistic that the latest proposals can be developed and refined to bridge the gaps that still exist.

Another country that has unilaterally implemented a DST is Italy, which holds the G20 Presidency in 2021. Roberto Gualtieri, Minister of Economy and Finance of Italy, indicated that the Italian DST will be repealed once an OECD solution is implemented. He stressed that countries must support Pillar One and Pillar Two to ensure a stable tax environment and that the alternative to a multilateral agreement is not the status quo. He indicated that reaching agreement on the BEPS 2.0 project by mid-2021 is a top priority for the G20 Italian Presidency, also noting additional priorities including tax transparency and endorsement of a framework for the automatic exchange of information on cryptocurrencies.

In other sessions over the two-day meeting, the Inclusive Framework focused on the major developments in international tax policy and administration in recent years, current policy challenges and what the future holds. The [agenda](#) covered a broad spectrum of tax policy issues, including:

- ▶ Global economic context and tax policy after COVID-19
- ▶ Tax and development
- ▶ BEPS, tax certainty, transparency and tax administration
- ▶ Tax and the environment

The discussion in these areas will be covered in the February edition of EY's Latest on BEPS and Beyond.

## Public consultation meeting on 14-15 January

On 14-15 January 2021, the OECD hosted a virtual public consultation meeting on the Pillar One and Pillar Two Blueprints and the stakeholder comments submitted. A replay of the consultation sessions and a copy of material presented during the sessions are available on the [OECD website](#).

### Day 1 - Pillar One

#### *Opening*

In his opening, the German government official who serves as the Chair of the Inclusive Framework reiterated that 2021 will be decisive for the members of the Inclusive Framework, with the top priority being the development of a global solution to the tax issues the Blueprints aim to address. He indicated that over 3,500 pages of comments were received, with submissions from over 200 contributors. The Chair referred to strong support for a global, consensus-based solution as being a common denominator in the comments. However, he also recognized that technical and policy issues have kept the Inclusive Framework from reaching consensus so far. He indicated that concerns about complexity and

workability of the rules laid out in the Blueprints, as well as concerns about some of the policy concepts reflected in those rules, have come across loud and clear. Therefore, simplification wherever possible will be at the heart of the improvements the Inclusive Framework will seek. The Chair also recognized the concerns expressed in comments about the scope of the rules and noted that some stakeholders proposed that the rules of Pillar One should apply equally to all businesses. In addition, some comments submitted by NGOs expressed concern that the scope of the proposed rules is too limited in that it would lead to what they see as only limited amounts of profits being redistributed to market jurisdictions. Finally, he drew attention to the fact that a consensus-based solution will require the agreement of the new US administration.

The Director of the OECD Center for Tax Policy and Administration of the OECD focused his opening remarks on the steps to be taken between now and the mid-2021 target date for a consensus-based solution and also on the role that the new US administration could play in getting to consensus. He noted that the first G20 Finance Ministers meeting will take place at the end of February, expressing hope that the new US administration will then provide a signal as to its position on the project.

Other meetings of the G20 Finance Ministers in 2021 are scheduled for April and early July, which is planned as an in-person meeting and at which the solution to be agreed by the Inclusive Framework would have to be presented for approval. The Director noted what he saw as general support for a global consensus-based solution in the comment submissions, but also recognized the range of concerns expressed in the submissions and the common view that there is a need for simplification. He indicated that ideas and proposals on how to achieve such simplification have been provided and that the OECD will be working in the coming weeks to get to the direction that is most likely to lead to a consensus-based solution.

The Chair of the Business at OECD (BIAC) Tax Committee reiterated the support from the business community for a multilateral agreement rather than a proliferation of unilateral measures. However, he also noted the business community's concerns on complexity, scope, segmentation and dispute resolution, among others. Focusing on Amount A in particular, he noted that the problem that it is trying to solve is not clearly articulated. For BIAC, the tax issue to be solved with Amount A is the ability to create value in a

country remotely, without having a taxable presence there. Looking at the way Amount A is drafted in the Blueprint, it is difficult to see how it addresses this issue.

On Pillar Two, the BIAAC Tax Committee Chair pointed to the significant complexity that would be created if more than 130 jurisdictions were to introduce the rules reflected in the Blueprint and stressed the need to reduce this complexity. To achieve this, he suggested narrowing the situations where application of the Pillar Two rules and calculations would be required. He also suggested that an approach that identifies those countries where taxation below the minimum is not an issue would be very helpful. Finally, he referenced the importance of international trade, investments and stability in the context of addressing the economic consequences of the COVID-19 pandemic and reiterated the need for a well-functioning multilateral agreement on any new tax rules.

The representative of the Trade Union Advisory Committee to the OECD (TUAC) noted three sources of concern. The first is complexity, and he expressed the view that the level of technical detail in the Blueprints does not allow a focus on the wider policy implications, which are not limited to tax but also include employment, trade and investment. The second concern is the fact that we are currently in the most substantial global crisis in recent history, one that has asymmetrical impact, where there are winners and losers. In this regard, he expressed the view that highly digitalized businesses are winners and also are undertaxed. The third concern relates to the involvement of stakeholders in the discussion. The consultation to date has involved primarily tax experts and other stakeholders, such as those reflecting labor, trade and investment interests, in his view, have not been consulted. He stressed that the voice of civil society more broadly should be heard and that the discussion should not be limited to tax experts and tax administrations.

The TUAC representative presented two approaches for moving forward. First, given the significant interest in Pillar Two, the Pillars should be decoupled if the negotiations on Pillar One do not advance so that Pillar Two can be delivered. Second, while TUAC is very interested in Pillar One, there are concerns about the complexity and scoping issues. In TUAC's view, the OECD should go much farther than the approach reflected in the Pillar One Blueprint and should move from the arm's-length principle to unitary taxation. In addition, there should be a focus on excess profit taxation for all businesses. Finally, the TUAC representative emphasized the importance of corporate transparency, stressing the importance of public country-by-country reporting (CbCR).

### *Key themes of comments*

After these opening remarks, the members of the OECD Secretariat provided a summary of the key themes they saw in the comments that were received. Overall points made by the Secretariat about the comment submissions included:

- ▶ 59% of the submissions on Pillar One came from business, 4% from civil society, 7% from academia, 17% from advisors and 13% from other stakeholders
- ▶ The comments not only identified problems but also provided solutions
- ▶ The comments generally reflected support for a global solution that includes removal of unilateral measures
- ▶ There seemed to be a convergence of views on the technical aspects of the Amount A building blocks, which the Secretariat viewed as a positive sign for the ability to achieve a consensus solution
- ▶ NGOs consider the proposed reforms too narrow, particularly in terms of the amount of profits to be redistributed

A slide deck with the OECD Secretariat's summary of the Pillar One comments is available on the OECD [website](#).

The OECD Secretariat's summary of the technical aspects of the comments received included the following:

- ▶ Scope: Activity test
  - Some commentators argued for a wider scope (covering all businesses)
  - Some commentators argued for modifications to the existing scope (for example, excluding specific activity such as prescription drugs, franchising models and telecommunications from consumer facing businesses (CFB))
  - A small number of commentators favored a safe harbor approach as was proposed by the US
  - A small number of commentators argued for limiting the scope to automated digital services (ADS) only
  - Some commentators argued for transition/phase in rules (for example, starting with larger businesses or with ADS only or starting on a trial basis)
  - Other commentators requested that the Inclusive Framework identify the principles underlying the proposed approach on scope
  - Commentators offered several other alternative proposals on scope

- ▶ Scope: Threshold test
  - Commentators expressed broad support for a de minimis foreign in-scope revenue exception
  - Most commentators supported a global threshold of €750 million
  - Some commentators also supported a phased approach to implementation, starting with larger multinational enterprises (MNEs)
- ▶ Nexus
  - Commentators expressed broad support for a market revenue threshold for nexus and broad concern that nexus plus factors would create excessive compliance costs
  - On revenue sourcing, the commentators expressed the view that the proposed sourcing architecture broadly works, subject to the need for some improvements, such as flexibility on the hierarchy of the rules and on the treatment of third party distributors
- ▶ Tax base
  - No commentator challenged the use of consolidated financial accounts as the starting point for computing the amount A tax base
  - The comments included a recognition that Amount A cannot always be calculated from the consolidated financial accounts
  - Commentators expressed a strong preference for using disclosed segments where possible
  - Commentators almost unanimously supported the proposed earn-out approach (in which losses are not allocated to the market jurisdictions) to carry forward losses
  - Commentators expressed support for accounting for pre-regime losses and profit shortfalls
  - Commentators expressed support for an unlimited loss carryforward
- ▶ Potential double counting
  - Commentators expressed support for the marketing and distribution safe harbor
  - Some commentators expressed support for the concept of a domestic business exemption
  - Commentators opposed applying Amount A on top of withholding taxes
- ▶ Elimination of double taxation
  - Commentators expressed broad concerns about the complexity of the rules
  - Most commentators preferred the activities test over the profitability test
  - Some commentators supported the market connection priority test, but there also were concerns about its complexity
  - Commentators preferred the exemption over the credit method for relieving double tax
- ▶ Amount B
  - Commentators expressed strong support if it is designed properly
  - Commentators expressed divergent views with respect to scope in particular
- ▶ Tax certainty
  - Business commentators expressed strong support from business and offered many suggestions and proposals
  - Commentators' main concerns about the Amount A tax certainty process focused on timing and resource burdens

#### *Reducing complexity*

The need for simplicity, certainty and sustainability were the first words from a business commentator in the first panel on reducing complexity, and after that first statement, this message resonated through all the presentations, even though the panelists presented a range of different issues.

In the first presentation, the panelist expressed the point of view that the industry approach reflected in Amount A is not based on any principle and therefore should be replaced by a business model approach. Moreover, instead of working with very complex new rules in the context of Amount A, the panelist proposed merging Amount A and B, by varying the Amount B fixed margin depending on relative profitability and applying it to all sales and distribution activities regardless of industry.

In the second presentation, the panelist focused on decentralized business models. She illustrated that decentralized business models application of Amount A could result in the allocation of local profits from one market to another market to which these profits have no connection at all. In addition, she addressed the issue of withholding taxes, concluding that where withholding taxes are levied, Amount A should either not be applicable, or be credited with the amount of withholding tax. Also, the panelist emphasized the importance of dispute resolution.



A panelist representing the Japanese business community stressed the importance of linking the fixed return of the marketing and distribution safe harbor of Amount A, with the fixed return of Amount B. Moreover, he made an argument for a formulaic way of determining the surrendering entities in the elimination of double taxation phase. The panelist commented on the substantial complexity of the revenue sourcing rules. He indicated that these rules would require the sharing of sensitive commercial information by distributors, the changing of contracts and IT systems, which he viewed as unreasonable.

Another company representative also had concerns about the revenue sourcing rules, more particularly the use of user locations and IP addresses. He shared the concern of the Japanese business community representative that independent distributors would not be willing to disclose the information needed for revenue sourcing. Also, he requested that guidance be given on what would be considered as reasonable steps for making the necessary determinations. As a simplification, he suggested that revenue sourcing should focus on the first third party that buys the product, as is also common in the Value Added Tax system in the European Union.

A panelist commenting on franchise business models stressed that in franchise situations the residual profits that are already taxed in the markets in the hands of the independent franchisees need to be taken into account.

Many of the concerns expressed by the panelists were shared by the discussants. Consistent with the EY comment letter, the EY representative supported the decentralized business model concern expressed by the second panelist and also suggested that a domestic activities carve out should be provided in addition to the marketing and distribution safe harbor, noting that carving out local-for-local activities would be simpler and better aligned with the policy objectives of Pillar One. Moreover, she indicated that such business models are relevant not only for CFB but also for ADS, suggesting that the marketing and distribution safe harbor (as well as a domestic activities carveout) should be extended to ADS. In closing the panel, another discussant suggested that a risk-based approach would allow for simplification.

#### *Tax certainty and administration*

This panel focused on the procedural elements of Amount A, including the early tax certainty process to prevent and resolve disputes on Amount A as well as the introduction of approaches to provide greater certainty beyond Amount A.

All the panelists and discussants were supportive of the work done by the OECD thus far but urged more simplification.

One of the business representatives presented an alternate mechanism for computing Amounts A and B. This panelist also suggested that there should be a taxpayer election for segmentation either on a product line basis or on a regional basis. He also stressed that purely domestic businesses should not have their profits reallocated for Amount A purposes.

An industry body representative from India discussed the mechanisms currently available in India with respect to tax certainty and highlighted how Advance Pricing Arrangements (APAs) and Mutual Agreement Procedures (MAPs) have been progressing well despite the initial resource constraints that were experienced when the APA program was introduced. The businesses' expectations on tax certainty arising out of the Pillar One proposals revolved around two aspects - a) businesses need a structured and constructive approach and b) timeliness - i.e., time-bound certainty. In light of the new dispute resolution process proposed under the Pillar One blueprint, this representative highlighted the need for independence between the determination and review panels and also put forth the idea of including industry experts in such panels. It was also highlighted that the review and determination panels be restricted to Amount A while Amount B matters should be subject to bilateral agreements. It was also stressed that MAPs should continue to be available as an option irrespective of the new dispute resolution process introduced as part of the Pillar One blueprint. Further, this panelist also recommended that the new regime which would be brought by Pillar One proposals should stimulate studies on user activities, value of data and the value of users.

Another business representative highlighted that there should not be an intersection between Amounts A and B given that there is significant difference in the purpose for each of the Amounts. This panelist also outlined that there is more work needed on the guidance for transactional transfer pricing adjustments and its intersection with Amount A. It was also highlighted that without a mandatory binding arbitration mechanism, it would be difficult to obtain Amount A relief. In order to address certainty, this representative outlined that a) any numbers included in the centralized simplified formula for computing Amount A should be run through the whole Inclusive Framework and not just unilaterally or bilaterally as this would affect all the calculations and b) it is also equally important that the governments consider something fair and do not believe that they are losing out.

A representative from an NGO expressed the view that Amount A should not be structured as a safe harbor. She also expressed that the threshold of €750 million is too high as it would turn irrelevant for many developing countries. It was also opined that the success of Pillar One would depend on more revenues for tax administrations, more redistribution and more equity.

At the end of the discussions by various panelists, the discussants (who were business representatives and tax advisors) made several points:

- ▶ The crucial role of Amount A is to identify what is the residual profit and for Amount B, it is key that it is designed correctly.
  - ▶ In relation to Amount B from a dispute resolution perspective, its effectiveness rests on widespread acceptance of underlying benchmarking analyses. The challenge would be to consolidate the various comparables search strategies that different taxpayers and tax authorities use into one unified approach but such an effort would be worthwhile prior to implementation.
  - ▶ Introduction of a netting mechanism between governments should be considered.
  - ▶ Implementing viability testing prior to formal roll would help ensure success.
  - ▶ Advance certainty is essential. Learning from the CbCR experience would be key prior to implementation.
  - ▶ Phased implementation should be considered.
  - ▶ DSTs must be completely removed as a pre-condition for implementing the Pillar One proposals.
- ▶ 27% of the submissions on Pillar Two came from business associations, 18% from advisors, 9% from civil society, 5% from academia, 9% from financial services businesses, 9% from IT and digital businesses, 6% from insurance businesses, 3% from extractive businesses, 1% from shipping businesses, and 13% from other businesses.
  - ▶ The comments not only identified problems but also provided solutions.
  - ▶ There was good regional representation in the submissions.
  - ▶ There were only few comments on the special rules proposed in Chapter 8 of the Blueprint, but those commentators expressed concern about the additional complexity these rules would introduce for joint ventures and associates.

A slide deck with the OECD Secretariat's summary of the Pillar Two comments is available on the OECD [website](#).

The OECD Secretariat's summary of the technical aspects of the comments received included the following:

- ▶ Scope
  - Broad support was expressed for the overall approach to scope.
  - Some commentators suggested a phased implementation.
  - Many commentators submitted specific comments on excluded entities and particular sectors.
- ▶ ETR calculation
  - Commentators expressed strong support for financial account data as the basis for Effective Tax Rate (ETR) calculations and for the approach to covered taxes.
  - Some commentators made suggestions for a global ETR safe harbor or a form of global blending approach to achieve simplification.
  - Business commentators expressed strong support for use of deferred tax accounting to address timing issues.
  - Civil society commentators warned against a possible weakening of the Global anti-Base Erosion (GloBE) rules that could result from the introduction of carve outs.
- ▶ Simplification options
  - Many commentators stressed the need for simplification measures.
  - Commentators preferred multiple simplification options over a single option and supported simplification options being elective for the taxpayer.

## Day 2 – Pillar Two

### Opening

In his opening comments, the Chair of OECD Working Party 11 indicated that the OECD received 197 written comments covering Pillar Two, spanning over 1,800 pages. He noted that the public consultation provided the opportunity to submit comments on all aspects of the Pillar Two Blueprint and, in particular, on the specific questions raised in the consultation document. He also indicated that a key focus of the comment submissions was on the simplification options.

### Key themes of comments

After these opening remarks, members of the OECD Secretariat provided a summary of the key themes they saw in the comments received. Overall points made by the Secretariat about the comment submissions included:

- Among the proposed simplification options, the tax administrative guidance option received the most support from commentators, followed by the CbCR ETR safe harbor option and the de minimis profit exclusion option.
- Commentators expressed limited support for the option of a single ETR calculation to cover several years.
- ▶ GloBE rules
  - Commentators supported the top-down approach of the income inclusion rule (IIR) but expressed concerns about the complexity of the split-ownership rules.
  - Some commentators raised specific concerns about the application of the undertaxed payments rule (UTPR) to the Ultimate Parent Entity jurisdiction.
- ▶ Subject to tax rule
  - Many commentators called for a narrow scope of application of the subject to tax rule (STTR).
  - The majority of commentators favored including an MNE-size threshold in the STTR.
  - Civil society commentators raised concerns that the STTR would be difficult to put in place given the required treaty changes.
- ▶ Implementation and rule coordination
  - Commentators generally expressed support for the coordinated approach in which the IIR would apply before the UTPR.
  - NGOs preferred a different rule order that would upgrade the UTPR.
  - Some commentators expressed support for deferred implementation of the UTPR.
  - Commentators strongly supported development of a multilateral convention.
  - Many commentators called for repeal of other domestic anti-avoidance rules once the Pillar Two measures have been implemented.
- ▶ Co-existence with the US Global Intangible Low-Taxed Income (GILTI) regime
  - The comments show strong support for qualifying GILTI as an IIR-compliant rule.
  - Concerns were expressed about the global blending approach of the GILTI regime.
  - Some commentators called for coordination rules for situations in which GILTI applies at a lower level in an ownership chain rather than at the Ultimate Parent Entity level.

- Some commentators suggested switching off the US Base Erosion and Anti-abuse Tax (BEAT) rules under the GloBE ordering rules.
- Some commentators called for a switch-off of the STTR for MNE groups that are subject to the GILTI rules.

#### *Tax base and simplification options*

Following this introduction, the first panel discussed technical aspects of the computation of the ETR, certain elements of tax base determinations and the mechanisms to address timing differences.

A panelist from academia expressed support for the jurisdictional blending approach and the use of financial accounts as the starting point for the ETR calculation. He proposed a de minimis profit exclusion on a global blending basis, including head office profits. He also stressed the importance of appropriate dispute resolution mechanisms and suggested that the tax certainty proposals for Pillar One should also be considered for Pillar Two. Finally, he pointed to the challenges attached to timing differences.

Timing differences were also at the heart of the concerns of panelists from businesses and tax advisory firms. They called for the recognition of deferred tax accounting, noting that this is a concept controlled by internationally recognized standards and is subject to audit. Other systems to address timing differences between financial and tax accounting bear the risk of resulting in double taxation and other distortions negatively impacting investment decisions. Panelists also pointed out that any system that seeks to connect financial accounting and tax accounting bears significant compliance issues. More generally, business representatives warned that the complexity and administrative burden of the Pillar Two framework would be significant and would have a negative impact on the investment environment. Panelists also warned fiscal authorities would come under significant pressure as a result of the complex new rules. Panel members argued that both taxpayers and tax administrations would benefit from simplification measures should countries decide to adopt the Pillar Two framework.

In this context, panel members also made suggestions for possible simplifications and carveouts. One panelist pointed out that the Pillar Two rules went far beyond the original policy intent, which was to end harmful tax competition. If the OECD nevertheless would proceed on the chosen path, simplifications would be needed to avoid complex ETR calculations and to avoid a lot of work that would need to be done to find out there is little or no top-up tax due. In this



context, suggestions for additional group-wide thresholds were made, as well as carving out low-risk jurisdictions. For the purposes of simplification, the use of CbCR data should be considered, although supplementary information may be required whereas that data is currently merely collected for risk assessment purposes. One panel member suggested, for example, to include details of innovation incentives, capital allowances and dividend payments subject to a participation exemption regime. Questions were also raised about the availability of data to apply proposed simplifications and carveouts. Panelists also discussed the de minimis rule but had different views as to the design of such rule.

Business commentators also stressed the importance of considering different industries and business models. A panelist representing an insurance company explained that such companies have a different profit cycle than most of the industries. Another panel member illustrated the concerns related to long-term capital-intensive investments. Concerns were expressed that the timing differences resulting for this are not well covered in the Blueprint and the use of deferred tax accounting was strongly recommended to solve this issue.

Finally, panelists stressed that rule coordination and other mechanisms to prevent and resolve double taxation should be treated as a top priority.

In response to the comments on deferred tax accounting, the Secretariat briefly summarized the main concerns that the Inclusive Framework members had expressed regarding this approach so far. The Secretariat indicated that deferred tax accounting would allow the use for a credit for expected future tax liabilities and governments are reluctant to provide taxpayers with the consequential time value of money benefit. Governments were also reluctant to address timing differences beyond those that were addressed by the Blueprint. Finally, some governments see deferred tax accounting as a “black box” and view this approach as having problems of its own. The Secretariat, however, noted that the submissions of commentators had brought forward new insights and indicated that it was incumbent on the Inclusive Framework to take another look at the issue. In this context, the Secretariat also referred to specific comments raised by the insurance industry, indicating that those points would be taken onboard.

#### *Selected issues emerging from consultation*

The second panel on Pillar Two focused on the mechanics of the IIR, UTPR and STTR, how to ensure coordination of the rules, and possible improvements related to implementation.

The panelists and discussants included company and business group representatives, tax advisors, and NGO representatives.

The first panelist, a company representative, described the STTR as the most inefficient, treaty dependent and transactional of the proposed Pillar Two rules. He described the UTPR as slightly better, but he noted the need for a harmonized approach and stressed the tremendous amount of coordination that would be required both among entities in an MNE group and among tax authorities. He described the IIR as the only rule that allows a centralized approach, noting that it involves limited adjustments, is better targeted because it is not based on payment streams, and has carryforward mechanisms that are somewhat simpler. However, he noted that the treatment of partially owned subgroups could be very complicated. Reiterating the need for simple rules to avoid controversy, he concluded that the IIR is the only rule that could meet that need and urged that the other rules be used only to the extent necessary to close potential gaps.

The second panelist, a tax advisor, focused on the treatment of partially owned groups. He noted that the proposed rules in this area were a deviation from the top-down application of the IIR and expressed concern about the overlap with the rules for associates and joint ventures. He proposed an approach that would involve calculating the ETR separately.

The third panelist, a tax advisor, described the UTPR as too complex and unclear. She focused on the need for a clear anti-overlap rule for the IIR and UTPR, describing four options including expanding the scope of the IIR in situations of minority ownership, limiting the UTPR to entities that are wholly owned by non-IIR entities, treating the IIR as a covered tax, or providing a carry forward mechanism. She also noted the need for clarification on the application of penalties, expressing particular concern about situations where the taxpayer would be required to get information from other parties.

The fourth panelist, a business group representative, focused on the treatment of the US GILTI rules, stressing that they represent a rigorous minimum tax and that there needs to be co-existence of the rules.

The fifth panelist, a tax advisor from Colombia, spoke about the importance of the STTR rule. She favored broadening the scope of payments covered by the STTR. She objected to any exclusion for low-return payments, unless such an exclusion were to apply to the other rules too. She recommended an

approach where the STTR reflects the circumstance of the particular market in terms of a materiality threshold and urged inclusion of an anti-fragmentation rule for purposes of applying such a threshold. In conclusion, she stressed the need to allow developing countries to use the STTR rule approach as it is the only rule that would have significant application for them, further noting that the concerns of the business community about the STTR could be addressed with a monitoring process to make sure that the application of the STTR does not result in over-taxation.

The final panelist, a tax advisor from India, was critical of the STTR and its gross basis approach, expressing the view that the IIR is sufficient and there is no need for the STTR. In her view, if the STTR is to be pursued, it would require an exclusion for low-return payments and clear rules as to exactly what payments are covered. She further recommended using an ex post annualized charge approach or alternatively, interim withholding at a low rate with a subsequent adjustment mechanism. Finally, she urged that any STTR have a narrow scope and be prospective only.

The first discussant, a business group representative, focused on the use of a multilateral instrument as a mechanism for providing more certainty and better coordination with respect to the IIR and UTPR. She also suggested creation of a white list of qualifying IIRs. The second discussant, an NGO representative, expressed the view that the approach in the Pillar Two Blueprint is unworkable because it would be too difficult to coordinate the rules. He also described the priority given to the IIR as inequitable. In his view, the package would require a new multilateral convention that would have to be signed and ratified by all jurisdictions without any reservations, which he believes would be impossible to achieve. He described an alternative approach that would involve a substance-based approach for allocating taxing rights over under-taxed income across all countries, with countries applying their tax rates to such income. He would use a three-factor approach for substance, based on assets, personnel and sales revenue (which could be determined consistent with the revenue sourcing rule being developed under Pillar One).

#### *Closing remarks*

In his wrap-up to the Pillar Two discussions, the Chair of Working Party 11 noted the need to address the challenges in applying the proposed rules to capital intensive industries.

He also acknowledged the differing views of the STTR but indicated that the STRR is viewed by developing countries as important to protecting the tax base and also noted that it is important to limit the potential for over-taxation, so further work will need to be done.

In wrapping up the two-day consultation, the Secretariat Director thanked the speakers who made remarks during the consultation, the stakeholders who submitted written comments, and everyone who took an interest in the consultation. He noted that about 3,000 people listened to the live consultation sessions. The Director acknowledged the diverse views expressed and the significant issues raised. He also welcomed what he saw as a recognition that the rules need to change, noting also the need to respect fairness and the importance of simplicity.

The Director noted what he saw as the main takeaways from the consultation:

- ▶ Pillar One needs to be simplified, particularly with respect to segmentation and double tax relief.
- ▶ The major issue around the scope of Pillar One is largely a political issue.
- ▶ Pillar Two requires enhanced coordination of the rules, noting that countries can move on their own in this area so that the existence of this aspect of the project is because of the need for rule coordination.

Looking ahead, the Director said that they would draw on these comments in attempting to work out the technical issues. He noted that the Inclusive Framework meeting at the end of January will be largely public and encouraged stakeholders to participate. Finally, he noted that this project likely will be discussed at the G20 Finance Ministers meeting in late February and reiterated the objective of reaching agreement on a solution by mid-2021.

## Implications

As reflected in the discussion during the Inclusive Framework meeting, political leaders continue to express strong support for the BEPS 2.0 project. While the six finance ministers speaking at the Inclusive Framework meeting acknowledged the existence of different views among countries, they also expressed the view that there is a clear need for compromise and that a global consensus agreement is the only way forward.

The discussion at the public consultation meeting highlighted the need for more clarity, simplification and certainty. It also underscored the need for more details to be fleshed out on both Pillar One and Pillar Two. Commentators stressed the breadth of the international tax changes being contemplated - changes that will have implications well beyond digital businesses and business models. In the Inclusive Framework meeting, which took place two weeks after the public consultation meeting, the finance ministers who participated in the panel discussion on BEPS 2.0 also noted the need for simplification and importance of effective dispute resolution mechanism.

It is important for companies to continue to follow the developments on BEPS 2.0 closely as they unfold in the coming months, including the developments on unilateral measures which countries are already introducing or announcing. Companies should consider taking the opportunity to engage with OECD and country policymakers on the design of the new rules to ensure that these rules are fit for their business models and industries and do not generate excessive administrative costs. Companies also should begin to evaluate the potential impact of these changes on their tax profile.

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## Endnotes

1. See EY Global Tax Alert, [OECD's Inclusive Framework releases BEPS 2.0 documents and agrees to continue work with target of conclusion by mid-2021](#), dated 13 October 2020.
2. See EY Global Tax Alert, [OECD releases BEPS 2.0 Pillar One Blueprint and invites public comments](#), dated 19 October 2020.
3. See EY Global Tax Alert, [OECD releases BEPS 2.0 Pillar Two Blueprint and invites public comments](#), dated 19 October 2020.
4. See EY Global Tax Alert, [OECD releases economic impact analysis of BEPS 2.0 project proposals](#), dated 2 November 2020.
5. See EY Global Tax Alert, [The OECD's interim report on tax challenges arising from digitalisation: An overview](#), dated 21 March 2018.



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