OECD

Vast Majority of Inclusive Framework Members Sign Up To Landmark Global Tax Reform

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On 8 October 2021, 136 Inclusive Framework (IF) members convened and jointly signed a new statement that envisages implementing a two-pillar solution towards addressing the tax challenges arising from the digitalization of the economy. The new statement's main function has been to update and finalize the initial IF two-pillar agreement introducing a new revised international tax framework, dated 1 July 2021 (for previous coverage, *see* OECD-1, News 2 July 2021).

According to the Organization for Economic Co-operation and Development (OECD), which has been supervising the IF negotiations, the new international tax reform envisages reallocating more than USD 125 billion of profits from the world's largest and most profitable multinational enterprises (MNEs) to market jurisdictions worldwide, and ensuring that those MNEs pay a fair share of tax in the jurisdictions they operate and generate profits, regardless of whether they have a physical presence there (Pillar One). It also aims to generate approximately USD 150 billion in additional global tax revenues on an annual basis through the imposition of a 15% global minimum corporate tax rate effective from 2023 (Pillar Two).

The most substantial updates contained in the new, revised global tax agreement are outlined below.

Pillar One

Tax certainty - Amount A

For elimination of double taxation purposes, an elective binding dispute resolution mechanism will be established for issues relating to Amount A for developing economies that are eligible for deferral of their BEPS Action 14 peer review (paragraph 7 of the Assessment Methodology chapter of BEPS Action 14 effective dispute resolution mechanisms) and have no or low levels of mutual agreement procedure (MAP) disputes. The eligibility of a jurisdiction for this elective mechanism will be reviewed regularly and jurisdictions found ineligible by a review, will remain ineligible in all subsequent years.

Implementation and unilateral measures

A multilateral convention (MLC) is envisaged, through which Amount A will be implemented. The MLC will be developed and be opened for signature in 2022. 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 among 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, as aforementioned. The MLC will be supplemented by an explanatory statement that will describe the purpose and operation of the specific rules and processes.

The MLC will require all IF member countries having joined the agreement to remove all unilateral digital services taxes (DSTs) and other relevant similar measures with respect to all companies, as well as to commit not to introduce such measures in the future. Therefore, no newly enacted DSTs or other relevant similar measures will be imposed on any company as from 8 October 2021 and until 31 December 2023 or the coming into force of the MLC (whichever happens earlier).

Implementation – Amount B

The technical work on Amount B will start by defining the in-scope in-country baseline marketing and distribution activities, and the final deliverables are expected to be issued by the end of 2022.

Pillar Two

Rule design

As was mentioned in the initial statement of 1 July 2021, the income inclusion rule (IIR) will allocate top-up tax based on a top-down approach subject to a split ownership rule for shareholdings below 80%.

The undertaxed payment rule (UTPR) will allocate top-up tax from low-tax constituent entities including those located in the ultimate parent entity (UPE) jurisdiction. Pillar Two will, however, provide for an exclusion from the UTPR for MNEs having a maximum of EUR 50 million tangible assets abroad and operating in no more than five other jurisdictions, in their initial phase of international activity. This exclusion is limited to a period of 5 years after the MNE comes into the scope of the Pillar Two rules for the first time.

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Minimum rate

The minimum corporate tax rate will be set at firmly 15%.

Carve-outs

As has already been part of the initial July agreement, Pillar Two will provide for a *formulaic substance carve-out* that will exclude an amount of income corresponding to 5% of the carrying value of tangible assets and payroll. The new revised agreement introduces a transition period of 10 years, during which 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 5 years and by 0.4 percentage points for tangible assets and by 0.8 percentage points for payroll for the last 5 years.

The *de minimis* exclusion under Pillar Two has, also, been specified to MNEs having revenues of less than EUR 10 million and profits of less than EUR 1 million.

Subject-to-tax rule

The minimum rate for the application of the subject-to-tax rule (STTR) under Pillar Two will be set at 9%.

Implementation

According to the new statement, model rules for the implementation of Pillar Two will be developed by the end of November 2021. Those rules will define the scope and set out the mechanics of Pillar Two, by including the rules for determining the effective tax rate (ETR) on a jurisdictional basis and relevant exclusions, such as the formulaic substance-based carve-out provisions. The model rules on Pillar Two will also cover administrative provisions that will address the in-scope MNEs' filing obligations and the use of any administrative safe-harbours, as well as any transitional rules.

As far as the STTR is concerned, a model treaty provision outlining the STTR will be developed by the end of November 2021, along with a multilateral instrument (MLI) towards facilitating the swift and consistent implementation of the STTR in relevant bilateral tax treaties, which will be developed by mid-2022.

Finally, an implementation framework will be developed for the purpose of facilitating the coordinated implementation of Pillar Two by the end of 2022 at the latest. This framework will cover agreed administrative procedures and safe-harbour rules for the purpose of encouraging the compliance by in-scope MNEs and facilitating a smooth administration by tax authorities of IF members.

Note: Four IF member jurisdictions, i.e. Kenya, Nigeria, Pakistan and Sri Lanka, have yet to join the global tax reform.

See also

Hungary-1, News 8 October 2021
Ireland-1, News 8 October 2021
France-1, News 7 October 2021
Greece-2, News 7 October 2021
United Kingdom-1, News 4 October 2021
OECD-1, News 2 July 2021

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