

# OECD SECRETARY-GENERAL TAX REPORT TO G20 FINANCE MINISTERS AND CENTRAL BANK GOVERNORS

Saudi Arabia  
July 2020



G20 

# **OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors**

Saudi Arabia

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**Note by Turkey**

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

**Note by all the European Union Member States of the OECD and the European Union**

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# Overview

Since I last reported to you in February 2020, the world has undergone a cataclysmic change. The emergence of the COVID-19 pandemic has upended daily life as countries attempt to protect the health of their citizens and mitigate the economic fallout from the ongoing crisis.

**In responding to this crisis, the tax agenda is more relevant than ever.** First, fiscal measures – in particular tax-related measures – have played and will continue to play a critical role as countries continue to navigate their way through the COVID-19 crisis. Following a request of Saudi Arabia's G20 Presidency, the OECD outlined measures taken by countries in its report *Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience*<sup>1</sup>, presented during the virtual meeting of the G20 Finance Ministers and Central Bank Governors, on 15 April 2020. **Effective tax policy responses in the recovery phase will provide countries with essential tools to face the upcoming challenges arising from the current crisis.** The OECD stands ready to deliver tax policy recommendations by spring 2021.

**Second, there remains a pressing issue that has been on the table for more than seven years: reaching a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the economy amongst the 137 members of the G20/OECD Inclusive Framework on BEPS (the G20/OECD Inclusive Framework).** Although practical challenges as a result of the pandemic have inevitably affected the pace of progress, technical work on a solution continues to progress well under both Pillar One (establishing a new nexus and reallocating taxing rights) and Pillar Two (ensuring a minimum level of taxation). Since January, and the adoption of an outline of Pillar One based on an OECD Secretariat proposal for a Unified Approach, 11 building blocks have been developed technically by the G20/OECD Inclusive Framework. Work on Pillar Two has also progressed well, with the aim of delivering blueprints for each Pillar for the October meeting of G20 Finance Ministers. Failure to reach an agreement comes with serious risks of escalating tax and trade tensions, which would further undermine the global economy.

Contrary to what has been reported publicly, all members are committed to the current negotiation even though some are of the view that a pause at the political level is needed. We encourage you all to remain fully engaged and advance the work so that, when the COVID-19 crisis is over and some of the electoral deadlines have passed, a political agreement can be reached. **We look forward to delivering a detailed blueprint of Pillar One in October, embedding needed simplification measures to the architecture of the Pillar that was agreed in January 2020.** This blueprint could serve as the basis for both a public consultation, so that all stakeholders can input and comment, and a final round of negotiation with a view to agreeing a consensus based solution.

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<sup>1</sup> OECD (2020), *Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience*, OECD, Paris. [www.oecd.org/tax/tax-policy/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience.htm](http://www.oecd.org/tax/tax-policy/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience.htm)

**The work to finalise Pillar Two is also well advanced and is increasingly relevant as public tolerance of tax avoidance by companies is expected to reach an historic low in the aftermath of the COVID-19 crisis.** By ensuring that a minimum level of tax will be paid on all profits made by multinational enterprises, Pillar Two offers another powerful tool to address BEPS and also establishes a floor to tax competition. Work is underway to finalise the technical design of Pillar Two, which will be submitted to the G20/OECD Inclusive Framework at its plenary meeting in October 2020.

**Reaching a solution to the tax challenges arising from digitalisation will only be achieved with your strong leadership and clear political support.** International co-operation is needed more than ever to provide tax certainty to businesses during very uncertain times and to prevent an unnecessary exacerbation of the already daunting economic challenges posed by the pandemic.

## Further progress on the tax agenda

Allow me to remind you that progress on international co-operation has been one of the great success stories of the G20. In the aftermath of the 2008 global financial crisis, you decided to end bank secrecy once and for all in order to crack down on tax evasion. Now, 12 years later, the results of the fruitful multilateral collaboration **between the now 161 members of the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), bank secrecy for tax purposes, and the tax evasion it facilitated, have been seriously reduced.**

The numbers speak for themselves. **Newly reported figures show that in 2019, information was exchanged on around 84 million financial accounts, with a total balance of around EUR 10 trillion.** This represents a significant increase compared to the 2018 figures, amounting to 47 million financial accounts, representing EUR 5 trillion. With this wealth of new information, tax administrations so far have been able to identify for collection EUR 102 billion that was previously hidden money.

**Effective multilateral co-operation has also delivered new model rules to require reporting by digital platform operators with respect to sellers in the sharing and gig economy.** This new tax compliance tool approved by the 137 member countries and jurisdictions of the G20/OECD Inclusive Framework will greatly enhance transparency in this sector of the digital economy. Activities facilitated by digital platforms may not always be reported to tax administrations, either by third parties or by taxpayers themselves. The model rules are designed to help taxpayers comply with their tax obligations, while also ensuring a level playing field with traditional businesses, in the key sectors (e.g. accommodation and transportation) of the sharing and gig economy. These model rules also help digital platform operators by avoiding the excessive compliance burdens that would result from a multiplicity of uncoordinated unilateral reporting requirements. These new model rules constitute an important element in addressing the tax challenges arising from the digitalisation of the economy and demonstrate that multilateral co-operation continues to deliver.

**Further proof of what can be accomplished through multilateralism can be seen from the results of the ongoing implementation of the OECD/G20 BEPS initiative.** As you will recall, following a G20 mandate, international co-operation fundamentally altered the international tax landscape as countries agreed to crack down on base erosion and profit shifting practices by multinational companies. Since 2016, the implementation of the BEPS Project's measures is producing results, as reflected in this year's fourth annual progress report of the G20/OECD Inclusive Framework (see Annex 1). As a result of this co-operation, taxation is now better aligned with where value is created, tax transparency has increased, and individuals and businesses have benefitted from improvements to dispute resolution.

**It should also be noted that a global crisis requires a global response, and particular attention should be devoted to the specific challenges faced by developing countries.** As developing countries often rely to a large extent on corporate tax revenues, they may therefore suffer from BEPS behaviours to a greater degree, thereby restricting their fiscal space in times of economic crisis. **Currently, the G20/OECD Inclusive Framework includes 70% of non-OECD, non-G20 member jurisdictions, including 66 developing member jurisdictions.** Fortunately, through extensive training and capacity building efforts, developing countries are in a better position than they would have been in the absence of BEPS implementation. In addition, the partners in the Platform for Collaboration on Tax (PCT) – the International Monetary Fund (IMF), OECD, United Nations (UN), and World Bank Group (WBG) – continue to strengthen their co-operation in support of developing countries. The PCT continues to deliver on its 2018 Action Plan, and a full update on its activities is available in the *Platform for Collaboration on Tax Progress Report 2020*<sup>2</sup>. Innovative programmes such as Tax Inspectors Without Borders (TIWB), which has resulted in over **USD 530 million of tax revenue** being recovered from tax assessments of over USD 1.7 billion to date, has also helped shore up the national budgets of developing countries.

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<sup>2</sup> IMF/OECD/UN/WBG (2020), *Platform for Collaboration on Tax Progress Report 2020*, IMF/OECD/UN/WBG, Washington D.C. <https://www.tax-platform.org/sites/pct/files/publications/Platform-for-Collaboration-on-Tax-PCT-Progress-Report-2020.pdf>

# Part I. The G20's International Tax Agenda



# 1 Tax policy in response to the COVID-19 crisis

## Update to the tax policy stocktake on countries' responses to the crisis

Responding to a request of the G20 Presidency, the OECD undertook a stocktake of countries' tax and fiscal policy responses to the COVID-19 crisis and provided a forward-looking framework for policy development. The resulting report, *Tax and Fiscal Policy in Response to the Coronavirus Crisis – Strengthening Confidence and Resilience* (April Report)<sup>3</sup>, was presented to G20 Finance Ministers and Central Bank Governors in April 2020. Since the publication of the April Report, the OECD has continued to track tax and fiscal policy responses and make this data<sup>4</sup> publicly available. The database presently lists approximately 1 100 policy measures in over 110 jurisdictions. The OECD continues to update and adapt its frameworks for tax and fiscal policy as the COVID-19 crisis and economic situation evolves.



The OECD Economic Outlook<sup>5</sup>, which was released on 10 June 2020, emphasises the very great uncertainty surrounding the evolution of the pandemic and the impact on the economy. It presents two scenarios, one in which the pandemic subsides after a single wave of infections, and one in which there is a “double hit”. In both cases, the fall in output and the rise in unemployment are very large. Global GDP is expected to fall by 6% in 2020 and unemployment to rise to more than 9% in the case of a single wave. Whether or not a second wave materialises, the possibility that this could happen weighs down recovery as households and businesses grapple with measures to reduce the risk of renewed infections and confidence remains low. The expected consequence is that, while the initial bounce-back of the economy may be swift because of the direct effects of removing lockdowns, further recovery will be slow and the overhang of the crisis long. Even with a single hit, the global economy would not return to pre-crisis output levels by the end of 2021.

<sup>3</sup> OECD (2020), *Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience*, OECD, Paris. [www.oecd.org/tax/tax-policy/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience.htm](http://www.oecd.org/tax/tax-policy/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience.htm)

<sup>4</sup> OECD 2020, *COVID-19 Tax Policy and Other Measures*, OECD, Paris, [www.oecd.org/tax/covid-19-tax-policy-and-other-measures.xlsm](http://www.oecd.org/tax/covid-19-tax-policy-and-other-measures.xlsm)

<sup>5</sup> OECD (2020), *OECD Economic Outlook, June 2020*, OECD, Paris. [www.oecd.org/economic-outlook/june-2020/](http://www.oecd.org/economic-outlook/june-2020/)

**The main findings from the April Report are as follows:**

- Governments, faced with an emergency, have taken decisive action to contain and mitigate the spread of the virus and to limit the adverse impacts on their citizens and their economies. Through various measures, including tax measures, countries have been helping businesses to stay afloat, supporting households and helping to preserve employment. The OECD policy tracking tool<sup>6</sup> shows that these efforts have continued through the period of the lockdowns and beyond.
- Continued expansionary fiscal policy is needed as countries move out of containment, so as to support the swiftest and strongest rebound possible. Concerns over the budgetary costs of support are on the rise but should not lead to withdrawing support too soon given the fragility of recovery after the exit from lockdown. Instead, support should gradually evolve in line with economic risks. Income support to vulnerable households and to ailing businesses, including vulnerable sectors, e.g. hospitality, culture and transport, should be phased out only gradually as capacity constraints are lifted and overall unemployment declines.
- The fragility of the recovery, which is attributable to uncertainty and low confidence, may also justify economic stimulus, which can be combined with incentives to increase economies' preparedness for health and environmental risks. Fiscal policies, including tax measures, are best targeted at households and businesses that would spend additional resources rather than save them. Stimulus could also take the form of temporary tax reductions for the creation of stable new jobs. Fiscal policies, including tax measures, are best targeted at households and businesses that would spend additional resources rather than save them. Stimulus could also take the form of temporary tax reductions for the creation of stable new jobs.

**Once economies have recovered from the crisis, efforts to restore public finances through taxes should not be pursued in haste, because raising tax burdens too soon could undermine the economic recovery.** Restoring public finances calls for a comprehensive review of countries' tax mixes, taking into account growth considerations, as well as inclusiveness and sustainability, which may have greater weight in fiscal policy-making after the crisis. Future tax reforms should focus on restoring public finances, but could also focus on the following aspects:

- Distribution of effort, in a context where the COVID-19 crisis has tended to amplify existing and emerging inequalities; where tolerance for tax evasion and tax avoidance has declined; and where the demand for public goods, e.g. in relation to resilience, may have increased. In developing economies, the crisis highlights the need to pursue sustainable domestic revenue raising strategies in the medium term.
- Revisiting the taxation of capital (from capital income to capital gains, and property taxation, including inheritance taxes) should be considered in the light of inclusive growth objectives, making the tax system more progressive where possible. These tax reforms might call for further enhanced international tax co-operation to prevent capital flight.
- While value added taxes (VAT) were largely used in the aftermath of the global financial crisis and room for manoeuvre may now be limited, strengthening VAT systems could be explored, particularly where this can ensure the effective collection of VAT on digital trade and to reduce revenue losses from VAT fraud.
- There should be greater use of carbon taxes, while fossil fuel subsidies should be reduced and, where possible, phased out. This would not only provide clear incentives for businesses and households to make investment and behavioural choices that mitigate climate change, but

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<sup>6</sup> OECD 2020, *COVID-19 Tax Policy and Other Measures*, OECD, Paris, [www.oecd.org/tax/covid-19-tax-policy-and-other-measures.xlsm](http://www.oecd.org/tax/covid-19-tax-policy-and-other-measures.xlsm)

would also provide revenues to compensate households and businesses hardest hit by the measures.

- Health taxes could also be increased to induce more healthy lifestyles.
- Finally, addressing the tax challenges from the digitalisation of the economy and ensuring that multinational enterprises pay a minimum level of tax would strengthen revenue raising capacity and could be seen to be an important part of the overall approach to burden sharing. Policy co-ordination in this area will make reforms more effective, including by fighting tax avoidance and ensuring that tax disputes do not turn into trade wars, which would harm recovery even further.

**To conclude, the tax policy work in the recovery phase will continue to provide tools to face upcoming challenges arising from the current crisis. The OECD stands ready to deliver tax policy recommendations by spring 2021, should G20 Finance Ministers so request.**

### Tax administration's responses to the crisis

Tax administrations in the 53 member jurisdictions of the OECD Forum on Tax Administration (FTA) acted rapidly and pragmatically to mitigate the effects of the COVID-19 crisis on both taxpayers and the day-to-day operation of tax administrations. This included:

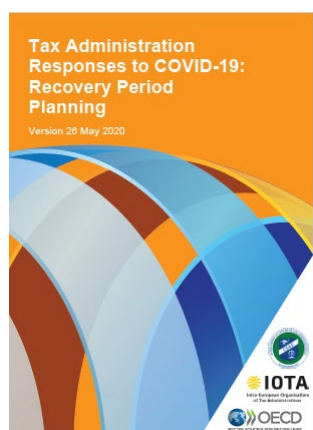
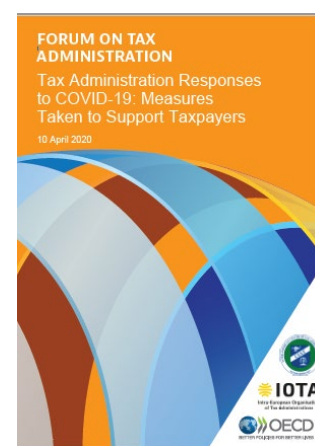
- **Establishing a COVID-19 virtual group**, regularly bringing together those working on COVID-19 responses across the FTA. Meetings have covered, among other things: measures to support taxpayers; communications; remote working challenges; tax debt management; managing reputational risks; employee and taxpayer health protections; and the challenges of taking on new roles to support government.
- **Publication of three COVID-19 planning documents**, jointly with the Inter-American Center of Tax Administration (CIAT) and the Intra-European Organisation of Tax Administrations (IOTA). These covered: examples of measures taken to support taxpayers; business continuity considerations in a pandemic; and recovery period planning. Additional COVID-19 related publications have included a note on privacy, disclosure and fraud risks and a note on reputational risk management.
- **Utilising the Knowledge Sharing Platform (KSP)** developed by the Canada Revenue Agency. This has allowed material from the virtual group meetings to be disseminated quickly and more widely to the global tax administration community, including developing countries.
- **Joint-working by the FTA's Networks and Communities of Interest (COIs)**, which have brought together subject matter experts, including on tax debt management, large business and international, enterprise risk management, digital transformation and the Joint International Task Force on Shared Intelligence and Collaboration (JITSIC).
- In the medium term, drawing on COVID-19 lessons and experiences, FTA members are planning joint work to accelerate the transformation of tax administrations, including by using digital tools to make the administration more resilient, agile, and efficient and to reduce burdens on taxpayers.

## Tax Administration COVID-19 Planning Documents



**Measures Taken To Support Taxpayers**<sup>7</sup>: This sets out examples of measures taken by over sixty tax administrations. Generally speaking, measures for individual taxpayers are intended to reduce immediate burdens and prevent hardship, for example the suspension of debt recovery. Measures for the self-employed and businesses generally focus on alleviating cash-flow problems, helping to prevent escalating problems such as the laying-off of workers, being unable to pay suppliers, and closure or bankruptcy. In many administrations there has also been a suspension of physical audits both to reduce immediate burdens and for health and safety purposes.

**Business Continuity Considerations**<sup>8</sup>: This seeks to draw out the main operational considerations for tax administrations in the context of a pandemic, in particular the duration of the pandemic, including the possibility of additional waves; the transmission and health risks; the extent and speed of government actions; and the deep and potentially prolonged economy-wide impacts. It emphasises the importance of joined-up, agile and well-informed business continuity governance arrangements combined with a strong understanding of critical functions, vulnerabilities and mitigating actions and robust scenario planning.



**Recovery Period Planning**<sup>9</sup>: This looks at the range of issues which need to be considered for a return to a more steady-state working environment, which may be different in many respects from the pre-crisis environment. It emphasises the continued importance of crisis-style management combined with a cross-administration strategic planning process. This is against the background of the complexities of resuming operations resulting, among other things, from inter-dependencies within the administration and with wider government actions to support the economy as well as continuing health risks.

<sup>7</sup> CIAT/IOTA/OECD (2020), *Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers*, OECD, Paris. [www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-measures-taken-to-support-taxpayers.htm](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-measures-taken-to-support-taxpayers.htm)

<sup>8</sup> CIAT/IOTA/OECD (2020), *Tax Administration Responses to COVID-19: Business Continuity Considerations*, OECD, Paris. [www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-measures-taken-to-support-taxpayers.htm](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-measures-taken-to-support-taxpayers.htm)

<sup>9</sup> CIAT/IOTA/OECD (2020), *Tax Administration Responses to COVID-19: Recovery Period Planning*, OECD, Paris. [www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-recovery-period-planning.htm](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-administration-responses-to-covid-19-recovery-period-planning.htm)

## Regional meetings on tax responses to COVID-19

**A series of virtual regional meetings on tax policy and tax administration responses to the COVID-19 crisis** has been held in collaboration with regional tax organisations (African Tax Administration Forum (ATAF), Commonwealth Association of Tax Administrators (CATA), Caribbean Organisation of Tax Administrators (COTA), Pacific Islands Tax Administrators Association (PITAA), and Study Group on Asian Tax Administration and Research (SGATAR)), and with the Asian Development Bank (ADB). The four meetings held so far for Africa, Asia-Pacific and the Caribbean brought together around 330 participants including high-level representatives from ministries of finance and tax administrations, such as Secretaries of State, Permanent Secretaries, Directors General, Commissioners General and Commissioners. The IMF, the WBG, the Overseas Development Institute (ODI), and the Institute for Fiscal Studies (IFS) also contributed to the meetings.

The meetings allowed for the exchange of knowledge and experiences among jurisdictions, regional and international organisations, donor agencies, academics and civil society representatives. Participants stressed the role of domestic resource mobilisation for financing the responses to the crisis as well as ongoing development. The importance and utility of sharing of experiences between countries and administrations was also emphasised. The discussions also highlighted the challenges posed by the pandemic, especially for less digitalised tax administrations, but at the same time underlined the opportunities for developing countries in terms of innovating tax policy and tax administration.

### Regional meetings on COVID-19

- **Africa**
  - Co-hosted with ATAF
  - Two meetings, one focusing on business continuity considerations
  - 35 jurisdictions
- **Asia-Pacific**
  - Co-hosted with ADB, CATA, PITAA, SGATAR
  - 29 jurisdictions
- **Caribbean**
  - Co-hosted with CATA and COTA
  - 17 jurisdictions

## 2 Tax transparency developments

The international community continues making tremendous progress in the fight against offshore tax evasion, as implementation of innovative transparency standards by the Global Forum moves countries ever closer to the goal of eradicating banking secrecy for tax purposes. In addition, the tax transparency agenda is adapting to the new trends in the economy with the development of model reporting rules for the sharing and gig economy to ensure tax compliance in this growing sector of the digital economy.

### Progress on Automatic Exchange of Information

**Nearly 100 countries carried out automatic exchange of information in 2019, enabling their tax authorities to obtain data on 84 million financial accounts held offshore by their residents, covering total assets of EUR 10 trillion.** This represents a significant increase over 2018 – the first year of such information exchange – where information on 47 million financial accounts was exchanged, representing EUR 5 trillion.

Since the G20 declared an end to bank secrecy in 2009, the international community has made strong and continuous progress in the fight against offshore tax evasion. Under the leadership of the Global Forum (see Part 2 of this report), jurisdictions have ramped up global co-operation, first through exchange of information on request and then through automatic exchange<sup>10</sup> starting in 2017, implemented through more than 6 000 bilateral relationships worldwide in 2019 (4 500 in 2018).

### Rapid spread of automatic exchange of information leads to much greater transparency over offshore accounts

**Nearly 100 countries** carried out automatic exchange of financial information in 2019. These exchanges covered information sent on **84 million accounts**, amounting to **EUR 10 trillion of total assets**.

	exchanging jurisdictions	exchange relationships	accounts (million)	assets (EUR trillion)
2019	97	6,100	84	10
2018	96	4,500	47	4.9
2017	48	2,600	11	1.1

Source: Global Forum on Transparency and Exchange of Information for Tax Purposes • Created with Datawrapper

<sup>10</sup> Under the Common Reporting Standard (CRS), countries and jurisdictions are required to exchange financial account information from non-residents obtained from their financial institutions automatically on an annual basis, reducing the possibility for offshore tax evasion. Many developing countries have joined the process and more are expected to join in the coming years.



**The growth stems from the wider scope of the information exchanged, an increase in the number of exchange relationships and the response rate.** As around half of the jurisdictions committed to the AEOI Standard commenced exchanges in 2018, they have exchanged the full scope of information for the first time in 2019, when information on all pre-existing accounts was exchanged (i.e. those jurisdictions that started exchanges in 2018 commenced exchanges on the full scope of information in 2019). In addition, virtually all jurisdictions, including financial centres in particular, expanded their exchange networks between 2018 and 2019 and therefore the number of partners to which they sent information. More information is available in Part 2 to this report from the Global Forum.

The benefits were seen even before the exchanges began. A November 2019 OECD study<sup>11</sup> shows that wider exchange of information driven by the Global Forum was associated with a global reduction in foreign-owned bank deposits in international financial centres (IFC) by 24% (USD 410 billion) between 2008 and 2019. Voluntary disclosure programmes, offshore tax investigations and related measures before the start of automatic exchange in 2017 and since then, have so far led to the identification of 102 billion euros of additional tax revenues worldwide.

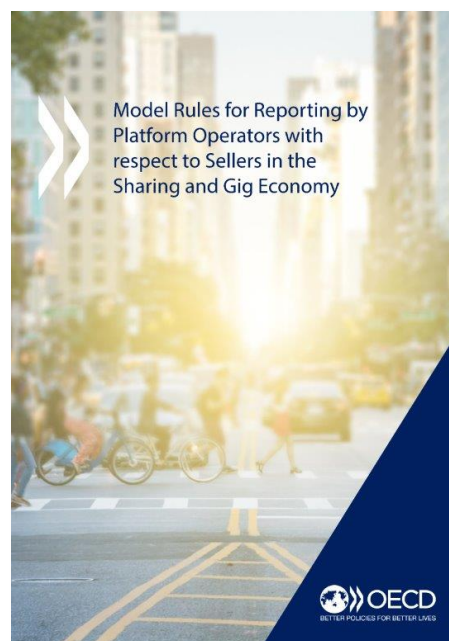
## Adoption of the reporting rules for digital platforms in the sharing and gig economy

**On 30 June 2020, the G20/OECD Inclusive Framework approved model reporting rules<sup>12</sup> for digital platforms facilitating transactions in the sharing and gig economy,** in particular in the transportation and accommodation sectors. The rules require platforms to report the identity of sellers active on the platform, as well as details on the transactions they have concluded and to report the information to tax authorities.

**The Model Rules were developed in light of the rapid growth of the digital economy** and in response to calls for a global reporting framework for digital platforms, as reflected in the 2018 OECD Interim Report to the G20 on Tax Challenges Arising from Digitalisation, as well as in the 2019 Report on the Effective Taxation of the Sharing and Gig Economy by the OECD Forum on Tax Administration.

As the digitalisation of the economy entails a shift from traditional employment contracts towards independent work, activities facilitated by platforms may not always be reported to tax administrations, either by third parties or by taxpayers themselves. The platform economy also means increased access to information for tax administrations, as it brings activities previously carried out in the informal cash economy onto digital platforms.

**The Model Rules are designed to help taxpayers comply with their tax obligations, while ensuring a level playing field with traditional businesses, in key sectors of the sharing and gig economy.** They further seek to avoid a proliferation of different and unilateral reporting regimes.



11 O'Reilly, P., K. Parra Ramirez and M. A. Stemmer (2019), "Exchange of Information and Bank Deposits in International Financial Centres", OECD Taxation Working Papers, No. 46, OECD, Paris. <https://doi.org/10.1787/025bfebe-en>.

12 OECD (2020), *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*, OECD, Paris. [www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm](http://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm)

To support the swift and coherent implementation of the Model Rules, the OECD will now work on the international legal and technical framework to facilitate the automatic exchange of the information collected under the Model Rules.

### **Update on the list of jurisdictions that have not satisfactorily implemented the tax transparency standards**

To ensure a level playing field, the G20 Finance Ministers have requested the OECD to regularly report on the jurisdictions that fail to comply with the tax transparency standards. Since December 2018, the number of identified jurisdictions has decreased from 15 to four today. This shows steady progress over time in the implementation of the tax transparency standards.

I can now report that currently only four jurisdictions (Dominica, Niue, Sint Maarten and Trinidad and Tobago) are failing to comply with the international tax transparency standards. Since my last report of February 2020, Brunei Darussalam has started to exchange automatically and therefore complies with the standards. The OECD Global Forum is working closely with all of these jurisdictions to provide whatever assistance and guidance is necessary to ensure a global level playing field. Further details on the application of the objective criteria used to identify jurisdictions that fail to comply with the tax transparency standards are included in Annex I.A to this report.

I will report to you on the progress made and identify any jurisdictions that still do not comply by the time of your next meeting.



# 3 Addressing the tax challenges arising from the digitalisation of the economy

## Background

In 2015, the BEPS Action 1 Report<sup>13</sup> laid the foundations of the project to address the tax challenges arising from the digitalisation of the economy. Since 2017, the G20/OECD Inclusive Framework has been working on the issue, delivering an interim report in March 2018, at the request of the G20. This report further identified the specific characteristics and tax challenges of the digitalisation of the economy. Following a new mandate from the G20, the members of the G20/OECD Inclusive Framework committed to continue working together to deliver a consensus-based solution by the end of 2020.

In May 2019, the G20/OECD Inclusive Framework adopted a Programme of Work which was endorsed by the G20 Finance Ministers and G20 Leaders at their respective meetings in Fukuoka<sup>14</sup> (8-9 June) and Osaka<sup>15</sup> (28-29 June). The Programme of Work draws extensively on the Policy Note<sup>16</sup> approved by the G20/OECD Inclusive Framework on 23 January 2019, which grouped proposals into two pillars that could form the basis for consensus:

### Key dates

**October 2015** – BEPS Action 1 report

**March 2018** – Tax Challenges Arising from Digitalisation: Interim Report

**January 2019** – Policy note agreed by the G20/OECD IF and public consultation in February/ March

**May 2019** – Program of Work to Develop a Consensus Solution

**October 2019** – Proposal of the Secretariat on a “Unified Approach”

**November - December 2019** – Public consultations on Pillar One and Pillar Two

**29-30 January 2020** – Plenary meeting of the G20/OECD IF- Adoption of the Statement on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy

**April and June 2020** - Contact group meetings with BIAC on Pillar One and Pillar Two

13 OECD (2015), *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. <https://doi.org/10.1787/9789264241046-en>

14 Paragraph 11 of the Communiqué, *G20 Finance Ministers and Central bank Governors Meeting, Fukuoka (Jun.8-9, 2019)*. [https://www.mof.go.jp/english/international\\_policy/convention/g20/communique.htm](https://www.mof.go.jp/english/international_policy/convention/g20/communique.htm)

15 Ministry of Finance, Japan (2019), *Communiqué, G20 Finance Ministers and Central bank Governors Meeting, Fukuoka. (Jun.8-9, 2019)*, Ministry of Finance, Japan. [https://www.mof.go.jp/english/international\\_policy/convention/g20/communique.htm](https://www.mof.go.jp/english/international_policy/convention/g20/communique.htm)

16 OECD (2019), *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. [www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf](http://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf)

- **Pillar One focuses on the allocation of taxing rights**, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules.
- **Pillar Two** (also referred to as the “GloBE” proposal) **focuses on the remaining BEPS issues** and encompasses rules that would provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.

The Programme of Work, endorsed by the G20 Finance Ministers in June 2019, included three different proposals under Pillar One. Recognising the ambitious timelines of the project, the Programme of Work stressed the need for an outline of the architecture of a consensus-based solution to be agreed by January 2020, including a reduction of the number of options pursued under Pillar One.

Based on an OECD Secretariat proposal for, issued in October 2019, a “Unified Approach” under Pillar One, in its Statement<sup>17</sup> of 30 January 2020 (Statement), the G20/OECD Inclusive Framework “agreed upon an outline of the architecture of a Unified Approach on Pillar One (the Outline) as the basis for negotiations and welcomed the progress made on Pillar Two”. “In further developing the two Pillars, the G20/OECD Inclusive Framework has therefore agreed upon an outline of the architecture of a Unified Approach on Pillar One as the basis for negotiations and welcomed the progress made on Pillar Two”.

## Update on the Programme of Work since February 2020

Since the approval of the “Outline of the Architecture of a Unified Approach on Pillar One” and the Progress Note on Pillar Two” in January 2020, significant progress has been made on the technical development of both pillars. Through the expertise found within its various working groups, the G20/OECD Inclusive Framework has advanced the development of the policy features and technical elements of both Pillar One and Pillar Two. This work has primarily been carried out through four meetings of the Steering Group of the G20/OECD Inclusive Framework and 15 Working Party meetings that have been organised between February 2020 and July 2020.

Notwithstanding the progress made, the emergence and persistence of the COVID-19 pandemic has understandably diverted the political attention necessary to broker a political agreement while slowing down the processes that govern the highly technical work undertaken by the G20/OECD Inclusive Framework. Adapting to this situation, the G20/OECD Inclusive Framework decided to postpone the date for key political decision-making from July 2020 to October 2020. Nevertheless, the technical development should be advanced enough to allow key political decisions to be taken on both pillars in October 2020.

The question of what should be delivered by the end of 2020 has been the subject of discussion amongst G20/OECD Inclusive Framework members. In a recent letter, U.S. Treasury Secretary Mnuchin suggested a pause to the negotiations on Pillar One due to the COVID-19 crisis with the intention to resume them later in 2020. The Secretary noted, however, that negotiations on Pillar Two could be concluded this year. Thus far, divergent views have been expressed about the decoupling of Pillar One and Pillar Two and about adopting a phased approach, starting with Pillar One. While some G20/OECD Inclusive Framework members support the idea of independently agreeing and implementing the pillars, other members call for the adoption and implementation of the two pillars as a package. These divergent positions will have to be bridged in the coming months.

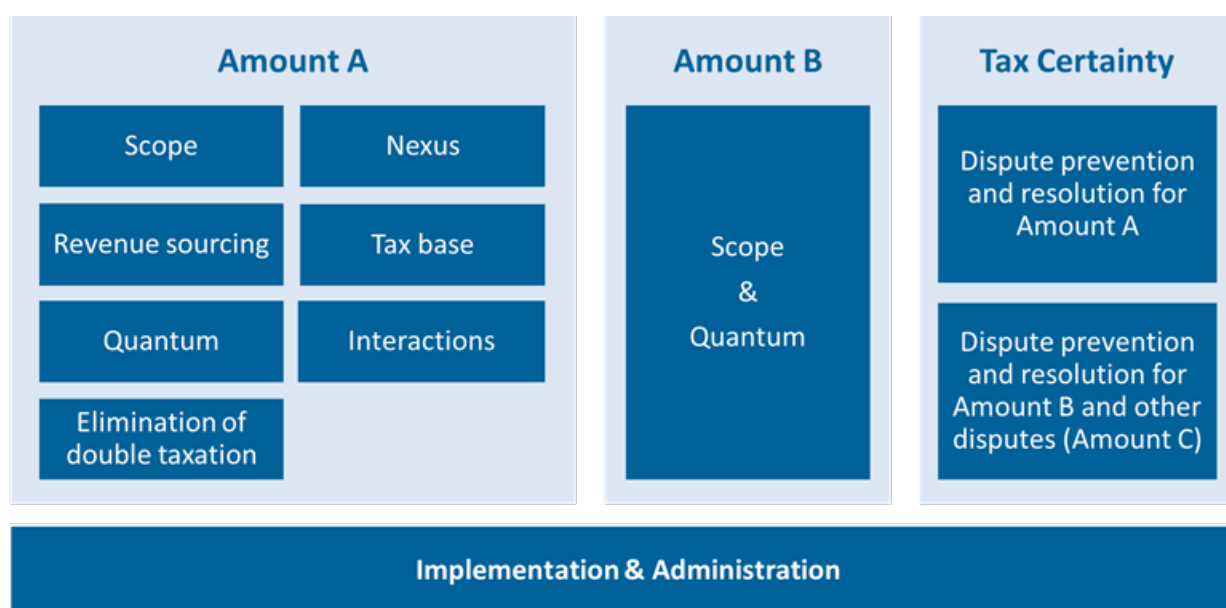
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<sup>17</sup> OECD (2020), *Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. [www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf](http://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf).

### Progress on Pillar One

The Outline of a Unified Approach that was adopted in January 2020 contained 11 building blocks (see Figure 3.1.). To date, all these building blocks have been discussed and refined by senior policymakers and tax administrators within the subsidiary bodies of the G20/OECD Inclusive Framework. The progress made includes further refinement of the scope of the new taxing right (Amount A) through the definition of automated digital services and consumer-facing businesses, the new nexus rules to determine when a business can be seen to have a significant and sustained engagement in a market, and the related source rules to allocate and measure revenues derived from a market.

Figure 3.1. Building blocks of the Unified Approach as Agreed in January 2020



Good progress has also been made on other elements of the Unified Approach, but further work will be required to resolve several pending issues. In particular, work is ongoing to reduce complexity of the Unified Approach, for example through reducing the scope of segmentation and simplifying the process to eliminate double taxation. The progress made so far on the pending issues and the options to simplify the Unified Approach, will be synthesised into a blueprint report to be considered by the G20/OECD Inclusive Framework in October 2020.

### Progress on Pillar Two

Work is well advanced to develop the global minimum tax proposal under Pillar Two, known as the global anti-base erosion proposal (GloBE proposal).

Further discussions are underway at the technical level to finalise the design of the four rules as set out in the Programme of Work: a) the income inclusion rule; b) the switch-over rule; c) the undertaxed payment rule; and d) the subject to tax rule. Regarding the key design features of Pillar Two, work has substantially progressed on the definition of the tax base including the list of permanent adjustments and the definition of covered taxes. Further considerations are being given to carve-outs, the design and scope of the above-mentioned four rules, the co-existence with the US GILTI and BEAT regimes and the minimum tax rate. Finally, work is ongoing on simplification options to reduce compliance costs associated with jurisdictional blending.

The key elements will be brought together to form the overall architecture of Pillar Two and provide a blueprint for the GloBE proposal. This blueprint will be considered at the next meeting of the

G20/OECD Inclusive Framework in October 2020, with a prior public consultation on the above-mentioned simplification options.

### **Impact Assessment**

**Work on the economic and tax revenue implications of the Pillar One and Pillar Two proposals is ongoing.** This work is being supported by discussions with all members of the G20/OECD Inclusive Framework on the jurisdiction-specific data and results. Jurisdiction-specific revenue estimates of the impact of both pillars have been shared bilaterally with member jurisdictions in recent months. In February 2020, the OECD provided an interim update on this work to the public, which included the presentation of high-level preliminary results.<sup>18</sup> The OECD is aiming to produce an economic analysis and impact assessment report by October 2020.

**Preliminary findings suggest that the combined effect of Pillar One and Pillar Two would lead to a significant increase in global tax revenues as well as a redistribution of taxing rights to market jurisdictions.** The final results will depend on the reform design and the behavioural responses of countries and MNEs. Ongoing refinements to the data and analysis, as well as the impact of recent developments, including the COVID-19 crisis, are not yet reflected in the data underlying the analysis. Based on the preliminary analysis, the results suggest that:

- **Pillar One would involve a significant change to the way taxing rights are allocated among jurisdictions and lead to a modest increase in global tax revenues.** The size of these revenue increases would depend on the final scope of the reforms. While low and middle-income jurisdictions would enjoy larger increases than high-income economies as a share of current corporate tax revenues, larger market jurisdictions will benefit more in absolute terms. Investment hubs, where the analysis suggests that levels of residual profit are high, would experience significant losses in tax base from Pillar One.
- **Pillar Two would yield a significant increase in corporate income tax revenue globally.** On average, all jurisdiction groups would experience increases in tax revenues. Analysis of the potential implications of substance-based carve-outs for Pillar Two has also commenced.
- **MNEs in digital-oriented and intangible-intensive sectors could be significantly impacted by both pillars.**
- **The COVID-19 crisis may negatively impact the overall revenue gains,** particularly given the focus of the proposals on firms with high profitability. While the impact of the crisis is still largely uncertain, it is likely to reinforce the trend towards digitalisation of the economy and increase the relative importance of automated digital services (ADS) in the scope of Pillar 1.

**Overall the proposals are unlikely to have significant effects on global investment levels.** Most firms will be unaffected by the proposals, which target firms with high levels of profitability and low effective tax rates. Pillar One would result in a modest increase in effective tax rates driven by the reallocation of profits from low-taxed jurisdictions to higher-tax jurisdictions. Larger increases in effective tax rates for some MNEs may result from Pillar Two. However, most increases in tax liability are likely to fall on larger and more profitable MNEs whose investment decisions are less sensitive to taxation.

The impact of the reforms on the location of investment could be more substantial. **Both pillars would reduce the dispersion of effective tax rates and reduce the profit-shifting incentives of MNEs.** This could be particularly beneficial for low and middle-income countries that often experience greater losses from profit shifting.

In addition to the positive impacts stemming from the reduction in profit shifting, the reduction in the dispersion of effective tax rates could also mean that investment would be driven more by non-tax

<sup>18</sup> OECD (2020), *Webcast: Update on Economic Analysis and Impact Assessment*, OECD, Paris. [www.oecd.org/tax/beps/webcast-economic-analysis-impact-assessment-february-2020.htm](http://www.oecd.org/tax/beps/webcast-economic-analysis-impact-assessment-february-2020.htm)

factors (e.g. infrastructure, education levels or labour costs), which would **improve the efficiency of the international allocation of investment and raise global productivity and growth.**

**The counterfactual to a consensus-based solution would be a proliferation of uncoordinated and unilateral measures and an increase in tax and trade disputes.** Preliminary analysis suggests that these measures would negatively affect global growth, both through the implementation of the unilateral measures and through potential tax and trade-based disputes. These tax and trade disputes could deepen the COVID-19 economic crisis and hinder the post-crisis recovery. In the event that a consensus-based solution cannot be secured, the proliferation of turnover-based Digital Services Taxes (DSTs) could lead to double taxation and could impose significant tax burdens on firms experiencing losses as a result of the pandemic. By contrast, the two-pillar package would not adversely affect global investment levels overall, but would instead help avoid economically damaging tax and trade disputes and provide greater tax certainty.

## Other work related to digitalisation

### *Indirect taxes*

**The OECD's standards for the effective collection of VAT on online sales of goods, services and digital products have continued to influence VAT reform in a growing number of countries worldwide.** These standards and the recommended solutions for their effective and consistent implementation were included in the 2015 BEPS Action 1 Report and in the detailed implementation guidance that has been developed since then. Work is now advancing on guidance for the VAT treatment of the sharing and gig economy, including on the role of sharing and gig economy platforms in facilitating VAT compliance.

**The continuously growing impact of these standards reflects their significant importance for countries' VAT revenues and for minimising competitive distortions between online traders and traditional businesses.** This has become even more relevant in light of the outbreak of COVID-19, as containment and mitigation measures taken in response to the pandemic have notably led to spikes in online shopping and increased demand for digital products and online services.

**Almost 65 jurisdictions have implemented these standards** while over 40 other jurisdictions are preparing to implement these standards or are considering doing so. While about 25 countries have adopted or are contemplating to adopt a Digital Services Tax (DSTs) based on turnover, only six of these countries have effectively implemented such a regime. In addition, three countries have abandoned their plans for such a DST, to replace it by a VAT/digital solution.

Very positive results have been reported in terms of compliance and revenue collected from these measures.

#### Examples of VAT collected from implementation of OECD VAT standards

EUR 14.8 billion in the EU in the first four years of implementation

ZAR 5.4 billion (approx. EUR 287 million) in South Africa

AUD 1 billion (approx. EUR 615 million) in Australia

RUB 12 billion (approx. EUR 154 million) in the Russian Federation in 2018

- The European Union reported EUR 14.8 billion of VAT revenues collected from these measures in the first four years of their operation, with revenues showing a constant growth from EUR 3 billion of VAT revenue collected in 2015 to EUR 4.57 billion in 2018.
- South Africa collected ZAR 5.4 billion (approx. EUR 287 million) in the 12 months since the expansion of its VAT regime for online sales of services and digital products in 2019, in line

with the OECD standards, thus recording a remarkable growth compared to the previous 5 years of its operation during which ZAR 3 billion (approx. EUR 159 million) was collected in total.

- Australia recorded total revenues of over AUD 1 billion (approx. EUR 615 million) of GST collected in the first two years of operating its GST regime for online sales of services and digital products (as of July 2017) and in the first year of its implementation for online sales of goods (as of July 2018).
- The Russian Federation reported RUB 12 billion (approx. EUR 154 million) of VAT collected from the implementation of the OECD standards on online sales of services and digital products in 2018, up from RUB 9.4 billion (approx. EUR 120 million) in 2017.

**The OECD Secretariat continues to advance its work to support developing countries seeking to implement these recommended solutions for the collection of VAT on online trade.** The development of a regional toolkit providing detailed practical implementation guidance for Latin American and Caribbean countries is on track for delivery in 2020. This project is carried out in co-operation with the WBG, the Inter-American Development Bank (IDB) and CIAT. Work on a similar project for the Asia-Pacific region has commenced, with the WBG and the ADB as partners. The project for an African regional toolkit is expected to be launched in the second half of 2020, with the WBG and ATAF as partners. In addition, a bilateral assistance programme was launched in early 2020 in response to the growing demand from developing countries for bespoke bilateral capacity building on VAT and e-commerce.

### ***Tax policy and transparency challenges arising from new technologies***

**Blockchain technologies, including digital financial assets, pose challenges for policymakers in a wide range of areas, including in tax policy.** The use, trade and storage of these assets, and in particular virtual currencies, has been rapidly increasing and the nature of these assets is rapidly evolving, posing challenges for tax administrations and policymakers. The challenges raised by virtual currencies are attracting increased attention, and were reflected in G20 Leaders' and Finance Ministers' communiqués in 2018 and 2019.

**Responding to both the G20 communiqués and the 2018 Interim Report on the Tax Challenges Arising from Digitalisation, the G20/OECD Inclusive Framework is developing a report on the taxation of virtual currencies,** with a view to analyse the laws and regulations implemented by countries around the world and drawing conclusions on the tax policy treatment of these assets. The report will analyse the tax treatment of virtual currencies in the field of direct and indirect taxation, as well as for property tax purposes. It will also explore the tax considerations associated with stablecoins and central bank digital currencies.

**In addition, the OECD is addressing the need for greater tax transparency in the area of digital financial markets, in particular in light of the tax compliance risks** posed by virtual assets, e-money and other new financial products. In this respect, the OECD is currently developing technical proposals in order to ensure an adequate and effective level of reporting with respect to both the value of virtual assets and e-money, as well as the income derived from such assets.

# 4 Implementing the Base Erosion and Profit Shifting measures

*“We reaffirm the importance of the worldwide implementation of the G20/OECD Base Erosion and Profit Shifting (BEPS) package and enhanced tax certainty.”*

Communiqué of the G20 Finance Ministers and Central bank Governors Meeting, Fukuoka (June 8-9, 2019)

**As jurisdictions begin to exit the immediate health crisis, the work on securing tools to counter tax avoidance by multinational companies, and thereby collecting tax revenues, is likely to be a priority in the recovery period.** With the focus and prioritisation on countering the effects of the COVID-19 crisis, progress on implementing the four BEPS minimum standards has stabilised since February 2020, albeit several improvements were still accomplished.

## Implementation of the four BEPS minimum standards

The core elements of the BEPS package are the four minimum standards that G20/OECD Inclusive Framework members have been implementing since 2016. Significant progress has been achieved with respect to implementation and the positive impacts from such implementation continue to increase. This year and 2021 will provide an opportunity to reflect on what has worked well since 2016 and what could be improved, as reviews of each minimum standard have begun this year.

Combating Harmful Tax Practices	Countering Tax Treaty Abuse	Country-by-Country reporting	Improving Dispute Resolution
Over 287 tax regimes reviewed – virtually all harmful regimes amended or abolished	BEPS Multilateral Instrument signed by 94 jurisdictions and covering over 1 680 tax treaties	90 jurisdictions introduced Country-by-Country reporting filing requirements	Almost 70 jurisdictions have been reviewed and around 1 500 recommendations have been made

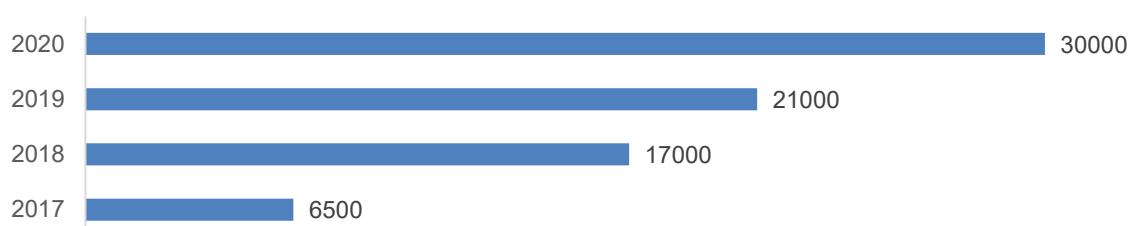


### **Action 5: exchange of tax rulings and preferential tax regimes**

The COVID-19 crisis has had an impact on the work of Action 5. While the Forum on Harmful Tax Practices (FHTP) has not been able to meet since my last report to you in February, work has continued to advance the implementation of the standard.

**The Action 5 minimum standard has strengthened the collaboration between tax administrations through the spontaneous information exchanges on tax rulings.** This co-operation led to almost 30 000 exchanges of information on tax rulings between 2016 and 2020. This ensures more transparency as tax administrations receive more information on tax rulings pertaining to the tax arrangements of their taxpayers, including MNEs, to identify and act on any potential BEPS risks, and the swift implementation of this standard is ensured through the peer review carried out by the FHTP.

Cumulative Number of Information Exchanges on Tax Rulings



At the same time, members of the G20/OECD Inclusive Framework (and jurisdictions of relevance) have continued to work on implementing changes if required by the FHTP in its review of preferential tax regimes and its review of the substantial activities requirement for no tax or only nominal tax jurisdictions. This includes making legislative changes to regimes and implementing legislation in no or only nominal tax jurisdictions, supported by effective implementation and enforcement in practice, to ensure these do not have features that facilitate BEPS.

**The FHTP has reviewed 287 preferential regimes since the BEPS Action 5 peer review started, as well as the legislation of 12 no or only nominal tax jurisdictions.** This process ensures that relevant preferential tax regimes, and regimes for highly mobile income in no or only nominal tax jurisdictions, are held to the same standard, thereby ensuring a level playing field. Virtually all of the regimes already reviewed have now either been amended or abolished to comply with this standard. In addition, no tax or nominal tax jurisdictions have implemented legislation for which almost all comply with the FHTP's requirements.

Cumulative Number of Preferential Regimes Reviewed by FHTP



The FHTP will continue to review existing regimes of new members of the G20/OECD Inclusive Framework and any newly introduced regimes of existing members. In addition, the FHTP monitors the no tax or only nominal tax jurisdictions and certain aspects of preferential regimes, thereby focussing on ensuring effectiveness in practice. Finally, the FHTP will keep on reviewing the implementation of the information exchanges regarding tax rulings.



### **Action 6 and Action 15: Prevention of tax treaty abuse and BEPS Multilateral Instrument**

The majority of the G20/OECD Inclusive Framework members are now in the process of strengthening their tax treaty network to prevent treaty shopping, generally defined as when a person accesses indirectly the benefits of a tax agreement between jurisdictions without being a resident of one of those jurisdictions. This will be done primarily through the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the BEPS Multilateral Instrument).

The BEPS Multilateral Instrument entered into force on 1 July 2018 and now covers 94 jurisdictions. Once all signatories have ratified the BEPS Multilateral Instrument, the instrument will impact over 1 600 tax agreements. As of May 2020, the BEPS Multilateral Instrument had already modified about 300 agreements across the worldwide network of tax agreements, and this number is going up rapidly as more signatories deposit their instruments of ratification. Already, 49 jurisdictions have finalised their ratification process, including ten G20 members<sup>19</sup> and 25 OECD members<sup>20</sup>. All countries that have not yet ratified the BEPS Multilateral Instrument, are encouraged to do so without delay. Once all current signatories have ratified the BEPS Multilateral Instrument, around 65% of all agreements between G20/OECD Inclusive Framework members will be modified by the BEPS Multilateral Instrument to include the four minimum standards, as well as other BEPS treaty-related provisions.

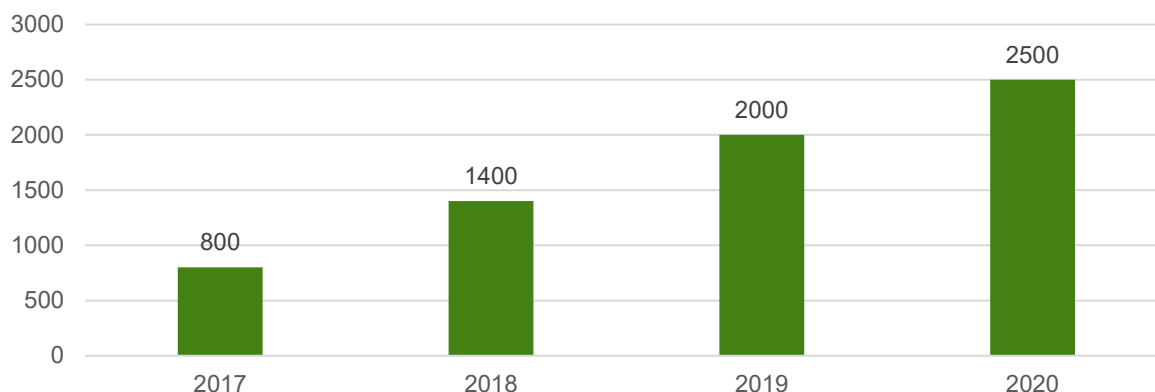
#### **BEPS Multilateral Instrument**

- Entered into force on 1 July 2018
- Covers 94 jurisdictions
- Impacts over 1 600 tax agreements
- 49 jurisdictions have already ratified the BEPS Multilateral Instrument
- 300 agreements have already been modified

### **Action 13: Improving transparency through Country-by-Country Reporting**

BEPS Action 13 promotes more transparency from large MNEs and requires them to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions in which they operate. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments. Since the first exchanges of Country-by-Country (CbC) reports began in June

Number of Bilateral Relationships for the Exchange of CbC-Reports



<sup>19</sup> Australia, Canada, France, India, Japan, Russian Federation, Saudi Arabia and the United Kingdom

<sup>20</sup> Australia, Austria, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Slovak Republic, Slovenia, Sweden, Switzerland and the United Kingdom

2018, **90 jurisdictions have established more than 2 500 bilateral relationships for the exchange of CbC reports** under the Convention for Mutual Administrative Assistance in Tax Matters, bilateral double tax conventions and tax information exchange agreements, and between European Union (EU) Member States. In total, over three quarters of the G20/OECD Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. **As a result of this progress, substantially every MNE above the consolidated group revenue threshold of EUR 750 million is already within the scope of CbC reporting and the few remaining gaps are rapidly being closed.**

The BEPS Action 13 Final Report included a mandate for a review of the minimum standard by the end of 2020 (the 2020 review). Currently underway, the 2020 review provides an opportunity to seek feedback from stakeholders on issues connected to the implementation and operation of BEPS Action 13, as well as exploring options for possible changes to the scope of CbC reporting and to the content of CbC reports.

To take work on the 2020 review forward, a public consultation document was released in February 2020 and an online public consultation meeting, including around 270 business and civil society participants, was held in May 2020. Work to agree revisions to the Action 13 minimum standard is ongoing and will be completed by the end of 2020, despite the challenges posed by COVID-19.

### ***Action 14: Mutual Agreement Procedures***

The Action 14 minimum standard is delivering real change to the efficiency of Mutual Agreement Procedures (MAP). **The peer review process shows that countries are updating their treaties and are greatly improving their MAP framework, including by making more resources available to their tax administrations to improve the speed and quality of MAP.** These positive developments are underpinned by the following key peer review outcomes:

- **There has been a marked increase in the number of cases which have been closed by competent authorities**, in almost all jurisdictions under review. In 2018, jurisdictions closed 12% more cases than in 2017 and 50% more cases than in 2016.
- The number of MAP profiles published on the OECD website continues to grow. MAP profiles of over 100 jurisdictions now provide taxpayers with a central repository of easily accessible information to facilitate the use of MAP.
- An increasing number of the jurisdictions have introduced or updated comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP.
- With nine out of ten batches completed in stage 1, **around 1 500 recommendations for improvement have been issued. The stage 2 monitoring process to check whether the jurisdictions are delivering on recommendations, is well underway.** Early outcomes of this monitoring process show that jurisdictions have made significant progress in improving their dispute resolution mechanisms.

Despite significant progress in terms of the speed and efficiency of MAP, the increased access to MAP by taxpayers has resulted in a substantial increase of pending MAP cases, with an inventory close to the 5 000 mark by the end of 2018.

The ongoing 2020 review of Action 14 is therefore the right moment to secure the important progress made, but also to ensure that MAP remains an accessible and efficient mechanism for addressing double taxation in the future. Careful consideration will also be given to ensure that the peer review process effectively detects and addresses risks as they arise in the global MAP network.

## Tax certainty

The OECD tax certainty agenda is driven by the belief that prevention is better than cure and that ideally disputes should be prevented or resolved at the earliest point in time, when information is readily available and positions have not yet become entrenched.

In this spirit, the OECD Forum on Tax Administration's International Compliance Assurance Programme (ICAP) provides a multilateral risk assessment and assurance process, which uses CbC reports and other risk assessment information to provide MNEs and tax administrations with increased tax certainty. A second pilot for ICAP (ICAP 2.0), including 19 participating tax administrations is currently underway. In the same vein, work is also being conducted in relation to the analysis of CbC reports, in order to drive greater convergence in the detection and perception of tax risks by tax administrations. This includes the development of practical tools to support tax administrations, in particular those in developing countries, in interpreting CbC reports.

Furthermore, the FTA is conducting work to promote joint audits of tax administrations, including through experience-sharing and pilot projects, as a cost-effective tool to ensure that taxpayers pay the right amount of taxes and to enhance tax certainty.

Finally, binding dispute prevention and resolution is also an essential part of any solution for the work on addressing the tax challenges arising from digitalisation.

# 5 Capacity building – Supporting developing countries

*“We continue to support tax capacity building in developing countries, including co-ordinating through the Platform for Collaboration on Tax.”*

Communiqué of the G20 Finance Ministers and Central bank Governors Meeting Riyadh, Saudi Arabia. (22-23 February 2020)

## Capacity building efforts for the implementation of the BEPS package

**41 bespoke induction programmes to support new members of the G20/OECD Inclusive Framework to implement their BEPS priorities and build capacity have been launched** to date. These programmes generally incorporate high level engagement with key decision makers and other stakeholders – to help ensure political support for necessary legislative or regulatory reforms – as well as technical workshops at a working level and ongoing remote support.

In addition to the BEPS minimum standards, such programmes cover other BEPS topics that are of particular interest to the country in question, such as transfer pricing or limiting excessive interest deductions. **Despite the COVID-19 crisis and associated restrictions, most technical elements of these induction programmes have been able to continue using remote channels.** However, some delays have been experienced, for example on high level engagement with Ministers and Commissioners General as a result of both travel restrictions and the immediate need for such key decision makers to address other priorities, particularly during the initial phase of the crisis.

**In-depth, bilateral technical assistance and capacity building support to increase domestic resource mobilisation has been carried out or is ongoing in 35 developing countries,** often in collaboration with regional and other international partners such as the African Tax Administration Forum (ATAF), the European Union (EU), WBG and the Inter-governmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). This work has also pivoted to virtual channels as a result of the COVID-19 crisis. While many of these programmes focus on key BEPS risks such as transfer pricing, in some cases they have also evolved to provide a sectoral focus, including “deep dives” on the mining industry in a number of resource-rich developing countries.

The restrictions introduced as a result of the COVID-19 crisis have undoubtedly presented challenges to capacity building efforts. However, the pivot to virtual channels also provides opportunities, in particular, in terms of the breadth of participation that can be achieved. **Around 1 700 officials from tax administrations and governmental tax policy departments have participated in 9 multilateral virtual workshops on BEPS-related topics since the start of the crisis.**

### Capacity building activities

- **41 bespoke induction programmes for new members**
- **Bilateral technical assistance activities for 35 developing countries**
- **Collaboration with regional and international partners such as ATAF, the EU and WBG**
- **Pivot to remote assistance**

## Update on the Academy for Tax and Financial Crime Investigation

**Tackling tax crimes and other financial crimes is an important area where capacity building is needed.** Without tackling the most serious tax evasion and related financial crimes such as money laundering and corruption, the gains made by building inclusive and resilient economies can be undermined. The OECD, with the support of the G20, has made capacity building a key pillar of its work in addressing tax crimes.

**As of June 2020, the Academy has trained over 1 000 financial crime investigators from almost 100 countries with demand for participation continuing to outpace supply.** To address ongoing demand, the Academy has in recent years expanded beyond its International Centre in Italy and established regional centres for Latin America (Argentina) and Asia Pacific (Japan), and has an ongoing pilot programme for Africa (Kenya). As well as expanding the geographical centres of the Academy, the course curriculum is continually updated to ensure it keeps pace with global financial crime trends is focused on the specific needs of different regions. The programme includes broad based courses on conducting and managing financial crime investigations, as well as specialised courses on asset recovery, VAT/GST fraud investigations, the cash economy, money laundering investigations and investigative techniques for the effective use of banking information. In addition to tax crime investigators and prosecutors, Academy courses are also open to law enforcement authorities responsible for taking enforcement action against corruption, money laundering, and other financial crimes – which is of critical importance in building an effective response to illicit financial flows.

### OECD International Academy for Tax Crime Investigation

Ostia, Italy  
Established in 2013  
578 participants (84 countries)

### OECD Asia-Pacific Academy for Tax and Financial Crime Investigation

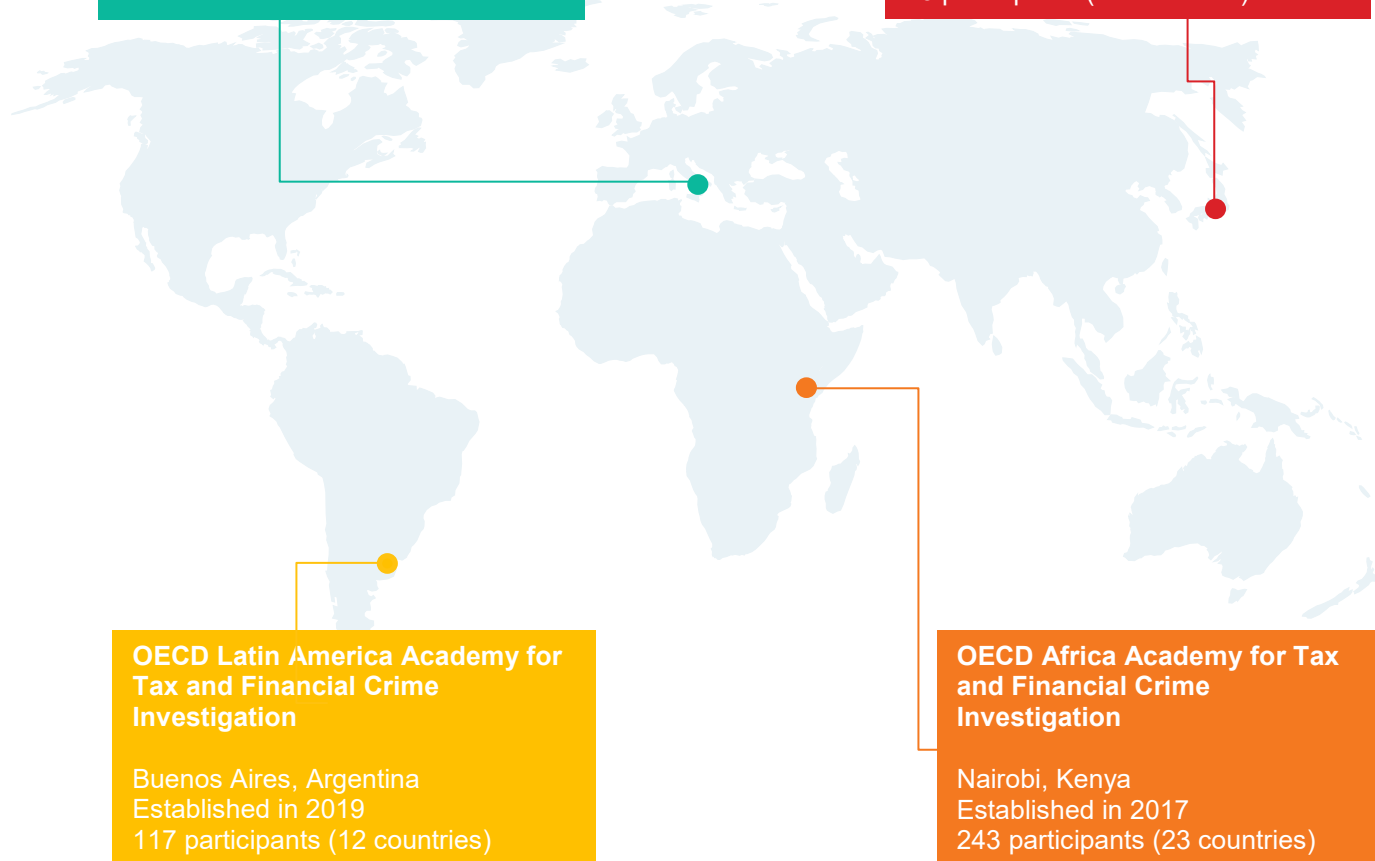
Wako, Japan  
Established in 2019  
73 participants (17 countries)

### OECD Latin America Academy for Tax and Financial Crime Investigation

Buenos Aires, Argentina  
Established in 2019  
117 participants (12 countries)

### OECD Africa Academy for Tax and Financial Crime Investigation

Nairobi, Kenya  
Established in 2017  
243 participants (23 countries)

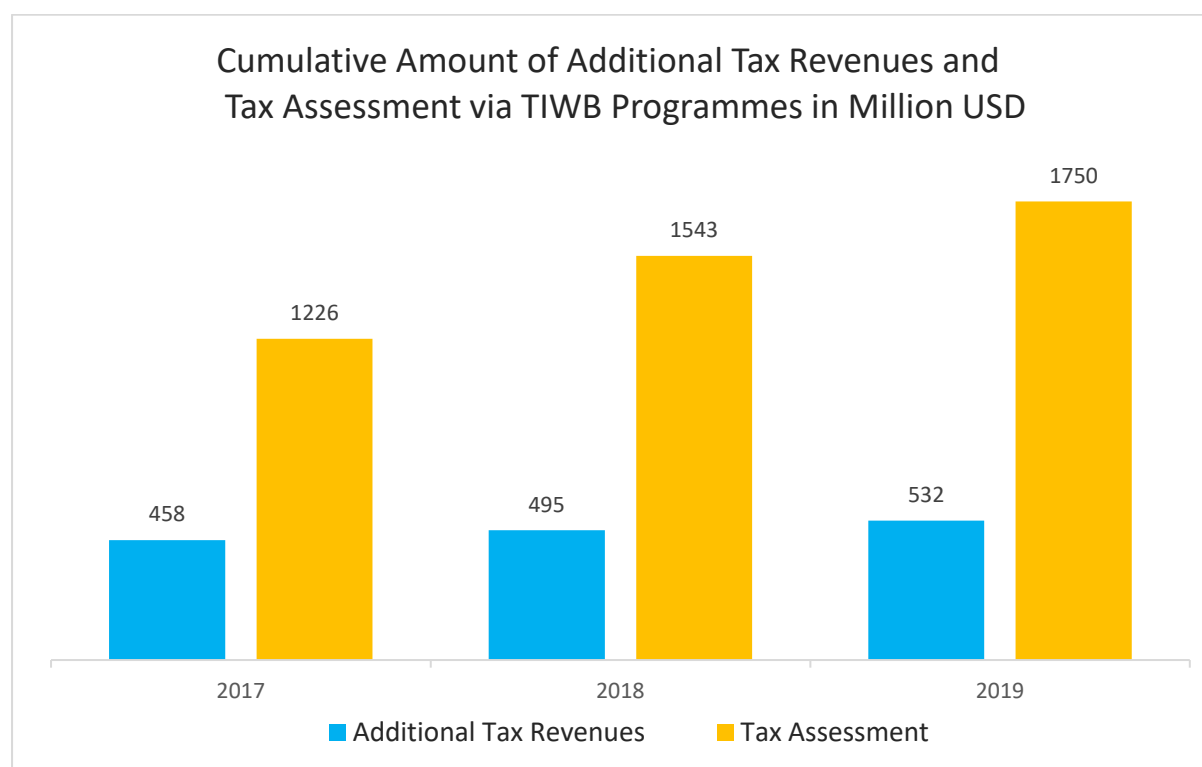


**The OECD continues to work to ensure the effectiveness of its capacity building in tax crime and financial crime.** This includes Training the Trainer workshops to equip investigators from developing countries with the skills needed to train their colleagues at home; the creation of an International Tax Crime Advisory Board to bring developing countries, donors, international organisations, and Academy trainers together to develop strategic approaches to tax crime capacity building; a training needs assessment study for the Africa Academy; and the development of new pilot programmes for bilateral capacity building in tax crime for developing countries. In 2020, the Academy will conduct a full scale survey of all past alumni to assess the ways in which the training has impacted their ability to conduct their day to day role and obtain qualitative data on practical outcomes the training has had within participants' organisations or administrations more broadly.

## Update on Tax Inspectors Without Borders

**The OECD/UNDP TIWB initiative is expanding its scope, with 36 programmes completed, 40 ongoing and 22 forthcoming as of June 2020.** This increase in the number of programmes is due to growing demand for general audits and for sector-focused programmes from host countries. The initiative is implementing or has implemented programmes in 39 countries and jurisdictions worldwide.

**TIWB programmes continue to show tangible results, with more than USD 532 million in additional tax revenues being recovered from an overall tax assessment of over USD 1.7 billion to date.** Broader benefits, such as skills transfers, development of effective tools and processes, organisational improvements and increases in taxpayer compliance, are also evident.



**“South-South” co-operation is also expanding with 13 such TIWB programmes implemented or underway.** In 2020, the initiative is also set to expand its offering beyond support for tax audits of MNEs. TIWB is currently undertaking pilot programmes in the areas of tax-related criminal investigations and the effective use of automatic exchange of information. Other areas under consideration include support for tax treaties implementation and joint audits.

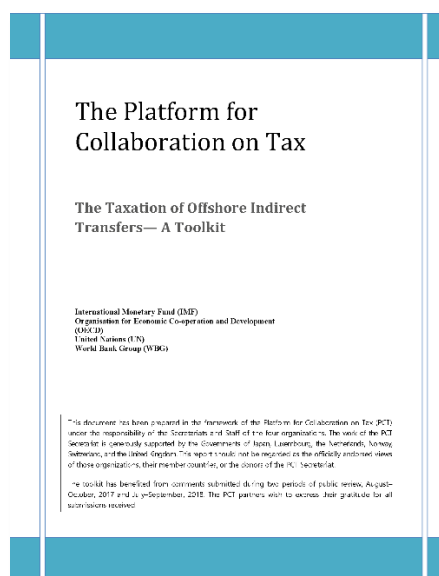
Beyond the core TIWB programme, work has commenced on a pilot programme for broader capacity building on **combating tax crimes**, including a component based on the TIWB model of expert support

on real-time case resolution. Five pilot projects are now underway, in Colombia (with plans to partner with the United States); Armenia (partnering with Italy); Pakistan (partnering with the United Kingdom); Uganda (partnering with India); Kenya (partnering with India) and expressions of interest received from others. The programme assesses current capacity in tax crime investigation (based on the OECD's *Fighting Tax Crime: The Ten Global Principles*<sup>21</sup>), providing recommendations for making reforms on the legal, operational and strategic building blocks in place, and providing support on anonymised tax crime cases.

## Update on the Platform for Collaboration on Tax

**The partners in the Platform for Collaboration on Tax (PCT) – the IMF, OECD, UN, and WBG – continue to strengthen their co-operation, an even more vital endeavour as countries seek to rebuild finances following the COVID-19 crisis.** The PCT is continuing to deliver its 2018 Action Plan, and a full update on activities is available in the *Platform for Collaboration on Tax Progress Report 2020*<sup>22</sup>. Since I last reported to you, the PCT delivered the following:

- The expanded secretariat of the PCT has enabled the **launch of the PCT website**<sup>23</sup> which includes details of all the capacity building activities of the PCT partners, facilitating improved co-ordination among the PCT partners, as well as providing greater transparency to other stakeholders. The PCT website has also been adapted to provide a repository of the collective resources from the PCT partners in response to the COVID-19 crisis.
- **Progress has continued on the toolkits being developed by the PCT under a mandate from the G20.** These toolkits provide practical implementation guidance on BEPS issues of particular relevance to developing countries. The toolkit on Offshore Indirect Transfer of Assets, the taxation of which is a significant issue for many developing countries, was published in June 2020, while the toolkit on transfer pricing documentation is expected to be published shortly. Workshops are being delivered to assist countries in making most effective use of the toolkits.
- **The PCT also continues to support the Medium Term Revenue Strategy (MTRS) concept,** as a way to help developing countries design a more effective and comprehensive approach to tax system reform. 21 countries are currently engaged with PCT partners in discussing, designing or implementing an MTRS.



<sup>21</sup> OECD (2017), *Fighting Tax Crime: The Ten Global Principles*, OECD, Paris. [www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.htm](http://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles.htm)

<sup>22</sup> IMF/OECD/UN/WBG (2020), *Platform for Collaboration on Tax Progress Report 2020*, IMF/OECD/UN/WBG, Washington D.C. <https://www.tax-platform.org/sites/pct/files/publications/Platform-for-Collaboration-on-Tax-PCT-Progress-Report-2020.pdf>

<sup>23</sup> <https://www.tax-platform.org>

# Annex I.A. Application of the criteria to identify jurisdictions that have not satisfactorily implemented the tax transparency standards

(as at 3 July 2020)

## List of criteria

The identification criteria cover all members of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), except developing countries without financial centres, as well as non-member jurisdictions that are identified by the Global Forum as relevant for the purposes of its work.

In order for a jurisdiction to be considered to comply with respect to international tax transparency, it would need to meet the benchmarks of **at least two of the three below-mentioned criteria**.

1. **The exchange of information on request (the EOIR standard):** a “Largely Compliant” overall rating, taking into account the Global Forum’s second round of reviews on an ongoing basis and provided jurisdictions (other than those that received a provisional rating in the first round) have had an opportunity to respond to any downgrades in rating through a supplementary report;
2. **The automatic exchange of information (the AEOI standard):**
  - a) All necessary legislation is in place and exchanges commenced by the end of 2018; and
  - b) Agreements are activated with substantially all interested appropriate partners by the end of 2019; and
3. Having the **Convention on Mutual Administrative Assistance in Tax Matters in force** or having a sufficiently broad exchange network of bilateral agreements in force permitting both EOIR and AEOI.

However, **a jurisdiction will be considered as failing to comply notwithstanding that it may have met the benchmarks of two of the three criteria** if:

- a) it is determined to be “non-compliant” overall for its implementation of the EOIR standard; or
- b) it has not met the AEOI benchmark set out above.

## Criterion 1: Exchange of Information on Request (EOIR)

Exchange of information on request has grown in importance as co-operation in tax matters has spread more widely. The level of compliance with the EOIR standard is high: today, **out of 69 Global Forum members that have been reviewed in the second round of reviews, 87% are rated at least “Largely Compliant” with the EOIR standard overall.**



Some Global Forum members that are developing countries without a financial centre have received a “Non-Compliant” or “Partially Compliant” overall rating in the second round of reviews but they are excluded from the scope of this exercise.

Of the jurisdictions that are within the scope of the listing exercise, four jurisdictions<sup>24</sup> do not satisfactorily implement the EOIR Standard and fail to meet the EOIR criterion, as their rating is Partially Compliant or Non-Compliant.

## Criterion 2: Automatic Exchange of Information (AEOI)

In total, 100 jurisdictions committed to implement the AEOI Standard by 2018. Out of these, **five jurisdictions are currently failing the criterion on AEOI with its two sub-criteria.**

### ***Sub-criterion a): legislation is in place and exchanges commenced by the end of 2018***

In February 2020, five jurisdictions<sup>25</sup> were identified as not having met this sub-criterion. Since the last report in February 2020, Brunei Darussalam commenced automatic exchanges and now meets this sub-criterion.

In total, 96 of the 100 jurisdictions that committed to commence exchanges by 2018 have therefore now exchanged information. **Four jurisdictions have yet to commence exchanges** (Dominica, Niue, Sint Maarten and Trinidad and Tobago).

It is worth noting that Niue has completed all of the necessary legal steps and are linking into the Common Transmission System (CTS), so it may therefore commence exchanges shortly.

### ***Sub-criterion b): Agreements activated with substantially all interested appropriate partners by the end of 2019***

Part of the commitment to the AEOI Standard is to exchange information with all interested appropriate partners. Interested appropriate partners' are defined as jurisdictions that are interested in receiving information from another jurisdiction and that meet the expected standards in relation to confidentiality and data safeguards. **To date, no gaps in the exchange networks in place have been identified, thanks to the Global Forum review process.**

A jurisdiction can trigger the review process when it is concerned about delays by potential partner jurisdictions in putting in place of an exchange relationship. The review is to establish whether an agreement should be put in place and therefore whether there is a gap in a jurisdiction's exchange network. Several jurisdictions triggered this process. As a first step in the review process the Global Forum facilitates further bilateral engagement. As a result of this facilitation the bilateral engagement has intensified and the jurisdictions have decided not to move to the next step in the process, which is the full review process.

## Criterion 3: Convention on Mutual Administrative Assistance in Tax Matters in force or having a sufficiently broad exchange network of bilateral agreements

As of 30 June 2020, 137 jurisdictions participate in the Convention on Mutual Administrative Assistance in Tax Matters (the Convention), resulting in over 7 000 exchange relationships. However, **one jurisdiction committed to AEOI (Trinidad and Tobago) still needs to ratify the Convention.**

<sup>24</sup> Panama, Kazakhstan, and Vanuatu. Although Trinidad and Tobago has not undergone a review under the second round, it received a non-compliant rating under the first round of reviews, and therefore is failing to comply.

<sup>25</sup> Brunei Darussalam, Dominica, Niue, Sint Maarten and Trinidad and Tobago.

# **Part II. Global Forum on Transparency and Exchange of Information for Tax Purposes: Progress Report to the G20**

# Introduction

It is somewhat startling to recall that only six months ago the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) was celebrating its 10-year anniversary by holding its largest ever meeting, with over 500 delegates from more than 140 jurisdictions, international organisations and regional groups, including over 40 delegations represented at ministerial level in Paris, France. The change since has been dramatic and has occurred over a very short period of time. The COVID-19 pandemic means that, like many others, the Global Forum is currently not able to meet in person, and remote working has become a new normal for many Global Forum members and the Secretariat.

Notwithstanding the immediate challenges, however, the Global Forum has remained resolute in adapting to the new circumstances to ensure that progress can still be delivered. This is because the importance of transparency and the exchange of information for tax purposes will not diminish, particularly as governments look to secure much needed revenues as we emerge from this crisis. In fact, the opposite is more likely to be the case.

As an example, in March 2020, as governments introduced restrictions across the world, the Global Forum's new AEOI Peer Review Group (APRG), which was meeting for the first time, converted its physical meeting to a virtual one. Despite the significant time-differences, delegates from across the world participated, with representation stretching from New Zealand to Colombia. Despite the challenges, substantive progress was achieved. The Global Forum has met virtually four times since then, including an extraordinary meeting of its Steering Group dedicated to discussing how to adapt to the new challenges posed by the COVID-19 pandemic.

This report contains a summary of the key achievements of the Global Forum over the last six months.

# 1 Delivering Effective AEOI

The move by the international community to the G20/OECD standard in the automatic exchange of information on the financial account of non-residents (the AEOI Standard) has been highly significant. This has most recently been demonstrated by the scale of the exchanges last year, when around 100 jurisdictions exchanged information with respect to more than 80 million accounts, with a total value of over EUR 10 trillion. This represents an approximate two-fold increase in the level of exchange since 2018. It can be largely explained by the significant increase in the number of exchange relationships, including with respect to key financial centres, as well as the increase in the scope of the information exchanged in the second year of exchange, when information on all pre-existing accounts is exchanged (i.e. those jurisdictions that started exchanges in 2018 commenced exchanges on the full scope of information in 2019). These figures make clear that the environment has completely changed for taxpayers looking to evade their responsibilities and for tax authorities looking to enforce them.

## Rapid spread of automatic exchange of information leads to much greater transparency over offshore accounts

**Nearly 100 countries** carried out automatic exchange of financial information in 2019. These exchanges covered information sent on **84 million accounts**, amounting to **EUR 10 trillion of total assets**.

	exchanging jurisdictions	exchange relationships	accounts (million)	assets (EUR trillion)
2019	97	6,100	84	10
2018	96	4,500	47	4.9
2017	48	2,600	11	1.1

Source: Global Forum on Transparency and Exchange of Information for Tax Purposes • Created with Datawrapper

It should also be noted, however, that the operation of the AEOI Standard has been impacted by the COVID-19 pandemic. Financial institutions and tax administrations have faced operational constraints in collecting, sorting and validating the information for exchange. Nevertheless, despite these challenges, the Global Forum is committed to ensure that the AEOI Standard operates effectively and sees the AEOI Standard as a key tool to support the recovery as we emerge from the crisis.

The operation of the AEOI Standard and ensuring its effectiveness has therefore been a key priority of the Global Forum over the past six months. The proper functioning of the exchanges in 2020, due by September, was a key initial focus. It was clear that despite the operational challenges faced by many jurisdictions, the exchanges should still take place, and in an orderly, coordinated and predictable way. It was therefore made clear that, where needed, jurisdictions may conduct the 2020 exchanges up until December.

Despite the immediate challenges, the Global Forum has also worked to make progress on ensuring the AEOI Standard operates effectively as a tool to tackle offshore tax evasion. Therefore, in addition

to providing flexibility where needed, the Global Forum has pressed ahead with its busy agenda and has adopted new approaches and tools, such as videoconferences and other online tools, to ensure delivery. This work has focused on two areas: (i) concluding the peer reviews of the legal frameworks in place to implement the AEOI Standard; and (ii) conducting the peer reviews in relation to the effectiveness in practice of the AEOI Standard.

### **Concluding the peer reviews of the legal frameworks in place to implement the AEOI Standard**

A main focus of the Global Forum over recent years has been reviewing the domestic and international legal frameworks that have been put in place to implement the AEOI Standard. This includes a detailed check to ensure that all of the key elements of the due diligence and reporting rules that financial institutions must follow are reflected in each jurisdiction's domestic legislative framework, along with a framework to enforce the requirements. Each jurisdiction's international treaty network is also reviewed to ensure it meets the requirements and permits the exchange of information with all jurisdictions that wish to receive information from that jurisdiction and that meet the required standards in relation to confidentiality and data safeguards.

This work is coming to a conclusion this year and the Global Forum expects to publish determinations on the extent to which each jurisdiction has the necessary legal frameworks in place by the end of 2020.

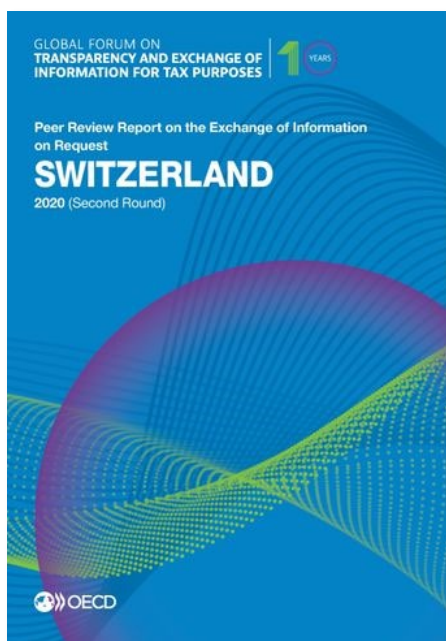
### **Conducting peer reviews of the effectiveness in practice of the AEOI Standard**

In order to have an effective AEOI Standard, not only must the necessary legal frameworks be in place, but they must operate effectively in practice. To this end the Global Forum has agreed a Terms of Reference and a methodology to conduct peer reviews with respect to the effectiveness in practice of each jurisdiction's implementation of the AEOI Standard. Under the agreed framework, all jurisdictions will be reviewed at once.

These peer reviews have commenced as scheduled. This includes collecting the details of the frameworks each jurisdiction has in place to ensure compliance by financial institutions with the requirements, as well as feedback from each jurisdiction's exchange partners on the content and technical aspects of the exchanges.

Given these peer reviews are a new work stream for the Global Forum, and the need to ensure that all members can fully engage with the process, the Global Forum is discussing the possibility to defer the finalisation of the reviews until 2022, rather than next year as originally scheduled. This would be to ensure that the reviews are robust and therefore best support an effective AEOI Standard based on a level playing field.

# 2 Securing the Level Playing Field for EOIR



In April 2020, eight new peer review reports were published. These reports relate to jurisdictions with a very diverse EOIR practice, and include for example Liberia, which received only two requests, and Switzerland, which received thousands of requests from multiple partners during the three years of practice under review.

Three jurisdictions – Brunei Darussalam, Macau (China) and Switzerland – received an overall rating of “Largely Compliant” in this second round of peer reviews. These ratings are the same as those issued after the first round of assessment (2010-2016).

In contrast, the overall rating of Barbados and the Seychelles was downgraded from “Largely Compliant” to “Partially Compliant” compared to their last review, highlighting some significant deficiencies in the implementation of the standard in practice, including insufficient supervision and enforcement of the legislation, which negatively affected their ability to exchange information for tax purposes.

Three jurisdictions – Liberia, Peru and Tunisia – were undergoing their first full peer review as only their legal framework had been reviewed so far, either because they had joined the Global Forum towards the end of the first Round (Peru and Tunisia) or because progress in legislation allowing to move to a full review on implementation came late in that round. The resulting reports rated Liberia as “Partially Compliant”, confirming the difficulties of the jurisdiction meeting the standard, especially in its offshore sector, while Peru and Tunisia both obtained a “Largely Compliant” rating.

Since 2016, 71 Round 2 EOIR peer review reports have been published, including 14 jurisdictions rated as “Compliant” with the standard, 46 as “Largely Compliant”, 8 as “Partially Compliant” and 1 as “Non-Compliant”. Overall, 87% of jurisdictions have received a satisfactory rating, which confirms that the implementation of the EOIR standard is on a good track (see **Annex B** “Overall EOIR Ratings of the Global Forum Members”).

## Adapting to a new reality

The COVID-19 pandemic has also impacted the Global Forum’s work on EOIR. The immediate impact has been the cancellation of on-site visits due to the closure of borders and suspension of most air traffic. Ongoing reviews for which the on-site visit was planned in March-June, have been suspended or postponed until the situation stabilises and international travel is possible. Nevertheless, several assessment teams and assessed jurisdictions are working together remotely to prepare the future on-site visit. The on-site visit will then provide an opportunity for the assessment teams to complete their understanding and to obtain a first-hand impression of the practical arrangements in place to ensure

the effectiveness of the implementation of the standard on transparency and exchange of information on request.

Regarding the reviews for which the on-site visit had occurred before the restrictions due to the COVID-19 pandemic were put in place, the Global Forum quickly adapted to the new situation. The Peer Review Group held on 25-27 February 2020 in Luxembourg was partly held by video conference for the colleagues in Asia that could not travel, and the next meeting in July will be fully online.

Considering the delay observed in most ongoing reviews, the Global Forum decided to postpone all future reviews by six months, in anticipation that the situation would have improved such that they could resume within the third quarter of the year. The new Schedule is available on the [Global Forum website](#).<sup>26</sup>

## Facilitating communication between Competent Authorities

The COVID-19 pandemic has also affected the day-to-day operations of the Competent Authorities of Global Forum member jurisdictions, as staff handling exchange of information on a daily basis may not have access to their office and resources, and the same applies to the persons from which information must be obtained. The Secretariat quickly adapted its secure website for it to be used as an efficient tool for a smooth and fast communication between all Global Forum members, giving them the opportunity to update their partners on their domestic situation and in particular the consequences in terms of their exchange of information activity, such as the timeliness of the answers.

GLOBAL FORUM ON  
TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES

1 YEARS

**Competent Authorities**

- List of jurisdictions
- Pretty Good Privacy (PGP)
- EOI case law
- Competent authorities conference: July 2019, Paris
- Interviews
- Give us feedback

[GF Competent Authorities](#)

### Welcome to the competent authorities secure database

**Impact of COVID-19 on EOI**

The COVID-19 pandemic has significantly affected the way in which tax administrations work, including for the competent authorities for exchange of information. The strict measures put in place by governments in several jurisdictions may result in delays in answering to EOI requests. Here are some statements from jurisdictions, as received by the Global Forum Secretariat, and a list of tips and best practices we have prepared for you:

- » [Statements of jurisdictions](#)
- » [Tips and best practices \(EN\)](#) | [Conseils et bonnes pratiques \(FR\)](#)
- » [Visit our new online community for competent authorities and share experiences with peers](#)

To further assist the Global Forum members, the competent authorities secure website has also compiled the best practices identified to efficiently adapt the organisation of the competent authorities working in these exceptional conditions, both in respect of EOIR and AEOI. A secure forum has also been put in place to give Global Forum members the opportunity to share experiences with all peers.

<sup>26</sup> OECD (2020) *Exchange of Information on Request; Schedule of Second Reviews 2016-2023*, Global Forum on Transparency and Exchange of Information For Tax Purposes, OECD, Paris. [www.oecd.org/tax/transparency/documents/schedule-of-reviews.pdf](http://www.oecd.org/tax/transparency/documents/schedule-of-reviews.pdf).



# 3 Strengthening Tax Transparency and Exchange of Information in Developing Countries

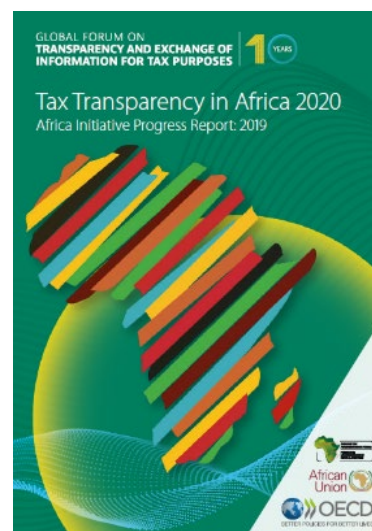
By tackling tax evasion, the international transparency and exchange of information standards help addressing a major source of illicit financial flows (IFFs) and mobilise domestic revenues. This work is particularly crucial from the perspective of developing countries that tend to face greater challenges with respect to IFFs and also have more acute capacity-building needs to fully benefit from cross-border co-operation between tax authorities.

The COVID-19 pandemic has brought challenges for capacity-building activities (i.e. technical assistance and trainings). Due to the wider restrictions put in place on-site activities have been suspended. Nevertheless, an important demand for support and technical assistance has been received, with an increased appetite for trainings, the development of strategies for post-COVID recovery, the preparation for EOIR peer reviews and the delivery of commitments to start exchanges under the AEOI Standard. In light of these circumstances, the Global Forum has adapted its work plan to ensure the continuity and strengthening of its activities.

## Progress on political and high-level commitments on tax transparency

Although the pandemic has reduced the opportunities to engage in high-level dialogues on tax transparency, the Global Forum has continued to interact with high-level officials at jurisdiction and regional level. For instance, the tax transparency agenda remains a high priority on the African continent.

The annual publication of the Africa Initiative, the Tax Transparency in Africa 2020 Report, was due to be launched during the first quarter of the year at two high-level events: the African Union Specialised Technical Committee Finance meeting in March and the 8th Africa Initiative meeting in April. As both meetings were unfortunately cancelled until further notice due to the COVID-19 pandemic, this report (which is a joint publication of the Global Forum, the African Union Commission (AU Commission) and ATAF, has been launched virtually during a high-level webinar event on 25 June 2020. The report sets out the substantial progress made by African members in implementing and benefiting from the tax transparency standards over the years as well as the challenges they face in doing so.<sup>27</sup>



<sup>27</sup> OECD (2020) *Tax Transparency in Africa 2020, Africa Initiative Progress Report: 2019*, Global Forum on Transparency and Exchange of Information For Tax Purposes, OECD, Paris. [www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Africa-2020.pdf](http://www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Africa-2020.pdf).



*“As a step forward, the African Union is committed to playing a leadership role in the implementation of the Africa Initiative on tax transparency and keeping the discussions at the high political level to ensure that all Member States join the Initiative. The Union will also make sure that Member States prioritise domestic resource mobilisation by improving good governance and increasing tax transparency among jurisdictions.*

*The African Union will spare no effort to work with policy decision makers and tax administrations of its Member States, the Global Forum and development partners to ensure the sustainable financing of its development.”*

Prof. Victor Harison  
Commissioner for Economic Affairs  
African Union Commission

## Continuing capacity-building activities and reaching positive outcomes

Country-specific technical assistance has almost exclusively been delivered remotely through desk-based support and videoconferencing. In particular, 38 comprehensive capacity-building programmes (Induction Programmes) offered to new members are ongoing and “à la carte assistance” has been provided to support the implementation of the EOIR and AEOI standards, including the advancement of the six AEOI pilot projects that are currently underway.<sup>28</sup> In total, 57 jurisdictions are currently supported by the Global Forum.



<sup>28</sup> Since 2014, eight pilot projects were launched with a partner jurisdiction, to assist developing countries in implementing AEOI. The pilot projects between Colombia and Spain, and Pakistan and the United Kingdom, came to successful conclusions with Colombia commencing exchanges under the AEOI Standard in 2017 and Pakistan in 2018. The six ongoing pilot projects are: Albania and Italy; Egypt and the United Kingdom; Ghana and the United Kingdom; Georgia and Germany; Morocco and France; and the Philippines and Australia.

To support the desk-based assistance and to strengthen its technical assistance offerings more generally, the Global Forum accelerated the development of new tools to continue to support its member jurisdictions, in particular through e-learning modules, toolkits and virtual trainings as set out in the table below.

E-learning	Toolkits	Trainings
Global Forum blended e-learning (2019)	Toolkit on BO information (2019)	Two physical trainings on EOIR/AEOI. in Jan. and Feb. 2020
E-learning on Beneficial ownership information (July 2020)	Toolkit on joining the Multilateral Convention (July 2020)	Virtual class on EOIR in April 2020
E-learning on EOIR (September 2020)	Toolkit on establishing an EOI Unit with ATAF (Q4 2020)	Three virtual seminars on BO implementation for French and English-speaking African countries (April and May 2020 with ATAF) and Spanish-speaking countries (June 2020 with CIAT and IADB)
E-learning on AEOI (2021)	Toolkit on ISM (Q4 2020)	Trainings of auditors and additional BO implementation seminars in French, English and Spanish (Q3 and Q4 2020)
	Revised EOI manual with WBG (Q4 2020)	Assessor training with ATAF (Q4 2020)

Ensuring transparency of beneficial ownership (BO) information has been a key focus in the first semester. Building on the BO implementation toolkit developed with the Inter-American Development Bank in 2019, virtual seminars were carried out to unpack the concept and explore policy considerations that Global Forum member jurisdictions can use to implement legal and supervisory frameworks to identify and collect BO information. These are followed by bilateral technical work on legal and practical aspects for a sound implementation taking into account jurisdictions context. The same approach is followed in other areas of technical assistance.

Despite the difficult circumstances, transparency and exchange of information remain high on the tax and development agenda, and a key component for the post-COVID recovery. This has resulted in the following achievements in the first semester:

- Two new countries (Mali and Palau) have joined the Global Forum and their induction programme have started virtually;
- Two new countries signed the Multilateral Convention (Togo and Thailand) and four have deposited their instrument of ratification (Armenia, Cabo Verde, Mongolia and Montenegro);
- In the context its pilot project with Germany, Georgia has committed to start its first exchanges under the AEOI standard in 2023;
- Tunisia and Peru received a satisfactory “largely compliant” rating with the EOIR standard in April 2020;
- Close to 2 000 officials were trained during the first half of 2020 and more than 2 000 officials have followed the existing blended e-learning course on the Global Forum. Very positive feedback has been received on the virtual trainings. Moving forward, these tools will further strengthen capacity-building programs and virtual classes will continue to be held, as they allow larger and more targeted audiences, and great participation.

## An ambitious capacity-building strategy for the future

The Global Forum's capacity-building programme will reach its 10-year mark in 2021, representing an opportunity to take stock of the achievements made and to review the strategy for the future. The main objective is to further improve the effectiveness of the support provided to members, taking into account their diversity and needs, as well as the resources available and the impact of actions on the ground.

Capacity-building is a composite of the Global Forum mandate vis-à-vis its members: "*The Global Forum shall work to achieve its aims by monitoring implementation of the standards, undertaking peer reviews, developing tools and assisting members to implement the standards effectively.*" Assistance is available for all members, and ranges from ad-hoc desk-based assistance to intensive and comprehensive support including on-site work. As the demand for assistance from member jurisdictions is growing, the intensity and scope of the support will be targeted to ensure a proper allocation of resources and support to maximise the outcomes.

The new strategy will focus on consolidating the engagement with members, providing assistance on a step-by-step approach for all relevant areas of work (EOIR, AEOI, Information Security Management and effective use of data) and strengthening the Global Forum's co-operation with other development agencies.

## Annex II.A. Jurisdictions participating in the multilateral Convention on Mutual Administrative Assistance in Tax Matters

(as of June 2020)

	Jurisdictions	Status regarding the Convention
125	Albania, Andorra, Anguilla <sup>(1)</sup> , Antigua and Barbuda, Argentina, Armenia, Aruba <sup>(2)</sup> , Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda <sup>(1)</sup> , Brazil, British Virgin Islands <sup>(1)</sup> , Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands <sup>(1)</sup> , Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao <sup>(3)</sup> , Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands <sup>(4)</sup> , Finland, France, Georgia, Germany, Ghana, Gibraltar <sup>(1)</sup> , Greece, Greenland <sup>(4)</sup> , Grenada, Guatemala, Guernsey <sup>(1)</sup> , Hong Kong (China) <sup>(5)</sup> , Hungary, Iceland, India, Indonesia, Ireland, Isle of Man <sup>(1)</sup> , Israel, Italy, Jamaica, Japan, Jersey <sup>(1)</sup> , Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat, Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten <sup>(4)</sup> , Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands <sup>(1)</sup> , Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, United States <sup>(6)</sup> , Vanuatu	Convention entered into force
12	Benin, Bosnia and Herzegovina, Burkina Faso, Gabon, Kenya, Liberia, Mauritania, Oman, Paraguay, Philippines, Thailand, Togo	Amended Convention signed

\* This table includes State Parties to the Convention as well as other Global Forum members, including jurisdictions that have been listed in its Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention. It also includes participating jurisdictions that are not Global Forum members.

<sup>(1)</sup> Territorial extension by the United Kingdom.

<sup>(2)</sup> Territorial extension by the Kingdom of the Netherlands. <sup>(3)</sup> Territorial extension by the Kingdom of the Netherlands. Curaçao and Sint Maarten used to be constituents of the "Netherlands Antilles", to which the original Convention applied as from 1 February 1997.

<sup>(4)</sup> Territorial extension by the Kingdom of Denmark.

<sup>(5)</sup> Territorial extension by China.

<sup>(6)</sup> The United States have signed and ratified the original Convention, which has been in force since 1 April 1995. The Amending Protocol was signed on 27 May 2010 but is awaiting ratification.

## Annex II.B. Overall EOIR ratings of the Global Forum members

(as of June 2020)

Ratings based on First round of reviews (where no rating is assigned yet in Second round)	Ratings based on Second round of reviews	Overall rating
China (People's Republic of), Colombia, Finland, Iceland, Korea, Lithuania, Mexico, Slovenia, South Africa, Sweden	Bahrain, Estonia, France, Guernsey, Ireland, Isle of Man, Italy, Jersey, Mauritius, Monaco, New Zealand, Norway, San Marino, Singapore	<b>Compliant</b>
Albania, Argentina, Azerbaijan, Belize, British Virgin Islands, Bulgaria, Burkina Faso, Cameroon, Chile, Cook Islands, Cyprus, Czech Republic, El Salvador, Gabon, Georgia, Gibraltar, Greece, Grenada, Israel, Kenya, Latvia, Lesotho, Malta, Mauritania, Montserrat, Morocco, Nigeria, Niue, Pakistan, Poland, Portugal, Romania, Russia, Senegal, Slovak Republic, Saint Lucia, Saint Vincent and the Grenadines, Uganda, Uruguay	Andorra, Aruba, Australia, Austria, The Bahamas, Belgium, Bermuda, Brazil, Brunei Darussalam, Canada, Cayman Islands, Costa Rica, Croatia, Curaçao, Denmark, Dominican Republic, Germany, Hong Kong (China), Hungary, India, Indonesia, Jamaica, Japan, Lebanon, Liechtenstein, Luxembourg, Macau (China), Malaysia, Marshall Islands, North Macedonia, Micronesia, Nauru, Netherlands, Peru, Philippines, Qatar, Saint Kitts and Nevis, Samoa, Saudi Arabia, Spain, Switzerland, Tunisia, Turks and Caicos Islands, United Arab Emirates, United Kingdom, United States	<b>Largely Compliant</b>
Antigua and Barbuda, Dominica		<b>Provisionally* Largely Compliant</b>
Anguilla, Sint Maarten, Turkey	Barbados, Botswana, Ghana, Kazakhstan, Liberia, Panama, Seychelles, Vanuatu	<b>Partially Compliant</b>
Trinidad and Tobago	Guatemala	<b>Non-Compliant</b>
The following jurisdictions have not yet been reviewed and/or assigned a rating: Armenia, Benin, Bosnia and Herzegovina, Cabo Verde, Cambodia, Chad, Côte d'Ivoire, Djibouti, Ecuador, Egypt, Eswatini, Faroe Islands, Greenland, Guinea, Guyana, Haiti, Honduras, Jordan, Kuwait, Madagascar, Maldives, Moldova, Mongolia, Montenegro, Namibia, Niger, Oman, Palau, Papua New Guinea, Paraguay, Rwanda, Serbia, Tanzania, Thailand, Togo, Ukraine and Viet Nam		<b>N/A</b>

\* These jurisdictions have been reviewed under the 2017 Fast-Track review procedure and assigned a provisional overall rating. Their full review under the strengthened 2016 Terms of Reference is ongoing.

# Annex II.C. AEOI Implementation and Commitments<sup>1</sup>

(as of June 2020)

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)
Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus <sup>2</sup> , Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom
JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2018 (51)
Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan <sup>3</sup> , The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam <sup>4</sup> , Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica <sup>4</sup> , Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue <sup>4</sup> , Pakistan <sup>3</sup> , Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten <sup>4</sup> , Switzerland, Trinidad and Tobago <sup>4</sup> , Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019 (2)
Ghana <sup>3</sup> , Kuwait <sup>5</sup>
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2020 (5)
Kazakhstan <sup>6</sup> , Ecuador <sup>3</sup> , Nigeria <sup>3</sup> , Oman <sup>5</sup> , Peru <sup>3</sup>
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2021 (2)
Albania <sup>3</sup> , Maldives <sup>3</sup>
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2023 (4)
Georgia <sup>3</sup> , Jordan <sup>6</sup> , Montenegro <sup>6</sup> , Thailand <sup>6</sup>
DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (47)
Armenia, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Cape Verde, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Egypt, El Salvador, Eswatini, Gabon, Guatemala, Guinea, Guyana, Haiti, Honduras, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mali, Mauritania, Moldova, Mongolia, Morocco, Namibia, Niger, North Macedonia, Palau, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Togo, Tunisia, Uganda, Ukraine, Viet Nam

<sup>1</sup> The United States has undertaken automatic information exchanges pursuant to FATCA from 2015 and entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

<sup>2</sup> Note by Turkey: The information in the documents with reference to "Cyprus" relates to the southern part of the Island. There is no single

authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in the documents relates to the area under the effective control of the Government of the Republic of Cyprus.

<sup>3</sup> Developing countries that do not host a financial centre and were not asked to commit to a specific date to exchange information, but have done so voluntarily.

<sup>4</sup> These jurisdictions have yet to commence exchanges.

<sup>5</sup> Developed countries that joined the Global Forum after the commitment process was conducted in 2014. They were therefore asked to commit to a particular timeline upon joining.

<sup>6</sup> Jordan, Kazakhstan, Montenegro and Thailand were subject to the Global Forum process aimed at identifying jurisdictions relevant for the implementation of the AEOI Standard and, if considered relevant, they would have been expected to commit to exchange under the AEOI Standard to a particular timeline. They however voluntarily committed to implement the AEOI Standard.



# **Annex 1. OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020**



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# Overview

1. The Base Erosion and Profit Shifting (BEPS) initiative originally emerged in the aftermath of the 2008 global financial crisis, when confidence in the fairness of the international tax system plunged. The OECD/G20 BEPS Project was developed in 2013 to address these concerns and turned the fallout from the global financial crisis into an opportunity to rewrite the international tax rules to make them more fit for a modern, globalised economy. Halfway through 2020, the world is now facing the prospect of an even more severe economic downturn as the economic impact from the COVID-19 crisis continues to unfold. As a result, the public's tolerance for tax avoidance is expected to reach historic lows. Fiscal measures, many of which are ultimately funded by public revenues, are a critical tool in the fight to mitigate the negative impact from this economic shock, and tax administrations are oftentimes on the front lines of providing relief to taxpayers. Seven years after the OECD/G20 BEPS Project was conceived and nearly five years after BEPS implementation began, the world is relatively better equipped to weather the fiscal fallout from the COVID-19 crisis than if the international tax rules had remained unchanged and aggressive tax planning had continued to proliferate unabated.
2. The 2013 BEPS Action Plan<sup>1</sup> noted that BEPS behaviours that were prevalent at the time were harming not just governments, but individuals and businesses as well and identified a number of actions that would help governments combat BEPS. The BEPS Action Plan recognised that fundamental changes to the international tax system were needed in order to establish coherence, realign substance with taxation rights, and increase transparency. These three principles provided the foundation for the 2015 BEPS package endorsed by the G20, which represented the first substantial and overdue renovation of the international tax standards in almost a century, and currently provide a lens through which to measure progress nearly five years since BEPS implementation began.
3. Governments recognised that the consistent and co-ordinated implementation and application of the solutions provided in the 2015 BEPS package<sup>2</sup> would be critical to reduce BEPS and that widespread participation from diverse geographic regions and from developed and developing countries alike would be key. As a result, the OECD/G20 Inclusive Framework on BEPS (OECD/G20 Inclusive Framework) was conceived, which would expand membership on an equal footing beyond just OECD and G20 countries, and include international organisations as well as regional tax organisations. In June 2016, the Inclusive Framework came to fruition as the 82 members of the newly established Inclusive Framework held its inaugural meeting in Kyoto, Japan and the implementation of BEPS began in earnest.
4. Since then, the membership of the Inclusive Framework has grown to over 135 countries and jurisdictions, including 66 developing countries (see Annex A) and 14 observer organisations. The ongoing work of the Inclusive Framework is led by a 24-country Steering Group where developing countries are also well represented. All members of the Inclusive Framework participate on an equal footing, and the widespread adherence to and further development of the BEPS standards have resulted in tangible progress under the three principles of coherence, substance and transparency as articulated under the original BEPS Action Plan.

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<sup>1</sup> [www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm](http://www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm)

<sup>2</sup> [www.oecd.org/tax/beps-2015-final-reports.htm](http://www.oecd.org/tax/beps-2015-final-reports.htm)

5. The year 2020 is a major milestone because it is the year when the first stocktaking exercises of the BEPS minimum standards were scheduled to begin. The 2020 reviews of the BEPS minimum standards currently underway provide an opportunity to evaluate what has worked well and how the standards could be improved to better counter BEPS practices. This review becomes all the more important in the context of the COVID-19 crisis. The Inclusive Framework is proving to be a valuable resource as countries collaborate and share best practices regarding fiscal policy and tax administration measures to respond to the COVID-19 crisis. Data on over 1 100 measures taken by more than 100 jurisdictions has been shared publicly and the fiscal policy section of the OECD's coronavirus hub<sup>3</sup> continues to be an invaluable resource for countries as they seek the best ways to support their people and their economies through the crisis. The fruits of international collaboration to tackle BEPS have spilled over into other areas, and are a bright spot in an otherwise challenging epoch.
6. Before the COVID-19 crisis hit, the review of the BEPS minimum standards and their implementation - both their successes and their shortcomings – was well advanced:
  - **Action 5 on Harmful Tax Practices** – Since 2016, over 285 regimes have been reviewed to ensure that there is substance associated with the activities they are intended to attract, and virtually all harmful preferential regimes have been amended or abolished. Furthermore, over 30 000 exchanges of information on rulings, covering over 18 000 rulings, have taken place, thereby ensuring greater transparency of the arrangements between tax administrations and taxpayers. Moving forward, consideration is being given to continue and refine the Action 5 peer review process post-2020. This work has continued during the first semester of 2020 despite the COVID-19 crisis, however the meeting of the Forum on Harmful Tax Practices (FHTP) has been postponed until October 2020. This postponement will also allow the FHTP to consider the implications on this work stream of the Global anti-Base Erosion proposal being developed in the context of the work to address the tax challenges of the digitalisation of the economy.
  - **Action 6 on Tax Treaty Abuse** – Most Inclusive Framework members are relying on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) to implement Action 6. To date, the MLI has been signed by 94 jurisdictions, 49 of which have ratified it thereby modifying approximately 300 bilateral tax treaties. Once all signatories have ratified the MLI, around 65% of all agreements between Inclusive Framework members will be modified to include the minimum standards (and other BEPS treaty related provisions), resulting in over 1 680 treaties being impacted.
  - **Action 13 on Country-by-Country Reporting** – The first exchanges of Country-by-Country (CbC) reports took place in June 2018, and as of May 2020, there are more than 2 500 bilateral relationships established for the exchange of CbC reports under the Convention for Mutual Administrative Assistance in Tax Matters<sup>4</sup>, under bilateral double tax conventions and tax information exchange agreements, and between European Union (EU) Member States. In total, over three quarters of the Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. As a result of this progress, substantially every Multinational Enterprise (MNE) above the consolidated group revenue threshold of EUR 750 million is already within the scope of CbC reporting and the few remaining gaps are rapidly being closed. Additionally, the first release of aggregated CbCR statistics for 2016 became available in July 2020 for 26 countries, covering nearly 4 000 MNE groups. The 2020 review of Action 13 is also well underway with a public consultation released for public comment in February 2020. Around 80 responses were received from MNE groups, advisors, NGOs and other stakeholders, and a public consultation meeting was held virtually in light of the COVID-19

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<sup>3</sup> [www.oecd.org/coronavirus/en/](http://www.oecd.org/coronavirus/en/)

<sup>4</sup> [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm)

crisis. The virtual meeting was attended by around 270 business and civil society representatives.

- **Action 14 on Mutual Agreement Procedure** – As tax certainty becomes ever more important, this minimum standard is critical to ensuring that tax disputes are resolved in a timely, effective and efficient manner. Already 82 members of the Inclusive Framework have been peer reviewed and 46 members have qualified for deferral, with another nine pending deferral. The peer review has led to a significant increase in the number of closed Mutual Agreement Procedure (MAP) cases in almost all jurisdictions under review, and an increasing number of jurisdictions have introduced or updated comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP. Results from the second stage of the peer reviews also demonstrate that most of the jurisdictions reviewed thus far reduced the amount of time needed to close MAP cases. As part of the 2020 review of Action 14, consideration is being given to three components: the minimum standard, reporting of MAP statistics and the assessment methodology. Discussions are ongoing in the Forum on Tax Administration (FTA) MAP Forum and will take place at the level of Working Party 1 regarding what changes, if any, should be made to these three components of Action 14.
7. The year 2020 is also the deadline mandated by the G20 for the Inclusive Framework to deliver a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the economy. The tax challenges were first highlighted in the 2013 BEPS Action Plan and 2015 Action 1 Final Report, the latter of which called for continued work in this area with a further report to be delivered by 2020. In March 2017, this timeline was accelerated at the initiative of the G20 Finance Ministers, who asked the Inclusive Framework, working through its Task Force on the Digital Economy, for an Interim Report (Interim Report),<sup>5</sup> which was delivered in 2018. To advance progress towards a consensus-based solution, Inclusive Framework members made a number of proposals and the OECD/G20 Inclusive Framework agreed a Policy Note<sup>6</sup> in January 2019 that grouped the proposals into two pillars – one of nexus and profit allocation (Pillar 1) and another on ensuring a minimum level of taxation (Pillar 2). Building on this background, a Programme of Work (PoW)<sup>7</sup> was agreed in May 2019 by the OECD/G20 Inclusive Framework to provide guidance to its technical working groups on a path forward to achieve a multilateral, consensus-based solution.
  8. For Pillar 1, the 2019 PoW identified and allocated work to explore the different proposals articulated by members of the Inclusive Framework but ultimately none could garner consensus. In an attempt to move the negotiations forward the OECD Secretariat developed its “Unified Approach”, which built on the commonalities identified in the PoW. This “Unified Approach” was released for public comment in October 2019<sup>8</sup> and attracted more than 300 submissions exceeding 3 000 pages, and an in-person public consultation was attended by more than 500 representatives from governments, business, civil society and academia in November 2019. A public consultation was also held on Pillar 2 in December 2019, which attracted more than 180 written comments totalling over 1 300 pages and which was attended in person by over 200 stakeholders.
  9. In January 2020, the Inclusive Framework at its plenary meeting reaffirmed its commitment to reach a consensus-based long-term solution by approving the “Statement by the OECD/G20 Inclusive Framework on BEPS on the Two Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy” (see Annex B). Building on the Unified Approach released by the OECD Secretariat in October 2019, the Statement included an “Outline of the Architecture

<sup>5</sup> [www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm](http://www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm)

<sup>6</sup> <https://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf>

<sup>7</sup> [www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm](http://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm)

<sup>8</sup> [www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf](http://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf)

of a Unified Approach on Pillar One” note as well as an updated Programme of Work, which identified 11 building blocks where further work was required to develop the solution. A progress note on Pillar 2 was also agreed. Throughout the COVID-19 crisis, work has continued both at the Steering Group and Working Parties levels. As a result of the crisis, however, it was agreed to postpone the Inclusive Framework meeting where a package would be agreed from July 2020 to October 2020.

10. Other aspects of the Action 1 responses are proving to be valuable. For example, the International VAT/GST Guidelines<sup>9</sup> developed in 2017 include recommended principles and mechanisms to address the challenges for the collection of VAT on cross-border sales of digital products that had been identified in the context of the OECD/G20 Project on BEPS. The benefits from implementing such standards are clear. For example, as a result of the adoption of the VAT/GST Guidelines, EU countries raised EUR 14.8 billion during the first four years of implementation (2015-2019).
11. Model rules for reporting for platform operators<sup>10</sup> have been developed in response to the growth of the “sharing” and “gig” economies. An increasing number of taxpayers are earning taxable income in the food delivery, transportation and the hospitality industries, among others. Some of these industries such as food delivery may actually see even greater growth so long as COVID-19 persists as a threat, while others such as the hospitality industry may see a decline under similar circumstances. The benefits of establishing such model rules for businesses include shielding them from the compliance burdens that would result from the proliferation of different unilateral reporting regimes and ensuring that platforms have a standardised reporting regime applicable across multiple jurisdictions, thereby decreasing compliance costs. A public consultation document was released for public comment in February 2020 and the final design of the rules reflects the constructive input received from taxpayers, businesses and other stakeholders. These rules could also be considered as part of a comprehensive solution to the tax challenges arising from digitalisation.
12. As this report will demonstrate, since the BEPS Action Plan was first released and BEPS implementation began, the coherence of the international tax system has been bolstered, taxation is now better aligned with substance, and transparency has increased. But much more remains to be done. Further reform is underway and the results from the ongoing 2020 BEPS minimum standards reviews will allow for a complete stock-take in 2021, when the full results of the 2020 reviews become available and the outcomes from Pillar 1 and Pillar 2 have further crystallised. All of this progresses with a historic level of participation from the 135+ members of the Inclusive Framework, all of which work on an equal footing in a continuous effort to adapt the international tax rules for the 21st century.

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<sup>9</sup> [www.oecd.org/tax/consumption/international-vat-gst-guidelines-9789264271401-en.htm](http://www.oecd.org/tax/consumption/international-vat-gst-guidelines-9789264271401-en.htm)

<sup>10</sup> [www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm](http://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm)

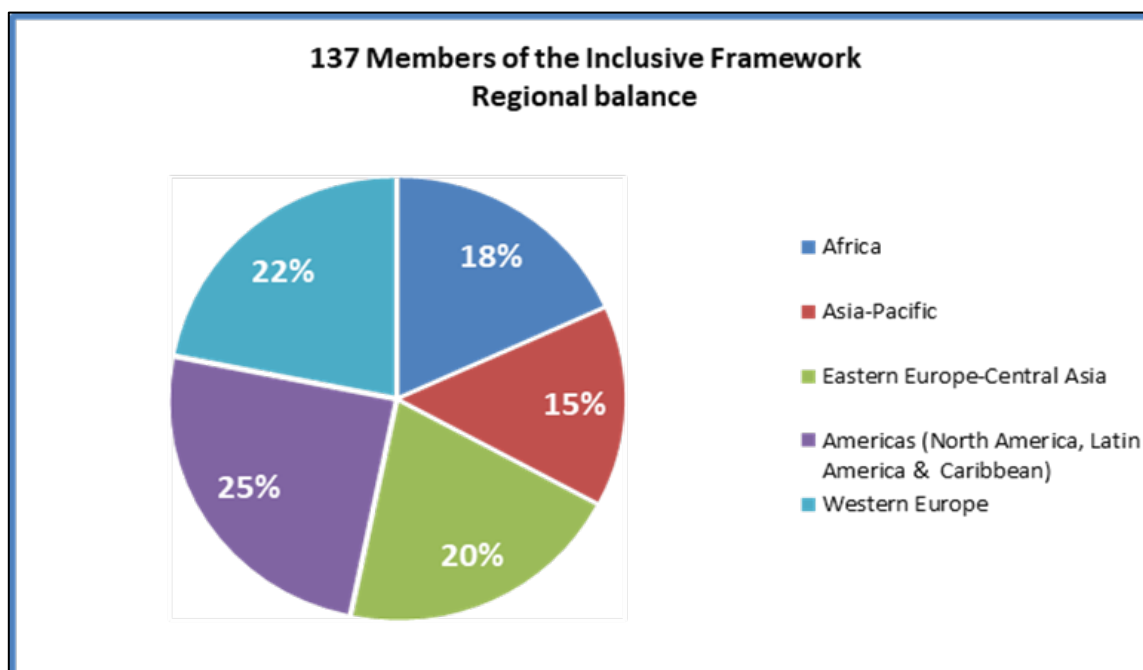


# Part I – Inclusivity and Support for Developing Countries

## Governance and Membership of the OECD/G20 Inclusive Framework on BEPS

13. The OECD/G20 Inclusive Framework, established in 2016, currently has 137 members, including 66 developing countries (see Annex A). The membership of the OECD/G20 Inclusive Framework comprises countries and jurisdictions from a range of geographic regions and reflects economic diversity (see Figure 1). Importantly, developing countries are also well represented on the Steering Group<sup>11</sup> of the OECD/G20 Inclusive Framework, which includes deputy chairs from China and Nigeria and other members from Brazil, Côte d'Ivoire, Georgia, India, Jamaica, Senegal and South Africa.

Figure 1. Regional composition of the OECD/G20 Inclusive Framework



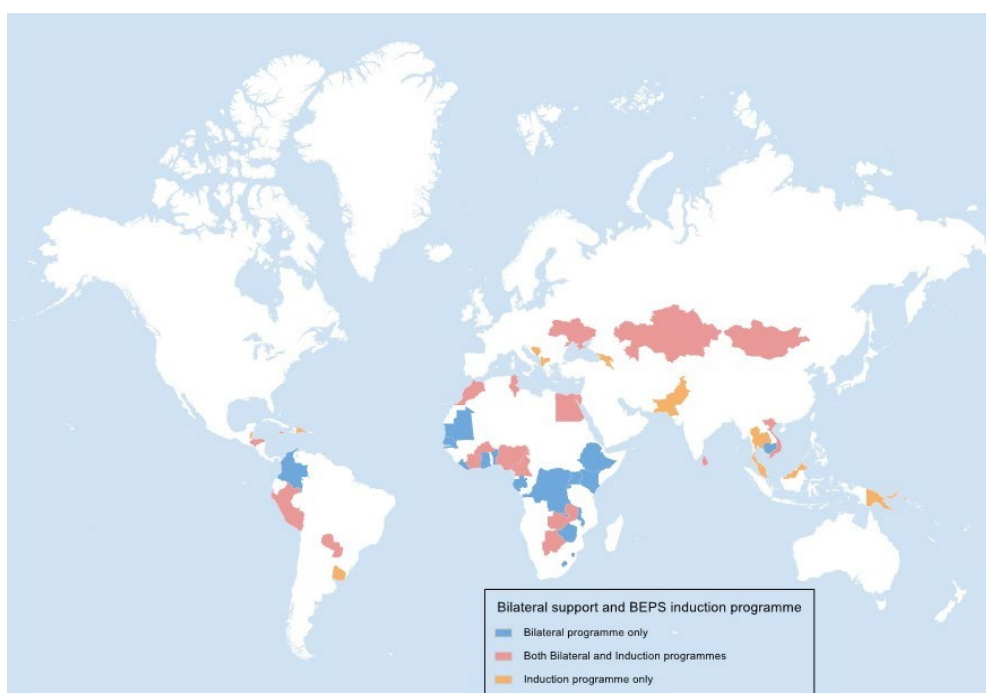
### Support for developing countries

14. Although all members of the OECD/G20 Inclusive Framework participate in its work on an equal footing by design, capacity limitations often mean that poorer and smaller developing countries often face greater challenges in their participation. Acknowledging this, a number of mechanisms are in place to support lower capacity developing countries in implementing their BEPS priorities. This support includes bespoke induction programmes to help countries to identify and implement

<sup>11</sup> [www.oecd.org/tax/beps/steering-group-of-the-inclusive-framework-on-beps.pdf](http://www.oecd.org/tax/beps/steering-group-of-the-inclusive-framework-on-beps.pdf)

priority BEPS measures, support in the peer review processes relating to the BEPS minimum standards, and support to countries to effectively participate in the ongoing standard-setting process. To date, 41 tailored induction programmes on BEPS have been launched, and additional bilateral support programmes, most of which focus on specific BEPS priorities such as transfer pricing, have been carried out or are ongoing in 35 countries (see Figure 2).

**Figure 2. Bilateral support and BEPS induction programmes**



15. Toolkits focused on the particular needs and priorities of developing countries in relation to profit shifting and base erosion issues are also being produced, notably through the Platform for Collaboration on Tax (PCT).<sup>12</sup> These toolkits aim at assisting developing countries to translate international tax norms so that they can be effectively implemented in their circumstances, bearing in mind capacity limitations and the practical realities faced by tax administrations in developing countries. A toolkit on offshore indirect transfers of interests was released on 4 June 2020<sup>13</sup> and another toolkit on implementing effective transfer pricing documentation is in the course of being developed.
16. As well as policy-focused support, a range of highly practical support tools are also available to lower capacity countries, notably through the Tax Inspectors without Borders (TIWB)<sup>14</sup> initiative and so-called Deep Dives on mining, which aim to cover all aspects of tax in relation to the mining sector. To date, 76 TIWB programmes in 44 jurisdictions have been completed or are ongoing, and the success of the format has resulted in pilot programmes to expand beyond the original focus of the project on auditing of MNEs, to include tax crime and effective use of automatic exchange of information. The forthcoming TIWB 2020 Annual Report will fully highlight these and other successes in further detail. Figure 3 below sets out the concrete results of TIWB programmes thus far in terms of revenue gains, but the benefits of these initiatives go beyond revenue

<sup>12</sup> [www.tax-platform.org/](http://www.tax-platform.org/)

<sup>13</sup> [www.oecd.org/tax/taxation-of-offshore-indirect-transfers.htm](http://www.oecd.org/tax/taxation-of-offshore-indirect-transfers.htm)

<sup>14</sup> [www.tiwb.org/](http://www.tiwb.org/)

collections and include skills transfers, development of tools and processes, organisation improvements and increases in taxpayer compliance.

**Figure 3. Revenue raised by TIWB programmes (by region)**



17. In 2020, the COVID-19 pandemic has meant all of these support initiatives have moved to virtual formats. While this presents many challenges, the move to online channels and remote support has, in some instances, allowed for even broader participation in capacity building events. For instance, the “virtual classrooms” on tax technical topics held in April 2020 reached almost 2 000 participants in over 35 countries.
18. Much of the support work is delivered in partnership with regional tax bodies and other international organisations. The OECD’s commitment to supporting developing countries was recognised by the African Tax Administration Forum (ATAF), which in 2019 named the OECD as its best international partner. Other partners such as the General Authority of Zakat and Tax in Saudi Arabia and the Asian Development Bank are looking to the OECD to establish hubs or platforms to intensify capacity-building support on a regional basis.
19. Despite these programmes, it is recognised that many lower capacity countries have yet to benefit fully from the BEPS agenda as we near the five-year mark since BEPS implementation began. For instance, many lower capacity countries are not yet able to access CbC reporting information, and may still be suffering from treaty abuse due to difficulties or delays in ratifying the MLI and/or updating bilateral treaties. Many lower capacity countries are also constrained by limited or unfavourable tax treaty and information exchange networks. In addition, while many developing countries have made excellent progress in building capacity within their tax administrations and implementing effective rules to tackle tax avoidance by MNEs, including in the form of transfer pricing regimes, the complexity of these rules remains a significant challenge. In part as a result of these capacity constraints, simpler, more administrable rules such as those based on BEPS Action 4 (limiting excessive interest deductions) have found favour in many developing countries.
20. Lower capacity countries also face additional challenges to participate effectively in the complex, highly technical and rapid-pace discussions taking place in the OECD/G20 Inclusive Framework to develop new international tax norms to address the tax challenges arising from the digital economy. The need for such reforms is becoming increasingly acute given the COVID-19 pandemic. The additional strain on public finances as a result of the health crisis is likely to be a particular problem in low income countries with more limited fiscal headroom and debt servicing

capacities and will make the need for improvements in domestic resource mobilisation all the more urgent. In addition to further efforts to support effective implementation of existing international tax norms, including through improvements in the efficiency and efficacy of tax administrations and the tax morale of taxpayers, the reallocation of taxing rights is under discussion in the OECD/G20 Inclusive Framework. A forthcoming Tax and Development annual report will further highlight the extensive outreach being conducted to ensure that developing countries' concerns are being fully addressed as BEPS implementation continues to progress.

## Part II - Strengthening Coherence

21. Halfway through the year 2020, it is worth revisiting the three principles that provided the foundational basis for the BEPS Actions: coherence, substance and transparency. With respect to the first principle, the original BEPS Action Plan clearly stated that new international standards being developed at the time should be designed to ensure the coherence of corporate income taxation. Due to the incoherence of both international and domestic tax rules in the pre-BEPS package world, there was ample room for taxpayers to conduct arbitrage by exploiting this incoherence. BEPS Actions 2-5 sought to bolster the coherence of domestic rules, as it was recognised that the increasing interconnectedness of domestic economies highlighted the gaps that could be created by interactions between domestic tax laws. In the years since BEPS implementation began, many countries have begun to act on the recommendations included in Actions 2-5, thereby contributing to enhanced coherence and fewer opportunities for BEPS.

### BEPS Actions 2-4

22. Aggressive tax planning (ATP) is a key risk to the tax revenue base and historically ATP schemes have been a significant driver of BEPS. The BEPS package included a common approach to neutralising hybrid mismatches (Action 2) and limiting excessive interest deductions (Action 4) as well as best practices in the design of effective controlled foreign company (CFC) rules (Action 3).
23. Although they are not minimum standards, Actions 2, 3 and 4 have been adopted by a large number of countries. Countries that have adopted these standards now have effective measures in place to limit the impact of profit-shifting through the use of financing and other structures. While it is challenging to measure the impact of these changes on ATP behaviour, anecdotal evidence suggests that the implementation of these recommendations has been effective at reducing ATP by MNEs and provided tax administrations with new tools to address BEPS.

### ***Action 2 on Hybrid mismatches***

24. The Action 2 recommendations targeted mismatches resulting from differences in the tax treatment or characterisation of an instrument or entity. The work on hybrid mismatches was subsequently expanded to deal with similar structures that arise through the use of branches.
25. Since the release of the Action 2 recommendations, a number of OECD/G20 Inclusive Framework members have adopted rules to address such hybrid and branch mismatches (e.g., Australia, Costa Rica and New Zealand) or made changes to the existing hybrids regime, such as Mexico and the United Kingdom. Hybrid rules were introduced as part of the 2017 U.S. Tax Cuts and Jobs Act and the ATAD II Directive adopted by the European Union required EU Member States to implement anti-hybrids rules consistent with Action 2 by 2020. As part of the common approach to addressing hybrid mismatches, work continues amongst OECD/G20 Inclusive Framework members to share practical examples of these structures to ensure consistent, comprehensive and coherent outcomes from the application of the new rules.

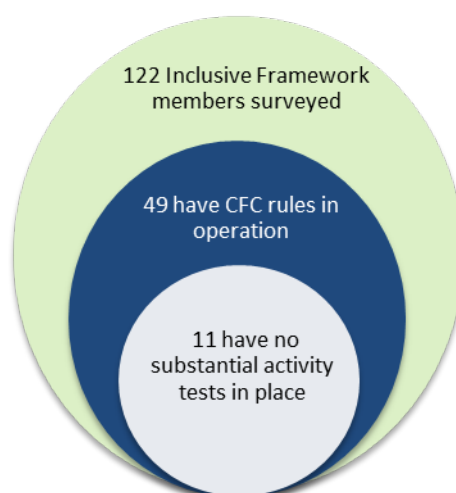
### ***Action 3 on Controlled Foreign Company rules***

26. The Action 3 recommendations outline best practices in the design of CFC rules to ensure the taxation of certain categories of income of an MNE in the jurisdiction of the parent company in order to counter offshore structures that result in no or indefinite deferral of taxation.

Comprehensive and effective CFC rules have the effect of reducing the incentive to shift profits from a market country into a low-tax jurisdiction.

27. A CFC is defined as a foreign company that is either directly or indirectly controlled by a resident taxpayer. Jurisdictions apply a variety of criteria to determine control. Some approaches make reference to voting rights held by resident taxpayers or to shareholder value held by resident taxpayers, while others stipulate that a foreign company is a CFC if it carries out its operations in a low-tax jurisdiction and others base CFC designation on a taxation test (i.e., if the foreign company does not pay tax in its jurisdiction of residence). Jurisdictions also vary in their definitions of CFC income, with some applying CFC rules to any type of income while others apply them to only passive income (i.e., income from interest, rental property, dividends, royalties or capital gains). Finally, jurisdictions also vary in the use of substantial activity tests. Of the 49 jurisdictions that had CFC rules in 2019, 11 had no substantial activity tests in place.

**Figure 4. Controlled foreign corporation rules across the OECD/G20 Inclusive Framework**



28. CFC rules are now in place in all EU Member States by virtue of the ATAD I Directive. Furthermore, consistent with the recommendations set out in the Action 3 report, the United States enacted, as part of the 2017 U.S. Tax Cuts and Jobs Act, a minimum tax on the foreign income of CFCs (GILTI). The United States' experience with the GILTI regime provides a useful precedent for the ongoing work under Pillar 2.<sup>15</sup>

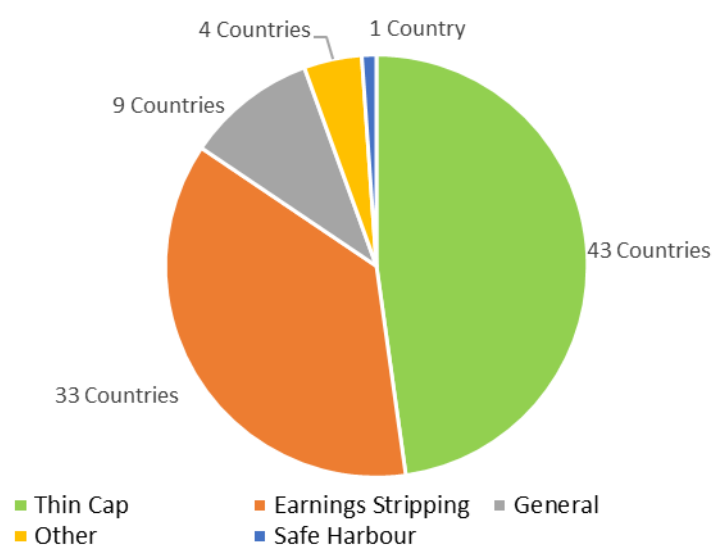
### **Action 4 on Interest Limitation Rules**

29. The deductibility of interest can lead to profit shifting through arrangements using third party debt (e.g., where one entity or jurisdiction bears an excessive proportion of the group's total net third party interest expense, or bears the burden of interest deductions on debt used to earn non-taxable income) and intragroup debt (e.g., where a group uses intragroup interest expense to shift taxable income from high tax to low tax countries).
30. In response, Action 4 established rules that linked an entity's net interest deductions to its level of economic activity within the jurisdiction, measured using taxable earnings before interest income and expense, depreciation and amortisation (EBITDA). This included three main elements:

<sup>15</sup> Pillar 2 (also referred to as the "GloBE" proposal) calls for the development of a co-ordinated set of rules to address ongoing risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation.

- A fixed ratio rule based on a benchmark net interest/EBITDA ratio
  - A group ratio rule allowing an entity to deduct more interest expense based on the position of its worldwide group
  - Targeted rules to address specific risks not addressed by the general rule.
31. By 2019, 90 OECD/G20 Inclusive Framework members have indicated that interest limitation rules were in place. Interest limitation rules have a variety of forms. Of the 90 jurisdictions that had interest limitation rules, the most common type was thin cap rules (43 jurisdictions), followed by earnings stripping rules (33), rules of a general nature or not specified (9), rules of another type (4) and, finally, safe harbour rules (1).

**Figure 5. Interest limitation rules in effect across the OECD/G20 Inclusive Framework**



32. Thin cap rules disallow tax deductibility of internal interest payments if the amount of debt passes a permissible threshold, where the threshold is based on debt-to-equity or debt-to-assets ratios. Thin cap rules most commonly reference a debt-to-equity ratio (though debt-to-assets is used in some jurisdictions), where the ratio values range from 0.3:1 in Brazil (i.e., interest payments are fully deductible only if the indebtedness of the Brazilian borrowing does not exceed 30% of the borrower's net equity) to 6:1 in Switzerland (for finance companies), with ratios of 2:1, 3:1 and 4:1 being very common as well.
33. Earnings stripping rules restrict tax deductibility of interest if the ratio of interest to earnings exceeds a certain threshold. While Action 4 recommends the use of EBITDA as the measure of earnings in the denominator, it also allows for the flexibility to introduce rules based on earnings before interest and taxes (EBIT). There are other interest limitation rules, such as interest caps that do not depend on a ratio or make reference to other ratios, such as the rule in Denmark, that applies the ratio of interest to tax value of total assets. Among the 33 jurisdictions with earnings stripping rules, the most commonly referenced ratio was interest-to-EBITDA (30 jurisdictions), with ratio values ranging from 10% in Romania to 30%, the most common ratio being 30% (24 jurisdictions).

### ***Transfer Pricing Guidance on Financial Transactions (Actions 4, 8-10)***

34. There have been further developments with respect to Action 4 in relation to transfer pricing guidance and financial transactions. In October 2015, as part of the final BEPS package, the



OECD/G20 published the reports on Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments) and Actions 8-10 (Aligning Transfer Pricing Outcomes with Value Creation). Those reports mandated follow-up work on the transfer pricing aspects of financial transactions.

35. In January 2020, the OECD/G20 Inclusive Framework approved the new Transfer Pricing Guidance on Financial Transactions.<sup>16</sup> The guidance was incorporated into the OECD Transfer Pricing Guidelines after its approval by the OECD/G20 Inclusive Framework. The new report is significant because it is the first time the OECD Transfer Pricing Guidelines include guidance on the transfer pricing aspects of financial transactions, which will contribute to consistency in the interpretation of the arm's length principle and help avoid transfer pricing disputes and double taxation. The report, which reflects the consensus view of the members of the OECD/G20 Inclusive Framework, will strengthen the coherence and stability of the international tax system by providing long awaited guidance that also contributes to enhance tax certainty, particularly regarding certain issues identified in the Action 4 Final Report.

## Action 5 on Harmful Tax Practices

36. As one of the BEPS minimum standards, Action 5 has been critical in bolstering both coherence and substance with respect to preferential tax regimes, as well as transparency on tax rulings. The BEPS Action Plan also mandated a consideration of revisions or additions to the FHTP framework. The OECD/G20 Inclusive Framework has made significant gains under all three of these areas.
37. First, with respect to preferential tax regimes, the FHTP has reviewed 287 regimes since 2016. This process holds all preferential tax regimes globally to the same standard, and almost all of these regimes that had features inconsistent with the standard have now been amended or abolished to comply with the standard.
38. Second, information on tax rulings is now regularly exchanged between tax administrations on a spontaneous basis, with almost 30 000 exchanges of information on tax rulings conducted between 2016 and 2019. This information exchange has created transparency in the issuance of tax rulings globally, ensuring that tax administrations are in receipt of information on tax rulings pertaining to the tax arrangements of their taxpayers, including multinational groups, to identify and act on any potential BEPS risks.
39. Most recently, as a key outcome of the work to consider additions or revisions to the FHTP framework, a new standard on substantial activities in no or only nominal tax jurisdictions was agreed in 2018. The legislative frameworks of 12 no or only nominal tax jurisdictions were subsequently reviewed in 2019 by the FHTP, with the domestic legal frameworks of 11 jurisdictions being found to meet all aspects of the standard.

## Preferential Tax Regimes

40. Some of the earliest attempts to establish coherence date back to when the FHTP began its first reviews of preferential tax regimes in 1998. With the expansion of the FHTP's work to all OECD/G20 Inclusive Framework members (and jurisdictions of relevance), there have now been nearly 300 regimes reviewed from over 70 jurisdictions, including both intellectual property (IP) and non-IP regimes. The Action 5 minimum standard requires that there be substantial business activities in the jurisdiction offering preferential tax regimes, with the "nexus approach" applicable

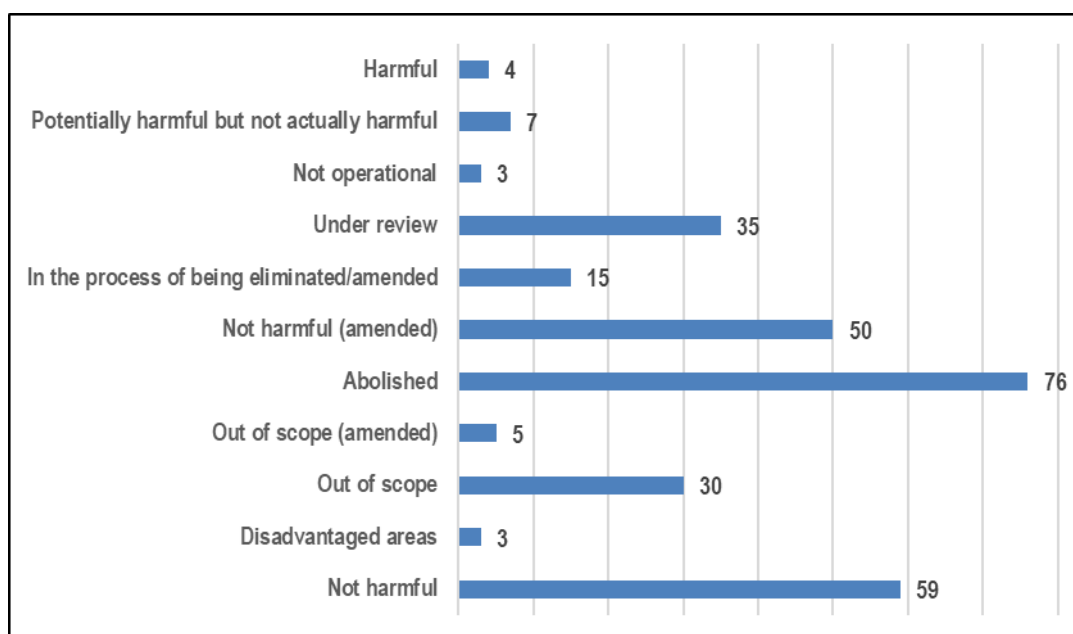
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<sup>16</sup> [www.oecd.org/tax/beps/oecd-releases-transfer-pricing-guidance-on-financial-transactions.htm](http://www.oecd.org/tax/beps/oecd-releases-transfer-pricing-guidance-on-financial-transactions.htm)

to the IP regimes<sup>17</sup>, and the “substantial activities requirement” for non-IP regimes, whereby tax benefits are only granted where the core activities required to earn the income are undertaken in the jurisdiction.<sup>18</sup> Furthermore, the standard does not permit preferential regimes to have harmful features that have the potential to unfairly impact the tax base of other jurisdictions or are lacking in transparency or in the ability to be subject to exchange of information.

41. Since the adoption of the BEPS Package in 2015, these requirements have resulted in fast-paced legislative changes by countries to comply with the standard. Fifty of these regimes remain under review or are in the process of undergoing legislative changes. In addition, the FHTP undertakes an annual monitoring process on certain aspects of preferential regimes. As almost all of the regimes reviewed by the FHTP have now been amended or abolished to comply with the standard, there is an increased focus on strengthening the FHTP annual monitoring processes. The annual monitoring process seeks to ensure that legislative changes in regimes effectively meet the standard in practice and to maintain the level playing field. Approximately 100 regimes are currently subject to monitoring by the FHTP.

**Figure 6. Illustration of the reviewed regimes outcomes between 2016 and 2020**



### *Future work*

42. The FHTP will continue to review existing preferential tax regimes, and monitor the introduction of any new regimes or amendment of existing regimes for review. The FHTP’s focus on the annual monitoring of regimes is a robust process to ensure the effectiveness in practice of legislative changes, including substantial activities requirements amongst other aspects. In this way, OECD/G20 Inclusive Framework members offering relevant preferential regimes are held to a high standard of oversight and enforcement. A scheduled meeting of the FHTP at which these topics

<sup>17</sup> The “nexus approach” was developed in the context of IP regimes and allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer itself incurred qualifying R&D expenditures that gave rise to the IP income.

<sup>18</sup> These core income-generating activities must be conducted with an adequate number of full-time qualified employees and incurring an adequate amount of operating expenditure to undertake such activities.

could have been discussed has been postponed until October 2020. This postponement will also allow the FHTP to consider the implications of Pillar Two on its work stream.

### ***Exchange of Information on Tax Rulings***

43. The spontaneous exchange of information on tax rulings has now occurred in relation to 18 000 rulings resulting in almost 30 000 exchanges to date. These exchanges create transparency in the tax rulings practices of over 100 countries worldwide, providing timely information to tax administrations that can be used in conducting risk assessments to identify BEPS issues. Furthermore, this transparency continues to deter tax administrations and taxpayers from engaging in rulings practices that may give rise to BEPS concerns.
44. The conclusion of the third peer review of jurisdictions' transparency frameworks in 2019 saw 112 jurisdictions reviewed, with 80 jurisdictions not receiving any recommendations, demonstrating considerable improvement in the global implementation of the standard. However, the report included 55 recommendations issued to the relevant jurisdictions, and therefore some jurisdictions must continue to improve in their implementation processes.

### ***Future work***

45. The peer review results of the transparency framework show that the majority of OECD/G20 Inclusive Framework members have appropriately implemented the requirements under the standard. However, a minority continue to have recommendations and therefore further work to do in order to meet the international standard. The FHTP will consider how to most effectively continue the peer review process beyond 2020, and consider ways to further streamline and increase the effectiveness of the standard, including whether changes to the standard are required.

### ***Revision of the FHTP Framework: Substantial activities in no or only nominal tax jurisdictions***

46. In parallel to the standard on preferential tax regimes, the FHTP continued to ensure that highly mobile income subject to a zero or only nominal rate must be earned through the value creating activities in the jurisdiction itself, by adopting in 2018 a new standard for substantial activities requirements in no or only nominal tax jurisdictions. This ensures there is a level playing field between jurisdictions that have introduced substantial activities requirements in preferential regimes, and jurisdictions offering a general zero or only nominal corporate tax rate. By 2019, the 12 relevant jurisdictions had already put in place domestic legislative requirements to meet the standard. The FHTP reviewed the legislative framework of these 12 jurisdictions, and 11 jurisdictions<sup>19</sup> were found to have a legal framework that met all aspects of the standard thereby further increasing the coherence of domestic and international tax systems, while one jurisdiction<sup>20</sup> is currently in the process of amending its legislation.

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<sup>19</sup> Anguilla, The Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands.

<sup>20</sup> The United Arab Emirates has been working closely with the FHTP and the EU Code of Conduct Group on the specific amendments to its economic substance legislation. The amended legislation is currently going through the Cabinet of Ministers' legislative process in the United Arab Emirates.

### *Future Work*

47. The FHTP will continue to monitor and review any changes to the legislative framework of the substantial activities requirements in no or only nominal tax jurisdictions to maintain a level playing field. Furthermore, the FHTP will review the next phases of implementation of the standard, including an in-depth annual monitoring process to assess effectiveness in practice, and the spontaneous exchange of information under the standard, which will commence from 2021 in accordance with the modalities established in the “Substantial Activities in No or Only Nominal Tax Jurisdictions: Guidance for the Spontaneous Exchange of Information.”<sup>21</sup>

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<sup>21</sup>[www.oecd.org/tax/beps/substantial-activities-in-no-or-only-nominal-tax-jurisdictions-guidance-for-the-spontaneous-exchange-of-information.htm](http://www.oecd.org/tax/beps/substantial-activities-in-no-or-only-nominal-tax-jurisdictions-guidance-for-the-spontaneous-exchange-of-information.htm)

## Part III – Substance

48. In addition to coherence, the BEPS package recognised that the tax rules must be modified to align tax with substance. It was far too easy to separate taxable profits from value-creating activities under the pre-BEPS tax treaty and transfer pricing system. Such practices opened the door for the establishment of shell companies, for example, which had little or no economic substance in terms of office space, tangible assets and employees. The BEPS Action Plan recognised that the international tax rules should be improved in order to put more emphasis on value creation in highly integrated groups, tackling the use of intangibles, risks, capital and other high-risk transactions to shift profits. The results from Actions 6-10 thus far have helped to mitigate the risk of such activities.

### Action 6 on Tax Treaty Abuse

49. Action 6 of the OECD/G20 BEPS Project identified treaty abuse, and in particular treaty shopping, as one of the principal sources of BEPS concerns. Treaty shopping typically involves the attempt by a person to access indirectly the benefits of a tax agreement between two jurisdictions without being a resident of one of those jurisdictions. Owing to the seriousness of this issue, jurisdictions agreed to adopt the Action 6 minimum standard to address treaty shopping, and to subject their efforts to an annual peer review. In 2018, the first peer review concluded that although few of the reported agreements met the minimum standard, many jurisdictions had begun in earnest to tackle the problem, principally by signing the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), a product of BEPS Action 15. The MLI is clearly the preferred means of countries to implement Action 6, and the broader benefits of the MLI since its entry into effect are worth elaborating here.

50. Not only does the MLI assist countries in the swift implementation of the BEPS minimum standards such as Action 6 without the need to renegotiate bilaterally each tax treaty, but it also helps bolster coherence on a number of other tax treaty related provisions designed to counter BEPS.

### ***Multilateral Instrument (BEPS Action 15)***

51. The MLI, an innovative new instrument that facilitates the modification of the vast existing network of bilateral tax treaties, was finalised in 2016 and first signed on 7 June 2017 by 76 jurisdictions. Today, the MLI covers 94 jurisdictions from all regions and all levels of development and 49 of these jurisdictions have already ratified it. Despite the fact that all signatories have not yet completed the ratification process, the MLI is still more efficient for governments than renegotiating bilaterally the 3 500 tax treaties currently in force. The MLI will modify existing bilateral tax treaties to implement swiftly the tax treaty measures developed in the course of the OECD/G20 BEPS Project. Treaty measures that are incorporated in the MLI include those on not only treaty shopping but hybrid mismatch arrangements and permanent establishments as well. The MLI also strengthens provisions to resolve treaty disputes.

52. As of May 2020, the MLI had already modified about 300 agreements across the worldwide network of tax agreements, and this number is going up rapidly as more signatories deposit their instruments of ratification. The entry into effect of the provisions of the MLI, less than three years after the first signing ceremony, underlines the strong political commitment to a multilateral approach to fighting BEPS and translating commitments into concrete measures that will be included in more than 1 680 tax treaties worldwide.

### Box 1. Key Facts on the Multilateral Instrument (MLI)

- The MLI covers 94 jurisdictions, of which 49 have ratified (finally reaching a 50% ratification rate)
- The MLI is in effect for over 300 treaties and will modify over 1 680 treaties once fully in effect
- Inclusion of the principal purpose test (PPT) in all of those 1 680 modified agreements (Action 6)
- Once all signatories have ratified the MLI, around 65% of all agreements between OECD/G20 Inclusive Framework members will be modified by the MLI to include the Action 6 minimum standard (and other BEPS treaty related provisions)
- 30 covered jurisdictions that opted for mandatory binding arbitration (modifying 211 covered tax agreements to include the MLI mandatory binding arbitration provisions)
- The first meeting of the MLI Conference of the Parties was held on 4 October 2019

53. With respect to Action 6, the 2019 peer review reveals that, by 30 June 2020, 94 OECD/G20 Inclusive Framework members had begun to update their bilateral treaty network and were implementing the Action 6 minimum standard. The data compiled for the 2019 peer review demonstrate that the MLI has been the tool used by the vast majority of jurisdictions that have begun to implement the minimum standard, although the effectiveness in practice is limited by the large number of jurisdictions that have still not yet ratified the MLI. Once all signatories have ratified the MLI, however, around 65% of all agreements between OECD/G20 Inclusive Framework members will be modified by the MLI to include the minimum standard (and other BEPS treaty related provisions). Other jurisdictions have expressed interest in signing the MLI and, if all waiting agreements<sup>22</sup> become covered tax agreements, this figure could be as high as 85%.

54. The existing peer review process does not measure whether the implementation of the minimum standard has actually reduced treaty shopping in practice since BEPS implementation began. A review of Action 6 will be carried out in the coming biennium. .

### Action 7 on Permanent Establishment Status

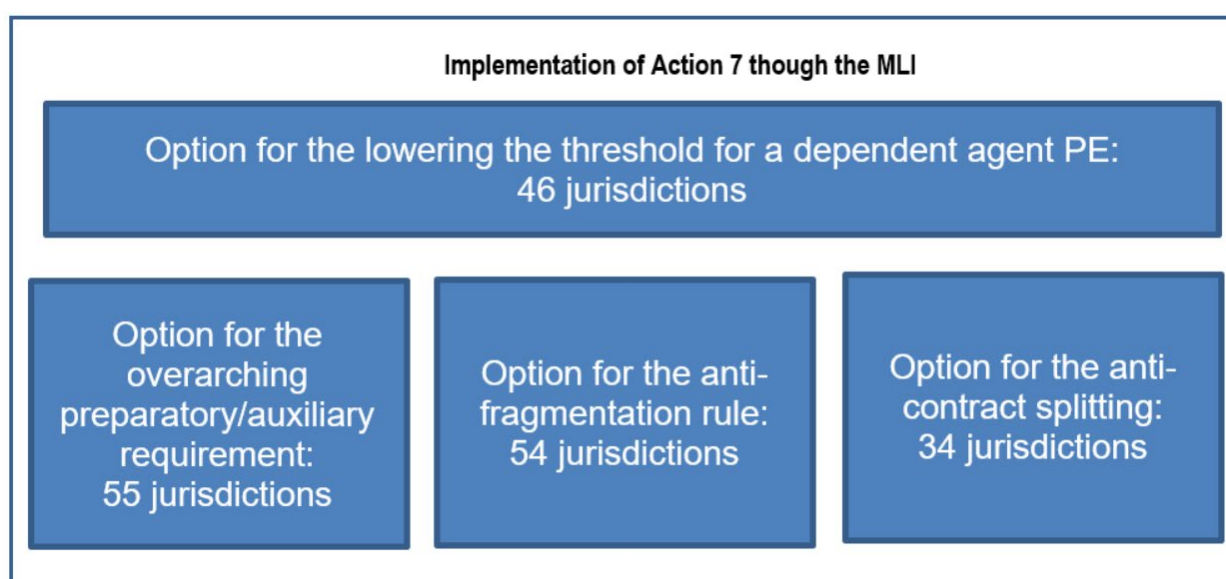
55. Tax treaties generally provide that the business profits of a foreign enterprise are taxable in a state only to the extent that the foreign enterprise has in that state a permanent establishment to which the profits are attributable. The definition of permanent establishment included in tax treaties is therefore crucial in determining whether a non-resident enterprise must pay income tax in another state.

56. Although the Action 7 Final Report did not include any minimum standards, it did provide general recommendations to address techniques used to inappropriately avoid tax nexus, including via replacement of distributors with commissionaire arrangements, via specific activity exemptions, and via the artificial fragmentation of business activities. The recommended treaty changes could be implemented through the MLI as optional provisions, or through bilateral tax treaty negotiations. Of the 94 jurisdictions that are party to the MLI:

<sup>22</sup> A “waiting agreement” is an agreement that has been listed under the MLI by only one of the treaty partners and is therefore waiting for the other partner to sign the MLI to create a match.

- 46 jurisdictions have opted for the changes to Article 5(5) and 5(6) of the OECD Model Tax Convention, lowering the threshold for the creation of a dependent agent PE and impacting 339 treaties in total.
- 55 jurisdictions have opted for the amended Article 5(4) of the OECD Model Tax Convention, with the overarching preparatory or auxiliary requirement and 54 jurisdictions have opted for the anti-fragmentation rule in Article 5(4.1) of the OECD Model Tax Convention. As a result, 379 treaties are impacted with respect to Article 5(4) while 542 treaties are impacted with respect to Article 5(4.1).
- 34 jurisdictions have opted for the anti-contract splitting provision included in the Commentary on Article 5 of the OECD Model Tax Convention, resulting in 163 treaties being impacted.

**Figure 7. Implementation of Action 7 through the MLI**



## Actions 8-10 on Transfer Pricing

57. The objective of the 2015 BEPS Report on Actions 8, 9 and 10 was to ensure that the profits of MNEs better align with economic activity and value creation. This work resulted in expanded guidance in Chapter VI of the OECD Transfer Pricing Guidelines on an approach for tax administrations to ensure appropriate pricing of hard-to-value intangibles (HTVI) in situations of information asymmetry. In 2018, additional guidance addressed to tax administrations on the application of the approach to HTVI was also incorporated into the Guidelines as an annex to Chapter VI. Under the general mandate in the 2015 BEPS Report on Actions 8, 9 and 10, a monitoring process specifically for the application of the HTVI approach by jurisdictions was agreed. The first phase of this process was launched in 2019 and it gathered information from over 30 jurisdictions on their legislation and practices related to the HTVI approach. This information is expected to be publicly released on the OECD website before the end of 2020, when a preliminary evaluation of the impact of these measures to align substance with value creation might be made.



### ***Transfer Pricing Guidance on Financial Transactions (Actions 8-10, 4)***

58. In February 2020 the report *Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS: Actions 4, 8-10*<sup>23</sup> was released. The 2015 BEPS package mandated follow up work on the transfer pricing aspects of financial transactions and this report reflects the consensus interpretation of the application of the arm's length principle to such transactions. As a result, for the first time the OECD Transfer Pricing Guidelines include guidance on the transfer pricing aspects of financial transactions, which will contribute to consistency in the interpretation of the arm's length principle and ensure the outcome of controlled financial transactions aligns with value creation and third parties' behaviour.
59. The report addresses the appropriate level of returns to intra-group funding, which will prevent the use of tax planning strategies associated with the allocation of capital and risks to members of MNE groups that lack a minimum level of functionality. The report emphasises that members of an MNE group that do not control the relevant risks associated with intra-group funding are not entitled to returns higher than a risk-free rate of return – e.g. a return similar to highly rated government issued securities. This will discourage MNE groups from funding their operating units through cash-rich entities that do not have an adequate level of activity.
60. The new guidance is relevant because it addresses very common scenarios where MNE groups tend to use different financial instruments that often lead to tax base erosion. The report highlights that centralised cash management is generally an ancillary service that often deserves a limited remuneration, which will prevent MNE groups from booking non-arm's length profits in treasury entities usually located in low-tax jurisdictions. Moreover, the report extends its guidance to captive insurance, which has been a frequent cause of concern to tax administrations. The new guidance has tightened the conditions under which a member of an MNE group that provides centralised insurance is entitled to profits from the insurance activity. This addresses tax-planning opportunities where MNE groups book purportedly genuine insurance transactions in entities with low functionality that eventually may benefit from a preferential tax treatment.
61. Finally, the report outlines long awaited guidance on pricing techniques that will help tax administrations and taxpayers to reduce administrative and compliance burdens associated with pricing controlled financial transactions.

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<sup>23</sup> [www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.htm](http://www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.htm)

## Part IV – Evaluation, Transparency and Tax Certainty

62. The BEPS Action Plan noted that actions to bolster coherence and better align taxation rights with substance also needed to be coupled with greater transparency and increased tax certainty. BEPS Actions 12, 13 and Action 14 were designed to do just that. The availability of timely, targeted and comprehensive information is essential to enable governments to identify BEPS risks and require taxpayers and advisors to disclose aggressive tax planning arrangements in order to help mitigate such risks. Under the implementation of BEPS Action 13<sup>24</sup>, the requirement for taxpayers to provide transfer-pricing documentation breaking down the information on a country-by-country basis has helped governments focus their audit strategies. With respect to tax certainty, under Action 14, efforts to make dispute resolution more timely, effective and efficient have facilitated mutual agreement procedures, which has bolstered predictability thereby contributing to enhanced tax certainty.
63. CbC reporting under Action 13 has also contributed to the monitoring and measurement of BEPS, a challenging task that was begun under BEPS Action 11. The aggregated and anonymised information collected from such CbC reporting offers glimpses into BEPS behaviours that will only become more robust with time as more data becomes available, in addition to the data already published in the second edition of Corporate Tax Statistics, which includes a report articulating both the benefits and limitations of the existing data. Nearly five years since the BEPS package was released, efforts to monitor and measure BEPS are starting to bear fruit although further work remains to be done to quantify fully the impact of BEPS implementation.

### Anonymised and Aggregated Country-by-Country Reporting Statistics

64. Although more quantitative work needs to be done to measure the impact of the aggregate efforts on BEPS across all action items since implementation began, under Actions 11 and 13 of the OECD/G20 BEPS Project, jurisdictions agreed to publish regularly aggregated and anonymised Country-by-Country Reporting (CbCR) statistics to support the ongoing economic and statistical analysis of multinational enterprises (MNEs) and BEPS. While the main purpose of CbCRs is to support tax administrations in the high-level detection and assessment of transfer pricing and BEPS-related risks, data collected from CbCRs can also play a role in supporting the economic and statistical analysis of BEPS activity and of MNEs in general. This CbCR data will also provide governments and researchers with important new information to analyse MNE behaviour,

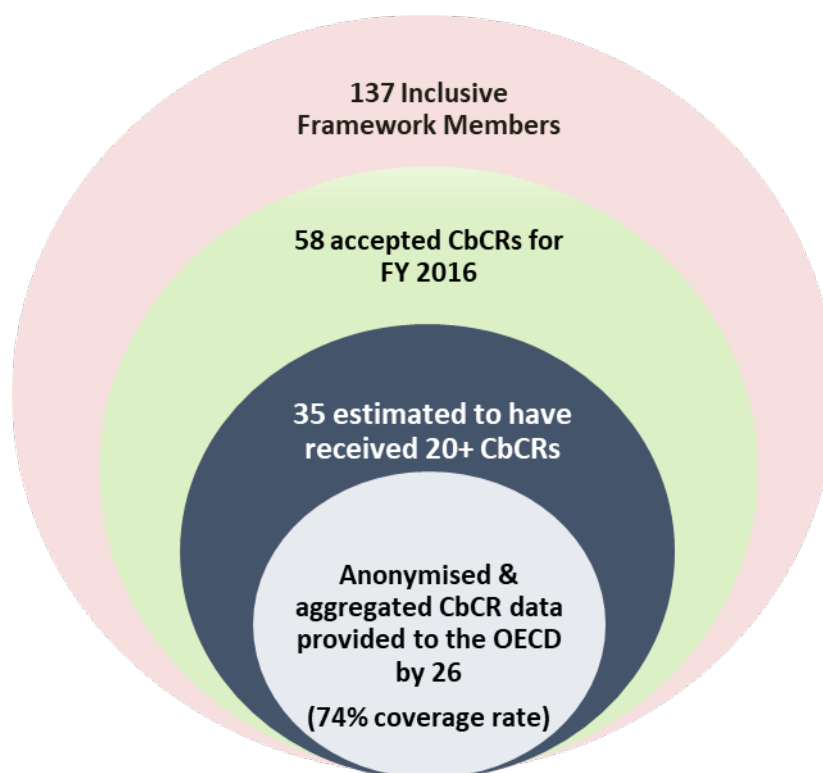
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<sup>24</sup> Action 13 contains a three-tiered standardised approach to transfer pricing documentation. First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a “master file” that is to be available to all relevant tax administrations. Second, it requires that detailed transactional transfer pricing documentation be provided in a “local file” specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company’s analysis of the transfer pricing determinations they have made. Third, large MNEs are required to file a Country-by-Country Report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax, income tax paid and accrued and other indicators of economic activities. Only the Country by Country Reporting is a minimum standard subject to peer review, which is why this report focuses on its implementation.

particularly in relation to tax, assisting to construct a more complete view of the global activities of the largest MNEs than offered by other sources.

65. The first release of aggregated CbCR statistics includes 2016 data relating to CbCRs filed in 26 jurisdictions, covering nearly 4 000 MNE groups. While this new dataset contains a vast array of information on the global financial and economic activities of MNEs, the data are subject to a number of limitations. Many actions have already been taken to improve the quality of the data, however, some of these changes will only lead to improvements over time. Furthermore, due to the low number of CbCRs filed in a number of jurisdictions, confidentiality requirements have also limited the numbers of jurisdictions that have been able to report their data. Despite these limitations and the fact that it is still too early to draw definitive conclusions about the impact of the OECD/G20 BEPS Project, the forthcoming release of aggregated CbCR statistics is still expected to provide some new insights on BEPS and the activities of MNEs.

**Figure 8. Coverage of Anonymised and Aggregated CbCR Statistics**



66. While there are 137 members of the OECD/G20 Inclusive Framework, only 58 jurisdictions received CbCRs for fiscal years starting in 2016, with only 46 having implemented mandatory reporting for the fiscal year 2016 and 12 having received CbCRs under voluntary filing. Of the jurisdictions receiving CbCRs, only 35 were estimated to have received a sufficient number of CbCRs to be able to provide aggregated statistics while ensuring taxpayer confidentiality. Of these 35, the first data release presents CbCR statistics from a total of 26 jurisdictions. The anonymised and aggregated CbCR data has been released as part of the second edition of *Corporate Tax Statistics*<sup>25</sup>, which also includes a report highlighting some of the general insights that can be drawn from this dataset. A detailed description of the caveats and data limitations are also provided in a disclaimer accompanying the release of the CbCR data.

<sup>25</sup> <https://oe.cd/corporate-tax-stats>

## Corporate Tax Statistics – Second Edition

67. Additional information on statistics relating to BEPS can be found in the second edition of the Corporate Tax Statistics database, which is a further step towards Action 11 implementation. These statistics will include expanded coverage of corporate income tax (CIT) revenues, statutory CIT rates, effective tax rates, R&D tax incentives and IP regimes. The first release of anonymised and aggregated CbCR statistics are also included in the second edition of the Corporate Tax Statistics database. In addition, data regarding CFC rules (Action 3) for 38 jurisdictions and data on interest limitation rules (Action 4) for 46 jurisdictions will also be included. The Corporate Tax Statistics dataset will continue to be an invaluable asset in the study of corporate tax policy, with the second edition expanding and improving the quality of data available for the analysis of BEPS.

## Action 12 on Mandatory Disclosure Rules

68. In the interest of transparency, BEPS Action 12 provided recommendations for the design of rules to require taxpayers and advisors to disclose aggressive tax planning arrangements. The recommendations sought a balance between the need for early information on aggressive tax planning schemes with a requirement that disclosure is appropriately targeted, enforceable and avoids placing undue compliance burden on taxpayers. The recommendations have also served as a basis for similar initiatives to improve tax transparency in other areas. Box 2 highlights recent developments with respect to mandatory disclosure rules for Common Reporting Standard (CRS) avoidance arrangements and opaque offshore structures:

### Box 2. Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures

In 2014, the OECD published the Standard for Automatic Exchange of Financial Account Information in Tax Matters, also known as the Common Reporting Standard or CRS. The CRS, which now serves as the basis for the annual automatic exchange of financial account information between more than 90 jurisdictions has marked a major shift in international tax transparency and the ability of jurisdictions to tackle offshore tax evasion.

At the same time, it is key to ensure that those intermediaries that continue to design, market or assist in the implementation of offshore structures and arrangements that can be used by non-compliant taxpayers to circumvent the correct reporting of CRS information are identified and subjected to reporting.

It is against this background that the Bari Declaration, issued by the G7 Finance Ministers in May 2017, called on the OECD to start “discussing possible ways to address arrangements designed to circumvent reporting under the Common Reporting Standard or aimed at providing beneficial owners with the shelter of non-transparent structures.” In this respect, **the Declaration called on the OECD to consider “model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS Action 12 Report.”**

The Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (i.e. structures where the beneficial owners are disguised) were approved and published by the OECD in early 2018. **The design of the model rules**

**has drawn extensively on the mandatory disclosure rules of BEPS Action 12 Report** while being specifically targeted at these types of arrangements and structures.

The purpose of the model rules is to provide tax administrations with information on CRS Avoidance Arrangements and Opaque Offshore Structures, including the users of those arrangements and structures and those involved with their supply. The rules should therefore have a deterrent effect against the design, marketing and use of arrangements covered by the rules.

The model rules require an intermediary or user of a CRS Avoidance Arrangement or Opaque Offshore Structure to disclose certain information to its tax administration. Where such information relates to users that are resident in another jurisdiction it would be exchanged with the tax administration(s) of that jurisdiction in accordance with the terms of the applicable international legal instrument.

Consistent with the concepts on mandatory disclosure articulated in the BEPS Action 12 Report the model rules are not limited to situations of non-compliance with the tax law (including the rules on CRS reporting), but rather seek to inform tax administrations of relevant arrangements to assess potential compliance risks the arrangements may entail.

Since the adoption of the model rules by the OECD in 2018 over 30 jurisdictions have decided to implement mandatory disclosure rules with respect to CRS Avoidance Arrangements and Opaque Offshore Structures.

At the EU level, the model rules have been incorporated into the Directive on Administrative Cooperation in Tax Matters and are expected to become effective in the course of 2020.

Where CRS-committed jurisdictions have implemented the model rules, the Global Forum on Transparency and Exchange of Information for Tax Purposes takes this into account for its review of the effectiveness of the implementation of the CRS by such jurisdictions.

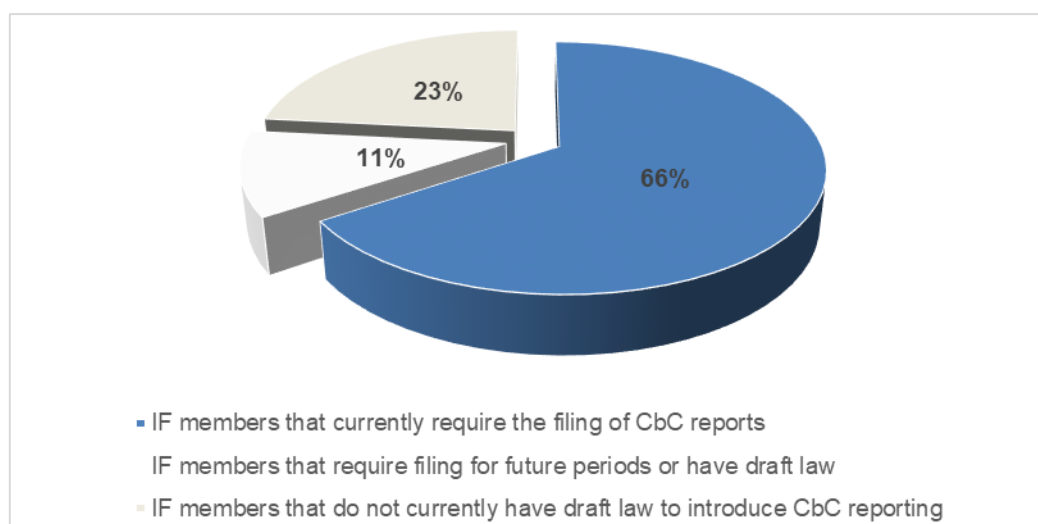
## Action 13 on Country-by-Country Reporting

### *Implementation of a CbC reporting filing obligation*

69. Action 13 on CbC reporting has led to a significant increase in both transparency and coherency in international tax, by improving the level and quality of information available to tax administrations on MNE groups in their jurisdiction, and ensuring tax administrations are increasingly able to access and make use of the same information regarding these groups.
70. Major advances towards the implementation of CbC reporting have been witnessed since 2019. In total, over three quarters of OECD/G20 Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. As a result of this progress, substantially every MNE above the consolidated group revenue threshold of EUR 750 million is already within the scope of CbC reporting, and the few remaining gaps are rapidly being closed. 90 OECD/G20 Inclusive Framework members now require CbCRs to be filed by the ultimate parent entity, with a further 15 OECD/G20 Inclusive Framework members either having introduced laws to require a CbC report to be filed from a defined future date, or having draft laws to introduce such an obligation in the near future.

71. CbC reporting is part of the three-tiered approach to transfer pricing documentation foreseen in Action 13, comprising a master file with an overview of an MNE group's business and transfer pricing policies, local files with more detailed information on specific transactions with a particular jurisdiction, and a CbC report containing information on the global spread of an MNE's activities, results, and where it pays tax. This set of improved and better-coordinated transfer pricing documentation will increase transparency by improving the quality of information provided to tax administrations and limit the compliance burden on businesses.

**Figure 9. Implementation of a CbC Reporting Obligation**



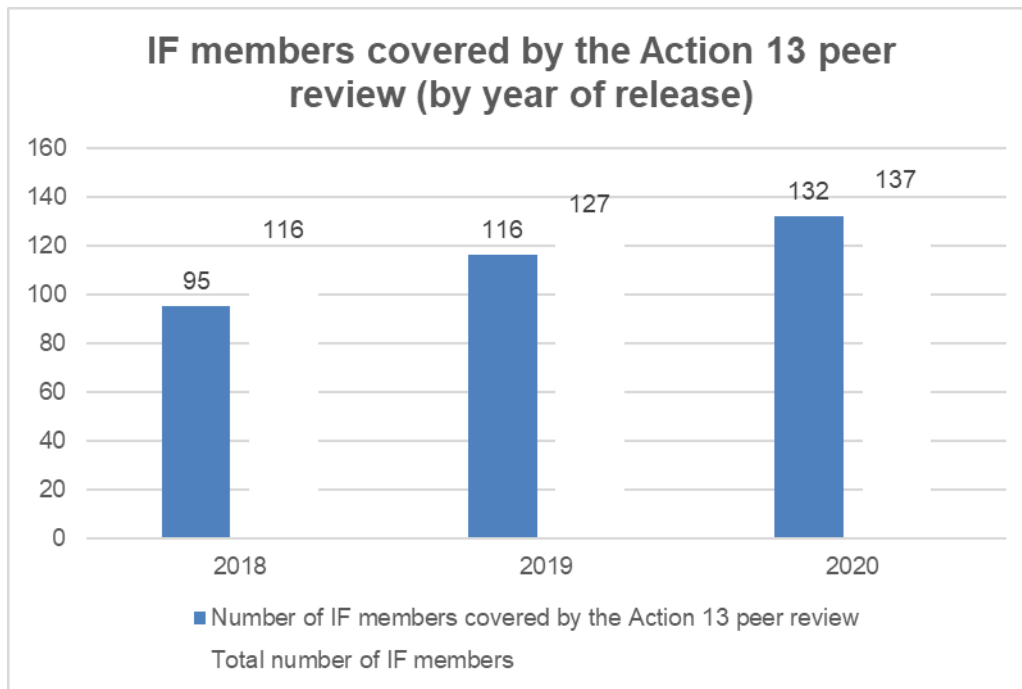
### ***Implementation of a CbC Reporting Exchange Framework***

72. As of May 2020, there are more than 2 500 bilateral relationships established for the exchange of CbC reports. Those relationships are being put in place under the Convention for Mutual Administrative Assistance in Tax Matters, bilateral double tax conventions and tax information exchange agreements, and between EU Member States. However, further work is needed to support jurisdictions in putting exchange relationships in place and in meeting the conditions for obtaining CbC reports.

### ***Peer Review Implementation of BEPS Action 13***

73. The third annual peer review of the implementation of Action 13 will be completed by the third quarter of 2020. This will consider implementation of the minimum standard by over 130 OECD/G20 Inclusive Framework members, compared with 116 jurisdictions in the second peer review and 95 jurisdictions in the first peer review. Where legislation is in place, implementation remains largely consistent with the Action 13 minimum standard. Since the first peer review, a large number of jurisdictions have introduced changes to address recommendations received.

Figure 10. Number of OECD/G20 Inclusive Framework members covered by the Action 13 peer review



### Box 3. Key facts on Action 13 implementation

- 90 jurisdictions require CbC reports to be filed.
- 105 jurisdictions have introduced a CbC reporting filing obligation into law or have a draft law to introduce an obligation in the near future.
- 2 500 bilateral relationships exist for the exchange of CbC reports.
- 132 jurisdictions will be covered in the third annual peer review.

### Work to Support the Effective Use of CbC Reports by Tax Administrations

74. It is vital that tax administrations be able to use the information in CbC reports effectively in the assessment of transfer pricing and other BEPS-related risks. The FTA has undertaken a number of initiatives to support tax administrations in using CbC reports and prevent its misuse.

- **CbCR risk assessment workshops:** Since January 2017, a series of workshops have been held to consider how CbC reports can be best used in risk assessments. Recent workshops included confidential competent authority sessions under the relevant treaties to facilitate multilateral discussions of specific CbC reports.
- **Handbook on the Effective Use of CbC Reports in Tax Risk Assessment:** This handbook considers how CbC reports may be used within different approaches to tax risk assessment, the key risk indicators that may be detected and what a tax administration should do if a CbC report suggests a tax risk may be present.
- **International Compliance Assurance Programme (ICAP):** ICAP is a multilateral risk assessment and assurance process, which uses CbC reports and other risk assessment



information to provide MNEs and tax administrations with increased tax certainty. A second pilot for ICAP (IACP 2.0), including 19 participating tax administrations, was launched in 2019 and is currently underway.

- **Comparative Risk Assessment initiative (CoRA):** Building on the increasingly common information available to tax administrations for tax risk assessment, CoRA is an initiative to drive greater convergence in the perception of risk by tax administrations, and in the understanding of how key risk indicators can be detected, including through an MNE's CbC report. It is expected that the outcomes of this work will be made available to tax administrations by the end of 2020.
- **Tax Risk Evaluation and Assurance Tool (TREAT) and Tax Risk Assessment Questionnaire (TRAQ):** The TREAT is a tool to support tax administrations, in particular those in developing countries, in interpreting an MNE's CbC report to identify where further enquiries may, or may not, be needed. TREAT incorporates training materials drawing on experience in ICAP and CoRA, to assist tax administrations in the risk assessment of MNEs. This is supported by the TRAQ, which may be provided by a tax administration to an MNE group, inviting it to provide additional information where possible indicators of potential tax risk appear to be present in the group's CbC report. It is expected that the outcomes of this work will be made available to tax administrations by the end of 2020.

#### Box 4. Key Future Developments on Action 13

- The third peer review of over 130 members of the OECD/G20 Inclusive Framework will be completed in mid-2020.
- The FTA will continue to develop practical tools to support the use of CbC reports, including ICAP 2.0, CoRA and the release of the TREAT and the TRAQ.
- A review of the Action 13 minimum standard, taking into account the experience of tax administrations and MNEs to date, commenced in November 2018 and will be completed by the end of 2020.

### **Facilitating the Implementation and Ensuring the Consistency of CbC Reporting**

75. Since the introduction of CbC reporting, a number of initiatives have been deployed to support MNE groups and jurisdictions in preparing and using CbC reports and to improve the quality of data in CbC reports.

- **Information on the implementation of CbC reporting by OECD/G20 Inclusive Framework members:** The OECD website includes comprehensive information on how CbC reporting has been implemented by OECD/G20 Inclusive Framework members, the notification requirements that apply in each jurisdiction, and the exchange relationships that have been activated for the exchange of CbC reports. This provides vital support to jurisdictions in meeting their commitments under the minimum standard and to MNE groups in understanding their obligations in jurisdictions where they have constituent entities.
- **Guidance on the interpretation of Action 13:** As the implementation and operation of CbC reporting has progressed, feedback has been sought from jurisdictions, businesses and other stakeholders on areas where the Action 13 report and implementation package seems incomplete or unclear. This has resulted in the development and release of regular guidance on the interpretation of the Action 13 report, which has proven invaluable in improving consistency in the preparation of CbC reports by MNE groups and helping tax administrations in interpreting the data they contain. For example, in November 2019



guidance<sup>26</sup> was updated noting that dividends from constituent entities should not be included in profit before tax in an MNE group's CbC report. Such guidance should improve the reliability of data both for the purposes of tax risk assessment and for economic and statistical analysis.

- **Common errors in the preparation of CbC reports:** As CbC reports have been filed by MNE groups, a number of common errors have been identified that have made the interpretation of data more difficult, in particular where a tax administration uses automated risk assessment processes. These errors included multiple currencies being used in the same CbC report, MNE groups excluding the last three digits or six digits from financial data (as is commonly done in the preparation of financial statements) and data being included in the wrong column. A list of these common errors has been compiled and included on the OECD website,<sup>27</sup> to assist MNE groups in avoiding making them when preparing CbC reports and to help tax administrations recognise them when they do arise.

### **The 2020 review of the Action 13 Minimum Standard**

76. The BEPS Action 13 Final Report included a mandate for a review of the minimum standard by the end of 2020 (the 2020 review). Currently underway, the 2020 review provides an opportunity to seek feedback from stakeholders on issues connected to the implementation and operation of BEPS Action 13, as well as exploring options for possible changes to the scope of CbC reporting and to the content of CbC reports.
77. A public consultation document to take forward work on the 2020 review was released in February 2020 and an online public consultation meeting, including around 270 business and civil society participants, was held in May 2020. Work to agree possible revisions to the Action 13 minimum standard is ongoing and will be completed by the end of 2020.

### **Action 14 on Mutual Agreement Procedure**

78. In addition to the BEPS Actions to address transparency shortcomings in the international tax architecture, tax certainty is also one of the fundamental goals of the OECD/G20 BEPS Project and is a key element of the ongoing work on the tax challenges arising from the digitalisation of the economy. In order to ensure tax certainty, reliable and efficient dispute resolution mechanisms are a crucial tool. In that respect, Action 14 has set a minimum standard for mutual agreement procedures. This section sets out the substantial progress that has been made, as demonstrated by the peer review outcomes, and provides an overview of the further improvements to dispute resolution mechanisms that are under discussion as part of the 2020 review of Action 14.

### **Action 14 Peer Reviews**

79. The Action 14 peer review process began in 2016. By May 2020, 69 jurisdictions have been reviewed under stage 1 of the process, with a final 13 jurisdictions still to be reviewed.<sup>28</sup> In addition,

<sup>26</sup> [www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm](http://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm)

<sup>27</sup> [www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf](http://www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf)

<sup>28</sup> In total 48 jurisdictions have obtained a deferral (Angola, Anguilla, Armenia, Belize, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Cabo Verde, Cameroon, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Dominica, Dominican Republic, Egypt, Gabon, Georgia, Grenada, Haiti, Jamaica, Kenya, Liberia, Malaysia, Maldives, Mauritius, Mongolia, Montserrat, Republic of North Macedonia, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Sri Lanka, Turks & Caicos Islands, Ukraine, Uruguay, Zambia), whereas a decision on a deferral is currently pending for seven jurisdictions: (Albania, Antigua and Barbuda, Eswatini, Honduras, Jordan, Montenegro and Namibia).

the stage 2 peer monitoring of all 44 countries that have initially committed to the BEPS outputs will be completed by 2020 as required by the Action 14 assessment methodology. The stage 2 peer monitoring of the newest members of the OECD/G20 Inclusive Framework is scheduled to continue into 2021.

80. For the 69 jurisdictions reviewed so far, around 1 500 recommendations have been made, including the need for more resources to process MAP cases, improving timeliness of the resolution of MAP cases and updating domestic rules.

81. The stage 1 peer review reports continue to represent an important step forward to turn the political commitments made by members of the OECD/G20 Inclusive Framework into measurable, tangible progress. The Action 14 minimum standard is already having a broader impact on MAP and tax certainty more broadly, and many countries are working to address deficiencies identified in their respective reports. For example:

- **There has been a significant increase in the number of closed cases in almost all jurisdictions under review.** This is likely the result of an increase in resources or of a more efficient use of resources by competent authorities due to (or in anticipation of) the peer review process.
- **The number of MAP profiles published on the OECD website<sup>29</sup> continues to increase, and now covers over 100 jurisdictions.** This central repository of easily accessible information for taxpayers will facilitate their use of MAP.
- **An increasing number of jurisdictions have introduced or updated comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP.**

82. In addition to these broader changes, the monitoring process under stage 2 is underway. The reports for six jurisdictions that were peer reviewed in batch 1 and for seven jurisdictions that were peer reviewed in batch 2 were published in August 2019 and April 2020 respectively. A further eight reports in batch 3 have recently been discussed and approved by the FTA MAP Forum and the OECD/G20 Inclusive Framework, and are scheduled to be published by July 2020. These stage 2 reports offer a first glimpse into how well jurisdictions are implementing the specific recommendations issued to them during stage 1 of the peer review process.

83. To date, the results of this stage 2 monitoring process show that jurisdictions are making tangible progress. For the 21 jurisdictions reviewed so far in stage 2, many have improved their performance with respect to the prevention of disputes, the availability of and access to MAP, the resolution of MAP cases and the implementation of MAP agreements. This progress is also reflected in the developments set out below:

- In addition to bilateral treaty changes, the MLI was signed by 20 of the 21 jurisdictions and has been ratified by all signatories, which brings a substantial number of their treaties in line with the standard.
- All of the jurisdictions have either introduced or updated publicly available MAP guidance to provide more clarity and details to taxpayers.
- Most of the 21 jurisdictions decreased the amount of time needed to close MAP cases and a majority of these jurisdictions met or were close to the sought-after 24-month average timeframe to close MAP cases.
- Following legislative or policy related changes in some jurisdictions since stage 1, most of these jurisdictions are now able to implement MAP agreements notwithstanding their domestic time limits.

84. There is still work to be done to bring the tax treaties of reviewed jurisdictions in line with the Action 14 minimum standard. Many of the assessed jurisdictions have however made substantial

<sup>29</sup> [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm)

progress in updating their treaty networks, including through an action plan to prioritise tax treaty negotiations when the treaties are not expected to be modified by the MLI. Further insight into the progress made can be expected from the release of future stage 2 monitoring reports that follow up on any stage 1 recommendations.

**Table 1. MAP Jurisdictions with Completion Dates**

Stage 1 completed								Stage 1 ongoing		
1 <sup>st</sup> batch	2 <sup>nd</sup> batch	3 <sup>rd</sup> batch	4 <sup>th</sup> batch	5 <sup>th</sup> batch	6 <sup>th</sup> batch	7 <sup>th</sup> batch	8 <sup>th</sup> batch	9 <sup>th</sup> batch	10 <sup>th</sup> batch	
26 September 2017	15 December 2017	12 March 2018	30 August 2018	14 February 2019	24 October 2019	28 November 2019	24 February 2020	By June 2020	By December 2020	
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Aruba	Thailand
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Bahamas	Bahrain	Trinidad and Tobago
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	Bermuda	Barbados	United Arab Emirates
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	British Virgin Islands	Gibraltar	Viet Nam
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Jersey	Cayman Islands	Greenland	
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Faroe Islands	Kazakhstan	
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino	Macau (China)	Oman	
13 August 2019	9 April 2020	Spain	Portugal	Turkey	South Africa	Saudi Arabia	Serbia	Morocco	Qatar	
<b>Stage 2 completed</b>		By July 2020	By December 2020	By March 2021	By March 2021			Tunisia	Saint Kitts and Nevis	
<b>Stage 2 ongoing</b>						<b>Stage 2 not yet started</b>				

## 2020 Review of Action 14

85. The 2018 MAP statistics released in September 2019 show that much progress has been made:

- In 2018, jurisdictions closed 12% more cases than in 2017, and over 50% more than in 2016. Country data for 2018 shows a decrease in the inventory in about half of the jurisdictions.
- More than 80% of MAP cases dealing with transfer pricing issues were closed in 2018, compared to 75% for other cases. For only 2% of the MAP cases the closure was due to competent authorities not finding a mutual agreement.
- Several competent authorities became more responsive and cases that were in the inventory for many years are now coming to a positive conclusion.

86. There is, despite the positive overall developments, still room for improvement:

- The total number of cases received continues to increase at a higher pace than the number of cases resolved. Although half of the jurisdictions managed to decrease their inventory, the total inventory of cases keeps increasing with a total of about 5 000 cases for 2018, with about one third of all cases being over three years old.
- In addition, not all cases eligible for MAP enter into the MAP process.
- Country specific data also shows that there are important differences in outcomes and average completion times between jurisdictions, with some jurisdictions closing more than 25% of cases without an agreement and some others having an average completion time of 66 months.

87. Table 2 shows the issues currently under discussion to strengthen the minimum standard and further enhance MAP statistics. There are ongoing discussions on re-designing the peer review process to make it more risk focused, particularly in light of the fact that approximately 50 jurisdictions share over 90% of the total MAP caseload.

**Table 2. Topics under discussion for the 2020 review of Action 14**

Strengthening the Action 14 Minimum Standard	Increasing transparency
<ul style="list-style-type: none"> <li>• Increasing dispute prevention via greater use of bilateral APAs and more focus on training on international tax issues for auditors.</li> <li>• Ensuring availability and access to MAP by determining the limited number of cases in which access can be denied, introducing standardised documentation requirements for MAP requests and examining whether it would be appropriate to suspend tax collection during the MAP process.</li> <li>• Improving resolution of MAP cases by allowing multi-year resolution through MAP of recurring issues with respect to filed tax years.</li> <li>• Ensuring the implementation of all MAP agreements and bringing interest charges / penalties in proportion to the outcome of the MAP process.</li> </ul>	<ul style="list-style-type: none"> <li>• Reporting of additional statistics to provide a complete picture of the cases closed and the ones that remain in inventory.</li> <li>• Providing the full picture of a jurisdiction's efforts regarding dispute prevention and resolution by the addition of statistics on APAs.</li> </ul>

## Tax Certainty

88. In addition to the ongoing efforts to increase tax certainty under Action 14, the very first Tax Certainty Day<sup>30</sup> was held in September 2019 at the OECD's headquarters in Paris. Over 200 tax policy makers, tax administrations, business representatives and other stakeholders from over 50 countries participated. This event provided an opportunity for tax policy makers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move towards further improvements in both dispute prevention and dispute resolution. The discussions covered the full suite of tax certainty tools available to tax administrations, including co-operative compliance programmes, advance pricing agreements, ICAP, joint audit as well as MAP. It was also the forum where the 2018 MAP statistics were released.<sup>31</sup> The event also highlighted the relevance of the OECD's report on tax morale,<sup>32</sup> which explores the latest evidence concerning the importance of tax certainty as a determinant of the willingness of individuals and business to engage positively in the tax system, particularly in developing countries.
89. As a follow up to Tax Certainty Day, work has commenced in relevant focus groups on three specific projects to support greater tax certainty for MNE groups through: (i) improvements to advance pricing agreement (APA) processes, (ii) greater use of multilateral dispute resolution and APAs and (iii) the use of standard benchmarks in common transfer pricing situations.
90. As recognised by G20 Finance Ministers, maintaining and enhancing tax certainty brings benefits for taxpayers and tax administrations alike and is key in promoting investment, jobs and growth. This is particularly the case against the backdrop of the rapid digitalisation of the economy, the emergence of new business models, and increased internationalisation putting pressure on audit practices and driving changes in the international tax rules. Certain measures to enhance tax certainty discussed at the September 2019 event continue to be under consideration as part of the ongoing work to achieve a multilateral consensus-based solution to the tax challenges arising from digitalisation.

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<sup>30</sup> [www.oecd.org/tax/administration/oecd-tax-certainty-day.htm](http://www.oecd.org/tax/administration/oecd-tax-certainty-day.htm)

<sup>31</sup> [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm)

<sup>32</sup> <http://oe.cd/tax-morale>

# Annex A. Membership of the OECD/G20 Inclusive Framework on BEPS

(as of May 2020)

- |   |                      |  |
|---|----------------------|--|
| 1. Albania                              | 47. Faroe Islands    | 94. New Zealand                          |
| 2. Andorra                              | 48. Finland          | 95. Nigeria                              |
| 3. Angola                               | 49. France           | 96. North Macedonia                      |
| 4. Anguilla                             | 50. Gabon            | 97. Norway                               |
| 5. Antigua and Barbuda                  | 51. Georgia          | 98. Oman                                 |
| 6. Argentina                            | 52. Germany          | 99. Pakistan                             |
| 7. Armenia                              | 53. Gibraltar        | 100. Panama                              |
| 8. Aruba                                | 54. Greece           | 101. Papua New Guinea                    |
| 9. Australia                            | 55. Greenland        | 102. Paraguay                            |
| 10. Austria                             | 56. Grenada          | 103. Peru                                |
| 11. The Bahamas                         | 57. Guernsey         | 104. Poland                              |
| 12. Bahrain                             | 58. Haiti            | 105. Portugal                            |
| 13. Barbados                            | 59. Honduras         | 106. Qatar                               |
| 14. Belgium                             | 60. Hong Kong, China | 107. Romania                             |
| 15. Belize                              | 61. Hungary          | 108. Russian Federation                  |
| 16. Benin                               | 62. Iceland          | 109. Saint Kitts and Nevis               |
| 17. Bermuda                             | 63. India            | 110. Saint Lucia                         |
| 18. Bosnia and Herzegovina              | 64. Indonesia        | 111. Saint Vincent and the<br>Grenadines |
| 19. Botswana                            | 65. Ireland          | 112. San Marino                          |
| 20. Brazil                              | 66. Isle of Man      | 113. Saudi Arabia                        |
| 21. British Virgin Islands              | 67. Israel           | 114. Senegal                             |
| 22. Brunei Darussalam                   | 68. Italy            | 115. Serbia                              |
| 23. Bulgaria                            | 69. Jamaica          | 116. Seychelles                          |
| 24. Burkina Faso                        | 70. Japan            | 117. Sierra Leone                        |
| 25. Cabo Verde                          | 71. Jersey           | 118. Singapore                           |
| 26. Cameroon                            | 72. Jordan           | 119. Slovak Republic                     |
| 27. Canada                              | 73. Kazakhstan       | 120. Slovenia                            |
| 28. Cayman Islands                      | 74. Kenya            | 121. South Africa                        |
| 29. Chile                               | 75. Korea            | 122. Spain                               |
| 30. China (People's Republic of)        | 76. Latvia           | 123. Sri Lanka                           |
| 31. Colombia                            | 77. Liberia          | 124. Sweden                              |
| 32. Congo                               | 78. Liechtenstein    | 125. Switzerland                         |
| 33. Cook Islands                        | 79. Lithuania        | 126. Thailand                            |
| 34. Costa Rica                          | 80. Luxembourg       | 127. Trinidad and Tobago                 |
| 35. Côte d'Ivoire                       | 81. Macau, China     | 128. Tunisia                             |
| 36. Croatia                             | 82. Malaysia         | 129. Turks and Caicos Islands            |
| 37. Curaçao                             | 83. Maldives         | 130. Turkey                              |
| 38. Czech Republic                      | 84. Malta            | 131. Ukraine                             |
| 39. Democratic Republic<br>of the Congo | 85. Mauritius        | 132. United Arab Emirates                |
|   | 86. Mexico           |  |

40. Denmark  
41. Djibouti  
42. Dominica  
43. Dominican Republic  
44. Egypt  
45. Estonia  
46. Eswatini

87. Monaco  
88. Mongolia  
89. Montenegro  
90. Montserrat  
91. Morocco  
92. Namibia  
93. Netherlands

133. United Kingdom  
134. United States  
135. Uruguay  
136. Viet Nam  
137. Zambia

## List of Observer organisations to the OECD/G20 Inclusive Framework on BEPS

(as of 2020)

1. African Development Bank (AfDB)
2. African Tax Administration Forum (ATAF)
3. Asian Development Bank (ADB)
4. Commonwealth Association of Tax Administrators (CATA)
5. Centro Interamericano de Administraciones Tributarias (CIAT)
6. Cercle de Reflexion et d'Echange des Dirigeants des Administrations Fiscales (CREDAF)
7. European Bank for Reconstruction and Development (EBRD)
8. Inter-American Development Bank (IADB)
9. International Monetary Fund (IMF)
10. Intra-European Organisation of Tax Administrations (IOTA)
11. Pacific Islands Tax Administrators Association (PITAA)
12. United Nations (UN)
13. World Bank Group (WBG)
14. World Customs Organization (WCO)



## Annex B. Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy<sup>33</sup>

1. In light of the strong support from the Inclusive Framework on BEPS (IF) members for reaching a multilateral agreement with respect to Pillar One and Pillar Two, and drawing on the technical work of the Working Parties, comments from the public consultation, as well as the discussion at a number of Steering Group meetings, and recognising the concurrent work on a without prejudice basis on the two pillars, **members of the Inclusive Framework affirm their commitment to reach an agreement on a consensus-based solution by the end of 2020. In further developing the two Pillars, the Inclusive Framework has therefore agreed upon an outline of the architecture of a Unified Approach on Pillar One as the basis for negotiations and welcomed the progress made on Pillar Two (which follows the outline of Pillar Two in the PoW) contained in Annexes 1 and 2 of this statement.**
2. With respect to Pillar One, the IF endorses the Unified Approach (set out in Annex 1) as the basis for the negotiations of a consensus-based solution to be agreed in 2020. The proposed reallocation of taxing rights under Pillar One would require improved tax certainty, including effective and binding dispute prevention and resolution mechanisms. In the design and implementation of the solution, the IF also acknowledges the need to minimise complexity.
3. Members note the technical challenges to develop a workable solution as well as some areas where critical policy differences remain which will have to be resolved to reach an agreement. They note a December 3 letter from the US Treasury Secretary to OECD Secretary-General Gurría reiterating the US political support for a multilateral solution and including a proposal to implement Pillar One on a ‘safe harbour’ basis. Many IF Members express concerns that implementing Pillar One on a ‘safe harbour’ basis could raise major difficulties, increase uncertainty and fail to meet all of the policy objectives of the overall process. The IF members note that, although the final decision on the matter will be taken only after the other elements of the consensus-based solution have been agreed upon, resolution of this issue is crucial to reaching consensus.
4. IF Members also recognise there are a number of other issues where significant divergences will have to be resolved. These include (i) the binding nature of dispute prevention and resolution mechanisms as well as the scope of the dispute resolution mechanisms under Amount C; (ii) the suggestion by some members to weight the quantum of Amount A to account for different degrees of digitalisation between in-scope business activities (so-called “digital

<sup>33</sup> As agreed by the Inclusive Framework in January 2020: [www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf](http://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf).

differentiation”); and (iii) the suggestion by some countries to account for regional factors in computing and allocating Amount A (through regional segmentation). Members note that concerns have been expressed by some jurisdictions and businesses about the continued application of Digital Service Taxes (DSTs).

5. With respect to Pillar Two, the IF welcomes the significant progress the working parties have been able to achieve on the technical design of the Pillar noting that more work needs to be done, as described in more detail in Annex 2.
6. The IF notes the good progress on the economic analysis and impact assessment of Pillars One and Two. The IF calls for continued efforts to strengthen the analysis with caution due to data limitations and for more detailed analysis on the investment and growth impacts of the proposals before the end of March 2020.
7. In this environment, IF members reaffirm their commitment to bridge the remaining differences and reach agreement on a consensus-based solution by the end of 2020, noting that this agreement will depend on the further concurrent work which will be carried out on the two pillars. An important step will be its next meeting in early July, at which it is intended to reach agreement on the key policy features of the solution which would form the basis for a political agreement.

## Annex 1. Outline of the Architecture of a Unified Approach on Pillar One

### 1. Introduction

#### 1.1 Background

1. The tax challenges of the digitalisation of the economy were identified as one of the main areas of focus of the Base Erosion and Profit Shifting (BEPS) Action Plan, leading to the 2015 BEPS Action 1 Report.<sup>34</sup> For direct taxes, the Action 1 Report observed that while digitalisation could exacerbate BEPS issues, it also raises a series of broader tax challenges, which it identified as “nexus, data and characterisation”. The latter challenges, however, were acknowledged as going beyond BEPS, and were described as chiefly relating to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions. Possible options to address these concerns were identified, but none were agreed or ultimately recommended as part of the BEPS package. Instead, the Action 1 Report called for continued work in this area with a further report to be delivered by 2020.
2. In March 2017, this timeline was accelerated at the initiative of the G20 Finance Ministers, who asked the OECD/G20 Inclusive Framework on BEPS (hereafter Inclusive Framework), working through its Task Force on the Digital Economy (TFDE), for an Interim Report, which was delivered in March 2018 (the Interim Report).<sup>35</sup> It contained an in-depth analysis of new and changing business models and possible implications for the international tax system (in particular nexus and profit allocation rules). The Interim Report also repeated the conclusion from the Action 1 report that it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy. While members of the Inclusive Framework did not agree on the conclusions to be drawn from this analysis, they committed to continue working together on the development of a consensus-based long-term solution by 2020, with an update in 2019.
3. To advance progress towards a consensus-based solution, Inclusive Framework members made a number of proposals, some of which focused on the allocation of taxing rights through modifications to the rules on nexus and profit allocation,<sup>36</sup> and others on unresolved BEPS issues.<sup>37</sup> The Inclusive Framework agreed a Policy Note in January 2019 that grouped the proposals into two pillars – one of nexus and profit allocation and another on ensuring a minimum level of taxation – and contained an agreement to examine them as a possible basis for consensus.<sup>38</sup> On Pillar One, the Policy Note recognised that in the balance are: the allocation of taxing rights between jurisdictions; fundamental features of the international tax system, such as the traditional notions of permanent establishment and the applicability of the arm’s length

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<sup>34</sup> OECD (2015), *Addressing the Tax Challenges of the Digital Economy*, Action 1 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<sup>35</sup> OECD (2018), *Tax Challenges Arising from Digitalisation – Interim Report 2018*, Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<sup>36</sup> Namely, the “user participation” proposal, the “marketing intangibles” proposal and the “significant economic presence” proposal (see Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019, OECD).

<sup>37</sup> The Global anti-base erosion proposal (see Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019, OECD).

<sup>38</sup> *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note*, as approved by the Inclusive Framework on BEPS on 23 January 2019, OECD 2019.

principle; the future of multilateral tax co-operation; the prevention of unilateral measures; and the intense political pressure to tax highly digitalised MNEs.

4. Following the January Policy Note, the Inclusive Framework continued working on the proposals on a without prejudice basis, considering how the gaps between the different positions of jurisdictions could be bridged, and in March 2019 sought input from external stakeholders through a public consultation process.<sup>39</sup> Based on those inputs, the Inclusive Framework delivered a detailed Programme of Work (May PoW)<sup>40</sup> in May 2019. This was endorsed by the G20 Finance Ministers and Leaders in June 2019.
5. For Pillar One, the May PoW identified and allocated work to explore the different proposals articulated by members of the Inclusive Framework. It acknowledged the commonalities between the proposals, but noted that options available would need to be reduced and some gaps bridged in order to deliver a consensus-based solution on Pillar One. It further emphasised the need for an agreement on the outlines of the architecture of a unified approach by January 2020, to arrive at a consensus-based solution by the end of 2020.
6. Mindful of this goal, the Secretariat developed an approach to facilitate progress towards consensus on Pillar One (the so-called “Unified Approach”) which built on the commonalities identified in the PoW, taking account of the views expressed during the March public consultation, and the need to deliver a solution that is acceptable to all members of the Inclusive Framework. After discussions at the Steering Group of the Inclusive Framework (SGIF) the proposal was discussed by the TFDE and further in the SGIF meetings in September and October 2019, and subsequently released to the public for comments on 9 October 2019.<sup>41</sup>
7. In less than five weeks, the Secretariat received 304 submissions exceeding 3,000 pages, covering both technical and policy aspects of the proposal. Stakeholders also expressed their views at the November Public Consultation meetings organised in Paris and Manila, which were attended by more than 500 representatives from governments, business, civil society and academia. During these consultations, respondents raised concerns on certain technical aspects of the proposed approach, including its complexity. Addressing these concerns and working on issues such as tax certainty, simplified compliance, dispute prevention and resolution, and elimination of double taxation, is essential and this note identifies different work streams to achieve this. Nevertheless, many were supportive of its objectives and guiding principles, provided it would effectively prevent the proliferation of unilateral measures, avoid double taxation and excessive compliance burdens, and restore stability and certainty to the international tax system.

## **1.2 Taking the Unified Approach forward**

8. The Inclusive Framework welcomes the Secretariat’s work to develop a “Unified Approach” to Pillar One. This document contains an outline of the architecture of a unified approach to Pillar One to use as the basis for the negotiation of a consensus-based solution to be agreed by mid-2020. This document is complemented by a separate revised Programme of Work for Pillar One (revised

<sup>39</sup> The public consultation document was released on 13 February 2019 (Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019). The response from stakeholders was robust with more than 200 written submissions running to over 2,000 pages of written comments. Stakeholders had the opportunity to express their views at the public consultation meeting that was held in Paris on 13 and 14 March 2019, with over 400 attendees.

<sup>40</sup> OECD (2019), *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.

<sup>41</sup> Public consultation document, *Secretariat Proposal for a “Unified Approach” under Pillar One*, 9 October 2019 – 12 November 2019.

PoW) that defines the remaining work that needs to be undertaken by the end of 2020 (see Annex 1). This revised PoW replaces the earlier Pillar One PoW that the Inclusive Framework adopted in May 2019.

9. It is expected that any consensus-based agreement must include a commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions.

## 2. Overview

10. The unified approach outlined in this document is designed to adapt taxing rights by taking into account new business models and thereby expand the taxing rights of market jurisdictions (which, for some business models, is the jurisdiction where the user is located).<sup>42</sup> This is intended to re-stabilise the international tax system, assisted by enhanced dispute prevention and resolution procedures. To achieve these results, the approach encompasses three types of taxable profit that may be allocated to a market jurisdiction: these are described as Amount A, Amount B and Amount C.

- **Amount A** – A share of residual profit allocated to market jurisdictions using a formulaic approach applied at an MNE group (or business line) level.<sup>43</sup> This new taxing right can apply irrespective of the existence of physical presence, especially for automated digital services. It reflects profits associated with the active and sustained participation of a business in the economy of a market jurisdiction, through activities in, or remotely directed at that jurisdiction, and therefore constitutes the primary response of the unified approach to the tax challenges of the digitalisation of the economy.
- **Amount B** – A fixed remuneration based on the ALP for defined baseline distribution and marketing functions that take place in the market jurisdiction.
- **Amount C** – The return under Amount C covers any additional profit where in-country functions exceed the baseline activity compensated under Amount B. A further aspect of Amount C is the emphasis it gives to the need for improved dispute resolution processes. The scope of Amount C is still being discussed and considered as a critical element in reaching an overall agreement on Pillar One (see Section 5 below).

11. Whilst some overlaps are possible (see Section 3.4 below), each of these three types of taxable profit have a different scope. Further, unlike Amount A, Amounts B and C do not create any new taxing rights. The taxable profits potentially allocable to market jurisdictions under Amounts B and C are based on the existing profit allocation rules (including the reliance on physical presence), and reflect efforts to improve the practical application of the ALP. The formula-based approach (with no connection to the ALP) is therefore applied only in the case of Amount A.
12. The following sections describe in more detail the key components of this unified approach, including a number of important pending questions, on which further work will be required to arrive at a political agreement by mid-2020.

## 3. The New Taxing Right (Amount A)

13. As noted, the primary response to the tax challenges of the digitalisation of the economy is a new taxing right over a portion of residual profits allocable to market jurisdictions. This will be limited to large MNE groups in scope which meet a new nexus test in the market jurisdiction concerned (3.1.), and to the agreed quantum of profit represented by Amount A (3.2.). These parameters

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<sup>42</sup> For the purpose of this paper, user/market jurisdictions (henceforth “market jurisdictions”) are jurisdictions where an MNE group sells its products or services or, in the case of highly digitalised businesses, provides services to users or solicits and collects data or content contributions from them.

<sup>43</sup> The residual profit used for Amount A will be the result of simplifying conventions agreed on a consensual basis.

need to be designed in a way that is simple, avoids double taxation (3.3.), and can be designed to work alongside the ALP, including as represented by Amounts B and C (3.4.). To clarify the scope and possible impact of Amount A on MNE groups, a decision tree is available in Annex 2.

### **3.1 Scope and nexus**

14. This section outlines the scope of Amount A, which will be due only from businesses in scope (3.1.1.) that meet a new nexus test in the market jurisdiction concerned (hereafter, “eligible market jurisdictions”) (3.1.2.).

#### **3.1.1 Scope**

##### **Policy issue**

15. In a digital age, the allocation of taxing rights and taxable profits can no longer be exclusively circumscribed by reference to physical presence. Due to globalisation and the digitalisation of the economy, there are businesses that can develop an active and sustained engagement in a market jurisdiction, beyond the mere conclusion of sales, without necessarily investing in local infrastructure and operations. This means that the profits attributable to the physical operations that a business undertakes in a jurisdiction, in accordance with Articles 5, 7 and 9 of the OECD and UN Model Tax Conventions, may no longer be reflective of its sustained and significant engagement in the market.
16. Amount A seeks to respond to that situation, through the allocation of a portion of the residual profits of a business to market jurisdictions. The amount so allocated is over and above the arm’s length return that might be allocable to in-market activities such as baseline marketing and distribution, but is not an additional remuneration in respect of those same in-market activities.<sup>44</sup>
17. This policy issue is of relevance to businesses that can, with or without the benefit of local physical operations, participate in a sustained and significant manner in the economic life of a jurisdiction. Such participation is attributable to the nature of what is being supplied, how it is being supplied and the nature of the active interaction or engagement with market jurisdictions. Accordingly, the policy objective pursued by the new taxing right is most relevant to two broad sets of business.
18. First, it is of relevance to businesses that provide automated and standardised digital services to a large and global customer or user base. These are businesses that, in general, are able to provide digital services remotely to customers in markets using little or no local infrastructure. In these situations, they generally benefit from exploiting powerful customer or user network effects and generate substantial value from interaction with users and customers. They often benefit from data and content contributions made by users and from the intensive monitoring of users’ activities and the exploitation of corresponding data. In some models the customers may interact on an almost continuous basis with the supplier’s facilities and services. These characteristics are exhibited more strongly within certain types of digital service provision. However, the ability to develop an active and sustained presence in remote markets through the channels identified above can be considered of general applicability to businesses that provide an automated service on a digital platform.
19. Second, the policy issue outlined above has relevance to other businesses that generate revenues from selling goods or services, whether directly or indirectly, to consumers (i.e. consumer facing businesses). This is a broad set of businesses that includes traditional businesses that have been disrupted to a lesser degree by digitalisation, e.g. businesses that manufacture physical products, sell those products through physical distribution channels and support sales with less sophisticated marketing methods such as television and banner advertising. However, there is an increasing

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<sup>44</sup> See also paragraph 55 and 56 below.

use by these businesses of digital technologies to more heavily interact and engage with their customer base. That could be through building more sustained relationships with individual customers, through more targeted marketing and branding, and through the collection and exploitation of individual customer data. This is particularly true of businesses that are selling connected products and those using online platforms as a principal means of selling and marketing to consumers.

20. The fact that this customer interaction and engagement can be carried out from a remote location means that these businesses are increasingly able to have an active non-physical presence in market jurisdictions<sup>45</sup> through which they substantially improve the value of their products and increase their sales.

### Businesses in scope

21. Against this background, the businesses that will fall within scope of the new taxing right under Amount A will be those that fall into the two categories described below.

### Automated digital services

22. These services will cover businesses that generate revenue from the provision of automated digital services that are provided on a standardised basis to a large population of customers or users across multiple jurisdictions.<sup>46</sup> This would be expected to include the following non-exhaustive list of business models:

- online search engines;
- social media platforms;
- online intermediation platforms, including the operation of online marketplaces, irrespective of whether used by businesses or consumers;
- digital content streaming;
- online gaming;
- cloud computing services; and
- online advertising services.

23. Further work will be required on the definition of an automated digital service, especially for business models that deal mostly with other businesses, and on the distinction between such digital service businesses and businesses whose services might be delivered to a customer online but involve a high degree of human intervention and judgement. The latter types of business typically include professional services such as legal, accounting, architectural, engineering and consulting, which do not fall within scope of this definition.

### Consumer-facing businesses

24. This would cover businesses that generate revenue from the sale of goods and services of a type commonly sold to consumers, i.e. individuals that are purchasing items for personal use and not for commercial or professional purposes.

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<sup>45</sup> This issue is also potentially relevant in situations where the MNE group has a physical taxable presence in the market jurisdiction. This is because existing rules (Articles 5, 7 and 9 of the OECD and UN Models) do not allocate profit to that taxable presence based on the group's profit or on its overall engagement with that market jurisdiction, which can also be carried out from a remote location.

<sup>46</sup> Including revenue associated with the monetisation of data.

25. This would bring into the scope of the new taxing right not only businesses that sell goods and services directly to consumers, but also those that sell consumer products indirectly through third-party resellers or intermediaries that perform routine tasks such as minor assembly and packaging.
26. Businesses selling intermediate products and components that are incorporated into a finished product sold to consumers would be out of scope, subject to a possible exception for intermediate products or components that are branded and commonly acquired by consumers for personal use.
27. Finally, the intention is to bring into scope businesses that generate revenue from licensing rights over trademarked consumer products and businesses that generate revenue through licensing a consumer brand (and commercial know-how) such as under a franchise model.
28. For example, the definition of a consumer-facing business would be expected to bring into scope the following non-exhaustive list of businesses:
  - personal computing products (e.g. software, home appliances, mobile phones);
  - clothes, toiletries, cosmetics, luxury goods;
  - branded foods and refreshments;
  - franchise models, such as licensing arrangements involving the restaurant and hotel sector; and
  - automobiles.
29. Further work will be needed on the definitions of some of the key terms identified above.

### Specific considerations

30. Extractive industries and other producers and sellers of raw materials and commodities will not be within the consumer-facing definition, even if those materials and commodities are incorporated further down the supply chain into consumer products. Taxes on profits from the extraction of a nation's natural resources can be considered to be part of the price paid by the exploiting company for those national assets, a price which is properly paid to the resource owner. Extractives and other commodities such as agricultural and forestry products are generally generic goods which are sold, and whose price is determined, on the basis of their inherent characteristics. For example, the sale of sacks of green coffee beans will not be within the scope of the new taxing right, whereas the sale of branded jars of coffee will be.
31. Most of the activities of the financial services sector (which includes insurance activities) take place with commercial customers and will therefore be out of scope. However, there is also a compelling case for the consumer-facing business lines such as retail banks and insurance within financial services businesses to be excluded from scope given the impact of prudential regulation and, for example, bank/insurance licensing requirements that are designed to protect local deposit/policy holders in the market jurisdiction. This typically ensures that residual profits are largely realised in local customer markets and therefore justifies that these activities should be excluded from scope. Consideration might, however, be given to whether there are any unregulated elements of the financial services sector or related to the sector which require special consideration, such as digital peer-to-peer lending platforms.
32. The effect of nearly all bilateral tax treaties is to assign exclusive taxing rights over the profits of an enterprise from the operation of ships and aircraft in international traffic to the state of residence of the enterprise. This long-standing practice has its own rationale, and it is therefore considered inappropriate to include airline and shipping businesses in the scope of the new taxing right.

### Interaction with other elements of the Amount A design



33. There will be many groups with diverse activities, some of which will meet the definitions above, some of which will not. This may be addressed by the segmentation of those activities into different business lines to which Amount A would be separately applied. Further work will be required to determine what level of segmentation is practicable and verifiable.
34. Even within business lines, sales of a product or service may be made to both consumers and business customers. An example would be a seller of personal computers whose customers include small businesses and consumers. As stated in paragraph 24, if the product is of a type that is commonly sold to consumers it would be expected to fall within the definition of a consumer-facing business.

### Thresholds

35. In order to ensure that the compliance and administrative burdens are proportionate to the intended benefits, the new taxing right will operate with a number of thresholds. First it will be limited to MNE groups that meet a certain gross revenue threshold. This threshold could, for instance, be the same as for Country-by-Country (CbC) reporting pursuant to BEPS Action 13 (i.e. MNE groups with gross revenue exceeding EUR750M). This avoids unnecessary compliance costs for smaller businesses and also provides a possible infrastructure for filing and exchange of information. Second, even for those MNE groups that meet the gross revenue threshold a further carve-out will be considered where the total aggregated in-scope revenue is less than a certain threshold. Third, consideration will be given to a carve-out for situations where the total profit to be allocated under the new taxing right would not meet a certain *de minimis* amount.<sup>47</sup> Finally, the effective computation of Amount A (see paragraph 46 below) and application of the new nexus rule (see paragraph 37 below) will involve additional thresholds. An overview of the impact and combination of these multiple thresholds is available in Annex B.

#### 3.1.2 Nexus

36. For MNEs in scope a new nexus rule will be created based on indicators of a significant and sustained engagement with market jurisdictions. The rule will be contained in a standalone rule to limit any unintended spill-over effects on other existing tax or non-tax rules. The implementation and administration of the new nexus rule will be designed so as to eliminate (or limit to a bare minimum) any filing and other tax related obligations arising from the allocation of the new taxing right to multiple market jurisdictions. This will include exploration of simplified reporting and registration-based mechanisms (such as a “one stop shop”) and exclusive filing in the ultimate parent jurisdiction (following the approach used for Action 13 CbC reporting).
37. The generation of in-scope revenue in a market jurisdiction over a period of years would be the primary evidence of a significant and sustained engagement. The revenue threshold would be commensurate with the size of a market, with an absolute minimum amount to be determined. The final agreement will include precise figures for the amount of the threshold.
38. For automated digitalised businesses in scope, the revenue threshold will be the only test required to create nexus. This recognises the fact that in a digital age, with scale without mass and unparalleled reliance on intangibles, the supply of automated digital services generally involves the level of active and sustained engagement with customers described above, even when the service is provided remotely.
39. For other in-scope activities, e.g. the sale of tangible goods, the proposal will not create a new nexus if the MNE is merely selling consumer goods into a market jurisdiction without a sustained interaction with the market. This recognises that the cross-border sale of tangible goods into a

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<sup>47</sup> For example, this might cover the situation of a large, domestically-focused business with a minimal level of foreign income.

market jurisdiction does not in itself amount to a significant and sustained engagement in that jurisdiction. Further work will be required to explore the use of possible additional or “plus” factors, such as the existence of a physical presence of the MNE in the market jurisdiction or targeted advertising directed at the market jurisdiction. The overriding objective, in combination with the different thresholds, is to avoid encompassing mere sales and to avoid or minimise additional compliance burdens, especially in situations where an MNE is not already present in a market or has not specifically targeted that market from abroad.

40. The rules will also be designed to avoid spill-over effects on any other (existing) nexus rule so that the new nexus remains exclusively applicable to the new taxing right (and cannot be used as a basis for creating a nexus for other taxes, whether income or non-income taxes, customs duties nor in any other non-tax context).
41. The future work will design clear and administrable rules that will source revenues to market jurisdictions for the purposes of establishing the nexus revenue threshold in, and also for the purposes of allocating profits to, that jurisdiction. This work will take into account the manner in which different automated digital services and consumer-facing businesses operate in market jurisdictions. It is of particular importance to deliver sourcing rules to cover certain digital transactions, for example by sourcing the revenue from online advertising services where the users (“eyeballs”) are located and revenue from other in-scope digital services where they are consumed. It will also be necessary to specify how revenues are sourced when products are sold via intermediaries before reaching their ultimate consumer.

### **3.2. Quantum of Amount A**

42. This section outlines the calculation of Amount A, which is largely formula-based and excludes business activities in scope that do not exceed a certain level of profitability (3.2.1.). It also discusses the allocation key that will be used to distribute Amount A among the eligible market jurisdictions (3.2.2.).

#### **3.2.1 The tax base**

43. In contrast to the traditional transfer pricing “separate entity” approach, the calculation of Amount A will be based on a measure of profit derived from the consolidated group financial accounts. While MNE groups produce consolidated financial statements under different accounting standards, most of the variations identified between different accounting standards are timing differences which do not affect the aggregate amount of income reported over time. This means that the type of adjustments required to harmonise the use of different financial accounting standards across different jurisdictions are likely to be kept to a minimum and relate only to material items, meaning differences that are significant in amount and duration. It also assists the calculation of a measure of profit on a broadly consistent basis across jurisdictions.
44. Among the different profit level indicators available, the public consultation process and various discussions with governments, taxpayers and advisors, indicate that profit before tax (“PBT”) is the preferred profit measure to compute Amount A as, in most cases, it most closely approximates the measure of profits by reference to which corporate income tax is normally levied. It will be applied consistently from year to year. To ensure that losses are brought into consideration, these rules will apply to both profits and losses, and will include loss carry-forward rules.<sup>48</sup>
45. Where the out-of-scope revenues of a multinational group are material, segmented accounts may be required to capture only in-scope business segments in the allocation of Amount A profits. In some cases, segmentation among multiple regions and/or in-scope business lines may be

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<sup>48</sup> The design of the loss rules will explore how to take account of pre Amount A regime losses, as well as losses that arise after the inception of the Amount A taxing right.

required where a taxpayer's profitability varies materially between different business lines or regions. The rationale and technical feasibility of regional segmentation will be further explored for a policy decision to be made on its viability. At the same time, consulted parties have also emphasized that the design of any segmentation rules must balance the need for simplicity and accuracy and take account of compliance burdens. Submissions in the public consultation process also asked for consideration of *de minimis* thresholds as well as the ability for taxpayers to elect into business line segmentation among in scope businesses (e.g. across regions or products).

46. Finally, the calculation of Amount A is based on a formula designed to identify the portion of the residual profits that is to be allocated to eligible market jurisdictions, as Amount A applies only to the portion of profit exceeding a certain level of profitability. As part of this formula, the quantum of Amount A could also be weighted to account for different degrees of digitalisation between in-scope business activities (so-called "digital differentiation"). Further negotiation could explore the level of profitability above which Amount A applies, and the portion of the residual profits that goes to market jurisdictions, taking into consideration the interest of small and large market economies. Further consideration will explore whether the relative portion of the profit allocated to the market under Amount A should be the same across all in-scope businesses or whether, to reflect the different degrees of relevance of the policy rationale, there should be different percentages applied for different businesses. The possibility of providing returns to market jurisdictions based on identified activities performed remotely or for the deemed performance of some activities in those jurisdictions as possible alternatives to a higher allocation of Amount A will also be explored.

### 3.2.2 *The allocation key*

47. After determining the quantum of Amount A, it will be necessary to distribute Amount A among the eligible market jurisdictions based on an agreed allocation key. This allocation key will be based on sales of a type that generate nexus (see section 3.1.2. for the discussion on nexus revenue threshold). Specific revenue-sourcing rules to support its application by reference to different business models will need to be developed. For example, for online advertising such rules will, when possible, deem revenue to arise in the jurisdiction where the advertising is viewed rather than the jurisdiction (if different) where the advertising is purchased. Revenue sourcing will also be considered to address sales through independent distributors in order to avoid possible distortions.

### 3.3. ***Elimination of double taxation***

48. Where profits are now allocated on the basis of the ALP, Amount A is an overlay to that system. As the ALP already allocates the full MNE group profit (which is, thus, already subject to tax), it is essential that there are appropriate mechanisms to eliminate double taxation. Common approaches to addressing international juridical double taxation, in both tax treaties and domestic law, are for one jurisdiction (the residence jurisdiction, where the owner of the income is tax resident) to exempt the income from tax, or to provide a credit against its own tax for the tax paid in the other jurisdiction (the source jurisdiction, where the income is treated as arising). Additionally, to eliminate economic double taxation resulting from transfer pricing adjustments, tax treaties typically oblige the jurisdiction in which the associated enterprise is resident to make a corresponding adjustment to the profits it taxes in the hands of that enterprise (provided it agrees with the transfer pricing adjustment in the first jurisdiction).
49. The application of those mechanisms to eliminate double taxation resulting from Amount A is not straightforward, however, as the calculation of Amount A applies to the profits of an MNE group (or business line) as a whole, rather than on an individual entity and individual country basis.
50. In particular, it will not be possible to use a corresponding adjustment approach (similar to the provisions in Article 9(2) of the OECD or UN Model Tax Convention) to eliminate double taxation

in all (or many) cases, as Amount A is not premised on there being identifiable transactions between particular group entities.<sup>49</sup> This will also prevent any unintended impact and issues with custom duties applied to imported goods.

51. Further, while it seems possible that existing domestic and treaty mechanisms (i.e. the credit or exemption method) could continue to relieve international juridical double taxation effectively, it will be necessary to determine which jurisdiction will have an obligation to eliminate any resulting double taxation; and, if there is more than one jurisdiction, the quantum of the relief to be provided by each. It is also critical to take into account the fact that Amount A will affect multiple jurisdictions that may not have existing bilateral treaties between them. This, in turn, requires addressing gaps in treaty coverage (as will be explained in Section 6 below) and the identification of the particular member(s) of an MNE group which are to be treated as owning the deemed residual profits corresponding to the profits taxable in market jurisdictions under Amount A.
52. The unified approach will therefore establish approaches to identifying these taxpayer entities in a way that is both administrable and fair.<sup>50</sup> This will involve further work on: approaches to identify the taxpayer entities by reference to measures of profitability; methods for allocating Amount A liabilities between these entities where there is more than one within a group (including the feasibility of pro-rata allocations); and assessing the extent to which identifying the relevant taxpayer in this way would allow existing mechanisms for eliminating double taxation (the credit or exemption method) to continue to operate effectively.

### **3.4. Interactions and potential for double counting**

53. As set out above, Amount A is part of the three-tier profit allocation system that makes up the unified approach. In practice, this means that an MNE group would first apply the ALP-based profit allocation rules (including Amounts B and C) to determine an initial allocation of profit between different entities and hence between jurisdictions. The relevant Amount A of in-scope MNE groups would then be allocated to eligible market jurisdictions as an overlay or partial override to the ALP-based profit allocation rules.
54. It is therefore important to identify any possible interactions between Amounts A, B and C that are not appropriately dealt with by the mechanisms to eliminate double taxation described above (see 3.3 above). These mechanisms to eliminate double taxation are the primary way in which potential interactions between Amounts A, B and C are addressed.

#### **3.4.1. Interactions between Amounts A and B**

55. The three-tier profit allocation system may result in an allocation of both Amount A and Amount B to a market jurisdiction. However, given that Amount A is designed to remunerate market jurisdictions with a portion of the relevant residual profits of that MNE group, and Amount B is designed to remunerate a market jurisdiction with a fixed return for baseline distribution and marketing activities, there will be no significant interaction between Amounts A and B.

#### **3.4.2. Interactions between Amounts A and C**

56. An important question is whether double counting may arise where both Amount A and Amount C are allocated to a market jurisdiction because the MNE group already has a taxable presence in that jurisdiction. In such a case, it is suggested that instances of double counting might arise if

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<sup>49</sup> The system of primary and corresponding adjustments under Article 9 is premised on an underlying transaction, which is absent in the Amount A charge. Instead, other methods based on specific deductions or allowances that are not premised on identifiable transactions could be contemplated, such as exemption methods.

<sup>50</sup> One way to achieve this would be to take into account where the profits reallocated under Amount A are recorded in the existing system (or where located under the ALP, before application of Amount A).

there is an overlap between Amounts A and C. Areas in which possible double counting might need to be considered relate to: (1) marketing intangibles in the local jurisdiction; (2) comparability adjustments under the ALP; and (3) uncommon interpretations of the ALP. While further consideration of these possible instances of double counting will be required, no instances of possible double counting should give rise to double taxation given the application of mechanisms to eliminate double taxation (see 3.3 above).

57. For an MNE group in scope and liable for Amount A to market jurisdictions, the interaction between Amount A and Amount C may occur each time its activities in scope are subject to a transfer pricing re-assessment. For example, a transfer pricing re-assessment would change the profitability of separate entities within the group, which has been used to identify those entities that would have to pay Amount A, and the jurisdictions that will have to give relief from double taxation. Further work will be undertaken to identify the interaction between Amount A and Amount C.

#### **4. The fixed Return for Defined Baseline Distribution and Marketing Activities (Amount B)**

58. Amount B aims to standardise the remuneration of distributors (whether constituted as a subsidiary or a traditional permanent establishment) that buy products from related parties for resale and, in doing so, perform defined “baseline marketing and distribution activities”. It proposes a fixed return to distributors that fall within this definition – a fixed return that is based on the ALP (i.e. Amount B would not be optional nor a safe-harbour). Against this backdrop, Amount B would seek to simplify the computation of the return to activities within scope, and reduce disputes and uncertainty about the pricing of certain types of distribution activities. The overall purpose of Amount B is therefore to:
- achieve a greater degree of simplification in the administration of transfer pricing rules for tax administrations and lower compliance costs for taxpayers; and
  - enhance tax certainty about the pricing of transactions, which should lead to a reduction of controversies between tax authorities and taxpayers.
59. Ultimately, it is expected that this fixed return model will allow tax administrations and taxpayers to make more efficient use of resources, focusing on high-risk cases with the potential to raise substantial tax revenue.
60. The fixed return a market jurisdiction would receive through Amount B for baseline distribution and marketing activities would deliver a result that is based on the ALP. To that aim, the work will explore how to account for different functionality levels, as well as differentiation in treatment between industries and regions. The design of Amount B will need to ensure the baseline distribution and marketing activities are only remunerated in Amount B and not (again) in Amount C. This is to be achieved by clear definitions of what constitute baseline activities.
61. The definition of baseline distribution activities will likely include distribution arrangements with routine levels of functionality, no ownership of intangibles and no or limited risks. Defining what entities and activities would qualify could be achieved by using a positive definition based on qualitative and quantitative factors, together with a list of activities and entities that would be out of scope. The transfer pricing distribution regimes of some countries could provide useful guidance.
62. Reaching agreement on the amount of the fixed percentage will require countries to make trade-offs between strict compliance with the arm’s length principle and the administrability of Amount B. That is, while the fixed percentage approach may not encapsulate all the facts and circumstances of each individual case, it does have the potential to significantly simplify the determination of the return for the activities within its scope.

63. The expectation is that treaty changes will not be required to implement the Amount B regime, which should simplify its implementation. Rather, as the Amount B regime, as set forth in section 4, is expected to be in accordance with the ALP, existing treaty provisions should suffice to support its adoption.
64. Accordingly, a number of key technical aspects of Amount B will need to be progressed so that member countries of the Inclusive Framework are in an informed position to support its implementation. Key technical matters to be advanced as part of the revised PoW include:
- definition of baseline activities;
  - consideration of an appropriate profit level indicator;
  - structuring the return as a fixed percentage at an agreed profit level (e.g. the median);
  - utilisation of benchmarking studies based on publicly available information to support the amount of the fixed percentage; and
  - the degree to which there may need to be a differentiation in treatment between industries and regions in order to remain in broad conformity with the ALP.

## 5. Tax Certainty: Dispute Prevention and Resolution

65. Securing tax certainty is an essential element of the unified approach and is a fundamental part of the design of Pillar One. This section provides a preliminary analysis of how Pillar One would increase tax certainty (see sections 5.1. and 5.2.). The work will include the exploration of innovative and inclusive processes to provide such tax certainty to taxpayers and tax administrations alike. The detailed features and scope of these new processes will be further developed as intensive work progresses. Work on tax certainty will require exploring a number of possible options, drawing as much as possible on existing models of multilateral processes – and taking into account domestic legal constraints – and ensuring an inclusive and fair process for both developed and developing countries. Agreement on tax certainty is considered to be critical to the overall agreement, noting that the scope of enhanced dispute resolution is a key component of Pillar One.

### 5.1 A new framework for dispute prevention and resolution for Amount A

66. The prevention of disputes with respect to Amount A will therefore begin with the design of clear and simple rules.
67. Compared with the arm's length principle, the new approach adopts a different method for the allocation of taxing rights, based on a globally agreed formula. While the risk of disputes under that approach can be reduced using mechanical rules based on clearly articulated formulae and detailed guidance, it cannot be eliminated.
68. It would be impractical (if not impossible) to allow all affected tax administrations to assess and audit an MNE's calculation and allocation of Amount A and to address potential disputes through existing bilateral dispute resolution mechanisms (however much they have already been improved and might be enhanced) because they generally operate after the event. Any dispute between two jurisdictions over Amount A will likely affect the taxation of Amount A in multiple jurisdictions. Resolving such differences under the existing bilateral system would therefore require multiple mutual agreement procedures involving several jurisdictions where the MNE has meaningful activities or sales, an outcome which would be uncoordinated, inefficient and lengthy.
69. To avoid such an outcome, the new approach would be supported by a clear, administrable and binding process for early dispute prevention. Work will be undertaken to fully develop the details of such a process.

70. It should provide early certainty, before tax assessments are made, to prevent disputes from arising. Certainty should be available over all aspects of Amount A, such as whether an MNE is in scope, the correct delineation of business lines, allocation of central costs and tax losses to business lines, whether a nexus exists in a particular jurisdiction, and identification of the relieving jurisdictions for purposes of eliminating double taxation.
71. It is agreed to explore an innovative approach under which tax administrations of the IF would provide early tax certainty for Amount A, for instance through the establishment of representative panels which would carry on a review function and provide tax certainty. This would require work on the process and governance of such panels to ensure appropriate representation of Members and effective, transparent, and inclusive processes.
72. The design of the process would also need to address the challenge of delivering binding agreements by all tax administrations.
73. Tax administrations' resource constraints will be a factor in the design of these new approaches to dispute prevention. On the other hand, synergies from a multilateral process will ensure that the total resources applied are less than would be needed under the existing separate and uncoordinated system. The new process could provide assistance to panel members from tax administrations with resource constraints – for example through a body of experts, which could also provide assistance with practical aspects of the review process. The new approach will consider the role for the tax administration of the ultimate parent entity and how to secure tax certainty in a timely manner, as well as options for preventing disputes where an MNE has not opted in to the early certainty process.
74. Further, the use of standardised administrative measures (e.g. for information reporting, filing of returns and collection of tax) would help to ensure consistent application and would minimise compliance and administration costs. Detailed guidance on the application of Amount A, reinforced by feedback from the new framework for dispute prevention and resolution outlined below, will also play an important role in preventing disputes.
75. Finally, in the event that a dispute might arise that is not already dealt with by the early dispute prevention process described above, appropriate mandatory binding dispute resolution mechanisms will be developed.<sup>51</sup>

## **5.2 Tax certainty and dispute prevention and resolution for Amounts B and C**

76. There is agreement that a new effective and binding dispute prevention and resolution mechanisms is required for amount A as described above in Section 5. The core of the work on tax certainty and dispute prevention and resolution for Amounts B will be to limit disputes by using fixed rates of return on baseline distribution and marketing activities.
77. As noted in Section 4 above, under the new approach, the design of Amount B will remunerate the market jurisdiction for routine “baseline” marketing and distribution activities, not for any other activities, and provide for a fixed return. Thus disputes with respect to Amount B while they can still arise, would be limited by the provision of clear and detailed guidance on the scope of Amount B. The work on Amount B will address appropriate dispute resolution mechanisms to the extent they are required.
78. However, there are currently differing positions on the breadth of application of new enhanced dispute resolution mechanisms to other transfer pricing and permanent establishment disputes that will continue to arise. Nevertheless, there is a need to explore innovative approaches that could be used in this regard including exploring the possibility of using the process, or aspects thereof, that may be put in place for providing tax certainty with respect to Amount A. All Inclusive

<sup>51</sup> This will require reaching consensus on such dispute resolution mechanism.

Framework members recognise reaching agreement on the breadth of the application of new enhanced dispute resolution is critical and agree to return to the matter as part of arriving at a consensus-based solution in 2020.

79. As some jurisdictions may have domestic obstacles to the adoption of mandatory binding arbitration, it may be necessary to consider mechanisms that do not present the same issues and that can be adopted by all members of the Inclusive Framework.
80. As with arbitration, the intent of having mandatory and binding dispute resolution procedures is not to rely on them as a main way of resolving disputes. Rather, they are presented chiefly as a backstop, providing a strong incentive for competent authorities to resolve disputes in a timely way under MAP.
81. Enhancing MAP is also an important aspect of the work on tax certainty and dispute prevention and resolution. This could be done by work planned for the 2020 review of BEPS Action 14, as well as other ongoing work to improve the effectiveness and efficiency of multilateral MAP.
82. In addition, specific enhancing measures to be enacted domestically could be explored in the context of Amount C. For example:
  - jurisdictions could explore limiting the time during which any adjustments with respect to Amount C could be made; and
  - collection could be limited or suspended for the duration of any disputes related to Amount C subject to conditions to be agreed.

## 6. Implementation and Administration

83. This Outline is presented on a without prejudice basis, including the consideration of the alternative global safe harbour system in section 6.2.

### 6.1 General

84. Implementing the new approach will require changes to domestic legislation and to tax treaties to remove existing treaty barriers. If different approaches could be envisaged to streamline the implementation of these changes, a new multilateral convention could be negotiated to establish a new multilateral framework for in-scope MNEs to ensure that all jurisdictions can implement the unified approach consistently and at substantially the same time.
85. Unlike the Multilateral Instrument used to implement some BEPS measures, a new multilateral convention would apply between jurisdictions that do not currently have a bilateral treaty, supersede the relevant provisions of existing treaties concluded to eliminate double taxation and contain all the international rules needed to implement the unified approach (scope, nexus, profit allocation, elimination of double taxation, and dispute resolution) that are central to achieving tax certainty. This approach would better facilitate the coordinated, consistent and effective implementation that is necessary between multiple jurisdictions and would close the gaps in treaty coverage. The application of the different elements of the package (Amounts A, B and C) in relation to jurisdictions that are not currently covered by a relevant bilateral tax treaty, and the required commitment by non-treaty jurisdictions, are issues that will need to be further explored.
86. The conclusion of a true multilateral convention however requires a strong impetus at the highest political level to achieve acceptance from a critical mass of jurisdictions.<sup>52</sup> The implementation of the new taxing right and the allocation of additional profits to the market jurisdiction should also be contingent on the acceptance of the new dispute prevention and resolution rules described above. Meeting this challenge will be necessary not only to address the challenges arising from the

<sup>52</sup> Further work will be required to determine the nature of a critical mass for these purposes, and the consequences of that critical mass not including all jurisdictions.



digitalisation of the economy, but also to strengthen and ensure the future sustainability of the existing consensual framework to eliminate double taxation.

87. As noted above, it is also important to build the appropriate framework and infrastructure to support a consistent and efficient administration of the unified approach, including its tax certainty measures. This would be aimed at keeping compliance and administrative costs to a minimum, including in situation involving multiple jurisdictions (Amount A), and ensure that appropriate resources can be made available for the administration of the unified approach.
88. It is recognised that the new taxing right creates a number of novel compliance and implementation requirements (e.g. segmentation). In those circumstances, it may be appropriate to introduce the relevant requirements on a phased basis, and/or possibly adopting a simplified approach to the compliance requirements for a designated initial period through transition rules.
89. It is also expected that any consensus-based agreement must include a commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions, and not adopt such unilateral actions in the future. The successful implementation of the unified approach hinges on the withdrawal of such actions because their continued application would challenge the legitimacy of the unified approach and undermine the future stability of the agreed framework.

## **6.2 Further consideration of alternative global safe harbour system**

90. In light of the safe harbour proposal referred to in the Statement by the OECD/G20 Inclusive Framework on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy, an alternative approach to Pillar One implementation will be considered. Under this alternative global safe harbour system, an electing MNE group would agree, on a global basis, to be subject to Pillar One. As part of this consideration, the PoW sets forth a work plan by which the IF and relevant working parties give due consideration to the critical design options for such an alternative global safe harbour system. The following is a non-exhaustive list of considerations to be addressed by the IF and relevant working parties:
  - Whether there are appropriate potential *scope* modifications to amount A to reflect the nature of this alternative global safe harbour system;
  - The need for operating and administration rules for an alternative safe harbour approach;
  - Appropriate mechanisms to avoid double taxation in light of a safe harbour approach;
  - Implications for unilateral measures in the context of the specific safe harbour proposal described in this section; and
  - Behavioural implications for taxpayers and jurisdictions.

## Annex 2: Programme of Work to Develop a Consensus-Based Solution to Pillar One Issues

1. This Annex sets out the remaining work that needs to be undertaken to further develop the solution described in the *Outline of the Architecture of a Unified Approach on Pillar One*. It is intended to replace the earlier Programme of Work on Pillar One issues adopted by the Inclusive Framework in May 2019.<sup>53</sup>
2. This revised Programme of Work is organised in the following sections: 1. the list of remaining work that needs to be undertaken in order to deliver a consensus-based solution by the end of 2020, 2. the related timeline to meet that deadline, and 3. the allocation of the work to appropriate subsidiary bodies.

### 1. Remaining work

3. As noted in the *Outline of the Architecture of a Unified Approach on Pillar One*, the remaining technical and policy issues to be resolved under Pillar One have been grouped into 11 work streams, namely:
  - I. **Scope of Amount A** – The need to address definitional issues for the scope for Amount A (e.g., consumer-facing businesses, automated digital services), develop appropriate revenue and profit thresholds, consider and define carve-outs, examine interactions with other elements of Amount A design and thresholds, and consider whether there are implications for the scope of Amount A of implementing Pillar One on a ‘safe harbour’ basis<sup>54</sup> (see work stream XI below).
  - II. **New nexus rules and related treaty considerations for Amount A** – The need to define a new nexus rule based on indicators of significant and sustained engagement with market jurisdictions, which could in some circumstances be unconstrained by physical presence. However, the mere conclusion of sales of tangible goods in the market jurisdiction would not create the new nexus. In addition, this work will consider how to streamline filing obligations and avoid duplication; explore interactions with existing treaty provisions; develop a standalone rule for nexus to avoid unintended spill over effects; and develop revenue-sourcing rules (see work stream V. below).
  - III. **Tax base determinations** – The need to assess the materiality of differences in financial accounting standards and explore mechanisms to address them; confirm that a profit before tax figure is preferred over other profit level indicators and examine whether potential adjustments to the profit before tax in the consolidated financial accounts are required to be made; consider rules for business line and regional segmentation for the purposes of computing Amount A, explore the materiality and impact of regional differences in profit margins; and assess administrability of using simplification measures to limit the burden of the new rules on tax administrations and taxpayers alike while retaining a principle-based approach. This work will also address issues and options in connection with the design of rules for the treatment of losses under Amount A including the calculation and definition of losses and the design of carry-forward rules that govern how losses can be offset against future profits.

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<sup>53</sup> OECD (2019), *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris.

<sup>54</sup> i.e. Where an electing MNE group would agree, on a global basis, to be subject to Pillar One.

- IV. Quantum of Amount A – The need to conduct economic analysis to inform the decision on the appropriate thresholds for the percentage(s) of profit that represents the deemed residual return, and the design of the formula (e.g. portion of residual profit allocable to market jurisdictions). This work will also explore digital differentiation and the possibility of resulting adjustments to the formulaic computation of Amount A, including different percentages applied to different businesses, and/or providing returns to market jurisdictions based on identified activities performed remotely or for the deemed performance of some activities in those jurisdictions.
- V. Revenue sourcing under Amount A – The need to design source rules to allocate revenues to specific market/user jurisdictions by identifying principles and objectives as well as considering relevant proxies that could support its application to different business models (e.g. multi-sided business models such as online advertising). This work is relevant for both nexus and profit allocation rules, and will also explore the practical and administrative issues that may arise in establishing and administering revenue sourcing rules, including whether and in what circumstances to look through independent distributors and how to do so.
- VI. Elimination of double taxation under Amount A – The need to address issues and options in connection with the elimination of double taxation for Amount A such as identification of the taxpayers deemed to own the taxable profit corresponding to Amount A ; the design of new methods (update of existing rules) to eliminate double taxation; and the need for new rules in the context of a new multilateral convention to provide a relief-of-double-taxation mechanism to address gaps in existing bilateral treaty relationships.
- VII. Interactions between Amounts A, B and C and potential risks of double counting – The need to address issues and options in connection with the interactions between Amounts A, B and C, with a focus on potential double counting issues such as the design of mechanisms to eliminate any double taxation including by adjustment of Amount A. This work will also include the design of Amount A so that there is no impact or influence on other taxes (e.g. Value Added Tax, excise taxes, customs duty, etc.); the design of Amount B so it only remunerates baseline distribution and marketing activities; and identification of any other interactions, including with unrelated articles of bilateral double taxation agreements.
- VIII. Features of Amount B – The need to address issues and options related to the design features of Amount B such as definition of “base line” distribution activities; determination of the quantum including use of fixed percentage(s); identification of an appropriate profit level indicator; the use of publicly available information for various industries and regions; considering the impact of regional differences in profit margins across regions and industries; the adoption of exemptions; the treatment of multifunctional entities and entities with very low system profits; and implementation issues, including coordination with the current transfer pricing system without giving rise to double taxation or double non-taxation.
- IX. Dispute prevention and resolution for Amount A – The need to address issues and options in connection with new approaches to enhance tax certainty and to prevent and resolve tax disputes. This will include the development of a new approach on a multilateral basis, to provide early certainty to prevent disputes and to minimise compliance and administration costs as well as measures to timely resolve any disputes that do arise. This approach will be mandatory and binding. The work here may be done in the context of a potential new multilateral convention to address gaps in treaty coverage between multiple jurisdictions, given the multilateral nature of Amount A.

- X. Dispute prevention and resolution for Amounts B and C – The need to explore issues and options in connection with the development of effective dispute prevention and resolution procedures, such as the design of mandatory binding dispute resolution mechanisms (including mechanisms developed under Amount A) and any necessary enhancements to existing rules on mutual agreement procedures to prevent potential disputes and/or facilitate their resolution.
- XI. **Implementation and administration** – The need to address issues and options in connection with the implementation and administration of the Unified Approach (Amounts A, B and C), such as exploring changes in domestic legislation; exploring feasibility and implications of implementing Pillar One on a ‘safe harbour’ basis; identifying the required changes to tax treaties and exchange of information mechanisms; the design of a multilateral convention (including the applicability of different elements of the solution (Amounts A, B and C) in relation to jurisdictions that are not currently covered by a relevant bilateral tax treaty) with coordinated entry into force provisions; the identification of relevant unilateral measures; measures to limit compliance and administrative costs and maximise certainty, including in situation involving multiple jurisdictions; and options/procedures to make the new taxing right as simple as possible.

In relation to a ‘safe harbour’ approach, detailed consideration will be required to assess key impacts and issues of implementing such an approach. These key considerations include estimation of revenue impacts for jurisdictions, feasibility of a system in which some MNE groups elect in and others do not, required operating and administration rules (e.g. process for electing and revoking an election, carry-over of tax attributes from pre-electing years, reorganisations of the MNE group), required treaty and domestic law changes, interactions with dispute prevention and resolution measures, implications for unilateral measures, the likely behavioural implications for taxpayers and jurisdictions, and the design of double taxation relief mechanisms.

## 2. Timeline

4. This revised programme of work (PoW) invites the Inclusive Framework and its subsidiary bodies to develop solutions to these technical and policy issues along the following timeline:
- First, the Steering Group, drawing on the expertise and inputs from various subsidiary bodies, will continue to work towards reaching an agreement in the Inclusive Framework on **the key policy features of a consensus-based solution to the Pillar One issues by July 2020**.
  - Second, the Steering Group and subsidiary bodies will continue to work towards producing **a final report by the end of 2020** that will set out the technical details of the consensus-based solution agreed by the Inclusive Framework.
5. The result is that aspects of the work programme will need to be completed in June 2020, where the related output is necessary to support a decision on the relevance and feasibility of key features of the consensus-based solution to Pillar One. This includes for example the definition of the categories of business activities falling within the scope of the new taxing right (see work stream I. above), and the determination of the appropriate thresholds for the percentage(s) of profit that will be reallocated under the new taxing right (see work stream IV. above). Other aspects of the work programme will instead be completed in November 2020, where the related output is only necessary to support the technical design and implementation of the consensus-based solution. This includes for example identifying changes to tax treaties required to remove barriers to the implementation of the new taxing right (see work stream XI. above).

### 3. Organisation

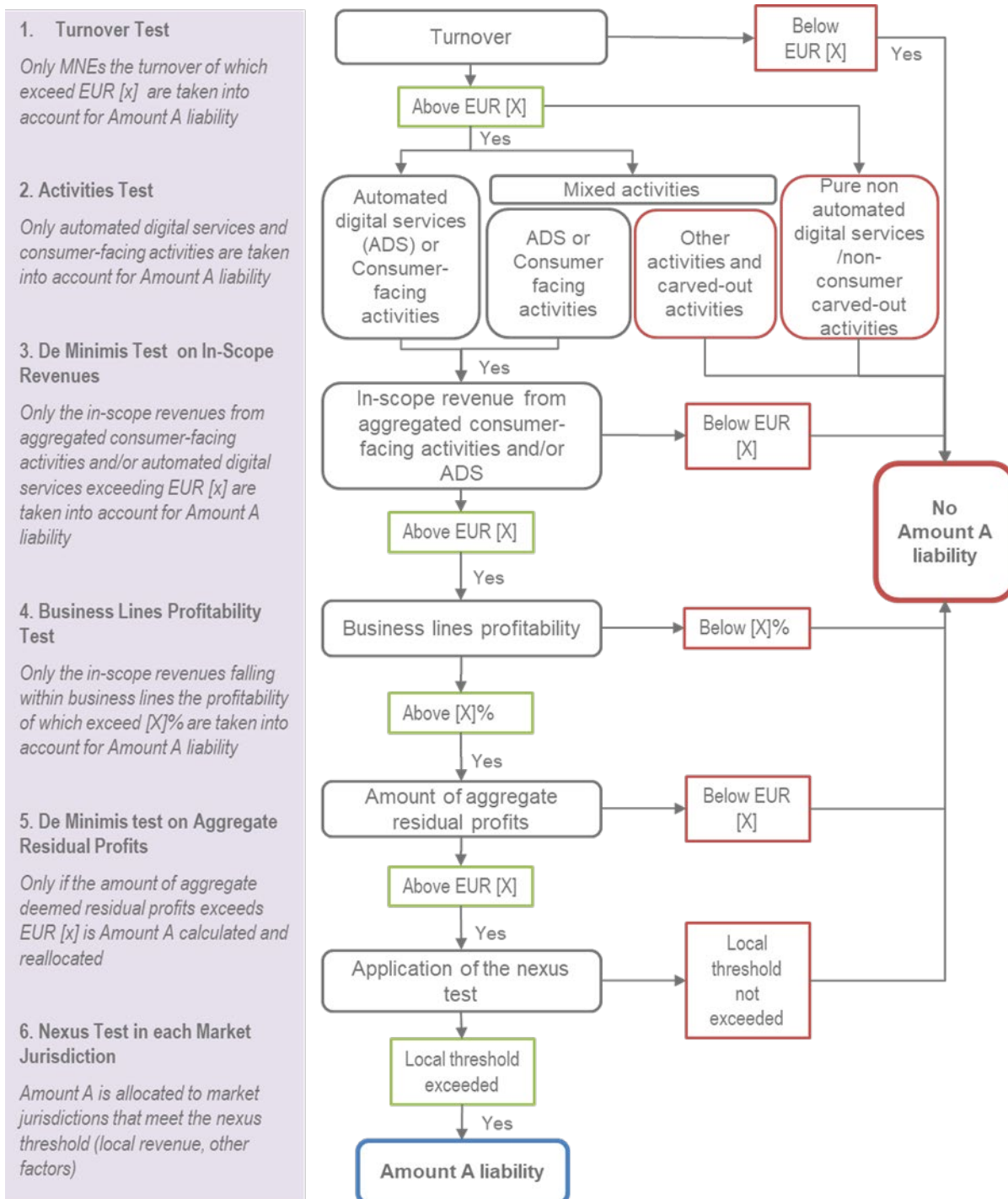
6. The technical expertise needed to deliver the measures envisaged in this revised PoW is largely found within the Inclusive Framework's existing architecture in the following subsidiary bodies of the Committee on Fiscal Affairs:
- Working Parties 1 and 6;
  - The Task Force on the Digital Economy (TFDE); and
  - Other subsidiary bodies such as the FTA MAP Forum (responsible for implementation of BEPS Action 14) and Working Party 10 (responsible for exchange of information) as well as other bodies including the CBC Reporting Group.
7. Table 3. Assignment of technical work to subsidiary bodies<sup>3</sup> below identifies the different subsidiary bodies with primary responsibility for each of the work-streams identified. This responsibility includes addressing all the different issues outlined in Section 2 above within the agreed timeline, as well as organising consultations with other relevant subsidiary bodies. Further, given the broad range of issues covered and the challenging timeline, it will be important to ensure for each work stream an effective participation of all members of the Inclusive Framework, including small and developing economies, as well as inputs from relevant external stakeholders (e.g. businesses) with the necessary skills and expertise. Finally, an effective and efficient coordination of the work programme will be essential, including continued guidance to advance and prioritise aspects of the programme of work that are necessary to support a decision on the key features of the consensus-based solution in June 2020. The economic analysis of these features will be of great importance for decision-making. The Steering Group of the Inclusive Framework, with the support of the TFDE, will therefore continue to steer, monitor and coordinate the work and outputs produced by different subsidiary bodies.

**Table 3. Assignment of technical work to subsidiary bodies**

	References to the Outline of the Architecture of a Unified Approach on Pillar One	Working Party responsible	Meeting dates <sup>55</sup>
Overall co-ordination		TFDE	March to November 2020
I. Scope of Amount A	3.1.1.	WP1/WP6	April to November 2020
II. New Nexus and related treaty considerations for Amount A	3.1.2.	WP1	April to November 2020
III. Tax base determinations for Amount A	3.2.1.	WP6	April to November 2020
IV. Quantum of Amount A	3.2.1.	WP6	April to November 2020
V. Revenue sourcing under Amount A	3.2.2.	WP1/WP6	April to November 2020
VI. Elimination of a double taxation under Amount A	3.3.	WP1/WP6	April to November 2020
VII. Interactions between Amounts A, B and C and potential risks of double counting	3.4.	WP1/WP6	April to November 2020
VIII. Features of Amount B	4.	WP6	April to November 2020
IX. Dispute prevention and resolution for Amount A	5.1.	WP1/FTA MAP Forum	February to November 2020
X. Dispute prevention and resolution for Amounts B and C	5.2.	WP1/FTA MAP Forum	February to November 2020
XI. Implementation and administration	6.	WP1/WP6/WP10	April to November 2020

<sup>55</sup> The first meeting dates of the subsidiary bodies planned so far include: Joint FTA MAP Forum bureau/WP1 extended bureau on February 28, Joint WP1 bureau/WP6 Focus Group on March 30 to April 3, Joint WP1/WP6 on April 20-23.

## Annex I: MNE Groups Impacted by Amount A



## Annex 3: Progress Note on Pillar Two

### 1. Introduction

1. In January 2019, the Inclusive Framework issued a Policy Note on Addressing the Tax Challenges of the Digitalisation of the Economy.<sup>56</sup> Under this Policy Note, the Inclusive Framework agreed, on a without prejudice basis, to undertake work on the following two pillars:
  - Pillar One focuses on the allocation of taxing rights, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules.
  - Pillar Two (also referred to as the “GloBE” proposal) focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.
2. The Inclusive Framework issued a Public Consultation Document on 13 February 2019, which sought input from external stakeholders on the specific proposals examined under Pillar One and Pillar Two.<sup>57</sup> The response was robust, with more than 200 written submissions running to over 2,000 pages.<sup>58</sup> Stakeholders had the opportunity to attend in person and express their views at a public consultation held in Paris on 13 and 14 March 2019, which was attended by over 400 representatives from governments, business, civil society and academia.
3. Following this consultation, and in light of the public comments received, the Inclusive Framework agreed on a Programme of Work<sup>59</sup> (PoW) at their meeting in Paris on 28-29 May 2019 based around the two Pillars identified in the Policy Note. This was endorsed by the G20 Finance Ministers and Leaders in June 2019. A public consultation on Pillar Two was held on 9 December 2019, which attracted over 200 participants and resulted in the submission of more than 180 written comments running to over 1,300 pages.

### 2. Status of the work and next steps

4. Following the PoW agreed by the Inclusive Framework in May constructive discussion has been conducted under Pillar Two. Unlike in the context of Pillar One where there were competing proposals that needed to be brought together in a “Unified Approach”, the individual components under Pillar Two were already identified in the PoW, noting of course that with respect to a number of the key elements of Pillar Two, various design options remain under discussion. Some countries have suggested to improve further the policy design of Pillar Two to ensure its focus on remaining BEPS issues and take the view that a systematic solution designed to ensure that all internationally operating businesses pay a minimum level of tax would go beyond the policy objective of Pillar Two. These countries further suggested that exploration of improvements in the policy design would therefore be welcomed.
5. The technical tasks regarding Pillar Two are being advanced by the relevant Working Parties which co-ordinate closely. Working Party 11 held a joint session with the Working Party 1 Extended Bureau on 10 December 2019 to ensure full alignment and allow for a common debrief on the

<sup>56</sup> [Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note](#), as approved by the Inclusive Framework on BEPS on 23 January 2019, OECD 2019.

<sup>57</sup> [Public Consultation Document, Addressing the Tax Challenges of the Digitalisation of the Economy](#), 13 February – 6 March 2019.

<sup>58</sup> All written submissions made to the Public Consultation Document are available at this [link](#).

<sup>59</sup> [Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy](#), 28 May 2019, (PoW).

public consultation held the previous day. Given the mandate in the PoW to explore simplifications that could reduce compliance costs to businesses, and in particular the use of financial accounts, Working Party 11 has set up a special subgroup on financial accounts. This subgroup brings together experts with tax technical as well as financial accounting expertise.

6. Significant work on key issues is advancing at a fast pace with good technical progress on many aspects of the GloBE proposal but significant work still remains. The Inclusive Framework is aware of the implications that the timelines of the project have imposed on all stakeholders, is very appreciative of all the input received so far and looks forward to continued close engagement.
7. Work will continue with a series of meetings already planned. The remainder of this note provides a short summary of each of the components of the GloBE proposal and a very brief update on the status of the work on some of the related key issues.

## **2.1 Income inclusion rule**

8. The basic approach taken by the income inclusion rules will be familiar to many taxpayers and tax administrations as it draws on the design of controlled foreign company (CFC) rules. The income inclusion rule would operate as a minimum tax by requiring a shareholder in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to an effective rate of tax above a minimum rate. It would ensure that the income of the MNE group is subject to tax at a minimum rate thereby reducing the incentive to allocate income for tax reasons to low taxed entities. Its effect would be to protect the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to put in place intra-group financing, such as thick capitalisation, or other planning structures that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate.
9. The PoW provides that the inclusion rule would operate as a top-up tax to a minimum rate calculated as a fixed percentage. The actual rate to be applied under the GloBE proposal has not yet been discussed by the Inclusive Framework. Other elements of the rule remain subject to further discussion with different design options under consideration.
10. Extensive work is underway around the use of financial accounts as a basis for the income determination as well as different mechanisms to address temporary differences between tax and financial accounting. The objective would be to limit adjustments for permanent differences to reduce complexity and compliance costs, with benefits for both taxpayers and tax administrations. The work will explore the use of principle-based criteria, including materiality and commonality, to identify the relevant permanent differences. There are detailed discussions around a range of important technical issues which were also the subject of the December public consultation and where valuable input was provided by stakeholders both at the consultation and in written comments.
11. On the question of blending (i.e., the ability to combine low-tax and high-tax income in determining the effective tax rate) the technical work carried out so far, supported by the public consultation and the written comments submitted by stakeholders, has helped to identify the policy choices that remain under consideration as well as design and compliance challenges of different approaches. It also highlights that there are a range of different elements to the GloBE proposal of which the type of blending is an important dimension but not the only one.
12. Another focus of the work and a key design issue for Pillar Two is the question of carve-outs. Different options are under consideration. The PoW noted that carve-outs for regimes compliant with the standards of BEPS Action 5 on harmful tax practices and other substance based carve-outs would undermine the policy intent and effectiveness of the GloBE proposal. However, some jurisdictions have stressed the importance of including substance carve-outs because, in their



view, such carve-outs are necessary to ensure that the focus of Pillar Two is on remaining BEPS issues.

13. Some of the design features under discussion will also be relevant for other elements of the GloBE proposal. For example, the discussions on carve-outs<sup>60</sup> and the use of financial accounts to determine the tax base are also relevant for the undertaxed payments rule.

## **2.2 Switch-over rule**

14. The GloBE proposal should apply equally to foreign branches and foreign subsidiaries that are taxed at an effective rate of tax below the minimum rate. The switch-over rule is a mechanism designed to ensure that the income inclusion rule applies to foreign branches exempt under double tax treaties. It would only apply where countries have committed to use the exemption method in their tax treaties. For example, in the case of profits attributable to exempt foreign branches, or that are derived from exempt foreign immovable property, the income inclusion rule could be achieved through a switch-over rule that would turn off the benefit of an exemption for income of a branch, or income derived from foreign immovable property, otherwise provided by a tax treaty and replace it with the credit method where that income was subject to a low effective rate of tax in the foreign jurisdiction.
15. A simple switch-over rule is being developed to facilitate implementation of the income inclusion rule, which will need to consider the final design of the income inclusion rule to ensure consistency in scope.

## **2.3 Undertaxed payments rule**

16. While the income inclusion rule taxes the parent on the low-tax income of a subsidiary, the undertaxed payments rule operates by denying a deduction or making an equivalent adjustment in respect of intra-group payments. The PoW notes that the undertaxed payments rule should be designed to be effective in achieving its stated objectives; be compatible and co-ordinated with other rules; avoid double taxation and taxation in excess of economic profit; minimise compliance and administration costs; and explore the possible use and effect of carve-outs, including those considered in the context of the income inclusion rule.
17. A number of proposals for the design of the undertaxed payments rule have been considered by both the Steering Group and Working Party 11 which has allowed for these groups to refine and better target the rule. These proposals have been designed to limit complexity, compliance and administration costs and the risk of over-taxation.

## **2.4 Subject to tax rule**

18. The PoW also includes consideration of a subject to tax rule which could work by subjecting a payment to withholding or other taxes at source and denying treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate.
19. The relevant Working Parties are exploring options and issues in connection with the design of a simple and targeted rule to address the most significant risks from a BEPS perspective. This rule, which is still under discussion, could be based on existing provisions in the Commentary to the OECD Model Convention on Income and on Capital. Further consideration will be given to the scope of the payments covered, the design of the minimum tax rate test, the extent of the adjustment required, the use of a *de minimis* threshold and the role of the subject to tax rule vis a vis the undertaxed payment rule. The PoW also contemplates the exploration of the application of

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<sup>60</sup> Cf. PoW, page 33.

a subject to tax rule to unrelated parties as regards Articles 11 and 12 of the OECD Model Convention.

### ***2.5 Rule co-ordination, simplification, thresholds and compatibility with international obligations***

20. There is ongoing work on all aspects of co-ordination, simplification and the compatibility with international obligations such as non-discrimination<sup>61</sup>. This work will address the priority in which the rules would be applied and how they interact with other rules (including existing BEPS measures) in the broader international framework with a view to minimising the risk of double taxation, including simplification measures that would further reduce compliance costs. There are also ongoing work-streams looking into possible thresholds (such as the EUR 750 million revenue threshold used for country-by-country reporting) and carve-outs that would restrict the application of the rules under the GloBE proposal.

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<sup>61</sup> Including, where appropriate, taking into account the implications of EU/EEA law.



**For more information:**

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