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

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OECD Secretary-General Report to the G20 finance ministers and central bank governors

FUKUOKA, JAPAN

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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".

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Overview

Since its inception in 2008, the G20 has developed a very ambitious tax agenda to improve tax cooperation and transparency and ensure that companies pay their taxes where they carry on their activities. The constant efforts of the G20 over the past 10 years have dramatically changed the environment, improving the efficiency and fairness of international tax. The results of these efforts are now showing and they are big.

10 years ago, bank secrecy and opaque structures were used and abused by too many taxpayers across the world to hide their assets and income from tax administrations. Thanks to the efforts of the G20, bank secrecy for tax purposes no longer exists and all financial centres are now engaged in the automatic exchange of financial information (through the OECD's Common Reporting Standard – CRS). In 2008, only 40 exchange of information agreements between secretive jurisdictions and other countries had been put in place. Today, more than 4500 exchange of information agreements are in force with 90 jurisdictions implementing the CRS in 2018). As a result **47 million offshore accounts – with a total value of around 4.9 Trillion euros – have been exchanged for the first time**. This level of transparency in tax matters is unprecedented and ensures that those assets will never escape detection. A small number of jurisdictions have yet to fulfil their commitments to exchange automatically by 2018 at the latest and they are urged to do so without further delay.

Beyond these impressive numbers, our action has had a very concrete impact. First, you and other countries in the world have recovered taxes which had been defrauded for too long. For a few years now, I have reported to you the amounts collected from taxpayers coming forward and having disclosed formerly concealed assets and income through voluntary compliance mechanisms and other offshore investigations. The latest update brings the amount to **over EUR 95 billion in additional revenue** (tax, interest, penalties) from such initiatives, which is an addition EUR 2 billion since November 2018. That said, now that the CRS is fully implemented this amount will stabilise and countries will annually collect taxes on the income generated by the disclosed assets.

I am also now in a position to report that there is economic evidence that your efforts have had an impact on offshore bank deposits. **Drawing on previous economic surveys, the OECD's analysis shows that bank deposits in international financial centres (IFCs) have fallen by approximately 34% over the past ten years for a decline of USD 551 billion.** A large part of that decline is due to the onset of the automatic exchange of information, which accounts for about two thirds of that decrease. **Specifically, automatic exchange of information (AEOI) has led to a decline of 20% to 25% in the bank deposits in IFCs over the past decade.**

Tax evasion is also often linked to other financial crimes, which are becoming increasingly sophisticated, including corruption, money laundering and terrorist financing. The OECD promotes a "whole of government" approach to fighting these types of economic crimes through its Oslo Dialogue, emphasising the great synergies that investigators can achieve through inter-agency cooperation and information sharing. **I am delighted to report on the establishment of the OECD Asia-Pacific Academy for Tax and Financial Crime Investigation, hosted by Japan,** in the margins of your meeting and of the Ministerial Symposium on International Taxation. The launch of this Academy, follows the success of the Academies established in Italy, in Kenya and in

Argentina from 2014 to 2018. This is about institution building and delivering on our commitment to support capacity building.

Regarding our fight against Base Erosion and Profit Shifting (BEPS), I am glad to report that the implementation of the standards to combat tax avoidance has been broad, consistent and is continuing through the G20/OECD BEPS Inclusive Framework.

Changes are massive and the proper implementation of the minimum standards is being peer reviewed. Some figures just show the magnitude of the legal and practical changes:

- **21 000 previously secret tax rulings have now been exchanged**, which is an increase of 4 000 additional rulings since I last reported to you. What does that mean? Companies can no longer negotiate secret, sweetheart deals which would deprive other countries of their revenues.
- **80 jurisdictions (up from 62 jurisdictions last year) have engaged in the exchange of Country-by-Country reports (CBCR) on the activities, income and assets of multinational enterprises**, which began in June 2018. CBCR provides tax administrations with access to extensive and consistent information on the largest foreign MNEs, which pose the greatest potential BEPS risk to their jurisdictions, given their size and potential revenues at stake.
- Preferential tax regimes allowed multinationals to avoid tax on their international activities, contributing to base erosion. **Since 2015 over 250 regimes have been reviewed and virtually all of the regimes that were identified as harmful have been amended or abolished.** Around the world, harmful regimes can no longer be used by countries to attract the tax base from other countries by targeting non-residents and foreign income only.
- With the Multilateral Instrument to implement BEPS covering 88 jurisdictions and already ratified by 25, treaty shopping, which deprives countries of billions of euros in revenue, is also coming to an end. **At this stage, all treaty shopping hubs have signed the Multilateral Instrument and tax administrations are reporting that they can see meaningful behavioural changes among taxpayers**.

Overall, the very high profile of our work against tax fraud and tax avoidance has brought tax matters to the boardrooms and is having a massive impact. These are just some of the successes. But implementing the OECD/G20 BEPS Package can also be a legal and administrative challenge. Ensuring that all members of the Inclusive Framework have the capacity to benefit from the international standards is essential to maintaining a global level playing field. This work continues through the Inclusive Framework and the Global Forum on Transparency and Exchange of Information, as well as in collaboration with other international organisations. **The OECD/UNDP Tax Inspectors Without Borders has been a major success story, helping developing countries raise USD 470 million in additional tax revenue to date.** The Platform for Collaboration on Tax brings together the IMF, the OECD, the UN and the World Bank Group to ensure that capacity building efforts are coordinated and coherent.

The implementation of the OECD/G20 BEPS Package is a good start, but we must now finish the job. The tax challenges of the digitalisation of the economy remain to be addressed. The public, in many countries, have yet to be convinced that changes are real and that justice has been restored in the international tax system. More needs to be done to complete our efforts, which are now recognised by all Inclusive Framework members. Working together, they have acknowledged that further efforts are necessary to stabilise the international tax system to make it more robust in the face of the increasing digitalization of business activities.

When I delivered to you the interim report on the tax challenges arising from digitalisation in March of 2018, the landscape was characterised by division. Today, because of your political will and your leadership, countries are working together and have agreed on a programme of work to deliver, by the end of 2020, a solution to these challenges. The aim is to overcome the obstacles that jurisdictions face in trying to tax the profits that multinational companies earn from users and consumers located in those jurisdictions, particularly where the companies are not physically present in those markets. They have also agreed to work on mechanisms so that companies would see their profits taxed at some minimum levels. In January, the 129 members of the Inclusive Framework agreed a policy note that identified the contours of a solution based on two pillars – one addressing the re-allocation of taxing rights (Pillar 1) and the other based around a minimum tax to address the remaining BEPS issues (Pillar 2). Today, the programme of work to deliver a solution by the end of 2020 is submitted to you for endorsement. **These are complex and difficult questions and in particular, the gaps to find a unified approach in Pillar 1 will have to be bridged. This will require political leadership of the G20 to forge the way to a global, consensus-based, long-term solution in 2020.**

Part I

THE OECD'S INTERNATIONAL TAX AGENDA

1. Addressing the tax challenges arising from digitalisation

Great success has been achieved with the global implementation of both tax transparency standards and the Base Erosion and Profit Shifting (BEPS) measures. However, more progress is needed to address the tax challenges arising from digitalisation, which are high on the political agenda.

In March 2018, I provided you with an Interim Report on the Tax Challenges Arising from Digitalisation, recognising that in spite of divergent views on the tax consequences of the digitalisation process, the members of the OECD/G20 Inclusive Framework on BEPS agreed to continue working together.

The G20 Leaders, at their Buenos Aires Summit on 30 November-1 December 2018, expressed their political support by stating in the communiqué that they "*will continue to work together to seek a consensus-based solution to address the impacts of the digitalisation of the economy on the international tax system, with an update on 2019 and a final report by 2020*".

The work has accelerated since then, and in January 2019 the OECD/G20 Inclusive Framework on BEPS agreed and published a Policy Note, where they agreed to examine and develop concrete proposals, articulated around two complementary pillars. The first pillar focuses on the allocation of taxing rights including nexus issues with three different proposals that would modify the existing rules based on the concepts of "user participation", "marketing intangibles" and "significant economic presence". All three proposals reallocate more taxing rights to the market jurisdictions. The second pillar explores a global anti-base erosion mechanism which aims to address the continued risk of profit shifting to entities subject to no or very low taxation.

Since January 2019, the work has continued to examine these proposals, including by considering how the gaps between the positions of different jurisdictions could be bridged. As part of this work, a public consultation was held in March 2019 which gathered over 400 participants and attracted over 2000 pages of comments from business, civil society, and academia that took part in the public consultation in March.

A major step forward was taken by the OECD/G20 Inclusive Framework on BEPS with the agreement on the Programme of Work at its plenary meeting on 28-29 May 2019. This agreement paves the way to further explore a long-term, consensus-based solution by 2020, and provides detailed instructions for the OECD/G20 Inclusive Framework and its technical groups.

This work goes beyond the existing BEPS standards to explore fundamental changes to the international tax architecture. To support governments in understanding its implications, the OECD will provide an economic analysis and impact assessment of the proposals. In order to agree on the long-term solution, it will be necessary to refine and unify the options and find the right balance between precision and administrability for jurisdictions at different levels of development.

Agreeing on a sustainable and workable solution will demand political engagement and compromise and the G20 leadership can be instrumental in this process. In order to meet the G20's deadline of 2020, political agreement needs to be reached soon on the fundamentals of the solution.

The Programme of Work is attached as Annex 1 to this report and submitted for your endorsement.

2. Tax transparency developments

By the end of 2018, 90 of the 100 jurisdictions that had committed to start automatic exchanges of financial account information (AEOI) in 2017 or 2018 had done so, which was the largest tax information exchange event in history.

Even before exchanges had started, AEOI was having an impact: taxpayers came forward and disclosed formerly concealed assets and income through voluntary compliance mechanisms and other offshore investigations to avoid being caught by AEOI once it started. **By June 2019, jurisdictions around the globe had identified over EUR 95 billion in additional revenue** (tax, interest, penalties) from such initiatives.

Information exchanged on more than 47 million financial accounts, with a total value of around EUR 4.9 trillion

Now with AEOI a reality, we can see the clear benefit to tax administrations of AEOI – information on more than 47 million financial accounts were exchanged in 2018 alone, with a total value of around EUR 4.9 trillion. Tax administrations are now able to assess which of these accounts had not been disclosed and collect the taxes due on the income. Moreover, we have analysed what impact the implementation of the tax transparency standards have had on cross-border deposits. The results reinforce the importance of this work and the G20's support.

AEOI resulted in a decline of 20% to 25% of bank deposits in international financial centres

The OECD's analysis shows that bank deposits in international financial centres (IFCs) have fallen by approximately 34% over the past ten years for a decline of USD 551 billion. A large part of that decline is due to the onset of the automatic exchange of information, which accounts for about two thirds of that decrease. Specifically, **AEOI has led to a decline of 20% to 25% in the bank deposits in IFCs over the past decade**.

At the same time, the OECD has been working with the G20 to push jurisdictions over the finish line and to ensure a level playing field with respect to the implementation of the internationally agreed tax transparency standards. In July 2018, I presented to you updated objective criteria to identify jurisdictions that were not implementing the tax transparency standards.[1] These criteria are reproduced in Box 1.

[1] www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-finance-ministers-july-2018.pdf

Box 1. Benchmarks for the Objective Criteria to Identify Jurisdictions that have not Satisfactorily Implemented the Tax Transparency Standards:

- a "Largely Compliant" overall rating with respect to the exchange of information on request (EOIR) standard, 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,
- with respect to the implementation of the AEOI standard, all necessary legislation is in place and exchanges commenced by the end of 2018; and agreements activated with substantially all interested appropriate partners by the end of 2019; and
- having the multilateral Convention in force or having a sufficiently broad exchange network of bilateral agreements in force permitting both EOIR and AEOI.

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 above-mentioned criteria. 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, contrary to its commitment to the Global Forum to implement the AEOI Standard by 2018, not met the AEOI benchmark set out above.

Based on these criteria, I reported to the G20 Leaders' in December 2018 that 15 jurisdictions were at-risk of being considered as having not satisfactorily implemented the internationally agreed tax transparency standards. Following that report, 5 of those jurisdictions met the criteria by the end of 2018 because they commenced their first exchanges under the automatic exchange of information criterion.

The full requirements of the AEOI criterion will only apply as of the end of 2019, when all committed jurisdictions will need to have exchange agreements activated with substantially all interested appropriate partners. However, I can now provide you with an intermediate report on the status of compliance with the international tax transparency standards in respect of the criteria as they apply for the end of 2018. Ten jurisdictions had not satisfactorily implemented the criteria at the end of 2018 as they had not yet commenced automatically exchanging information – Antigua and Barbuda, Brunei Darussalam, Dominica, Israel, Montserrat, Niue, Saint Vincent and the Grenadines, Sint Maarten, Trinidad and Tobago and Vanuatu.

Since the end of 2018, two of these jurisdictions – Antigua and Barbuda and Saint Vincent and the Grenadines – have commenced automatically exchanging information, complying with the criteria and today have therefore satisfactorily implemented the tax transparency standards. In addition, Brunei Darussalam and Dominica have made progress in putting in place their legal frameworks, including through the ratification of the multilateral Convention. Israel has also finalised its legal framework. These jurisdictions now need to commence exchanges without further delay to meet the criteria. The remaining jurisdictions identified still need to make major improvements in order to satisfy the criteria. We are working with all of these jurisdictions to provide whatever assistance is needed to help them fulfil their commitments.

I will provide an update to you, at your meeting in October 2019, on progress made by the jurisdictions identified above, as well as the number of jurisdictions that may be at risk of not meeting the additional test for AEOI by the end of 2019.

3. Implementing the Base Erosion and Profit Shifting (BEPS) measures

The recent plenary meeting of the OECD/G20 Inclusive Framework on BEPS on 28-29 May 2019 has provided a good opportunity for its members to assess the progress made with respect to the implementation of the BEPS measures. By welcoming 13 new members since my last report to you in July 2018[2], the OECD/G20 Inclusive Framework on BEPS has now expanded to 129 members including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions. With greater inclusiveness, developing countries' perspectives and inputs are increasingly influencing the development of international standards. The 3rd Annual Progress Report of the OECD/G20 Inclusive Framework on BEPS is attached as Annex 2 to this report.

The core elements of the BEPS package are the four minimum standards[3], and significant progress has been achieved in their implementation. There are now concrete results.

Harmful preferential tax regimes allowed multinationals to avoid tax on their international activities, contributing to base erosion. **Since 2015 over 250 regimes have been reviewed and virtually all of the regimes that were identified as harmful have been amended or abolished.** Since my last report in July 2018 70 additional regimes have been reviewed, progress is being monitored and newly introduced regimes are being brought into the review process shortly after their introduction. Around the world, harmful regimes can no longer be used by countries to attract the tax base from other countries by targeting non-residents and foreign income only. In addition, low or no tax jurisdictions had in the past escaped scrutiny under the harmful tax practice rules. But the criteria has been changed and they must now ensure that companies established there have appropriate substance to their activities. Finally, on exchange of tax rulings between tax administrations, information on more than **4 000 additional tax rulings have been exchanged** among governments since my last Report in in July 2018, resulting in information on **a total of 21 000 tax rulings exchanged, for the sake of full transparency**.

On tax treaty abuse, the majority of the OECD/G20 Inclusive Framework members are now in the process of strengthening their tax treaty network. This will be done primarily through the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the BEPS Multilateral Instrument). It entered into force on 1 July 2018 and now covers **88 jurisdictions and, once all signatories have ratified, will impact over 1 500 tax agreements**. As of May 2019, **25 jurisdictions have already finalised their ratification process**, including four G20 members[4] and 15 OECD Member Countries[5]. We encourage all countries that have not yet ratified, to do so at the earliest possible delay.

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[2] Antigua and Barbuda, Armenia, Aruba, Cabo Verde, Cook Islands, Dominica, Dominican Republic, Faroe Islands, Greenland, Grenada, Morocco, North Macedonia, and Saint Vincent and the Grenadines.

[3] Namely BEPS Action 5 on harmful tax practices, Action 6 on tax treaty abuse, Action 13 on transfer pricing documentation, and Action 14 on dispute resolution mechanisms.

[4] Australia, France, Japan and UK

[5] Australia, Austria, Finland, France, Ireland, Japan, Lithuania, Luxembourg, Netherlands, New Zealand, Poland, Slovakia, Slovenia, Sweden, and the United Kingdom.

Key Results on BEPS Implementation

Combating Harmful Tax Practices	Countering Tax Treaty Abuse
Over 250 tax regimes reviewed - virtually all harmful regimes amended or abolished	Almost 90 signatories of the BEPS Multilateral Instrument closing loopholes in more than 1500 tax treaties

Ensuring Transparency	Improving Dispute Resolution
Over 2,000 bilateral relationships in place for exchanges of Country-by-Country reports Over 21,000 tax rulings exchanged	Around 85% of Mutual Agreement Procedures cases concluded in 2017 resolved

Since the first exchanges of Country-by-Country (CbC) reports in June 2018, 18 additional jurisdictions have introduced CbC reports filing requirements for multinational enterprises (MNEs), bringing the total to 80 jurisdictions. This translates into 600 new bilateral relationships, for a total of 2 000 bilateral relationships. Moreover, the first aggregated and anonymised statistics prepared from data collected on CbC reports is already showing some interesting patterns of where MNEs activity is located, reporting of profits and the tax paid. The work to support the effective use of CbC reports by tax administrations is providing greater certainty to MNEs, including through the **International Compliance Assurance Programme (ICAP)** which is a multilateral risk assessment process, using CbC reports and other information. Currently, 15 tax administrations are participating in a pilot programme.

The work on dispute resolution, aimed at improving Mutual Agreement Procedures (MAP) shows encouraging results. Already 45 jurisdictions have been reviewed, around 990 recommendations for improvement have been issued and the stage 2 monitoring process has already begun. The early results of this stage 2 monitoring process indicates that jurisdictions are making tangible progress in addressing the recommendations and improving their dispute resolution mechanisms.

The dispute prevention and resolution work is a key aspect of the G20 tax certainty agenda. A wide range of activities relating to tax certainty is going on and the *2019 Progress Report on Tax Certainty: IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors* is attached as Annex 3 to this report.

Tax administrations are reporting early positive signs from implementation of BEPS actions. An early survey of a number of members of the OECD's Forum on Tax Administration (FTA), shows there are positive signals that BEPS implementation is taking place in practice. They report that Multinational Enterprises (MNEs) are implementing new requirements and are highly engaged. There are also signs of changes in behaviour with some MNEs actively seeking greater collaboration and transparency with tax administrations. Tax administrations themselves are enhancing their approaches, IT systems and guidance, seeking greater consistency and tax certainty for both administrations and MNEs, in particular through closer collaboration on how they assess, identify and treat tax risk.

4. Capacity Building – Supporting the BEPS Implementation in developing countries

With participation on an equal footing in the BEPS process, the OECD/G20 Inclusive Framework supports technical assistance to developing countries in the implementation of the BEPS package through various tools and initiatives. To date, 30 bespoke induction programmes have been launched with the aim of assisting developing countries to successfully implement their BEPS priorities.

Tackling tax crimes and other financial crimes is an important area where capacity building is needed. In the context of the Oslo Dialogue, launched in 2011 to promote a 'whole of government' approach to tackle financial crimes, over 650 financial crime investigators from more than 80 countries have been trained in Centres of the OECD's International Academy for Tax Crime Investigations in Italy, Kenya, and in Argentina.

Japan has now decided to host the OECD Asia-Pacific Academy for Tax Crime Investigation in Wako, which will be established in the margins of the Ministerial Symposium on International Taxation on 8 June 2019. This will help provide training for tax officials from the entire region.

In addition, the OECD/UNDP Tax Inspectors Without Borders (TIWB) initiative continues to provide hands-on audit support to tax administrations in developing countries, engaging tax audit experts to transfer skills to strengthen capacity in auditing MNEs. With 61 programmes ongoing or completed and over 28 upcoming programmes in the pipeline in Africa, Asia Pacific, Latin America and Caribbean, and Eastern Europe, TIWB is fast expanding. Following the successful "South-South" experience of the Kenya-Botswana TIWB programme in 2017, the cooperation is increasing with India, Kenya, Morocco, Mexico, Nigeria, and South Africa providing support. TIWB is now branching out from general audit support to more specific sector audits mainly in mining, financial sector, commodities and telecommunications; as well as from tax avoidance issues to tax evasion issues supporting investigations for tax and crime.

TIWB key figures: Evolution of tax revenues collected (cumulative)

To date, 470 million USD of additional revenues have been raised. TIWB represents good value for money with over 100 USD in additional revenues recovered for every 1 USD spent on operating costs.

The partners in the Platform for Collaboration on Tax (PCT) – the IMF, OECD, UN, and WBG – continue to strengthen their co-operation by implementing the Action Plan agreed at the conclusion of the first PCT conference in 2018. The PCT is currently expanding its secretariat to enable it to deliver on the Action Plan, and is preparing a full update on activities. Progress is made on the toolkits being developed by the PCT, which are intended to provide practical implementation guidance on BEPS issues of particular relevance to developing countries.

Part II

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES PROGRESS REPORT TO THE G20 LEADERS

Introduction

154 jurisdictions closely cooperate within the framework of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) seeking to advance the capacity of tax authorities to detect tax evasion and strengthen tax compliance. This cooperation delivers results. Tax transparency and exchange of information continues to expand and at an unprecedented scale. Since the last report to the G20 Finance Ministers and Central Bank Governors published in July 2018, several important developments have taken place.

1. Automatic Exchange of Information (AEOI)

Building the Global Network of AEOI

In July 2018, you called on the jurisdictions due to commence automatic exchange of financial account information for tax purposes (the AEOI Standard) in 2018 to ensure that all necessary steps were taken to meet this timeline. By the end of 2018, already 90 jurisdictions had exchanged information on financial accounts held by non-residents and two more jurisdictions have exchanged such information during 2019.[6]

These exchanges marked a major victory in the global fight against tax evasion. It should be noted, though, that some jurisdictions experienced delays due to technical issues or delays in putting in place the domestic or international legislative framework for the collection and exchange of information.[7] The Global Forum has been working closely with these jurisdictions to ensure that they commence AEOI as soon as possible. The exchanges due to take place in September 2019 are therefore expected to be more widespread. The focus is now also on ensuring that the exchange networks in place are sufficiently broad (i.e. they include all interested appropriate partners, being those interested in receiving information and that meet the expected standards on confidentiality and data safeguards).

The global AEOI network is also expanding as developing countries (without financial centres which were therefore not invited to commence exchanges by 2018) are voluntarily expressing their intention to implement the AEOI Standard. These countries benefit from the support offered in the framework of the *Global Forum's Plan of Action for Developing Countries' Participation in AEOI* (2017) and are taking steps towards AEOI. Around twenty developing country members have already engaged in a preliminary assessment of their capacity for implementing the AEOI Standard. In addition, five bilateral pilot projects are underway to support developing countries in the implementation of AEOI.[8]

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[6] www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/

[7] As of 31 December 2018, Montserrat, Saint Vincent and the Grenadines and Vanuatu had not exchanged information because their technical implementation was ongoing; however, Saint Vincent and the Grenadines have since exchanged, Brunei Darussalam, Dominica, Israel, Niue, Sint Maarten and Trinidad and Tobago had not exchanged information because their legal implementation was still not completed. Antigua and Barbuda completed its legal implementation in early 2019 and subsequently exchanged information.

[8] Albania and Italy; Georgia and Germany; Ghana and the United Kingdom; Morocco and France; and the Philippines and Australia.

As a result, in addition to two developing countries which commenced exchanges in 2018 (Azerbaijan and Pakistan), six other developing country members have already declared their intention to commence exchanges by a specific date, with more commitments expected in the near future. Nigeria and Ghana are looking to commence exchanges this year and Albania, Kazakhstan (which also hosts a financial centre), the Maldives and Peru intend to start exchanges in 2020.

The up-to-date status of AEOI commitments can be found in Table 1 that summarises the intended implementation timelines of the new standard.

Table 1. The Status of AEOI Commitments* (as of 16 May 2019)

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)
Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus**, 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***, The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan***, Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019 (3)
Ghana***, Kuwait**** and Nigeria***
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2020 (5)
Albania***, Kazakhstan, Maldives***, Oman and Peru***
DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (46)
Armenia, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Cape Verde, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eswatini, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guatemala, Guyana, Haiti, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Mongolia, Montenegro, Morocco, Niger, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Thailand, Togo, Tunisia, Uganda, Ukraine

* 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.

** 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 recognizes 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.

*** Developing countries that do not host a financial centre were not asked to commit to 2018 but these jurisdictions have done so voluntarily.

**** Kuwait originally expected to exchange information in 2018, but has since postponed its date of first exchange to 2019.

Ensuring the effectiveness of AEOI Implementation

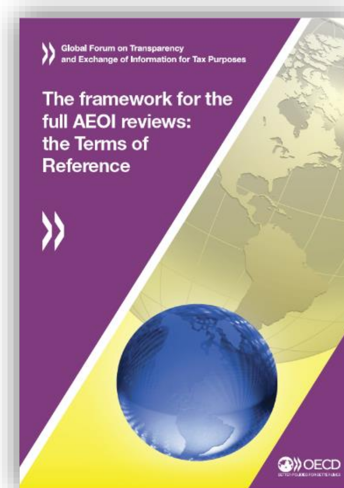
Before the exchanges under the AEOI Standard commenced, the Global Forum had started assessments of the completeness of the legal and other frameworks which were put in place by the committed jurisdictions for the purpose of AEOI implementation. These assessments focused on three key aspects.

First, the Global Forum completed preliminary assessments of confidentiality and data safeguards standards in place to ensure that all jurisdictions exchanging information comply with the required standards in this area. Where gaps were identified, assistance was provided to address them.

Second, the assessment extended to the content of the domestic legal frameworks requiring financial institutions to collect and report information. All of the key elements of the reporting and due diligence rules were covered. As part of these assessments, the Global Forum also reviewed jurisdiction-specific exemptions of financial institutions or financial accounts seen as posing a low risk of being used for tax evasion. This process has now extended to the assessment of legal frameworks in relation to beneficial ownership and the wider enforcement and compliance frameworks relied upon for AEOI. It is due to shortly be completed. Jurisdictions are already making progress on addressing identified gaps.

Finally, the Global Forum has been closely monitoring the exchange agreements put in place to facilitate exchanges between all interested appropriate partners. A dedicated process has been put in place which allows any jurisdiction which becomes concerned of a delay to raise this issue within the Global Forum and work towards its resolution. In this regard, by the end of 2019, the Global Forum will assess the progress made by jurisdictions to deliver upon their commitment to have agreements with all interested appropriate partners.

With the commencement of exchanges, the Global Forum will move to begin to assess whether the AEOI Standard is operating effectively in practice. This assessment will cover the issue of whether proper enforcement mechanisms have been put in place and whether financial institutions are carrying out their obligations in accordance with the Standard. At the 2018 plenary meeting, the Global Forum adopted the Terms of Reference,[9] and the next step is to develop and test a framework for assessing the effectiveness of the AEOI Standard in practice. The effectiveness reviews will then commence in 2020.



[9] www.oecd.org/tax/transparency/AEOI-terms-of-reference.pdf.

2. Exchange of Information on Request (EOIR)

Delivering EOIR Peer Reviews

In the second round of EOIR peer reviews, which commenced in 2016, 45 new ratings have been published as of 16 May 2019, of which 14 overall ratings are "Compliant", 28 "Largely Compliant" and 3 "Partially Compliant" (see Table 2 "Overall Ratings Following Peer Reviews against the EOIR Standard" below). A further 33 reviews are on-going.[10] This includes in particular the reviews of practically all jurisdictions that had been assigned provisional ratings in 2017.[11]

In the second round, several jurisdictions have improved their overall rating, from "Largely Compliant" to "Compliant", and one from "Partially Compliant" to "Largely Compliant". Progress is being recorded on the elements which were subject to the first round of EOIR peer review and are re-visited in the second round, and in particular there is a positive trend of increasing capacity to deal with the growing volume and complexity of requests. This augurs well for the potential benefits of higher revenue mobilisation based on future EOIR cooperation in the light of the recent AEOI data exchanges. Nevertheless, the implementation of the new beneficial ownership requirement continues to raise concerns with most jurisdictions having received recommendations to improve their legal framework to align with international standards and in some cases with an impact on overall rating resulting in a downgrade. Annual follow-up monitoring is in place to track the progress made at the post-assessment stage.

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[10] Reviews are launched according to the Schedule of Reviews available at www.oecd.org/tax/transparency/about-the-global-forum/publications/schedule-of-reviews.pdf.

[11] Andorra, Costa Rica, Dominican Republic, Guatemala, Lebanon, Marshall Islands, Federated States of Micronesia, Nauru, Panama, Samoa, Trinidad and Tobago, United Arab Emirates and Vanuatu.

Table 2. Overall Ratings Following Peer Reviews against the EOIR Standard (as of 16 May 2019)

Ratings based on First round of reviews	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	**Compliant**
Albania, Argentina, Azerbaijan, Barbados, Belize, Botswana, British Virgin Islands, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Chile, Cook Islands, Cyprus, Czech Republic, El Salvador, Gabon, Georgia, Gibraltar, Greece, Grenada, Israel, Kenya, Latvia, Lesotho, Macao (China), Malaysia, Malta, Mauritania, Montserrat, Morocco, Nigeria, Niue, Pakistan, Poland, Portugal, Romania, Russia, Senegal, Slovak Republic, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Seychelles, Switzerland, Uganda, Uruguay	Aruba, Australia, Austria, The Bahamas, Belgium, Bermuda, Brazil, Canada, Cayman Islands, Denmark, Germany, Hong Kong (China), Hungary, India, Indonesia, Jamaica, Japan, Liechtenstein, Luxembourg, North Macedonia, Netherlands, Philippines, Qatar, Saint Kitts and Nevis, Spain, Turks and Caicos Islands, United Kingdom, United States	**Largely Compliant**
Andorra, Antigua and Barbuda, Costa Rica, Dominica, Dominican Republic, Guatemala, Federated States of Micronesia, Lebanon, Nauru, Panama, Samoa, United Arab Emirates, Vanuatu		**Provisionally* Largely Compliant**
Anguilla, Sint Maarten, Turkey	Curaçao, Ghana, Kazakhstan	**Partially Compliant**
Marshall Islands		**Provisionally* Partially Compliant**
Trinidad and Tobago**		**Non-Compliant**

* These jurisdictions have been reviewed under the Fast-Track review procedure and assigned a provisional overall rating. Their full reviews under the strengthened 2016 Terms of Reference have been launched or are due to be launched shortly.

** This jurisdiction applied for the Fast-Track review, but the progress it demonstrated was not sufficient to justify an upgrade of its rating beyond Non-Compliant.

Ensuring a Level Playing Field

The Global Forum has a process in place which allows its members to nominate and scrutinise non-members to ensure a level playing field. At the 2017 plenary, the Global Forum members agreed that Bosnia and Herzegovina, Montenegro and Serbia are of relevance for EOIR purposes. All three countries have subsequently joined the Global Forum. In 2018, Oman and Jordan were identified as relevant with Oman joining the Global Forum shortly after.

3. The Convention on Mutual Administrative Assistance in Tax Matters

Since 2009, the G20 has consistently encouraged countries to sign the Convention on Mutual Administrative Assistance in Tax Matters (the multilateral Convention). During this period, the multilateral Convention has vastly enlarged the number of jurisdictions which participate in it from below 20 to 128 (see Appendix 1). Today the multilateral Convention creates an impressive network equivalent to over 6,000 bilateral agreements which enables all forms of tax co-operation to tackle tax evasion and avoidance.

Since the last report to the G20 Finance Ministers and Central Bank Governors,[12] the multilateral Convention has entered into force in eight jurisdictions, i.e. Bahamas, Bahrain, Grenada, Hong Kong (China),[13] Macau (China),[14] Peru, Turkey, and United Arab Emirates. In further four jurisdictions the agreement entered into force, following the deposition of an instrument of ratification, acceptance or approval, i.e. Jamaica, Kuwait, Qatar and Vanuatu. Two jurisdictions, Antigua and Barbuda and Dominica, signed the multilateral Convention and deposited the instrument of ratification, acceptance or approval. In Antigua and Barbuda the convention has entered into force and in Brunei Darussalam and Dominica it will do so in a few weeks. Three countries – Ecuador, Mauritania and North Macedonia – have signed the multilateral Convention with further steps pending.

Whilst all G20 countries, all BRIICS, all OECD countries, and major financial centres participate in this legal instrument, there are still many developing countries which are yet to sign and ratify it.

[12] www.oecd.org/ctp/oecd-secretary-general-tax-report-g20-finance-ministers-july-2018.pdf.

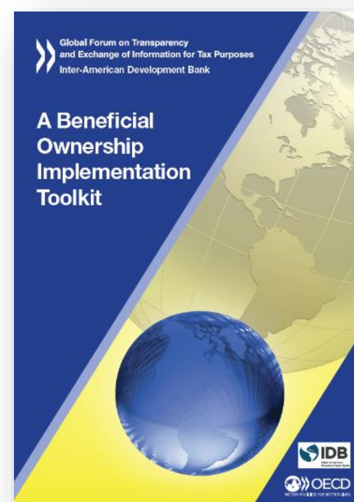
[13] Extension by the People's Republic of China.

[14] Extension by the People's Republic of China.

4. Technical Assistance

More than a half of the existing Global Forum members, and practically all new members, are developing countries. This creates a constant demand for technical assistance.

This demand is now particularly acute as members are undergoing the second round of EOIR peer reviews which includes some new elements. One of the key challenges faced by members in this round concerns beneficial ownership. To help governments implement the Global Forum's standards on ensuring that law enforcement officials have access to reliable information on who the ultimate beneficial owners are behind a company or other legal entity, the Global Forum – in partnership with the Inter-American Development Bank – released *A Beneficial Ownership Toolkit* (March 2019).[15] As the current beneficial ownership standard does not provide a specific method for implementing it, the toolkit seeks to assist policy makers in implementing the legal and supervisory frameworks to identify, collect and maintain the necessary beneficial ownership information.



In addition, as more and more developing countries express their intention to implement AEOI, technical assistance in this area is expanding. Overall, at the moment, more than 50 developing countries are provided with tailored support either as part of a structured Induction Programme or through *ad hoc* assistance offered on request.

The Global Forum is actively working at the regional level to seek political commitment for the effective use of tax transparency tools. The *Yaoundé Declaration* (2017) called on all African countries to make the best use of the most recent improvements in global tax transparency.[16] As of 16 May 2019, the number of African countries which have now adhered to this Declaration reached 24.[17] Practical steps made towards stronger tax transparency were discussed at the 6th Meeting of the Global Forum's Africa Initiative held in Kigali, Rwanda, on 28 February and 1 March 2019. The meeting was attended by over 20 African countries and marked by the launch of the first progress report on tax transparency in Africa.[18]

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[15] www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf.

[16] The Yaoundé Declaration (2017), www.oecd.org/tax/transparency/yaounde-declaration.pdf.

[17] The list of signatories is available at: www.oecd.org/tax/transparency/technical-assistance/declaration/yaounde-declaration-list-of-signatories%20.pdf.

[18] www.oecd.org/tax/transparency/africa-initiative-report-2018.pdf

The work is also progressing in other regions. Alongside the 2018 Global Forum plenary which was hosted by Uruguay, a high-level meeting for Latin American countries was held, resulting in the signature of the *Punta del Este Declaration* which calls for closer international tax co-operation in several areas, including with respect to providing more efficient access to the beneficial ownership information and closer interagency co-operation.[19] As of 16 May 2019, eight jurisdictions[20] have adhered to this Declaration.

Further, the Global Forum co-organised high-level events in Tbilisi (Georgia) and in Kyiv (Ukraine), in co-operation with the Georgian and Ukrainian authorities in July and November 2018 respectively, which focused on the implementation of the measures enhancing tax transparency and fighting profit shifting.

Future Outlook

This year the Global Forum marks its 10th anniversary since a major restructuring that took place in 2009 to provide for an open membership and put in place the process of EOIR peer reviews. The upcoming plenary meeting will therefore allow the Global Forum to report on a remarkable journey made in the past decade. Alongside, the Global Forum will continue to deliver EOIR reports according to the schedule and to build the foundation for commencing the AEOI effectiveness reviews in 2020.

[19] www.oecd.org/tax/transparency/Latin-American-Ministerial-Declaration.pdf

[20] Argentina, Chile, Colombia, Ecuador, Panama, Paraguay, Peru and Uruguay.

Appendix 1

Jurisdictions participating in the multilateral Convention on Mutual Administrative Assistance in Tax Matters* (as of 16 May 2019)

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

[1] Territorial extension by the United Kingdom.

[2] Territorial extension by the Kingdom of the Netherlands.

[3] 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.

[4] Territorial extension by the Kingdom of Denmark.

[5] Territorial extension by China.

[6] 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 1: Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy

Also available at: 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

Chapter I - Introduction

The digital transformation spurs innovation, generates efficiencies, and improves services while boosting more inclusive and sustainable growth and enhancing well-being. At the same time the breadth and speed of this change introduces challenges in many policy areas, including taxation.

The tax challenges of the digitalisation of the economy were identified as one of the main areas of focus of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project, leading to the 2015 BEPS Action 1 Report (the Action 1 Report).[1] The Action 1 Report found that the whole economy was digitalising and, as a result, it would be difficult, if not impossible, to ring-fence the digital economy.

For indirect taxes, the Action 1 Report recognised new challenges related to the collection of Value Added Taxes (VAT)/Goods and Services Taxes (GST) on the continuously growing volumes of goods and services that consumers purchase online from foreign suppliers. It recommended implementing the destination principle contained in the 2017 OECD International VAT/GST Guidelines,[2] together with the mechanisms for effective collection of VAT/GST on cross-border supplies of services and intangibles presented in those Guidelines.

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. A number of potential options to address these concerns were discussed, but none were ultimately recommended. Instead, the Action 1 Report called for continued work in this area, notably by monitoring developments in respect of digitalisation, with a further report to be delivered by 2020.

Notwithstanding the progress made in tackling double non-taxation as part of the BEPS package, and the widespread implementation of the OECD International VAT/GST Guidelines, ongoing concerns around the tax implications of a rapidly digitalising economy led the G20 Finance Ministers, at their meeting in Baden Baden in March 2017, to advance the timeline and request the Inclusive Framework to deliver an interim report by early 2018. In March 2018, the Inclusive Framework, working through its Task Force on the Digital Economy (TFDE), issued *Tax Challenges Arising from Digitalisation – Interim Report 2018* (the Interim Report).[3] The Interim Report provided an in-depth analysis of new and changing business models that enabled the identification of three characteristics frequently observed in certain highly digitalised business models, namely *scale without mass*, *heavy reliance on intangible assets*, and the *importance of data, user participation and their synergies with intangible assets*. The ensuing potential tax challenges were discussed, including remaining BEPS risks and the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions.

While members of the Inclusive Framework did not converge on the conclusions to be drawn from this analysis, they committed to continue working together to deliver a final report in 2020 aimed at providing a consensus-based long-term solution, with an update in 2019.

Conscious of the challenging time frame and the importance of the issues, the Inclusive Framework further intensified its work after the delivery of the Interim Report. Consistent with the analysis included in the Action 1 Report as well as the Interim Report, some members made suggestions on how the work could be taken forward to achieve progress towards a consensus-based solution. Some proposals focused on the allocation of taxing rights by suggesting modifications to the rules on profit allocation and nexus, other proposals focused more on unresolved BEPS issues. In the Policy Note *Addressing the Tax Challenges of the Digitalisation of the Economy*,[4] approved on 23 January 2019, the Inclusive Framework agreed to examine and develop these proposals on a "without prejudice" basis. These proposals were grouped into two pillars which could form the basis for consensus:

- 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 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.

While the two issues of the ongoing work on remaining BEPS challenges and a concurrent review of the profit allocation and nexus rules are distinct, they intersect and a solution that seeks to address them both could have a mutually reinforcing effect. Therefore the Inclusive Framework agreed that both issues should be discussed and explored in parallel.

Since January 2019, and consistent with the Policy Note, the Inclusive Framework has continued to examine the proposals, including by considering how the gaps between the different positions of jurisdictions could be bridged, taking into consideration the overlaps that exist between the BEPS issues exacerbated by digitalisation and the broader tax challenges. As part of this work, a public consultation document was released on 13 February 2019, which sought input from external stakeholders on the specific proposals examined under Pillar One and Pillar Two.[5] The response from stakeholders was robust with more than 200 written submissions running to over 2,000 pages of written comments.[6] Stakeholders had the opportunity to express their views at the public consultation meeting that was held at the OECD Conference Centre in Paris on 13 and 14 March 2019 and that was attended by over 400 representatives from governments, business, civil society and academia.

This ongoing work, including the public consultation process and inputs received from various stakeholders, has highlighted important areas that need to be discussed among the members of the Inclusive Framework. One area is the effect of the three characteristics noted in the Interim Report, which are more pronounced in certain highly digitalised business models, reinforced by globalisation, and the broader challenges this may pose in relation to existing tax rules, including by exacerbating some BEPS risks.[7] For some commentators and members of the Inclusive Framework the work on the tax challenges of digitalisation has revealed some more fundamental issues of the existing international tax framework, which have remained after the delivery of the BEPS package.

A further issue is the recognition that if the Inclusive Framework does not deliver a comprehensive consensus-based solution within the agreed G20 time frame, there is a risk that more jurisdictions will adopt uncoordinated unilateral tax measures. A growing number of jurisdictions are not content with the taxation outcomes produced by the current international tax system, and have or are seeking to impose various measures or interpretations of the current rules that risk significantly increasing compliance burdens, double taxation and uncertainty. One of the focal points of dissatisfaction relates to how the existing profit allocation and nexus rules take into account the increasing ability of businesses, in certain situations, to participate in the economic life of a jurisdiction without an associated or meaningful physical presence. An unparalleled reliance on intangibles and the rising share of services in cross border trade are among the causes typically identified. This dissatisfaction has created a political imperative to act in a significant number of jurisdictions. Cognisant that predictability and stability are fundamental building blocks of global economic growth, the Inclusive Framework is therefore concerned that a proliferation of uncoordinated and unilateral actions would not only undermine the relevance and sustainability of the international framework for the taxation of cross-border business activities, but will also more broadly adversely impact global investments and growth.

This economic and political context is at the foundation of the programme of work for each Pillar outlined in this paper, which has been developed by the Inclusive Framework with a view to reporting progress to the G20 Finance Ministers in June 2019 and delivering a long-term and consensus-based solution in 2020. This timeline is extremely ambitious given the need to revisit fundamental aspects of the international tax system, but is reflective of the political imperative that all members of the Inclusive Framework attach to finding a timely resolution of the issues at stake.

A consensus based solution to be agreed among the 129 members of the Inclusive Framework will, in addition to the important technical work that must be carried out, require political engagement and endorsement as the interests at stake for members go beyond technical issues and will have an impact on revenues and the overall balance of taxing rights. For a solution to be delivered in 2020, the outlines of the architecture will need to be agreed by January 2020. This outline will have to include a

determination of the nature of, and the interaction between, both Pillars, and will have to reduce the number of options to be pursued under Pillar One. The solution should reflect the right balance between precision and administrability for jurisdictions at different levels of development, underpinned by sound economic principles and conceptual basis. Furthermore, it would be important to ensure a level playing field between all jurisdictions; large or small, developed or developing. The G20 process can provide important momentum in this regard. As indicated in the Policy Note,[8] the rules agreed should not result in taxation where there is no economic profit nor should they result in double taxation.

The work programme contained in this paper provides a path to finding such a solution but will require an early political steer informed by an economic analysis and impact assessment of the possible designs of a solution, as described in Chapter IV.

Given the interlinked nature of these different elements the Steering Group of the Inclusive Framework will play a key role in advancing this work and developing proposals for the consideration of the Inclusive Framework.

To support this process and enable the Steering Group to fulfil its mandate, technical work, including on the economic analysis, at the subsidiary body level will start immediately on all current proposals as needed to support the Steering Group. Once there is an agreed architecture proposed by the Steering Group and agreed by the Inclusive Framework, the subsidiary bodies will revert to their more traditional role of working towards the implementation of an agreed policy direction.

The programme of work for the future technical work contained in this document needs to be seen in this context. It remains dynamic throughout, recognising that new technical issues may emerge as the work progresses. It has a preparatory focus initially and then turns more definitive once an overall architecture has been agreed. It recognises that there are cross-cutting issues that affect both Pillars requiring close coordination. Finally, it recognises the need for the Steering Group to play a central and ongoing role in managing the work and provide direction as and when needed to achieve a successful outcome.

Chapter II of the document focuses on the allocation of taxing rights (Pillar One), and describes the different technical issues that need to be resolved to undertake a coherent and concurrent revision of the profit allocation and nexus rules.

Chapter III focuses on remaining BEPS issues (Pillar Two), and describes the work to be undertaken in the development of a global anti-base erosion (GloBE) proposal that would, through changes to domestic law and tax treaties, 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.

Chapter IV discusses work to be undertaken in connection with an impact assessment and economic analysis of the proposals.

Chapter V explains how the work under both Pillars is organised and articulates the role of the Steering Group in steering, monitoring and co-ordinating the Programme of Work and related outputs in order to ensure that the Inclusive Framework can deliver on its commitment to arrive at a consensus solution and produce a final report by the end of 2020. The schedule of meetings of the Inclusive Framework will be adapted accordingly.

References

[1] 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, https://doi.org/10.1787/9789264241046-en.

[2] OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris, https://doi.org/10.1787/9789264271401-en.

[3] 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, https://doi.org/10.1787/9789264293083-en.

[4] OECD (2019), *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, Paris, www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf.

[5] OECD (2019), Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019, www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf.

[6] All written submissions made to the Public Consultation Document are available at: www.oecd.org/tax/beps/public-comments-received-on-the-possible-solutions-to-the-tax-challenges-of-digitalisation.htm.

[7] This matter was recently addressed in a Policy Paper released by the International Monetary Fund (IMF), stressing that the challenges raised by digitalisation are emblematic of wider vulnerabilities in the international tax system that cannot be addressed by small scale reforms but rather ask for a more fundamental reconsideration (International Monetary Fund (2019), *Corporate Taxation in the Global Economy*, Policy Paper No 19/007, Washington D.C., accessible at: https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650.

[8] See footnote 4.

Chapter II – Revised Nexus and Profit Allocation Rules (Pillar One)

Under Pillar One, three proposals have been articulated to develop a consensus-based solution on how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries – namely, the "user participation" proposal,[1] the "marketing intangibles" proposal[2] and the "significant economic presence" proposal.[3]

These proposals have important differences, including the objective and scope of the reallocation of taxing rights – hereafter, the "new taxing right". At the same time, they all allocate more taxing rights to the jurisdiction of the customer and/or user – hereafter, the "market jurisdictions"[4] – in situations where value is created by a business activity through (possibly remote) participation in that jurisdiction that is not recognised in the current framework for allocating profits. Further, they have important common policy features, as they all contemplate the existence of a nexus in the absence of physical presence, contemplate using the total profit of a business, contemplate the use of simplifying conventions (including those that diverge from the arm's length principle) to reduce compliance costs and disputes – a feature supported by many commentators at the public consultation, who expressed concerns about approaches that would add complexity to existing tax rules –, and would operate alongside the current profit allocation rules.

Hence, although further work will be conducted in parallel to reach a political agreement on the objective and scope of a unified approach, the existing commonalities suggest that there is sufficient scope to establish a programme of work considering together some key design features of a consensus-based solution under Pillar One. The technical issues that need to be resolved under the programme of work may be grouped into three building blocks, namely:

- different approaches to determine the amount of profits subject to the new taxing right and the allocation of those profits among the jurisdictions;
- the design of a new nexus rule that would capture a novel concept of business presence in a market jurisdiction reflecting the transformation of the economy, and not constrained by physical presence requirement; and
- different instruments to ensure full implementation and efficient administration of the new taxing right, including the effective elimination of double taxation and resolution of tax disputes.

The programme of work will invite subsidiary bodies to explore these issues and assess their implications, with a view to assisting the Steering Group to reach a unified approach on Pillar One which will facilitate a political agreement.

1. New profit allocation rules

1.1. Overview

The new taxing right requires a method to quantify the amount of profit reallocated to market jurisdictions, and a method to determine how that profit should be allocated among the market jurisdictions entitled to tax under the new taxing right. The different methods suggested so far to determine the profit subject to the new taxing right will be further explored, including the possible use of more simplifications to minimise compliance costs and disputes.

Due consideration will be given to concerns about the complexity and uncertainty of the methods articulated so far, and the possible advantages of using other simplified approaches. Additionally, this work will consider the feasibility of business line or regional segmentations, different mechanisms to allocate the profit to the relevant market jurisdictions, the design of various scoping limitations and alternative treatments of losses. It is recognised that, due to the nature and the variety of possible approaches that are to be considered in this work, the scope of the work may need to be adapted as the work progresses.

1.1. New profit allocation rules

The programme of work would explore issues and options in connection with new profit allocation rules. These issues and options are expected to include:

1) The development of conceptually underpinned methods for determining the amount of profit and loss subject to the new taxing right, consistent with the principle of avoiding double taxation;

2) The use of simplification measures where appropriate to limit the burden of the new rules on tax administrations and taxpayers alike; and

3) An assessment of the administrability of the features of any proposal, taking into consideration capacity and resource constraints.

1.2. Modified residual profit split method

The MRPS method would allocate to market jurisdictions a portion of an MNE group's non-routine profit that reflects the value created in markets that is not recognised under the existing profit allocation rules. It involves four steps: (i) determine total profit to be split; (ii) remove routine profit, using either current transfer pricing rules or simplified conventions; (iii) determine the portion of the non-routine profit that is within the scope of the new taxing right, using either current transfer pricing rules or simplified conventions; and (iv) allocate such in-scope non-routine profit to the relevant market jurisdictions, using an allocation key.

The programme of work will explore the issues and alternative options associated with each of these steps, including possible simplifications. Further, given that the scope of the new taxing right is not intended to cover all profit, the MRPS method will coexist with the existing transfer pricing rules and rules for coordinating these two sets of rules will be necessary to provide certainty and minimise disputes.

1.2. Modified Residual Profit Split

The programme of work would explore options and issues relating to a modified residual profit split method. These issues and options are expected to include:

1. The development of rules that govern how total profits should be computed for purposes of applying the Modified Residual Profit Split ("MRPS") method.
    a. This requires consideration of the suitability of using accounting rules for the computation of total profits, the relevant measure of profit to be used (such as pre-tax profit etc.), and what adjustments (if any) would be appropriate.
    b. It also requires an evaluation of the relative merits of determining total profits:
        i. on a group-wide basis, including how this approach could be integrated with the existing international tax system to ensure that a group could identify which entity's or entities' profit is subject to the new taxing right exercised by a particular jurisdiction; or
        ii. on an entity or aggregated entity basis, including how the entity or entities in scope could be identified and, where multiple entities are identified, how the combined profits of these entities would be reallocated under the new taxing right.

2. The development of rules to bifurcate total profit into routine and non-routine components. This would require an evaluation of the relative merits of using current transfer pricing rules and simplified approaches. In particular,
    a. The evaluation of using current transfer pricing rules would include consideration of the following:
        i. the impact of future transfer pricing disputes (which can take a number of years to conclude) on routine and non-routine profit computations; and
        ii. the mechanisms that local tax administrations would require to confirm the amount of non-routine profits.
    b. The evaluation of using simplified approaches would include consideration of possible proxies for the determination of non-routine profit.
3. The development of rules to quantify the portion of non-routine profit subject to the new taxing right. This would include an evaluation of the relative merits of using the approaches set forth below.
    a. The adaptation of the current transfer pricing rules, taking into account the issues raised above.
    b. The use of a proxy based on capitalised expenditures. This would include consideration of:
        i. how costs relating to the activities and assets in and out of scope of the new taxing right should be identified;
        ii. how the "useful lives" of different categories of expenditure and investment should be determined and applied; and
        iii. how concerns that cost may not always be an appropriate indicator of value could be addressed.
    c. The use of a proxy based on projections of future income.
    d. The use of a proxy based on fixed percentages of total non-routine income, including the possibility of using different fixed percentages for different lines of business.
    e. Such other proxies as may be developed by the detailed work in this area.
4. The development of rules to allocate the identified profit subject to the new taxing rights among the relevant market jurisdictions. This requires the evaluation of possible allocation keys, such as revenues.
5. The integration of the MRPS method with the existing transfer pricing rules without giving rise to double taxation or double non-taxation.
6. Other technical issues that arise from the exploration of the above topics, recognising that the detailed points discussed above may need to be adapted as the work progresses.

** A fundamental issue associated with the MRPS method is whether it would be applied to an MNE group as a whole, or whether it would separately take into account different business lines and geographical regions. That topic is addressed below.*

1.3. Fractional apportionment method

The fractional apportionment method involves the determination of the amount of profits subject to the new taxing rights without making any distinction between routine and non-routine profit. One possible approach to assessing the profit derived by a non-resident enterprise is to take into account the overall profitability of the relevant group (or business line). This method would involve three steps: (i) determine the profit to be divided, (ii) select an allocation key, and (iii) apply this formula to allocate a fraction of the profit to the market jurisdiction(s).

In exploring the development of a fractional apportionment method, the programme of work will explore a number of issues, including:

- Determining options for the starting point of the computation of the relevant profits subject to the fractional apportionment mechanism. Such options may include the profit of the selling entity as determined by the current transfer pricing rules, or by applying a global profit margin to local sales, or by any other measures as may be considered appropriate.
- Explore different allocation keys that could be taken into account in constructing the formula that would be used to apportion the relevant profit.
- Addressing the interaction between the current profit allocation framework with the fractional apportionment approach, especially if a decision is made to adjust the amount of profit allocated to the market jurisdiction based on the overall profitability of the relevant group or business line.

1.3. Fractional apportionment

The programme of work would explore issues and options relating to a fractional apportionment method. These issues and options are expected to include:

1. The development and evaluation of a method to determine the profits of a non-resident entity or group that would be subject to the fractional apportionment mechanism, including the possibility of taking into account overall profitability.
2. The financial accounting regime and measure upon which the profit determination would be based for this purpose.
3. The factors, including employees, assets, sales, and users, that could be taken into account in constructing the formula that would be used to apportion the relevant profit.
4. The design of rules to coordinate the effect of the fractional apportionment method and the current transfer pricing system, without giving rise to double taxation or double non-taxation. This would include, for example, rules related to how the burden of the new taxing right might be shared with other entities in the MNE group where the profits of a non-resident entity take into account the overall profitability of the group.

1.4. Distribution-based approaches

Consistent with the strong demand for simplicity and administrability, the programme of work will also explore other possible simplified methods. This includes consideration of a simplified approach grounded in the twin considerations of the interest in allocating more profit to market jurisdictions and reducing the ongoing controversies associated with the proper pricing of marketing and distribution activities. In contrast to the MRPS method, this approach might address, in addition to non-routine profit, profit arising from routine activities associated with marketing and distribution.

One possibility would be to specify a baseline profit in the market jurisdiction for marketing, distribution and user-related activities. Other options might also be considered, for example, the baseline profit could increase based on the MNE group's overall profitability. Through this mechanism, some of the MNE group's non-routine profit would be reallocated to market jurisdictions. The baseline profit could also be modified by additional variables to accommodate, for instance, industry and market differences.

The design of such an approach would require consideration of whether it would envisage allocating to market jurisdictions a profit which would be a final allocation – i.e. an allocation which taxpayers or tax authorities would not be able to re-evaluate under the current transfer pricing rules. Alternatively, such a simplified approach could be designed to allow the allocation of a higher return under traditional transfer pricing principles to market jurisdictions, such as in those cases where a local distribution company owns and controls all the risks for highly profitable marketing intangibles.

In scenarios involving a remote activity, an issue that will need to be explored is whether the amount of profit (including any baseline profit) taxable by that market jurisdiction would be the same as for locally-based marketing and distribution activities, or whether that amount should be reduced in some formulaic manner.

1.4. Distribution-based approaches

The programme of work would explore issues and options related to distribution-based approaches. These issues and options are expected to include:

1) The development of rules providing a baseline amount of profit attributable to marketing, distribution, and user-related activities.
2) The assessment of whether and how a baseline amount could be adjusted based on a group's overall profitability and other relevant factors to effectively allocate a proportion of routine and non-routine profits to market jurisdictions. This could include consideration of how concerns that cost may not always be an appropriate indicator of value could be addressed.
3) The assessment of whether the baseline could function as a minimum or maximum return.
4) The assessment of whether and how any such adjusted profits or returns could be applied where the relevant group has no established tax presence in the market jurisdiction.
5) How the approach could be coordinated with the current transfer pricing system without giving rise to double taxation or double non-taxation.

1.5. Explore the use of business line and regional segmentation

The profitability of a MNE group can vary substantially across different business lines and regions. To avoid unintended outcomes and distortions, and ensure a proper balance between simplicity and precision, the programme of work will explore the possibility of determining the profits subject to the new taxing right on a business line and/or regional basis.

1.5. Business line and regional segmentation

The programme of work would explore issues and options for business line and regional segmentation. These issues and options are expected to include:

1) The design of rules to define and delineate among different business lines for the purposes of applying the approaches described above, and an evaluation of the administrability associated with such rules. As elsewhere, these rules would need to be administrable for taxpayers and tax administrations with different capability and resource constraints. In developing these rules consideration would be given to (i) the information MNE groups already prepare (e.g. for accounting, securities law, or regulatory purposes); (ii) the extent to which this information could be used reliably to segment MNE groups by business line; and (iii) any other required information.
2) The design of rules or principles to allow the regional segmentation of an MNE group's activities for the purposes of applying the approaches described above. These rules or principles could need to consider many of the same issues identified for business line segmentation.

1.6. Design scoping limitations

To the extent that the activities and assets within the scope of the new taxing right would not be undertaken or exploited by all businesses, scope limitations may be appropriate. The programme of work will explore different limitations that could operate either by reference to the nature (e.g. through negative exclusions, safe harbours, and/or other screening criteria) or the size (e.g. thresholds based on revenue or other relevant factors) of a given business. In this task, due consideration will be given to the feasibility of business line segmentations and any legal constraint arising from other international obligations. Due consideration will also be given to whether or to what extent any new taxing right would apply to certain items such as commodities and other primary products, and financial instruments.

1.6. Design scope limitations

The programme of work would explore issues and options in connection with design scoping limitations. These issues and options are expected to include:

1) Potential limitations on the scope of the new taxing right. This work would include the development of rules to limit the scope of the new taxing right based on the size of a MNE group or business line. It would also include an evaluation of rules that could focus the scope of the rules on businesses that are of a type to which the rules should apply.
2) Consideration would also be given to whether any scope limitations are legally constrained by other international obligations, e.g. trade regulations.

1.7. Develop rules on the treatment of losses

It is important that the new profit allocation rules have effective application to both profits and losses. The programme of work will explore the different options available for the treatment of losses under the new taxing right.

1.7. Treatment of losses

The programme of work would explore issues and options in connection with the design of rules for the treatment of losses. These issues and options are expected to include:

1) The development of profit allocation rules that apply symmetrically to profits and losses. This should include consideration of the practical consequences of this approach, such as when and how a loss-making MNE group would be required to file a tax return in market jurisdictions.
2) The development of an "earn out" approach to losses, wherein an MNE group would maintain a notional cumulative loss account, and profits would be subject to the new taxing right only once that cumulative loss account had been reduced to zero by subsequent profits.
3) The development of a hybrid system incorporating elements of the symmetric treatment of losses and "earn out" approach could also be considered.
4) The determination of whether all or a defined subset of the losses of an MNE group (such as carry-forward losses, losses in relation to a particular business line, or losses in a particular region/jurisdiction) should be taken into account under the approaches described above.

2. New nexus rules

The work programme will explore the development of a concept of remote taxable presence (i.e. a taxable presence without traditional physical presence) and a new set of standards for identifying when such a remote taxable presence exists. The work programme will also consider a new concept of taxable income sourced in (i.e. derived from) a jurisdiction. This taxing right would generally not be constrained by physical presence requirements.

Developing a new non-physical presence nexus rule to allow market jurisdictions to tax the measure of profits allocated to them under the new profit allocation rules would require an evaluation of the relative merits of alternative approaches, including:

- amendments to the definition of a "permanent establishment" (PE) in Article 5 of the OECD Model Convention,[5] and potential ensuing changes to Article 7 of the OECD Model Convention;
- development of a standalone rule establishing a new and separate nexus, either through a new taxable presence or a concept of source.

2.1. New nexus rules rule and other treaty related issues

The programme of work would explore options and issues related to a new nexus rule. These options and issues are expected to include:

1. The development of a new nexus rule that would capture a novel concept of a business presence in a market jurisdiction reflecting the transformation of the economy and not constrained by physical presence requirements, and which would allow market jurisdictions to exercise taxing rights over the measure of profits allocated to them under the new profit allocation rules. This would require an evaluation of the relative merits of alternative approaches, including the making of recommendations on:
    a. Amending Articles 5 and 7 of the OECD Model Convention to deem a PE to exist where an MNE exhibits a remote yet sustained and significant involvement in the economy of a jurisdiction and to accommodate the new profit allocation rules. This would also require a consideration of any impact of such an amendment on other provisions that use the PE concept (Articles 10-13, 15, 21, 22, and 24) and other issues (such as VAT and social security contributions).
    b. Alternatively, introducing a new standalone provision giving market jurisdictions a taxing right over the measure of profits allocated to them under the new profit allocation rules, which would require:
        1. identifying and defining a new non-physical taxable presence separate from the PE concept;
        2. identifying and defining a new concept of income taxable in the source jurisdiction (i.e. income derived from a particular source in a jurisdiction); and
        3. the interaction between the new taxable presence or source income and existing provisions (including especially provisions governing non-discrimination).
2. The evaluation and development of indicators of an MNE group's remote but sustained and significant involvement in the economy of a market jurisdiction. This would require:
    a. a sustained local revenue threshold (both monetary and temporal); and
    b. a range of additional indicators which, in combination with sustained local revenues, would be taken to demonstrate a link beyond mere selling between those revenues and the MNE's interaction with the economy of a jurisdiction.
3. The necessity to change any other treaty provision, such as Article 9, to allow market jurisdictions to exercise taxing rights over the measure of profits allocated to them under the new nexus and profit allocation rules.
4. The considerations to ensure tax certainty, administrability, and effective dispute prevention and resolution.

3. Implementation of the new taxing right

3.1. Elimination of double taxation

The proposals under this Pillar may, depending on the design options eventually chosen, envisage reallocating taxing rights over a proportion of an MNE group's profit (however defined), rather than over the profit from specific transactions or activities undertaken by particular separate entities. It may therefore not be immediately clear which member(s) of an MNE group should be considered to derive the relevant income. This leads to questions about how, in practice, source jurisdictions would exercise the reallocated taxing rights, and how residence jurisdictions would provide relief from double taxation of the relevant income. It is also recognised that the new taxing right may raise new questions relating to the sufficiency of existing double tax relief mechanisms.

The work programme will consider those questions and, in particular, explore the effectiveness of the existing treaty (and domestic law) provisions and the need to develop new or enhanced provisions. Consideration would also be given to a multilateral competent authority mutual agreement or framework that would provide additional guidance.

The programme of work will also examine the current dispute prevention and resolution procedures in the context of the new nexus and profit allocation rules and, where necessary, make recommendations for changes or enhancements to these procedures, including arbitration procedures, multilateral competent authority agreements, etc.

Where appropriate, the work could also consider whether multilaterally co-ordinated risk assessment could be helpful in applying the new nexus and profit allocation rules and make recommendations accordingly. This work could be informed by the ongoing work within the Forum on Tax Administration, including the International Compliance Assurance Programme.

3.1. Elimination of double taxation and dispute resolution

The programme of work would explore options and issues related to the elimination of double taxation and the avoidance and resolution of disputes in relation to the new nexus and profit allocation rules. These options and issues are expected to include:

1. The effectiveness of the existing treaty provisions and the need to develop new or enhanced, treaty provisions for the effective elimination of double taxation in relation to the new nexus and profit allocation rules. This work should examine, in particular:
    a. The extent to which, under the new profit allocation rules, the clear identification of the relevant taxpayer in respect of the income that is reallocated would allow the existing treaty and domestic law mechanisms for eliminating double taxation to continue to operate as intended.
    b. The effectiveness of the existing mechanism for addressing economic double taxation by way of appropriate adjustments under Article 9(2) of the OECD Model Convention and the need for this mechanism to be updated or supplemented in relation to the new profit allocation rules.
    c. The effectiveness of the existing mechanisms for eliminating juridical double taxation by using the exemption or credit method and the need for those mechanisms to be updated or supplemented in relation to the new profit allocation rules.

2. The interaction between the new taxing right and existing taxing rights – in particular those permitting the imposition of withholding taxes on payments (such as royalty payments or payments for services) forming part of the reallocated income. Appropriate recommendations for the development of rules or guidance designed to coordinate the application of these taxing rights in the market jurisdiction would also be explored.
3. The current dispute prevention and resolution procedures, in the context of the new nexus and profit allocation rules. Where necessary, appropriate recommendations for changes or enhancements to these rules would be made. In particular, given that, under some design options, the new approaches will have a more multilateral focus, the work would examine the extent to which these existing procedures need updating because they have focused largely on solving bilateral disputes. This will require, in particular, the evaluation of the need for multilateral approaches to dispute avoidance and resolution.
4. The consideration for multilaterally co-ordinated risk assessment in applying the new nexus and profit allocation rules. This work should be informed by the ongoing work within the Forum on Tax Administration.

3.2. Administration

The implementation of any of the approaches would first require identifying the taxpayer who bears the tax liability and the filing obligations. Where the tax liability is assigned to an entity that is not a resident of the taxing jurisdiction, it would be necessary to address the required enforcement and collection arrangements. The work programme will need to examine, and develop recommendations to address, these enforcement and collection issues.

One option could be to design simplified registration-based collection mechanisms. A simplified registration-based collection mechanism, together with enhanced exchange of information and cooperation mechanisms may be sufficient for compliance and collection purposes. However, as a complementary measure, a withholding tax mechanism will also be explored in the work programme, where it does not lead to double taxation.

The effective application of any of the approaches would likely require a number of data points (e.g. total profit, total profit per business line, sales, users etc.) to be available not only to the tax administrations, but also to the MNE group and the taxpayer itself. In all events, the implementation of any of the approaches would likely result in the need for new data, documentation and reporting obligations. The work programme will develop recommendations for a system to report and disseminate information needed to administer the new taxing right. One option for such a system could be based on the existing framework and technology used for the exchange of country-by-country reports under BEPS Action 13. The data points could be included on a separate report, as the CbC reports are limited to assist with risk assessment.

The work programme will furthermore need to examine the challenges that may arise in determining and reporting the location of sales.

3.2. Administration

The programme of work would explore options and issues in connection with the administration of the new taxing right. These options and issues are expected to include:

1. The development of measures needed for the effective administration of the new taxing right. This work will explore collection mechanisms including a withholding tax, reporting obligations and mechanisms to disseminate that information to the tax authorities.
2. The technical and practical issues that may arise in determining and reporting the location of sales, including:
   a. establishing the final destination of remote sales, sales to a market through third party intermediaries located in a third country, sales in multi-sided business models where the users/consumers are located in different jurisdictions, sales of intermediate goods, and destination of services;
   b. the need for new reporting obligations; and
   c. the need for new and/or revised protocols for the exchange of information between jurisdictions.

3.3. Changing existing tax treaties

Any proposal seeking an allocation of taxing rights over a portion of a non-resident enterprise's business profits in the absence of physical presence and computed other than in accordance with the arm's length principle would require changes to existing tax treaties if they are to be successfully implemented. Different approaches could be envisaged to streamline the implementation of these changes and these options would need to be further assessed in the work programme in light of the precise nature of the changes to be made.

3.3. Modifying Tax Treaties

The programme of work would explore options and issues related to modifying existing tax treaties, with the aim of ensuring that all parties committing to the changes can implement them at substantially the same time. These options and issues are expected to include:

1. Ways to coordinate the effective implementation of the tax treaty changes required to introduce the new nexus and profit allocation rules and address the challenges that arise in relation to the elimination of double taxation and the resolution of associated disputes.
2. The relative merits of implementing these treaty changes by amending or supplementing the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS* (MLI) to further modify existing treaties, or by establishing a new multilateral convention.

References

[1] See paragraphs 17-28 of the Public Consultation Document.

[2] See paragraphs 29-49 of the Public Consultation Document.

[3] See paragraphs 50-54 of the Public Consultation Document.

[4] In the context of the programme of work, the term “market jurisdiction” refers to the jurisdiction where the customers of the business are located or, in the case of businesses that supply services to other businesses, the jurisdiction where those services are used. In the context of many digitalised business models, this definition would cover the jurisdiction where the user is located either because the user acquires goods or services directly from the on-line provider or because the on-line provider provides services to another business (such as advertising) targeting such users.

[5] What matters, of course, is what is in existing bilateral or multilateral tax treaties – whether these are based on the OECD Model Convention or not. But for clarity and convenience this note talks about the OECD Model Convention.

Chapter III – Global anti-base erosion proposal (Pillar Two)

Under Pillar Two, the Members of the Inclusive Framework have agreed to explore an approach that leaves jurisdictions free to determine their own tax system, including whether they have a corporate income tax and where they set their tax rates[1], but considers the right of other jurisdictions to apply the rules explored further below where income is taxed at an effective rate below a minimum rate. Within this context, and on a without prejudice basis, the members of the Inclusive Framework have agreed a programme of work that contains exploration of an inclusion rule, a switch over rule, an undertaxed payment rule, and a subject to tax rule. They have further agreed to explore, as part of this programme of work, issues related to rule co-ordination, simplification, thresholds, compatibility with international obligations and any other issues that may emerge in the course of the work.

Consistent with the Policy Note *Addressing the Tax Challenges of the Digitalising Economy*, approved on 23 January 2019, Members of the Inclusive Framework agree that any rules developed under this Pillar should not result in taxation where there is no economic profit nor should they result in double taxation.

This part sets out the global anti-base erosion (GloBE) proposal which seeks to address remaining BEPS risk of profit shifting to entities subject to no or very low taxation It first provides background including the proposed rationale for the proposal and then summarises the mechanics of the proposed rules together with a summary of the issues that will be explored as part of the programme of work.

While the measures set out in the BEPS package have further aligned taxation with value creation and closed gaps in the international tax architecture that allowed for double non-taxation, certain members of the Inclusive Framework consider that these measures do not yet provide a comprehensive solution to the risk that continues to arise from structures that shift profit to entities subject to no or very low taxation. These members are of the view that profit shifting is particularly acute in connection with profits relating to intangibles, prevalent in the digital economy, but also in a broader context; for instance group entities that are financed with equity capital and generate profits, from intra-group financing or similar activities, that are subject to no or low taxes in the jurisdictions where those entities are established.[2]

The global anti-base erosion proposal is made against this background. It is based on the premise that in the absence of multilateral action, there is a risk of uncoordinated, unilateral action, both to attract more tax base and to protect existing tax base, with adverse consequences for all countries, large and small, developed and developing as well as taxpayers. It posits that global action is needed to stop a harmful race to the bottom, which otherwise risks shifting taxes to fund public goods onto less mobile bases including labour and consumption, effectively undermining the tax sovereignty of nations and their elected legislators. It maintains that developing countries, in particular those with smaller markets, may also lose in such a race. Over recent decades, tax incentives have become more widespread in developing countries as they seek to compete to attract and retain foreign direct investment.[3] Some studies have found that, in developing countries, tax incentives may be redundant in attracting investment.[4] Revenue forgone from tax incentives can also reduce opportunities for much-needed public spending on infrastructure, public services or social support, and may hamper developing country efforts to mobilise domestic resources. There is evidence that tax incentives are frequently provided in developing countries in circumstances where governments are confronted with pressures from businesses to grant them.[5] Depending on its ultimate design, the GloBE proposal could effectively shield developing countries from the pressure to offer inefficient incentives and in doing so help them in better mobilising domestic resources by ensuring that they will be able to effectively tax returns on investment made in their countries. The proposal therefore seeks to advance a multilateral framework to achieve a balanced outcome which limits the distortive impact of direct taxes on investment and business location decisions. The proposal is also intended as a backstop to Pillar One for situations where the relevant profit is booked in a tax rate environment below the minimum rate.

Recognising, as stated in the Action 1 Report, that it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes, the scope of the anti-base erosion proposal is not limited to highly digitalised businesses. By focusing on the remaining BEPS challenges, it proposes a systematic solution designed to ensure that all internationally operating businesses pay a minimum level of tax. In so doing, it helps to address the remaining BEPS challenges linked to the digitalising economy, where the relative importance of intangible assets as profit drivers makes highly digitalised business often ideally placed to avail themselves of profit shifting planning structures.

1. GloBE proposal

The proposal seeks to address the remaining BEPS challenges through the development of two inter-related rules:

1) an ***income inclusion rule*** that would tax the income of a foreign branch or a controlled entity if that income was subject to tax at an effective rate that is below a minimum rate; and
2) a ***tax on base eroding payments*** that would operate by way of a denial of a deduction or imposition of source-based taxation (including withholding tax), together with any necessary changes to double tax treaties, for certain payments unless that payment was subject to tax at or above a minimum rate.

These rules would be implemented by way of changes to domestic law and double tax treaties and would incorporate a co-ordination or ordering rule to avoid the risk of economic double taxation that might otherwise arise where more than one jurisdiction sought to apply these rules to the same structure or arrangements.

The combined rules are intended to affect behaviour of taxpayers and jurisdictions alike which is expected to limit the revenue impact of rule order for jurisdictions. Rather, rule order will need to be determined by reference to principles of good rule design including effectiveness, simplicity and transparency.

2. Income inclusion rule

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. This rule could supplement a jurisdiction's CFC rules.

The income inclusion rule would ensure that the income of the MNE group is subject to tax at a minimum rate thereby reducing the incentive to allocate returns for tax reasons to low taxed entities. The income inclusion rule would have the effect of protecting 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.

2.1. Top up to a minimum rate

The work programme would explore an inclusion rule that would impose a minimum tax rate. This approach is consistent with a policy of establishing a floor on tax rates by ensuring that a multinational enterprise (MNE) would be subject to tax on its global income at the minimum rate regardless of where it was headquartered. Consideration could be given to an exception to this principle in the case of income taxed below the minimum rate and benefiting from a harmful preferential regime, which would then be taxed at the higher of the minimum rate or the full domestic rate.

In general terms, it is contemplated that this rule would apply where the income is not taxed at least at the minimum level – that is, it would operate as a top up to achieve the minimum rate of tax.[6] A top-up

to a minimum rate increases the likelihood of the proposal resulting in a transparent and simple global standard that sets a floor for tax competition and makes it easier to develop consistent and co-ordinated rules. It would further increase the likelihood of achieving a level playing field for both jurisdictions and MNEs and reduces the incentive for inversions and other restructuring transactions designed to take advantage of low effective rates of taxation below the threshold.

A minimum tax tied to each country's corporate income tax (CIT) rate would result in a more complex and opaque international framework given the significant variance in CIT rates across Inclusive Framework members. For jurisdictions with high domestic CIT rates, such a design would create a cliff-edge effect for income that was subject to tax at around the minimum tax rate threshold.

2.2. Use of a fixed percentage

The work programme would explore an approach using a fixed percentage rather than a percentage of the parent jurisdiction's CIT rate or a range or corridor of CIT rates.

While there is precedent in the CFC context for using a percentage of the parent jurisdiction's CIT rate, this approach would give rise to significant variations in the rates used under the inclusion rule, which would result in a rule that is not in line with the intended policy of the GloBE proposal in addressing the risks associated with low-taxation. It would not result in a level playing field and make it difficult to co-ordinate such a rule with the undertaxed payments rule, significantly increasing the risk of double taxation.

Another possible approach would be to use a range or corridor of minimum rates depending on other design elements of the inclusion rule that impact on the effective rate of tax. However, it would be difficult for jurisdictions to quantify the impact of different design features and determine how that translates to an appropriate rate thereby resulting in potentially arbitrary and less transparent outcomes, making it harder for jurisdictions to co-ordinate their rules, thereby increasing compliance and administration costs and leading to a greater risk of double taxation.

An approach based on a fixed percentage tax rate is the simplest option from a design perspective. It provides greater transparency and facilitates rule co-ordination, thereby reducing administration and compliance costs. It also helps maintain a level playing field for jurisdictions and taxpayers and reduces the incentives for tax driven inversions and other restructuring transactions.

2.3. Exploration of simplifications

The programme of work starts from the proposition that in principle the tax base would be determined by reference to the rules that jurisdictions already use for calculating the income of a foreign subsidiary under their CFC rules, or in the absence of CFC rules, for domestic CIT purposes. Such an approach means, however, that each subsidiary of an MNE would need to recalculate its income in accordance with the tax base calculations in the parent jurisdiction. This may result in significant compliance costs and lead to situations where technical and structural differences between the calculation of the tax base in the parent and subsidiary jurisdiction could result in an otherwise highly taxed subsidiary being treated as having a low effective rate of tax for reasons unrelated to the policy drivers underlying the GloBE proposal.

For example, differences between countries in the treatment of carry forward losses and the timing of recognition of income and expenses could impact on the calculation of the effective rate of tax in different jurisdictions. Structural differences in the design of different jurisdictions' tax bases could result in the application of the rule in cases that might not give rise to the policy concerns that are intended to be addressed by the inclusion rule.

In order to improve compliance and administrability for both taxpayers and tax administrations and to neutralise the impact of structural differences in the calculation of the tax base, the programme of work will explore simplifications. Simplifications could also serve to make the rules more transparent and help with co-ordination in the operation of the rules.

One simplification could be to start with relevant financial accounting rules subject to any agreed adjustments as necessary. The starting point for such an approach could be the financial accounts as prepared under the laws and relevant accounting standards of the jurisdiction of incorporation or establishment, which would be subject to agreed upon adjustments to reflect timing and permanent differences between tax and financial accounting rules. Other simplification measures could also be explored as part of the programme of work.

2.1. Inclusion Rule

The programme of work would explore options and issues in connection with the design of the income inclusion rule. These options and issues are expected to include:

1. A design that operates as a top up to a minimum rate but with an inclusion at the full rate for income taxed at below the minimum rate and benefitting from a harmful preferential regime;
2. A test for determining when income has been subject to tax at a minimum effective rate whereby:
    a. the tax rate would be based on a fixed percentage;
    b. the tax base would in principle be determined by reference to the rules applicable in the shareholder jurisdiction, but
    c. the design would consider simplifications with a view to reduce compliance costs and avoid unintended outcomes including exploring the possible use of financial accounting rules as a basis for determining net income (with appropriate adjustments including for losses and the timing of recognition of income and expenses).
3. The possible use and effect of carve-outs, including for:
    a. Regimes compliant with the standards of BEPS Action 5 on harmful tax practices, and other substance based carve-outs, noting however such carve-outs would undermine the policy intent and effectiveness of the proposal.
    b. A return on tangible assets.
    c. Controlled corporations with related party transactions below a certain threshold.
4. Different options of blending,[1] ranging from blending at the entity level to blending at global group level with a particular focus on blending at the jurisdictional versus global level; and
5. All other relevant design and technical issues, including:
    a. co-ordination with other international tax rules, such as withholding tax rules and other source based taxation rules, transfer pricing rules and adjustments, CFC and other inclusion rules;
    b. co-ordination between inclusion rules where, for instance, in a tiered ownership structure several jurisdictions may apply the rule;
    c. ownership thresholds;
    d. rules for the attribution of income and calculation of tax paid on that income; and
    e. rules for calculating the investor's tax liability.

[1] *Blending refers to the ability of taxpayers to mix high-tax and low-tax income to arrive at a blended rate of tax on income that is above the minimum rate*.

There is a need to ensure that the income inclusion rule applies to foreign branches as well as foreign subsidiaries. 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.

2.2. Switch-over rule

The programme of work would explore options and issues in connection with the design of the switch-over rule. These options and issues are expected to include:

1. The design of a switch-over rule for tax treaties that would allow the state of residence to apply the credit method instead of the exemption method where the profits attributable to a permanent establishment (PE) or derived from immovable property (which is not part of a PE) are subject to tax at an effective rate below the minimum rate; and
2. A design that, as much as possible, is simple to implement and to administer.

3. Tax on base eroding payments

The second key element of the proposal is a tax on base eroding payments that complements the income inclusion rule by allowing a source jurisdiction to protect itself from the risk of base eroding payments. More specifically, this element of the proposal would explore:

- an *undertaxed payments rule* that would deny a deduction or impose source-based taxation (including withholding tax)[7] for a payment to a related party if that payment was not subject to tax at a minimum rate; and
- a *subject to tax rule* in tax treaties that would only grant certain treaty benefits if the item of income was subject to tax at a minimum rate.

The undertaxed payments rule denies a deduction or a proportionate amount of any deduction for certain payments made to a related party unless those payments were subject to a minimum effective rate of tax.

3.1. Undertaxed payments rule

The programme of work would explore options and issues in connection with the design of the undertaxed payments rule. These options and issues are expected to include:

1. A rule that would achieve a balance between a number of design principles including effectiveness to achieve its stated objectives, design compatibility and co-ordination with other rules, avoidance of double taxation and taxation in excess of economic profit, and minimising compliance and administration costs; and
2. A range of different design options including a consideration of:
   a. the types of related party payments covered by the rule (including measures to address conduit and indirect payments);
   b. the test for determining whether a payment is "undertaxed", which will include dealing with loss situations;
   c. the nature, extent and operation of the adjustment to be made under the rule (including whether it should be on the gross amount of the payment or limited to net income); and
   d. the possible use and effect of carve-outs including those referred to in Box 2.1 above.

The proposal also includes a subject to tax rule which could complement the undertaxed payment rule 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. This rule contemplates possible modifications to the scope or operations of the following treaty benefits, with priority given to interest and royalties:

a. The limitation on the taxation of business profits of a non-resident, unless those profits are attributable to a permanent establishment. (Article 7 of the OECD Model Convention)
b. The requirement to make a corresponding adjustment where a transfer pricing adjustment is made by the other Contracting State (Article 9 of the OECD Model Convention)
c. The limitation on taxation of dividends in the source state (Article 10 of the OECD Model Convention)
d. The limitations on taxation of interest, royalties and capital gains in the source state (Articles 11-13 of the OECD Model Convention)
e. The allocation of exclusive taxing rights of other income to the state of residence (Article 21 of the OECD Model Convention)

There are a number of broad issues to be explored in connection with the subject to tax rule, including the benefits of a withholding tax over a deduction denial approach, the degree of overlap with the undertaxed payments rule, and timing issues also considering the overall principle that any rule should include measures to avoid double taxation.

The proposal also contemplates the exploration of the application of a subject to tax rule to unrelated parties as regards Articles 11 and 12 of the OECD Model Convention. The programme of work would explore risk areas that may justify an extension to unrelated parties or to other treaty benefits beyond interest and royalties. For instance, whether there are certain arrangements, using structured, but otherwise unrelated arrangements that could achieve tax outcomes inconsistent with what is intended by the GloBE proposal.

3.2. Subject to tax rule

The programme of work would explore options and issues in connection with the design of the subject to tax rule. These options and issues are expected to include:

1. Broad issues including:
   a. the need to amend bilateral tax treaties and other cost benefit considerations of a subject to tax rule next to an undertaxed payments rule;
   b. the design of a subject to tax test and the degree of overlap with the test for low taxation under an undertaxed payments rule;
   c. the operation of any withholding tax particularly where the effective rate of tax on the payment may not be known at the time the payment is made and including the need to address issues of possible double taxation;
   d. the identification of risks that would merit the extension of the subject to tax rules to payments between unrelated parties; and
2. Different rule designs, taking into account the specificities of the particular treaty benefit, the learnings from work on the undertaxed payments rule limited to interest and royalties, but also identifying risks that would merit the extension of the scope to other types of payments.

4. Rule co-ordination, simplification, thresholds and compatibility with international obligations

Further work will also be required on rule co-ordination, simplification measures, thresholds and carve-outs to ensure the proposal avoids the risk of double taxation, minimises compliance and administration costs and that the rules are targeted and proportionate. This work will address the priority in which the rules would be applied and how they interact with other rules in the broader international framework. In this context it is important to analyse the interaction between this proposal and other BEPS Actions. It will also explore compatibility with international obligations (such as non-discrimination) including, for EU members, the EU fundamental freedoms and how that compatibility could depend on the rule's detailed design.

4.1. Co-ordination, simplification, thresholds and compatibility with international obligations

The programme of work would explore options and issues in connection with the design of co-ordination, simplification and threshold measures including interaction with BEPS Actions. These options and issues are expected to include:

1. Co-ordination between the undertaxed payments rule, subject to tax rule and income inclusion rule to minimise the risk of double taxation, including simplification measures that could further reduce compliance costs; and
2. Thresholds and carve-outs to restrict the application of the rules under the GLOBE proposal, including:
   a. Thresholds based on the turnover or other indications of the size of the group;
   b. *De minimis* thresholds to exclude transactions or entities with small amounts of profit or related party transactions; and
   c. The appropriateness of carve-outs for specific sectors or industries.
3. Compatibility with international obligations (and, where appropriate, the EU fundamental freedoms).

References

[1] Previous OECD studies, including OECD (2008), *Taxation and Economic Growth*, Working Paper No. 620, have suggested that there may be efficiency benefits in improving the design of the corporate income tax and reducing its relative weight in a country's tax system. However, these studies, which were issued before the BEPS Project was launched, did not consider the proposals currently under discussion under Pillar Two. Current proposals should be designed in a way that preserves the ability of jurisdictions to determine their own tax systems.

[2] Other members are of the view that the rules explored within this pillar may affect the sovereignty of jurisdictions that for a variety of reasons have no or low corporate taxes in particular where they target income arising from substantive activities.

[3] See, for example, IMF, OECD, UN, and World Bank (2015), *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment*, A Report to the G-20 Development Working Group, pp. 8-9.

[4] Ibid., pp. 11-12.

[5] Ibid., pp. 35-36.

[6] Countries would, of course, remain free to tax a subsidiary's income (or particular categories of income) at a rate higher than the minimum rate as they already do under their CFC rules.

[7] For treaty-related aspects see the subject to tax rule.

Chapter IV – Economic analysis and impact assessment

In agreeing to explore the various proposals under the two Pillars, the Policy Note *Addressing the Tax Challenges of the Digitalising Economy*, approved on 23 January 2019, highlighted the desire of Members of the Inclusive Framework to carry out more in-depth analysis of each proposal and their interlinkages with a particular focus on the importance of assessing the revenue, economic and behavioural implications of the proposals in order to inform the Inclusive Framework in its decision making.

Assessing the impact of the proposals will involve an in-depth consideration of how they would be expected to affect the incentives faced by taxpayers and governments, their impact on the levels and distribution of tax revenues and their overall economic effects, including their effects on investment, innovation and growth. The impact assessment will also need to consider how these effects vary across different kinds of MNEs, sectors and economies.

The analysis of the economic impacts of the proposals will need to draw upon the existing public finance literature and will also require new empirical research to be undertaken. Such research will need to rely upon the full range of available data sources, including macro-level data (e.g., National Accounts and FDI statistics) and micro-level data (e.g., company financial statements). To the extent that available data permits, the analysis will need to consider the impact of the proposals on particular sectors, industries and business models.

The Secretariat has already undertaken some preliminary economic analysis to address these questions. An update of this work was presented to the Inclusive Framework meeting in May 2019. The preliminary analysis has considered available evidence on the size, location, composition and potential allocation of profits under the various Pillar One proposals. Under Pillar Two, proxies for the extent of profits that may be subject to a minimum tax have been considered. The preliminary analysis has also considered the broader incentive effects of the proposals, principally by drawing on the economic literature. So far, the preliminary analysis has drawn on macro-level and micro-level data sources, including National Accounts data, Balance of Payments data, anonymised and aggregated Country-by-Country-Report data and ORBIS.

While the economic analysis will be carried out throughout the course of the entire period of the programme of work, the timing of this work will need to be phased in such a way as to deliver members of the Inclusive Framework with the information required to take decisions at key milestones. Building upon the preliminary economic analysis already undertaken, the programme of work will require further Secretariat-led analysis to be provided to members of the Inclusive Framework by the end of 2019. This analysis will be designed to support members of the Inclusive Framework to take decisions in relation to the future direction of the overall programme of work. Continued work will be carried out during 2020, to ensure that the Inclusive Framework can be kept fully informed of the impact of key technical decisions relating to the design of the proposals.

Noting that the various proposals are evolving as discussions continue, the Secretariat will need to carry out a range of economic analyses in order to support the ongoing discussions around design questions associated with the proposals.

In carrying out this work, the Secretariat will need to assemble a multidisciplinary team across a number of the OECD's directorates. The Secretariat will carry out its work in consultation with member jurisdictions, bilaterally, and Working Party No.2, other international organisations (e.g., the IMF), the academic community and other stakeholders.

4.2. Economic analysis and impact assessment

The programme of work would require that an economic analysis and impact assessment be carried out. This analysis would explore the following key questions:

1. What are the pros and cons of the proposals with respect to the international tax system?
2. How would the proposals affect the incentives for:
    a. Taxpayers (e.g., profit shifting, investment and location of economic activity)?
    b. Governments (e.g., tax competition)?
3. What is the expected economic incidence / impact of the proposals?
4. What are the expected effects of the proposals on the level and distribution of tax revenues across jurisdictions?
5. What economic impact will the various proposals have for different types of MNEs, sectors and economies (e.g., developing countries; resource-rich countries; R&D intensive economies, etc.)?
6. What data sources and methodologies could jurisdictions use to assess the proposals?
7. What are the expected regulatory costs of the proposals?
8. What would be the impact of the proposals on investment, innovation and growth?

Chapter V - Organisation of the work to deliver the Programme of Work and next steps

1. Overall approach

As described in the Introduction, the work towards a consensus-based solution will proceed along the following separate (but related) tracks:

- first, the Steering Group will continue the process aimed at reaching an agreement on a unified approach to addressing the issues of profit allocation and nexus under Pillar One and agreement on the key design elements of the GloBE proposal under Pillar Two (this work will draw on the expertise of delegates from various working parties);
- second, the subsidiary bodies will provide technical input on certain issues that may arise in the course of developing a consensus-based solution as well as the preparation of final reports that will set out the details of the agreement reached by the Inclusive Framework; and
- third, the Secretariat will provide an economic analysis and impact assessment of the proposals under the two pillars.

Although certain parts of the work can be advanced in parallel, there will be many interactions between them. The work to be done under one track will both depend on and drive the progress made under another. For example, the technical work to be undertaken by the various working parties is not only expected to inform and facilitate agreement under Pillars One and Two, but also to evolve and adapt as progress is made on the development of a consensus-based long-term solution.

Given the interlinked nature of the work and the challenging time frame for completing it, the Steering Group of the Inclusive Framework will:

- continue its work on the development of a unified approach under Pillar One and the key design elements of the GloBE proposal under Pillar Two so that the outputs from this work can be submitted to the wider Inclusive Framework for agreement; and
- steer, monitor and co-ordinate the work programme and related outputs produced by different subsidiary bodies so as to ensure that a solution can be agreed and delivered in a timely manner.

Finally, new technical issues may emerge as the work advances. The programme of work includes the exploration of all relevant issues and options in connection with the Pillars and a subsidiary body should not disregard an option that would address a particular issue on the basis that it has not been raised in the programme of work. To the extent necessary, transition rules would be considered.

2. Organisation of the work

The technical expertise needed to deliver the measures envisaged in the programme of work is largely found within the Inclusive Framework's architecture, namely the Committee on Fiscal Affairs subsidiary bodies:

- Working Party 1, which generally has responsibility for treaty developments and may be called upon to make recommendations under Pillar One regarding the design of a new nexus rule, the effectiveness of the existing, or the need to develop new, provisions for the elimination of double taxation and dispute resolution, ways to effectively implement tax treaty changes, and under Pillar Two regarding switch-over and subject to tax rules;
- Working Party 2, which generally has responsibility for data collection and economic and statistical analysis and will be consulted on the economic analysis and impact assessment of both Pillars;
- Working Party 6, which generally has responsibility for the development of transfer pricing guidance and may be expected to make recommendations regarding the design of a new profit allocation rule under Pillar One;

- Working Party 11, which generally has responsibility for the development of co-ordinated measures to address aggressive tax planning and may be called upon to advance the work on Pillar Two liaising with other working parties as necessary;
- The Task Force on the Digital Economy will continue to play its role in supporting the Steering Group in its coordination role. In particular, it will facilitate any further public consultation in relation to the proposals as required; and
- Other subsidiary bodies such as the FTA MAP Forum which has responsibility for the implementation of BEPS Action 14, as well as other bodies that deal with country-by country related questions including the CBC Reporting Group.

The Chairs of the relevant subsidiary bodies, working with the Secretariat, should consider ways to streamline working methods to achieve this goal. In particular, given existing resource constraints, it will not be possible for the Working Parties to meet continuously to accomplish the work on the action items. Therefore, work will also need to be done remotely between the meetings. This work could be co-ordinated through the Bureau of the relevant Working Parties to examine particular issues. Further, Working Parties should evaluate the use of focus groups, ad hoc committees, and other organisational approaches that would facilitate the generation of timely work product.

Additionally, the programme of work covers a broad range of issues which involve different expertise and subsidiary bodies, and a critical aspect of this programme will be to ensure an effective coordination of the work. Therefore, the subsidiary bodies would work closely together as they advance their technical work, including working in different joint session formats if necessary.

Table 1 assigns responsibilities to different subsidiary bodies for each of the work streams identified in the programme of work. The work will start immediately on all current proposals, as well as on the economic analysis, with initially a focus on supporting the work of the Steering Group. Once there is an agreed architecture proposed by the Steering Group and agreed by the Inclusive Framework, the Working Parties will revert to their more traditional role of working towards the implementation of an agreed policy direction which, given the dynamic nature of the work programme, may evolve and also require the involvement of other working parties. A Report on the progress on work is expected in December 2019.

Table 1. Assignment of technical work to subsidiary bodies

		Working Party responsible	Working Party consulted
OVERALL			
1.	**Support the Steering Group and organise Public Consultation**	TFDE	
PILLAR 1			
1.	**Modified Residual Profit Split**	WP6	WP1
2.	**Fractional apportionment**	WP6	WP1
3.	**Distribution-based approaches**	WP6	WP1
4.	**Business line and regional segmentation**	WP6	WP1
5.	**Design scope limitations**	WP1/WP6	
6.	**Treatment of losses**	WP6	WP1
7.	**New nexus rules**	WP1	WP6
8.	**Elimination of double taxation**	WP1/WP6	FTA MAP Forum
9.	**Dispute resolution**	WP1	WP6 FTA MAP Forum
10.	**Dispute prevention**	WP1/FTA MAP Forum	FTA
11.	**Administration**	WP6/WP10	WP1/FTA
12.	**Modifying Tax Treaties**	WP1	WP6/WP11/FTA MAP Forum
PILLAR 2			
1.	**Inclusion Rule**	WP11	WP1
2.	**Switch-over rule**	WP1/WP11	
3.	**Undertaxed payment rule**	WP11	WP1
4.	**Subject to tax rule**	WP1/WP11	
5.	**Rule co-ordination, simplification and thresholds and compatibility with international obligations**	WP11/WP1	FTA
6.	**Other issues arising in connection with Pillar 2**	WP11	
ECONOMIC ANALYSIS			
1.	**Economic analysis and impact assessment**		WP2

3. Next Steps

In accordance with the overall approach described in this Chapter, the Working Parties will meet in June and July and subsequently throughout the remainder of this year to consider relevant technical issues arising in connection with the Programme of Work. These meetings will take place under the leadership and co-ordination of the Steering Group and will focus on those aspects of the Programme of Work that are most pertinent to the development of a unified approach under Pillar One and the key design elements of the GloBE proposal under Pillar Two.

The Steering Group will continue to work on the development of a unified approach under Pillar One and the key design elements of the GloBE proposal under Pillar Two so that a recommendation on the core elements of long-term solution can be submitted to the Inclusive Framework for agreement at the beginning of 2020.

Throughout 2020 the Inclusive Framework, Steering Group and Working Parties will work on agreeing the policy and technical details of a consensus-based, long-term solution to the challenges of the digitalisation of the economy and will deliver a final report by the end of 2020. Consideration will be given to the holding of public consultations as necessary in order to obtain stakeholder feedback as the various proposals are refined.

Annex 2: Third Annual Progress Report of the OECD/G20 Inclusive Framework on BEPS

Also available at: www.oecd.org/tax/beps/inclusive-framework-on-beps-progress-report-july-2018-may-2019.htm

Overview

The OECD/G20 Base Erosion and Profit Shifting (BEPS) Project is about bringing coherence, transparency and substance to the international tax rules, which have been under pressure in recent years from the pace of globalisation and the heightened sophistication of international business transactions and global value chains, as well as the strains that digitalisation has brought to rules developed a century ago in a vastly different time. OECD and G20 governments came together in 2013 to address the issue of tax avoidance, and agreed a series of actions to tackle it.

The evolution of the OECD/G20 BEPS Project, from securing political commitment to take action in 2013 to the finalisation of detailed actions to counter BEPS in 2015 and to the establishment of an OECD/G20 Inclusive Framework on BEPS in 2016, is a case study in how multilateralism can be effective in the face of today's global challenges.

The OECD/G20 Inclusive Framework continues to grow from 82 members at the inaugural meeting of the OECD/G20 Inclusive Framework in July 2016 in Kyoto, it is now composed of 129 members and 14 observers, including over 70% of non-OECD and non-G20 countries and jurisdictions from all geographic regions. They are working together on an equal footing, and not only to implement the BEPS measures agreed in 2015. Beyond that, they are now designing the new international tax rules including as part of the fundamental discussions on how to address the tax challenges arising from digitalisation.

On 28-29 May 2019, the OECD/G20 Inclusive Framework met in Paris, with 289 delegates from 99 member jurisdictions and 10 observer organisations taking part. The key outcome of that meeting was the agreement of a *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy* (Programme of Work)[1], which will achieve a consensus-based, long-term solution by the end of 2020.

The agreement of this Programme of Work comes at a pivotal time in the history of the OECD/G20 BEPS Project, with the peer reviews of the BEPS minimum standards showing even greater levels of implementation, new and more detailed information on the activities of multinational enterprises being available – allowing a fuller understanding of the impact of base erosion and profit shifting – and the participation and importance of this work to developing countries taking on heightened importance.

The stakes are high. Understanding how much tax avoidance costs to governments around the world is fundamental to developing sound policies and prioritising specific measures. When the BEPS package was published in 2015, the OECD estimated that tax avoidance cost between USD 100-240 billion per year, or 4-10 percent of global corporate tax revenues.

That estimate was based on the best information available at the time. With the work done in the past years at ensuring the implementation of the BEPS Actions and the information gathered in the course of the various reviews, the OECD/G20 Inclusive Framework is now developing a more finely-tuned estimate of the impact of BEPS and the effectiveness of the measures taken to address it. In particular, the collection and analysis of corporate revenue statistics, the first look at the aggregate data on Country-by-Country (CbC) reports under Action 13, and other data sources will support an updated economic analysis of tax avoidance, and also of the impact of the implementation of the BEPS measures.

What is already evident is that the combined effect of the BEPS Actions has brought increased coherence, transparency and substance to the international tax rules, and their implementation has produced tangible results:

- **Action 5** (Harmful Tax Practices) – 255 preferential tax regimes have been reviewed to ensure that there is substance associated with the activities they are intended to attract, and more than half have already been amended or abolished, with the others either already in accordance with

[1] 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, www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf.

the standard or still in the process of being reviewed or reformed. Exchanges of information on more than 21 000 tax rulings took place, thereby ensuring greater transparency of the arrangements between tax administrations and taxpayers. In addition, revising the criteria for the Forum on Harmful Tax Practices' peer reviews, a new global standard on the resumption of application of the substantial activities factor to no or only nominal tax jurisdictions was adopted in 2018.

- **Action 6** (Tax Treaty Abuse) – The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) now covers 88 jurisdictions, which will impact more than 1 500 bilateral tax treaties once governments finalise the ratification process. To date, over 20 signatories have ratified the MLI and over 50 tax treaties have already been modified and reinforced against abuse. Although such figures may seem low, more jurisdictions are currently in the process of ratifying the MLI which in turn will soon modify many more tax treaties.
- **Action 13** (Country-by-Country Reporting) – The first exchanges of CbC reports took place in June 2018, and currently there are more than 2 000 relationships in place for the exchange of CbC reports, under the Convention for Mutual Administrative Assistance in Tax Matters, under bilateral double tax conventions and tax information exchange agreements, and between EU Member States.
- **Action 14** (Mutual Agreement Procedures) – This is a key measure to improve certainty for taxpayers, and the first peer review results are encouraging. Around 85% of Mutual Agreement Procedures (MAPs) concluded in 2017 resolved the issue. Almost 60% of MAP cases closed were resolved with an agreement fully resolving the taxation not in accordance with the tax treaty. This important increase in the number of cases closed is likely the result of an increase in resources or in a more efficient use of resources for many countries' competent authorities.

Overall, and through data analysis, we can already see some interesting patterns of where Multinational enterprise (MNE) activity is located and the relationship between that activity, the reporting of profits, and the tax paid. Moving forward, the continued collection of statistics in future years will provide a clearer picture of how companies are organising their global operations, and will further allow countries to assess the associated tax risks.

1. Highlights: What's new?

1.1. Tax Challenges arising from digitalisation

1.1.1. Programme of Work

The top priority for the OECD/G20 Inclusive Framework is the work on tax and digitalisation, which has been a key aspect of the OECD/G20 BEPS Project since its inception. The 2015 BEPS Action 1 Report on *Addressing the Tax Challenges of the Digital Economy*[2] showed that, as a result of the pervasive nature of digitalisation, it would be difficult, if not impossible, to ring-fence the "digital economy" from the rest of the economy for tax purposes. Rather, it showed that the entire economy was digitalising.

The work of the OECD/G20 Inclusive Framework continued, and responding to the G20's call in March 2017, it delivered in 2018 an Interim Report[3] which embodied a commitment from all members to work on nexus and profit allocation rules that would consider the impacts of digitalisation, relating to the principle of aligning profits with underlying economic activities and value creation.

In January 2019, the OECD/G20 Inclusive Framework agreed on a Policy Note[4] – that included concrete proposals made by members framed within two complementary pillars – one revising the allocation of profit and nexus rules, and one proposing a global anti-base erosion mechanism. In February 2019 the OECD/G20 Inclusive Framework published a public consultation document that describes the two pillars in more detail, attracting 2 000 pages of written comments, and a public consultation took place in March with over 400 participants attending, from business, academia and civil society.

These discussions have informed the work of the OECD/G20 Inclusive Framework, which agreed at its plenary meeting of 28-29 May 2019 a Programme of Work that will pave the way toward a global solution to the tax challenges raised by digitalisation. This is a major step, which shows the strong willingness of OECD/G20 Inclusive Framework members to reach an agreement by the 2020 deadline set by the G20. This Programme of Work provides instructions for the OECD/G20 Inclusive Framework as well as assigning technical work to subsidiary bodies to explore and agree on the core elements of the consensus-based solution to be delivered by next year.

The stakes are very high, but the spirit of compromise and unity that have been the foundation for the OECD/G20 Inclusive Framework's accomplishments to date provide great reason for optimism that a long-term, consensus-based solution can be achieved.

1.1.2. Value Added Tax

The 2015 BEPS Action 1 Report found that there was a high risk that services and intangibles delivered over the internet (such as streaming films or music) were escaping VAT in any jurisdiction, and that there was also a broader challenge for tax authorities to collect the VAT on cross-border supplies from online sales, particularly where these are acquired by private consumers from suppliers abroad (business-to-consumer or B2C sales).

To address the broader challenges of collecting the VAT on online sales of services and intangibles by foreign vendors, new guidelines and VAT collection mechanisms were agreed in the 2015 BEPS Action 1 Report that require foreign vendors to register for VAT in the consumer's jurisdiction and recommended a simplified regime be used to remit the VAT to facilitate compliance and administration.

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[2] www.oecd.org/tax/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report-9789264241046-en.htm

[3] www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm

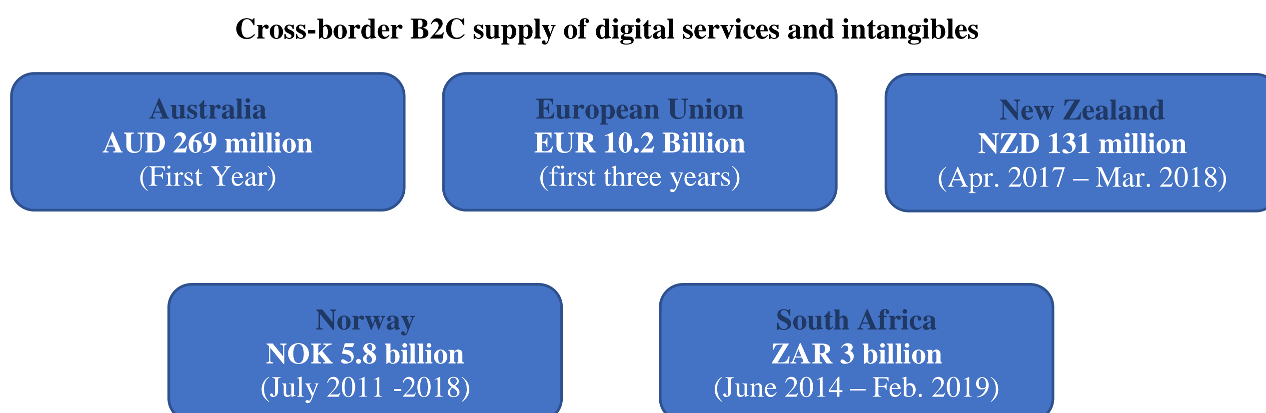
[4] www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf

The recommended rules and mechanisms included in the 2015 BEPS Action 1 Report were complemented with the 2017 report on "*Mechanisms for the Effective Collection of VAT/GST Where the Supplier is Not Located in the Jurisdiction of Taxation*" that provided further detailed practical guidance to support their consistent and effective implementation. The 2015 BEPS Action 1 Report also outlined options to facilitate the collection of VAT for imports of low-value goods from online sales, through the intervention of online vendors or other parties involved in the supply chain for online sales, such as e-commerce platforms or express couriers.

To date, over 50 jurisdictions have adopted rules for the application of VAT to B2C supplies of services and intangibles from online sales by foreign vendors in accordance with rules and mechanisms recommended in the 2015 BEPS Action 1 Report. Among these jurisdictions, 40 jurisdictions have implemented simplified registration and collection regimes for the collection of VAT on the cross-border B2C supplies of services and intangibles. The evidence on the impact of these measures suggests that their implementation has greatly enhanced compliance levels and yielded substantial tax revenues for market jurisdictions, and has levelled the playing field between domestic suppliers and foreign vendors (see Figure 1).

Figure 1. Revenues raised by jurisdictions implementing the recommended measures

Cross-border B2C supply of digital services and intangibles



It is notable that following the adoption of rules for the application of VAT to B2C supplies of services and intangibles from online sales by foreign suppliers, countries are now turning their attention to the VAT treatment of imports of low-value goods. Since July 2018, Australia has applied GST at the point of sale for imports of low-value goods including the enlistment of platforms in the collection of the GST. In the first quarter of operation, Australia raised AUD 81 million from this measure. Further, the EU has legislated to apply such a regime from 2021 with estimates that this will raise EUR 7 billion annually, New Zealand is currently in the process of legislating for such a regime, and other countries, including Norway, have signalled similar reforms. As of January 2019, Switzerland has introduced mail-order trade regulation according to which imports of low-value goods are subject to VAT.

The OECD has continued to support tax authorities worldwide with the implementation of measures for the effective and efficient collection of VAT on the continuously growing online trade. Another recent key deliverable from this work is the report on "The Role of Digital Platforms in the Collection of VAT/GST on Online Sales", which provides guidance on a range of measures for enlisting e-commerce marketplaces and other digital platforms in the collection of VAT on the sales that they facilitate. These measures include making these platforms liable for collecting and remitting the VAT on the sales by online vendors that use their platform, as well as the sharing of information with tax authorities to increase compliance levels and reduce VAT fraud. This report was welcomed by the representatives from more than 100 countries, jurisdictions, international organisations and regional groups at the fifth meeting of the OECD Global Forum on VAT in Melbourne, Australia (20-22 March 2019).

1.2. Country-by-Country Reporting: exchanges and data

The beginning of the exchange of CbC reports marks an important milestone towards transparency, in the implementation of the OECD/G20 BEPS Project. The first exchanges took place in June 2018, and to date 80 jurisdictions have introduced CbC reporting filing obligation. Overall, 2 000 relationships between countries were activated for the exchange of CbC reports. Tax administrations now have access to unprecedented and consistent information on the largest foreign MNEs, which pose the greatest potential BEPS risk to their jurisdictions, given their size and potential revenues at stake.

In addition, the first aggregated and anonymised statistics prepared from data collected on CbC reports have now been prepared by OECD/G20 Inclusive Framework members and provided to the OECD for processing.

The statistics are being provided for CbC reports relating to fiscal years beginning between 1 January 2016 and 1 July 2016, preserving the anonymity of MNE groups and the confidentiality of individual CbC reports. In total, there were 58 OECD/G20 Inclusive Framework members that had implemented CbC Reporting or had voluntary parent filing for the 2016 fiscal year, and it is estimated that only around 35 of those member jurisdictions received sufficient numbers of CbC reports to provide aggregated and anonymised statistics. Of those 35 jurisdictions, 26 jurisdictions have currently provided aggregated and anonymised statistics to the OECD covering around 4 100 CbC reports overall. Some OECD/G20 Inclusive Framework members are still in the course of preparing the statistics, so the total number of jurisdictions and CbC reports should increase by the time the CbC statistics are published in the second edition of *Corporate Tax Statistics* in 2020.[5]

[5] Disclaimer: The initial analysis of the statistics is preliminary, both because data validation checks are still being performed, and because the OECD has only received reports from about 75% of the jurisdictions that received significant numbers of CbC reports for the 2016 fiscal year. The statistics from additional Inclusive Framework members will be incorporated into the analysis when they are provided. As the statistics were prepared from CbC reports filed for the 2016 fiscal year, it is worth noting that this period still pre-dates much of the implementation of the BEPS Actions. Nevertheless, we can already see some interesting patterns of where MNE activity is located and the relationship between that activity, the reporting of profits, and the tax paid.

2. Minimum standards: the results

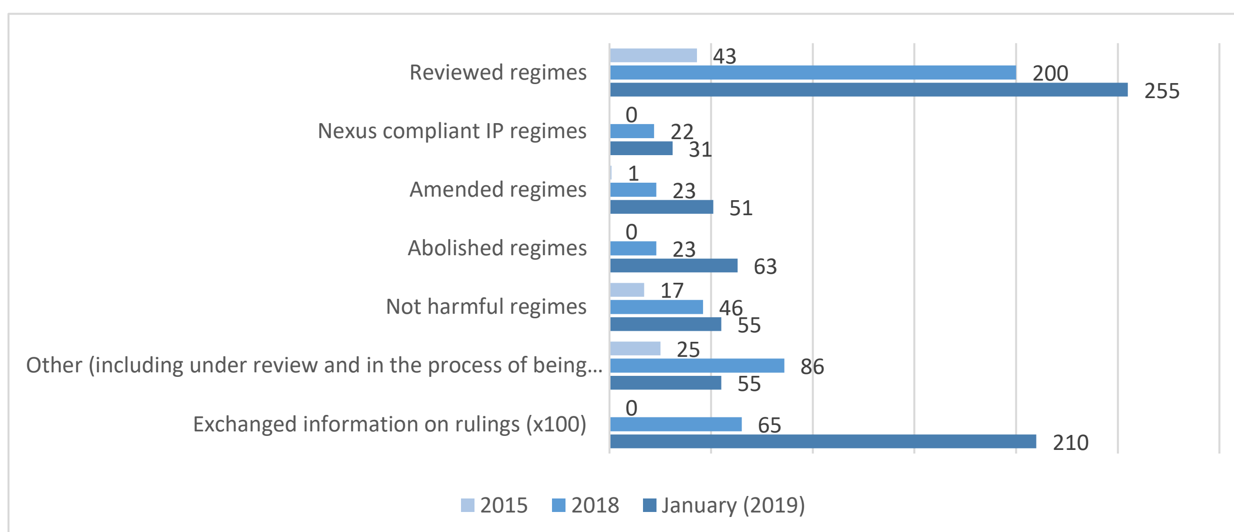
Peer reviews of the BEPS minimum standards are an essential tool to ensure the effective implementation of the BEPS package. First results were available for Action 5 in 2017, for Action 13 and Action 14 in 2018, and the first results for Action 6 were published this year. The results of the peer reviews show strong implementation throughout the world.

2.1. Action 5 Harmful Tax Practices

Action 5 contains two related but distinct requirements: one with respect to preferential tax regimes, and one on transparency that requires the exchange of information on tax rulings. Both requirements are peer reviewed by the Forum on Harmful Tax Practices (FHTP). The implementation of the Action 5 minimum standard has significantly changed preferential tax regimes all over the world, many of which have now been abolished, and the others are in the process of being made consistent with Action 5 or remain under review. In addition, information on tax rulings that was not accessible to other tax administrations is now routinely exchanged, leading to more transparency and equipping tax administrations with more data on the international tax arrangements of their multinational groups to enable earlier detection of aggressive tax planning / non-compliance. The exchange of information on these rulings also acts as a deterrent to governments and taxpayers from agreeing "sweetheart" deals.

The progress achieved under Action 5 from the start of the OECD/G20 BEPS Project until today is significant.

Figure 2. BEPS Action 5 in figures: 2015-2019



FHTP 2018 highlights

- All of the 16 Intellectual Property (IP) regimes listed in the 2015 BEPS Action 5 report, which were inconsistent with the agreed standard, are now in line with it, or have been abolished.[1]
- During the year, legislation has been enacted for more than 80 regimes to abolish them or to make amendments in order to comply with the Action 5 minimum standard.
- A new global standard on the application of substantial activities requirements, to no or only nominal tax jurisdictions has been adopted.
- New regimes have been brought into the review process shortly after their introduction.
- Almost 21 000 exchanges of information on tax rulings have taken place in the two years of the operation of this Action 5 standard.

2.1.1. Preferential tax regimes

The FHTP started its work on harmful tax practices in 1998 and reviewed preferential tax regimes of OECD members based on the criterion set out in the 1998 report. As the scope of the FHTP's work has now been expanded to all Inclusive Framework members (and jurisdictions of relevance), the FHTP has, since the start of the OECD/G20 BEPS Project, reviewed over 250 regimes of 70 jurisdictions.

In 2015, the Action 5 minimum standard introduced more stringent requirements for substantial activities, by introducing the nexus approach for IP regimes. At that time, none of the existing IP regimes of OECD members and G20 countries were compliant with the nexus approach, which is a key feature of the Action 5 standard since it ensures that the benefit of a preferential regime is linked to a substantial research and development (R&D) activity.[2] As it stands, all of those regimes are now in line with the nexus approach or have been abolished, and beyond this, almost all IP regimes of the other Inclusive Framework members are likewise abolished or amended to be nexus compliant. Jurisdictions introducing new IP regimes are in general immediately designing them to be compliant with the nexus approach, creating a more global level playing field.

OECD/G20 Inclusive Framework members that were first reviewed in 2017 have also made a tremendous effort to comply with the ambitious FHTP timelines, which provides for the amendment or abolishment of other regimes that fail to meet the criteria in principle no later than by the end of 2018.

An ongoing mandate from the Action 5 report was the consideration of revisions or additions to the existing FHTP criteria. The most important aspect of the revision released in 2018 is the adoption of a new standard imposing substantial activities requirements on no or only nominal tax jurisdictions. As all preferential tax regimes providing benefits to income from geographically mobile activities must meet the substantial activities requirements, it was agreed that it was essential to ensure that business activity does not simply relocate to a zero tax jurisdiction to avoid these requirements. This new standard will ensure a more level playing field and the FHTP is reviewing jurisdictions against the standard starting this year.

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[1] Two regimes that remain actually harmful in one aspect are Italy and Turkey's intellectual property (IP) regimes. These regimes have already been amended, and the determination of actual harmfulness only relates to certain grandfathering aspects of the regime. As such, this harmful element is transitional only and will cease to operate by 30 June 2021.

[2] 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.

Put together, the progress achieved on Action 5 has delivered significant progress in limiting harmful tax practices. Around the world, regimes can no longer be used by countries to attract the tax base from other countries by targeting non-residents and foreign income only. They must also comply with transparency and where relevant be subject to exchange of information. Finally, they must enforce substantial activities requirements to ensure that such regimes cannot be used for empty, tax-driven arrangements. A more level playing field is also being established vis-à-vis no and only nominal tax jurisdictions, where the same substantial activities requirements now apply across whole sectors of business activity.

2.1.2. Exchange of information on tax rulings

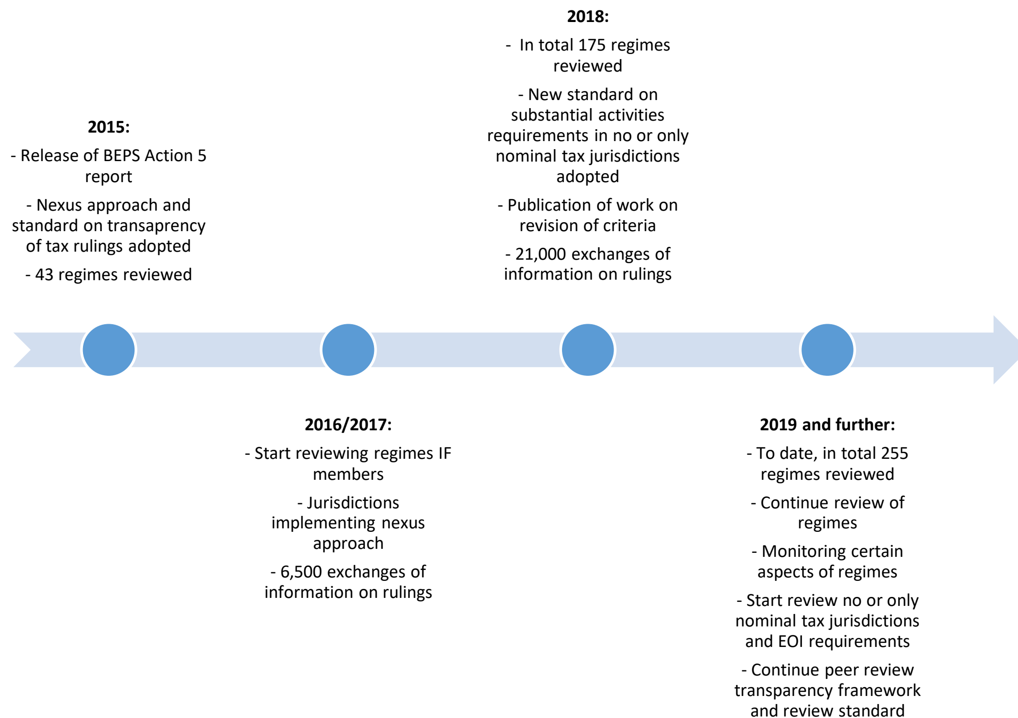
Almost 21 000 exchanges of information on tax rulings have taken place between Inclusive Framework jurisdictions, increasing transparency between tax administrations significantly. The second annual peer review of the transparency framework was finalised in 2018, covering 92 jurisdictions. The report includes 60 recommendations for improvement, and jurisdictions already have undertaken or are now undertaking actions to resolve the issues, demonstrating the effectiveness of the peer review process. For example, almost two thirds of the recommendations for improvement made to the 44 jurisdictions in the first annual peer review have already been addressed.

2.1.3. Future work

- The FHTP will continue to review existing and future preferential tax regimes.
- In addition, the review of the substantial activities factor for no or only nominal tax jurisdictions has started in 2019, together with the development of the exchange of information requirements that support the new standard.
- The FHTP will increasingly focus its attention on the effective implementation of the substantial activities requirements in practice, conducting annual monitoring to revisit any issues of compliance with the substantial activities standard where needed in respect of both regimes and no or only nominal tax jurisdictions.
- The FHTP will continue its annual peer review of the transparency framework on the exchange of information on rulings, and prepare to conduct the review of the effectiveness of the standard.

Figure 3 shows the most important work done by the FHTP in the last years and its future work.

Figure 3. Timeline for Forum on Harmful Tax Practices



2.2. Action 6 Tax Treaty Abuse

Action 6 identified treaty abuse, and in particular treaty shopping, as one of the most important sources of BEPS concerns. Taxpayers that engage in treaty shopping and other types of treaty abuse undermine tax sovereignty by claiming treaty benefits in inappropriate circumstances, thereby depriving countries of tax revenues.

Tackling treaty shopping is one of the four BEPS minimum standards, and jurisdictions have committed to include provisions in their tax agreements to ensure a minimum level of protection against treaty shopping. Before the OECD/G20 BEPS Project, most of the world's 3 500+ tax treaties did not include a robust anti-treaty shopping provision that could prevent the granting of treaty benefits in inappropriate circumstances.

Compliance with the Action 6 minimum standard requires members of the Inclusive Framework to include in their tax treaties (1) a statement that the common intention of the parties to the treaty is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements, and (2) an anti-abuse treaty provision such as a principal purposes test (PPT) or a limitation on benefits provision. To increase tax certainty in the application of the PPT, the Inclusive Framework has formed an informal group of interested delegates that would explore various areas where more tax certainty could be provided in the PPT, including best practices in the area of the general anti-avoidance rules, and would report back with recommendations.

The peer review of Action 6 was launched in 2018 and the results were published in January 2019, showing that Inclusive Framework members have together taken steps to strengthen their treaty networks.

The first results show that a large majority of OECD/G20 Inclusive Framework members are now in the process of modifying their treaty network. On 30 June 2018, 82 of the then 116 members had some

agreements that were already compliant with the minimum standard or were subject to a complying instrument and would therefore comply shortly.[3]

Countries are doing so primarily by modifying their treaties through the MLI – the legal instrument developed following the conclusions of Action 15 of the BEPS Action Plan to implement tax treaty-related BEPS standards and measures. Almost all the bilateral tax agreements will be subject to the MLI, and the few that are not, will be amended via separate renegotiations.

The next peer review exercise will be launched in the first half of 2019 and there will be a review of methodology in 2020.

2.2.1. Action 15: Multilateral Instrument

The MLI was first signed on 7 June 2017. Today, the MLI covers 88 jurisdictions from all continents and all levels of development. 25 of these jurisdictions have already deposited their instrument of ratification as of May 2019.[4] Despite the fact that the ratification process may seem slow, it is still faster for governments than renegotiating bilaterally the 3 500 tax treaties currently in force.

The MLI will modify existing bilateral tax treaties to swiftly implement the tax treaty measures developed in the course of the OECD/G20 BEPS Project. Treaty measures that are included in the MLI include those on hybrid mismatch arrangements, treaty abuse and permanent establishment. The MLI also strengthens provisions to resolve treaty disputes.

The year 2019 marks an important step in the implementation process of the MLI as its provisions started to enter into effect on 1 January. As of May 2019, the MLI had already modified about 60 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 two 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 1 500 tax treaties worldwide.

As many more jurisdictions expect to deposit their ratification instruments this year, signatories remain committed to ensure the effective, clear and consistent implementation of the MLI. As part of this work, the OECD continues to improve and develop new tools to help users understand the MLI and its effects. The MLI matching database allows users to easily assess the impact of the MLI on a particular tax treaty. It automatically generates information on the likely matching of MLI Positions and on the likely modifications made by the MLI to that treaty. The OECD is currently working on expanded features to add to the database, including information on entry into effect.

At the same time, jurisdictions are preparing *synthesised texts* of their modified agreements, based on Guidance published by the OECD at the end of 2018. This guidance is used by governments that intend to provide insight into the impact of the Convention on existing treaties. Synthesised texts also provide comprehensive information to taxpayers, auditors, advisors and other users on when the modifications will have effect in each jurisdiction. The Guidance is among the recent additions to a wide range of existing tools and background documents, which are expected to be used widely as jurisdictions' implementation of the MLI gathers pace.

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[3] A further seven jurisdictions have no comprehensive tax agreements and are therefore at present outside the scope of this exercise.

[4] Namely Australia, Austria, Curaçao, Finland, France, Georgia, Guernsey, Ireland, Isle of Man, Israel, Japan, Jersey, Lithuania, Luxemburg, Malta, Monaco, the Netherlands, New Zealand, Poland, Serbia, Singapore, Slovakia, Slovenia, Sweden and the United Kingdom.

Key facts on Action 15 implementation

- 88 covered jurisdictions
- 25 jurisdictions depositing their ratification instrument
- Over 1 500 agreements to be modified by the MLI
- Inclusion of the principal purpose test (PPT) in those 1 500 modified agreements
- About 60 agreements already modified by the MLI
- 29 covered jurisdictions that opted for mandatory binding arbitration

2.3. Action 13 Country-by-Country Reporting

2.3.1. Implementation of a CbC reporting filing obligation

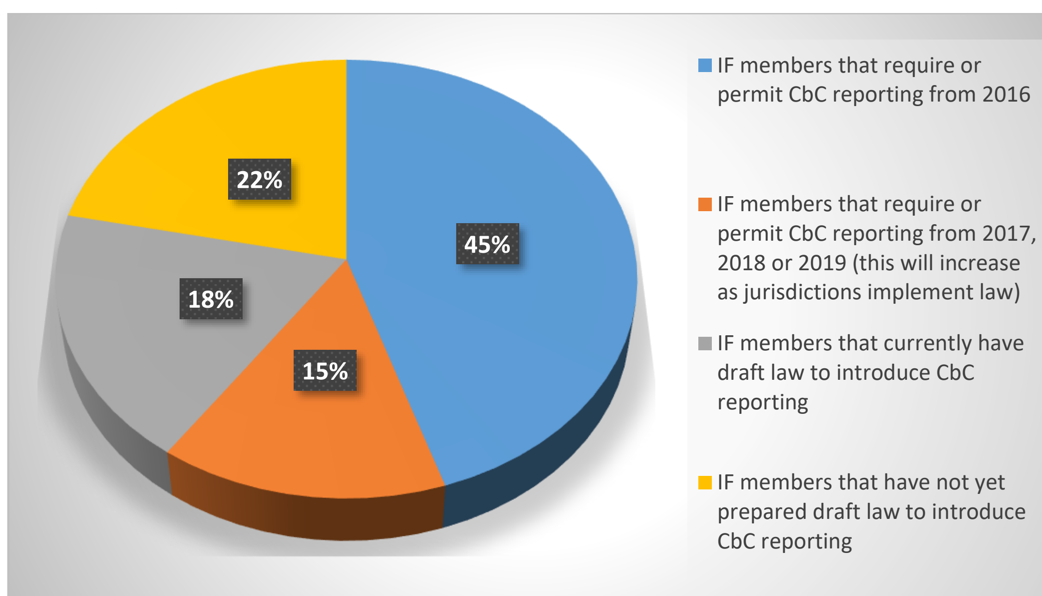
Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations and limit the compliance burden on businesses. Action 13 on Transfer Pricing Documentation establishes a three-tiered approach to transfer pricing documentation, comprising a master file with an overview of an MNE'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.

Action 13 supports both transparency and coherence in international tax, by improving the level and quality of information available to tax administrations on MNEs in their jurisdiction, and ensuring tax administrations are increasingly able to access and make use of the same information on these MNEs.

Significant advances toward CbC reporting implementation have been witnessed this last year, with 58 OECD/G20 Inclusive Framework members requiring or permitting CbC reports to be filed by the ultimate parent entity of MNEs with consolidated group revenue of at least EUR 750 million (or near equivalent in domestic currency as of January 2015) in the previous year. Moreover, almost 80 OECD/G20 Inclusive Framework members have introduced a CbC reporting filing obligation into law and around 25 further OECD/G20 Inclusive Framework members currently have draft law to introduce an obligation in the near future.

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 is already within the scope of CbC reporting, and the remaining gaps are rapidly being closed.

Figure 4. Implementation of a CbC reporting filing obligation



2.3.2. Implementation of a CbC reporting exchange framework

Currently, there are more than of 2 000 bilateral relationships 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. Further work is needed to support jurisdictions in putting exchange relationships in place and in meeting the conditions for obtaining CbC reports.

2.3.3. The peer review of implementation of BEPS Action 13

The second annual peer review of the implementation of Action 13 will be completed in the summer of 2019. This will consider implementation of the minimum standard by almost 120 Inclusive Framework members, compared with 95 jurisdictions in the first peer review. Where legislation is in place, implementation remains largely consistent with the minimum standard. Since the first peer review, a large number of jurisdictions have introduced changes to address recommendations received.

Key facts on Action 13 implementation

- 58 jurisdictions require or permit CbC reports to be filed.
- 80 jurisdictions having introduced CbC reporting filing obligation and 25 further jurisdictions currently having draft law to introduce an obligation in the near future.
- 2,000 bilateral relationships exist for the exchange of CbC reports.
- 120 jurisdictions will be covered in the second annual peer review.

2.3.4. Work to support the effective use of CbC reports by tax administrations

It is vital that tax administrations use the information in CbC reports effectively in the assessment of transfer pricing and other BEPS-related risks. The OECD Forum on Tax Administration (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. These include a September

2018 workshop in the People's Republic of China, co-hosted with the State Taxation Administration, attended by representatives of 21 tax administrations and 10 MNEs and business groups.

- ***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 so far 17 participating tax administrations, was announced at the FTA's 12th Plenary meeting, held in Santiago, Chile on 26-28 March 2019.
- ***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.
- ***Tax Risk Evaluation and Assurance Tool (TREAT):*** 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.

Key future developments on Action 13

- The second peer review of almost 120 members of the Inclusive Framework will be completed in mid-2019.
- The FTA will continue to develop practical tools to support the use of CbC reports, including ICAP 2.0, CoRA and the release of TREAT.
- 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.

2.4. Action 14 Mutual Agreement Procedure

The genesis for Action 14 developed from a recognition that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for businesses and individuals. It was therefore necessary to develop robust dispute settlement resolution processes across jurisdictions to ensure that disputes are resolved in a timely, effective and efficient manner. The Action 14 minimum standard seeks to achieve this through a rigorous stage 1 peer review process that is then followed up one year later in a stage 2 monitoring report.

The peer review process is now well underway. With already 45 jurisdictions reviewed under stage 1 of the process, 16 more are currently in the process of being finalised and another 18 jurisdictions are scheduled for review (see Table 1). Almost all OECD/G20 Inclusive Framework members that qualify for a deferral have opted to do so and for 31 jurisdictions such deferral has been approved by the FTA MAP Forum.

Furthermore, OECD/G20 Inclusive Framework members are now reporting their MAP statistics under the previously developed MAP Statistics Reporting Framework that reflects a collaborative approach. These statistics are published annually on the OECD website and provide transparency on a jurisdiction-by-jurisdiction basis regarding (i) the number of cases started (ii) the outcome of the cases (iii) inventories and (iv) the length of time it takes to resolve such cases on average. This common reporting also provides a reliable and comparable metric by which jurisdictions can be assessed under the minimum standard for certain elements.

For the 45 jurisdictions reviewed thus far, around 990 recommendations have been issued, including recommendations for jurisdictions to maintain compliance with certain elements of the minimum standard, including the need for more resources to process MAP cases, improving timeliness of the resolution of MAP cases and updating domestic rules. At the same time, the Action 14 minimum standard is already having a broader impact on MAP worldwide:

- There has been a marked increase in the number of cases dealt with by competent authorities which have been closed, in almost all jurisdictions under review. This is likely the result of an increase in resources or in a more efficient use of resources for many competent authorities as a result of the peer review process or, in some cases, for jurisdictions that anticipate their own upcoming peer review.
- The peer review process has spurred changes in a few jurisdictions regarding the structure and organisation of competent authorities to streamline their processes for resolving MAP cases in a timely manner.

> Italy has implemented **changes in January 2017 to the structure and organisation of its competent authorities to streamline their processes for resolving MAP** cases in a timely manner.

- The number of MAP profiles published on the OECD website continues to increase. MAP profiles of over 90 jurisdictions are published on the OECD website[5] thereby providing taxpayers with a central repository of easily accessible information, which will facilitate their use of MAP.

[5] Available at: www.oecd.org/tax/dispute/country-map-profiles.htm

- In addition, more than a quarter of the jurisdictions updated or introduced comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP.

> Luxembourg and Belgium have each **introduced MAP guidance** for the first time.
>
> The United Kingdom **revised its MAP guidance** to reflect fully the requirements of the Action 14 Minimum Standard, thus providing further clarity to taxpayers seeking to access MAP

- Access to MAP is now granted for more cases than in the past. For instance, transfer pricing cases are given access to MAP in all but one jurisdictions. Furthermore, a few jurisdictions changed their policy to allow for access to MAP after a judicial decision has been rendered, even if their competent authorities are still bound by such a decision.

> Switzerland revised its MAP guidance and **simplified its procedures for taxpayers to submit a MAP request** for both transfer pricing cases **and cases concerning individuals.**
>
> Greece and Mexico both **changed their policy to allow access to MAP after a judicial decision** has been rendered.

In addition to these broader changes, the monitoring process under Stage 2 has already begun. The reports for the six jurisdictions that were peer reviewed in batch 1 have recently been discussed and approved by the FTA MAP Forum. These stage 2 reports are the first glimpse into how well jurisdictions are implementing the specific recommendations issued to them during stage 1 of the Action 14 peer review process.

The results of this stage 2 monitoring process available thus far indicate that jurisdictions are making tangible progress. In general, the six batch 1 jurisdictions are considered to be compliant under most of the criteria of the Action 14 minimum standard with respect to the prevention of disputes, availability and access to MAP, the resolution of MAP cases and the implementation of MAP agreements. In this regard, a few noteworthy highlights are as follows:

- All six jurisdictions provide for the possibility of roll-back of bilateral APAs and provide access to MAP in eligible cases.
- All six jurisdictions have a documented bilateral notification and/or consultation process in place to notify the other jurisdictions in cases where they consider a MAP request to be not justified.
- Many of the jurisdictions have updated their publicly available MAP guidance to provide more clarity and details to taxpayers. One revised its MAP guidance to provide further clarity to taxpayers seeking to access MAP in a MAP-intensive jurisdiction. Another also revised its MAP guidance and simplified its procedures for taxpayers to submit a MAP request for both transfer pricing cases and cases concerning individuals. One other jurisdiction introduced comprehensive MAP guidance for the first time.
- Each of the six jurisdictions decreased the amount of time needed to close MAP cases and five of the six jurisdictions met the sought-after 24-month average timeframe to close MAP cases.
- Almost all jurisdictions are able to implement MAP agreements notwithstanding their domestic time limits and no issues have surfaced in this respect throughout the peer review process.

With respect to each jurisdiction bringing their tax treaties in line with the Action 14 minimum standard, there is still some divergence. Half of the assessed jurisdictions made very good progress on updating their treaty network and achieved this by carrying out an action plan that prioritised relevant tax treaty negotiations when the treaties are not expected to be modified by the MLI. Some jurisdictions are bringing their tax treaties in line with the Action 14 minimum standard through ratification of the MLI.

In the future, more insights into progress will come not only from the publication of the 2018 MAP statistics but also from the release of each stage 2 monitoring report following up on any stage 1 recommendations.

Table 1. Mutual Agreement Procedures (MAP) Jurisdictions

Stage 1 completed						Stage 1 ongoing		Not yet started	
1st batch 5 December 2016	2nd batch 7 March 2017	3rd batch 7 July 2017	4th batch 29 December 2017	5th batch 10 April 2018	6th batch 31 August 2018	7th batch 31 December 2018	8th batch By April 2019	9th batch By August 2019	10th batch By December 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Bahrain
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Anguilla	Barbados
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	Bahamas	Kazakhstan
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	Bermuda	Oman
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Jersey	British Virgin Islands	Qatar
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Cayman Islands	Saint Kitts and Nevis
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino	Macau (China)	Thailand
		Spain	Portugal	Turkey	South Africa	Saudi Arabia	Serbia	Tunisia	Trinidad and Tobago
								Turks and Caicos Islands	United Arab Emirates

3. Other key developments

3.1. BEPS implementation beyond the minimum standards

3.1.1. Actions 2, 3 and 4

The BEPS package included recommendations for domestic law measures to address the BEPS risks posed by aggressive tax planning. These 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).

Actions 2-3-4 Implementations

Although they are not minimum standards, Actions 2-3-4 have been rapidly adopted by a large number of countries:

- The EU Council has adopted two Anti-Tax Avoidance Directives requiring Member States to implement, by the beginning of this year, interest limitation and CFC rules that are consistent with Actions 3 and 4 and anti-hybrids rules consistent with Action 2 by the beginning of 2020.
- The Tax Cuts and Jobs Act ("TCJA"), which was signed into law by the United States at the end of 2017, includes provisions consistent with the recommendations under Actions 2-4, and the introduction of a minimum tax on global intangible low-taxed income (GILTI), which reflects recommendations made in the Action 3 report.

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 opportunities that arise through the use of branch structures.

Since announcement of the Action 2 recommendations, a number of Inclusive Framework members have rapidly adopted rules to address such hybrid and branch mismatches (e.g., Australia and New Zealand). 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.

The Action 3 recommendations outline approaches to ensure the taxation of certain categories of income of a multinational enterprise in the jurisdiction of the parent company in order to counter popular 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. Almost 50 OECD/G20 Inclusive Framework members now have CFC rules.

As for Action 4, several jurisdictions have either already taken steps to limit interest deductibility (e.g., Argentina, India, Japan, Korea, Malaysia, Norway and South Africa) or are in the process of aligning their domestic legislation with the recommendations of Action 4 (e.g., Peru and Viet Nam).

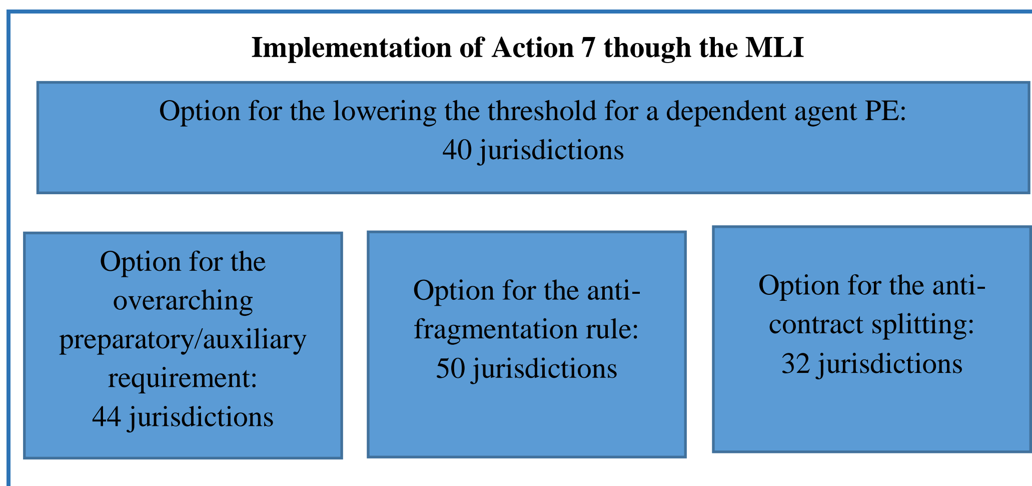
3.1.2. Action 7 Permanent Establishment Status

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.

The Action 7 Final Report did not include any minimum standards, but recommended changes to address techniques used to inappropriately avoid the 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. The take-up of those provisions among the (currently) 88 jurisdictions that are party to the MLI is as explained below.

- 40 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.
- 44 jurisdictions have opted for the amended Article 5(4) of the OECD Model Tax Convention, with the overarching preparatory or auxiliary requirement and 50 jurisdictions have opted for the anti-fragmentation rule in Article 5(4.1) of the OECD Model Tax Convention.
- 32 jurisdictions have opted for the anti-contract splitting provision included in the Commentary on Article 5 of the OECD Model Tax Convention.



3.1.3. Action 8-10 Transfer Pricing

The objective of the 2015 Final Report on Actions 8-10 was to ensure that the profits of MNEs better align with economic activity and value creation. The updated edition of the OECD Transfer Pricing Guidelines was published in July 2017 to incorporate the deliverables resulting from this work.

Finalisation of BEPS follow-up work

Significant progress was made since the last progress report on the projects mandated by the 2015 Final Report on Actions 8-10.

Additional guidance on the attribution of profits to permanent establishments resulting from the changes in the Action 7 Final Report to Article 5 of the OECD Model Tax Convention was published in March 2018. Revised guidance on transactional profit split method (Action 10) was also published in June 2018[6] and will be incorporated into the next edition of the Transfer Pricing Guidelines.

The additional guidance addressed to tax administrations on the application of the hard-to-value intangibles (HTVI) approach (Action 8) was finalized and published in June 2018 and it will be incorporated in the next edition of the Transfer Pricing Guidelines, foreseen in 2019. It was also agreed that a monitoring process be put in place to monitor the application of the HTVI approach by jurisdictions in the period of 2019-2020.

Developing transfer pricing guidance for financial transactions started in 2016 and a discussion draft was released for public consultation in March 2018. That discussion draft, which does not yet represent

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[6] OECD (2018), Revised Guidance on the Application of the Transactional Profit Split Method - BEPS Action 10, www.oecd.org/tax/transfer-pricing/revised-guidance-on-the-application-of-the-transactional-profit-split-method-beps-action-10.pdf.

a consensus position of the Inclusive Framework or its subsidiary bodies, aims to clarify the application of the principles included in the 2017 edition of the Transfer Pricing Guidelines, in particular, the accurate delineation analysis under Chapter I, to financial transactions. The work also addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance. Significant progress was made on this project and it is nearing completion, which is expected to be accomplished in 2019.

Monitoring

Monitoring activities have been enhanced to gather information on the key features of countries' transfer pricing system and more specifically on the status of the implementation by jurisdictions of the guidance developed under Actions 8-10.

That work has produced an update of the Transfer Pricing Country Profiles, which can be consulted on the OECD website. Further analysis of the information collected from tax administrations in more than 50 OECD/G20 Inclusive Framework members has been conducted with a view to assessing the effectiveness of the measures adopted as well as the impact on both compliance by taxpayers and proper administration by tax authorities. Monitoring will continue to gain importance as jurisdictions continue to implement and apply (all or part of) the guidance developed under Actions 8-10.

3.1.4. Action 11 – Economic analysis of BEPS

The delivery of the Corporate Tax Statistics database, which was launched in January 2019, is a significant step toward Action 11 implementation. This new database is intended to assist in the study of corporate tax policy and has already begun to improve the quality and expand the range of data available for the analysis of BEPS. The first edition of the database contains information on over 100 jurisdictions, and several main categories of data: corporate tax revenues, corporate tax rates, and tax incentives related to innovation.

Corporate Tax Statistics Database Main features

- **Corporate tax revenues**: The data show that corporate income tax remains a significant source of tax revenues for governments across the globe. In 2016, corporate tax revenues accounted for 13.3% of total tax revenues on average across the 88 jurisdictions for which data is available (it accounted for 12% in 2000).
- **Corporate tax rates**: The data compiled on statutory corporate tax rates show a clear trend of declining rates over the last two decades. The database shows that the average combined (central and sub-central government) statutory tax rate fell from 27.8% in 2000 to 20.7% in 2018.
- **Forward-looking ETRs** (for 74 jurisdictions in 2017): These forward-looking ETRs capture information on corporate tax rates and bases as well as other relevant provisions within a comparable framework. They provide an appropriate basis for cross jurisdiction comparisons of the combined impact of corporate tax systems on the investment decisions of firms.
- **Tax incentives for innovation**: The database covers 65 IP regimes in 41 jurisdictions that had been reviewed or were under review by the Forum for Harmful Tax Practices (FHTP) as at November 2018. (The results of the FHTP's most recent reviews were published in January 2019. The next edition of Corporate Tax Statistics will take these updates into account.)

3.1.5. Action 12 Mandatory Disclosure Regimes

Action 12 contains rules that allow jurisdictions to obtain early information on the tax compliance and policy risks raised by aggressive tax planning. Action 12 seeks to balance the need for early information on aggressive tax planning schemes with the need for disclosure requirements to be appropriately targeted, enforceable and avoid over-disclosure or placing undue compliance burdens on taxpayers. The adoption of Council Directive (EU) 2018/822 by EU Member States will result in the reporting of cross-border aggressive tax planning, offshore structures and CRS avoidance schemes to EU member tax authorities. The directive largely incorporates the model rules set out in the OECD Report on Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures issued in February 2018.

3.2. Inclusiveness

The OECD/G20 Inclusive Framework was established in 2016, in response to calls for greater developing country inclusion. Critically, all members of the OECD/G20 Inclusive Framework participate on an equal footing, giving each of them a voice in the decision making.

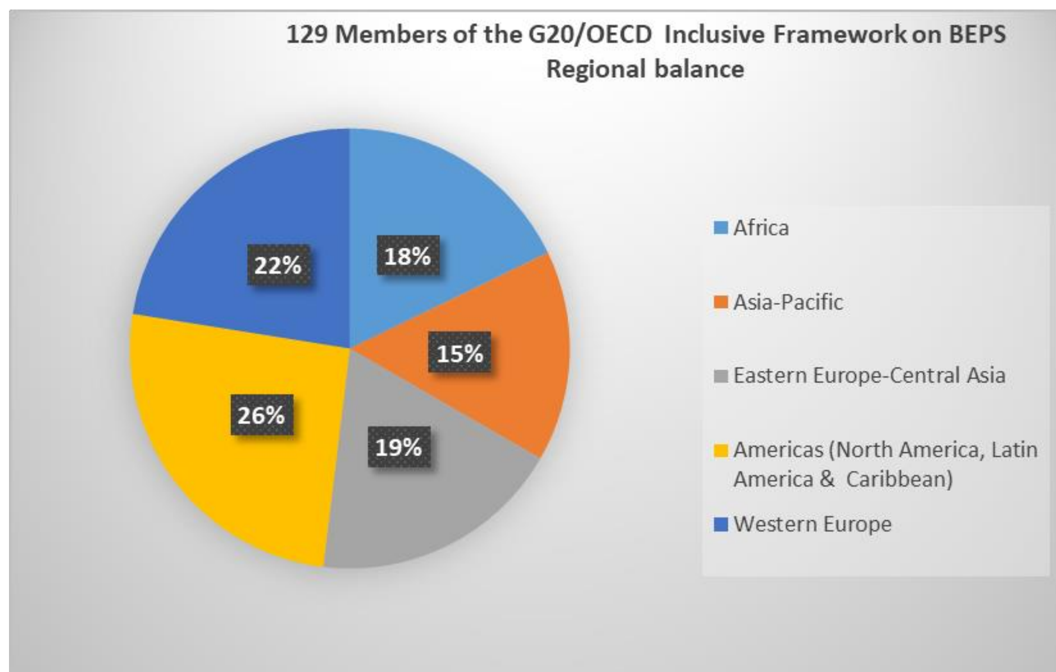
3.2.1. Membership

At its inaugural meeting in Kyoto, Japan in July 2016 there were 82 members of the OECD/G20 Inclusive Framework. Today, there are 129 members and 14 observer organisations[7]. The past year has seen further growth and a consolidation of the OECD/G20 Inclusive Framework. It welcomed 13 new members: Antigua and Barbuda, Armenia, Aruba, Cabo Verde, Cook Islands, Dominica, Dominican Republic, Faroe Islands, Greenland, Grenada, Morocco, North Macedonia, and Saint Vincent and the Grenadines.

The OECD/G20 Inclusive Framework now has a truly global membership, including over 70% of non-OECD and non-G20 countries from all geographic regions (see Figure 4). The leadership of the OECD/G20 Inclusive Framework reflects this diversity, with newly elected or re-elected deputy chairs from China and Nigeria, and Steering Group members from Brazil, Côte d'Ivoire, Georgia, India, Jamaica, Senegal and South Africa.

With greater inclusiveness and participation, developing countries' perspectives and inputs are increasingly influencing the development of international standards on corporate taxation, particularly on the taxation of the digitalising economy and in terms of standard setting for transfer pricing.

Figure 5. Regional Composition of the OECD/G20 Inclusive Framework on BEPS



[7] The full list of OECD/G20 Inclusive Framework on BEPS members and observers is available in Annex A.

3.2.2. Support to Developing Countries

Capacity building support for developing countries has always been core to the OECD/G20 Inclusive Framework, prioritising active, equal participation in the BEPS process. In addition, the Secretariat, in partnership with the African Tax Administration Forum (ATAF), the European Commission and the WBG also supports countries that are not OECD/G20 Inclusive Framework members through demand-led bilateral programmes, some of which are making significant progress on BEPS implementation, like in Uganda for instance.

To date, 30 bespoke induction programmes have been launched with the aim of assisting developing countries to successfully implement their BEPS priorities. These programmes are tailored to the needs of the countries concerned and may include technical workshops and/or high-level engagement with ministers or other key political decision makers.

The Secretariat is also supporting developing countries with the use of on-line resources. After the successful introduction of “blended learning” events in 2018 – combining on-line training and traditional face-to-face workshops, the Secretariat has launched an e-learning programme in February 2019 and will be developing further modules on international tax topics.

3.2.3. Tax Inspectors Without Borders (TIWB)

Tax Inspectors Without Borders (TIWB), a joint-OECD/United Nations Development Programme (UNDP) initiative, which was launched in Addis Ababa in July 2015, has further strengthened and expanded its reach across the globe in the past year. With 61 programmes currently underway or completed and over 28 upcoming programmes, TIWB audit assistance continues to provide tax administrations in developing countries with much needed assistance in building capacity to implement BEPS solutions and generate more revenues.

To date, cumulative increases in revenue collected since 2012 amount to approximately USD 470 million from thirteen cases. On average, for every USD 1 spent on TIWB activities between 2013 and 2018, there was a more than USD 100 increase in tax revenues collected by Host Administrations (see Figure 6).

Beyond the increase in tax revenues collected, TIWB programmes have been a major confidence builder for tax administrations, and a deterrent against tax avoidance strategies by MNEs, helping to create behavioural changes and a culture of voluntary compliance as well as an environment where businesses know what to expect from tax administrations.

The TIWB initiative has continued to evolve to meet the needs of developing countries. One of those needs has been for greater input from industry experts, e.g. from the diamond, floriculture, oil and gas, forestry and mining sectors. The enhanced sectoral focus of TIWB into the mining sector will be bolstered by the OECD’s strengthening partnership with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). IGF will provide industry experts, raise demand for TIWB programmes among its 71 members and promote inter-agency co-operation in the host countries undertaking TIWB programmes in the mining sector. The TIWB initiative also places an increasing emphasis on enhancing South-South co-operation to help ensure developing country perspectives remain at the forefront in the audit assistance provided.

Figure 6. Regional Reported Revenue Increases from TIWB Assistance

TIWB is currently looking into further areas where its model can apply. For instance, five pilot programmes on tax crime are due to begin in 2019. Other areas being explored include the use of TIWB for joint audits and support for Common Reporting Standard (CRS) data interpretation.

3.2.4. Platform for Collaboration on Tax

The Platform for Collaboration on Tax (PCT) partners – the IMF, OECD, UN, and WBG – continue to strengthen their co-operation implementing the Action Plan agreed by the Platform partners at the conclusion of the PCT conference in February 2018. The PCT is currently expanding its secretariat to enable it to deliver on the Action Plan, and is preparing a full update on activities. Work is also underway to further clarify the roles of the Platform partners to enhance co-operation. The PCT will also deliver a progress report on its activities to the G20 Finance Ministers in June 2019. In addition, a programme to support Small Island Developing States and other limited capacity countries to address BEPS in the tourism sector will shortly be launched by the PCT. It is envisaged that this programme would draw on sectoral and tax technical expertise within the secretariats of the partner organisations, complemented by practical TIWB initiatives in relevant participating economies.

Progress has been made on the toolkits being developed by the PCT. These toolkits are intended to provide practical implementation guidance on BEPS issues of particular relevance to developing countries. A draft of the toolkit on *Taxation of Offshore Indirect Transfers* was subject to a second public consultation that closed on 24 September 2018. This second round of consultation was undertaken because the toolkit addresses a number of difficult international tax policy issues on which there is limited existing practical guidance. This has attracted considerable debate from business. Progress is continuing with further toolkits - a toolkit on *Implementing Efficient and Effective Transfer Pricing Documentation Regimes* will be launched for consultation in 2019.

In the past year, a number of events were held with developing country participants to operationalise the completed PCT toolkits. Feedback from participants on these events has been extremely positive and countries are reporting that the tools provided are having a real impact on corporate tax enforcement efforts. As a result of this positive feedback, the approaches discussed in the 2017 toolkit on *Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* will also be incorporated into the UN Practical Manual on Transfer Pricing for Developing Countries, as well as being the focus of a new e-learning module being developed by the OECD.

3.2.5. Co-operation with regional organisations, civil society

The work of the OECD/G20 Inclusive Framework has been consolidated in the past year, including embedding BEPS implementation so that it becomes an integral part of the regional tax architecture. Regional organisations are increasingly taking ownership of the OECD/G20 BEPS Project, and its implementation is increasingly being incorporated into existing meetings of regional tax organisations

(RTOs) and other inter-governmental forums like the Asia-Pacific Economic Cooperation (APEC) forum (see Box 1).

Box 1. BEPS Implementation Support by Regional Organisations

The past year's APEC experience of supporting BEPS implementation is illustrative of the how regional membership groupings and bodies are taking ownership of the BEPS agenda. Building on work begun by Viet Nam in 2017, as APEC President, Papua New Guinea hosted several BEPS technical training events in 2018 for APEC economies, supported by the Secretariat of the OECD/G20 Inclusive Framework, and Australia. The mix of developing and developed economies provided a useful basis for experience sharing and mutual support. In 2019, Chile as APEC President is pursuing this work. To encourage the exchange of knowledge, the Secretariat of the OECD/G20 Inclusive Framework developed an on-line community of practice facility specifically for APEC economies, based on the Knowledge Sharing Platform financed and developed by Canada.

Similar projects are well underway among regional tax organisations and regional banks. The Inter-European Organisation of Tax Administrations (IOTA) and the African Tax Administration Forum (ATAF), for example, have committee structures in place to support BEPS implementation. The Inter-American Center of Tax Administrations (CIAT), the Study Group on Asian Tax Administration and Research (SGATAR) and the Asian Development Bank have also embarked on BEPS support programmes and activities for their members.

Eleven regional outreach events were delivered by the Secretariat of the OECD/G20 Inclusive Framework in the past year, all of them conducted in partnership with various Regional Tax Organisations, reaching 96 developing economy jurisdictions and countries around the globe. In addition, the number of international and regional organisations involved in the work of the OECD/G20 Inclusive Framework has continued to increase, which in turn has supported increased representation of developing country views in relevant forums (see list of participating international and regional organisations in Annex A).

Civil society has been continuously involved in the work of the OECD/G20 Inclusive Framework. In the past year, civil society representatives have had a particularly active role in the discussions on the tax challenges of digitalisation. For instance, civil society representatives took an active part in the Stakeholder Roundtable held during the Sixth meeting of the OECD/G20 Inclusive Framework on 24 January 2019 in Paris.

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

Complete list of Members of the OECD/G20 Inclusive Framework on BEPS as at May 2019[8]

Andorra
Angola
Anguilla
Antigua and Barbuda
Argentina
Armenia
Aruba
Australia
Austria
Bahamas
Bahrain
Barbados
Belgium
Belize
Benin
Bermuda
Botswana
Brazil
British Virgin Islands
Brunei Darussalam
Bulgaria
Burkina Faso
Cameroon
Canada
Cape Verde
Cayman Islands
Chile
China (People's Republic of)
Colombia
Congo
Cook Islands
Costa Rica
Côte d'Ivoire
Croatia
Curaçao
Czech Republic
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Egypt
Estonia
Faroe Islands
Finland
France
Gabon
Georgia
Germany
Greece
Greenland
Grenada
Guernsey
Haiti
Hong Kong (China)
Hungary
Iceland
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Jamaica
Japan
Jersey
Kazakhstan
Kenya
Korea
Latvia
Liberia
Liechtenstein
Lithuania
Luxembourg
Macau (China)
Malaysia
Maldives
Malta
Mauritius
Mexico
Monaco
Mongolia
Montserrat
Morocco
Netherlands
New Zealand
Nigeria
North Macedonia
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
San Marino
Saudi Arabia
Senegal
Serbia
Seychelles
Sierra Leone
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turkey
Turks and Caicos Islands
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Viet Nam
Zambia

[8] An up-to-date list of Members can be found online at www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf

List of Observer Organisations to the OECD/G20 Inclusive Framework on BEPS as at May 2019

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 Réflexion et d'Échange 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. BEPS Actions and the Subsidiary Bodies of the OEC/G20 Inclusive Framework on BEPS

The OECD's Committee on Fiscal Affairs in its OECD/G20 Inclusive Framework on BEPS format is the decision making body of the OECD/G20 Inclusive Framework. Subsidiary bodies of the OECD/G20 Inclusive Framework carry out the technical work on each of the BEPS Actions, as set out in the table below.

All members of the OECD/G20 Inclusive Framework participate on an equal footing in the decision-making body, as well as in the technical working groups.

BEPS Action	Relevant subsidiary bodies and ad hoc groups of the OECD/G20 Inclusive Framework
Action 1 – Addressing the Tax Challenges of the Digital Economy This action analyses BEPS risks exacerbated in the digital economy and shows the expected impact of the measures developed across the OECD/G20 BEPS Project. It concludes that the digital economy cannot be ring-fenced as it is increasingly the economy itself and proposes technical options to deal with the tax challenges of the digital economy.	Task Force on the Digital Economy
Action 2 - Neutralising the Effects of Hybrid Mismatch Arrangements This action provides a common approach which facilitates the convergence of national practices through domestic and treaty rules to neutralise such arrangements. It helps to prevent double non-taxation by eliminating the tax benefits of mismatches and to put an end to costly multiple deductions for a single expense, deductions in one country without corresponding taxation in another, and the generation of multiple foreign tax credits for one amount of foreign tax paid.	Working Party No. 11 on Aggressive Tax Planning
Action 3 - Designing Effective Controlled Foreign Company Rules This action sets out recommendations in the form of building blocks of effective CFC rules, while recognising that the policy objectives of these rules vary among jurisdictions. It identifies the challenges to existing CFC rules posed by mobile income such as that from intellectual property, services and digital transactions, and allows jurisdictions to reflect on appropriate policies in this regard.	Working Party No. 11 on Aggressive Tax Planning
Action 4 - Limiting Base Erosion Involving Interest Deductions and Other Financial Payments This action provides a common approach to facilitate the convergence of national rules in the area of interest deductibility. It aims at ensuring that an entity's net interest deductions are directly linked to the taxable income generated by its economic activities and fostering increased co-ordination of national rules in this space.	Working Party No. 11 on Aggressive Tax Planning
Action 5 - Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance This action sets out a minimum standard based on an agreed methodology to assess whether there is substantial activity in a preferential regime. In the context of IP regimes such as patent boxes, consensus was reached on the "nexus" approach. In the area of transparency, a framework has been agreed for mandatory spontaneous exchange of information on rulings that could give rise to BEPS concerns in the absence of such exchange.	Forum on Harmful Tax Practices

Action	Body
Action 6 - Preventing the Granting of Treaty Benefits in Inappropriate Circumstances This action includes a minimum standard on preventing abuse including through treaty shopping and new rules that provide safeguards to prevent treaty abuse. Other changes to the OECD Model Tax Convention have been agreed to ensure that treaties do not inadvertently prevent the application of domestic anti-abuse rules. It also contains the policy considerations to be taken into account when entering into tax treaties with certain low or no-tax jurisdictions.	Working Party No. 1 on Tax Conventions and Related Questions
Action 7 - Preventing the Artificial Avoidance of Permanent Establishment Status This action includes changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention. These changes address techniques used to inappropriately avoid the tax nexus, including via replacement of distributors with commissionaire arrangements or via the artificial fragmentation of business activities.	Working Party No. 1 on Tax Conventions and Related Questions
Actions 8-10 - Aligning Transfer Pricing Outcomes with Value Creation Action 8 looked at transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are often hard-to-value. Under Action 9, contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Action 10 has focused on other high-risk areas. The combined report contains revised guidance which responds to these issues and ensures that transfer pricing rules secure outcomes that better align operational profits with the economic activities which generate them. It also contains guidance on transactions involving cross-border commodity transactions as well as on low value-adding intra-group services.	Working Party No. 6 on the Taxation of Multinational Enterprises
Action 11 - Measuring and Monitoring BEPS This action assesses currently available data and methodologies and concludes that significant limitations severely constrain economic analyses of the scale and economic impact of BEPS and improved data and methodologies are required. Noting these data limitations, a dashboard of six BEPS indicators has been constructed. These indicators provide strong signals that BEPS exists and suggest it has been increasing over time.	Working Party No. 2 on Tax Policy Analysis and Tax Statistics
Action 12 - Mandatory Disclosure Rules This action provides a modular framework of guidance drawn from best practices for use by countries without mandatory disclosure rules which seeks to design a regime that fits those countries' need to obtain early information on aggressive or abusive tax planning schemes and their users. The recommendations provide the necessary flexibility to balance a country's need for better and more timely information with the compliance burdens for taxpayers.	Working Party No. 11 on Aggressive Tax Planning
Action 13 - Transfer Pricing Documentation and Country-by-Country Reporting This action contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on Country-by-Country Reporting. 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. The "master file" and "local file" are not part of the minimum standard.	Ad Hoc Group on Country-by-Country Reporting, consisting of members of both Working Party No. 6 and Working Party No. 10

Action 14 - Making Dispute Resolution Mechanisms More Effective Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, countries have committed to a minimum standard with respect to the resolution of treaty-related disputes. In particular, this includes a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure.	Forum on Tax Administration – Mutual Agreement Procedures Forum/ Working Party 1 on Tax Treaties
Action 15 - Developing a Multilateral Instrument to Modify Bilateral Tax Treaties This action explored the technical feasibility of a multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties. This led to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, which was adopted in November 2016.	Ad Hoc Group on the Multilateral Instrument for BEPS tax treaty measures

Annex 3: IMF/OECD 2019 Progress Report on Tax Certainty

Also available at: www.oecd.org/tax/tax-policy/g20-report-on-tax-certainty.htm

Executive summary

Tax certainty for taxpayers is an important component of investment decisions and can have significant impacts on economic growth. In 2016, the G20 Leaders called on the International Monetary Fund (the IMF) and the Organisation for Economic Co-operation and Development (OECD) to work on this issue.

Following an initial report in 2017 (the 2017 Report[1]) and an update in 2018 (the 2018 Update[2]), the G20 Leaders re-iterated the importance of this issue, noting their continued support for enhanced tax certainty. The Buenos Aires Action Plan called for "the OECD and the IMF to report to Finance Ministers and Central Bank Governors in 2019 on progress made on tax certainty".

This report provides an update on the work on tax certainty issues and shows clearly that this remains a priority issue for taxpayers and tax administrations alike. Moreover, the work on tax certainty covers a wide variety of issues in both tax policy and tax administration, notably:

- A shifting focus from dispute resolution to dispute prevention: ensuring that disagreements between tax administrations can be resolved quickly to avoid double taxation will always be a core element of tax certainty, but with the advances in tax transparency, cooperative compliance and the implementation of the OECD/G20 BEPS Project, the opportunity for early certainty is far greater. The availability of Country-by-Country reports allows for more targeted audits and the practice of joint audits is becoming more common, allowing for the highest levels of integration and coordination. The International Compliance Assurance Program (ICAP), which has now launched its second pilot, provides for a multilateral approach to early certainty for eligible multinational enterprises.
- The demand and need for improvements to the integrity, efficiency and accountability of tax administrations, particularly in developing countries. The IMF has produced new results from its *Tax Administration Diagnostic Assessment Tool* (TADAT) and the OECD has begun work on the link between tax morale, namely the confidence that taxpayers have in a country's tax system, and tax certainty. Capacity building work by both the IMF and OECD (and others) continued to support tax certainty on many fronts, including new initiatives in relation to combatting corruption in tax administrations given corruption is closely linked to tax certainty.
- Work on ensuring that the tax rules are as clear and administrable as they can remains a key component of tax certainty. There is considerable work on-going to make the transfer pricing rules simpler and easier to administer. The OECD continues to work on strengthening the OECD Transfer Pricing Guidelines (TPG) and on the implementation of BEPS Actions 8-10 work streams, including work on hard-to-value intangibles (HTVI), low value-added intra-group services (LVAS) implementation, and in respect of financial transactions and the application of the transactional profit split method (TPSM).

[1] IMF/OECD (2017), OECD/IMF Report on Tax Certainty, Paris. www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf

[2] IMF/OECD (2018), OECD/IMF Report on Tax Certainty - 2018 Update, Paris. www.oecd.org/ctp/tax-policy/tax-certainty-update-oecd-imf-report-g20-finance-ministers-july-2018.pdf

- Several lessons (not all new) have emerged from the capacity building work of both the IMF and OECD to inform the design and delivery of future assistance to enhance tax certainty in developing countries. A key lesson is that success in improving tax systems should be assessed not only by revenue levels achieved, but also by the improvements in the quality of the tax system to minimize economic distortions while ensuring predictability, fairness and simplicity.

The current debates around the international tax agenda, and in particular how to address the tax challenges arising from digitalisation, necessarily have a tax certainty angle, and indeed, tax certainty is increasingly part of the policy agenda for both G20 and OECD countries as well as developing countries. There is good, concrete work going on in a number of areas and the IMF and the OECD will continue to take forward the work on these fronts.

Introduction

The work on international taxation over the past decade has focussed on enhancing transparency and developing more coordinated rules to ensure that all taxpayers contribute to the financing of vital public services and the policy priorities of their governments, as well as capacity building for developing countries to ensure they can contribute to and benefit from these advances. However, the need to ensure a predictable and stable investment environment and international rules that facilitate global trade remains a fundamental component of the international tax architecture.

In that regard, tax certainty for taxpayers is an important influence on investment and other commercial decisions and can have significant impacts on economic growth. Improving tax certainty also cuts both ways, benefiting both taxpayers and tax administrations. In 2016, the G20 Leaders called on the International Monetary Fund (the IMF) and the Organisation for Economic Co-operation and Development (OECD) to work on the issue of tax certainty. Following an initial report in 2017 (the 2017 Report[3]) and an update in 2018 (the 2018 Update[4]), the G20 Leaders re-iterated the importance of this issue, noting their continued support for enhanced tax certainty. The Buenos Aires Action Plan called for "the OECD and the IMF to report to Finance Ministers and Central Bank Governors in 2019 on progress made on tax certainty".

The 2017 Report highlighted that tax uncertainty creates a risk of discouraging investment and to enhance tax certainty, the report identified a set of concrete and practical approaches and solutions. These range from improving the clarity of legislation, increasing predictability and consistency of tax administration practices, effective dispute prevention, and robust dispute resolution mechanisms. The basis for much of the analysis in the 2017 Report was the 2016 OECD business survey on tax certainty (2016 OECD Survey), which compiled information from more than 700 businesses, combined with a review of the formal analytical literature.

While the 2017 Report focused on G20 and OECD countries, it was noted that the underlying concerns and suggested approaches have potential relevance to developing countries as well. However, it was also recognised that developing countries face different challenges than those in OECD countries, which could also require alternative tools, having regard to their enforcement capabilities and implementation capacity. The 2018 Update elaborated further on tax certainty in developing countries, particularly the specific results for developing countries obtained from the 2016 OECD Survey, as well as from a consultative workshop that was held in Dar-es-Salam, Tanzania in October 2017.

There is an important role that capacity building work can play to inform the standard setting work. Co-operation among the international organisations active in this area, including through the Platform for Collaboration on Tax (PCT), is also vital.

A large part of the certainty agenda revolves around tax administration, which is at the heart of the implementation of tax legislation and consequently a crucial channel for delivering an appropriately certain tax system. Clear, coherent legislation is critical, but does not guarantee

[3] IMF/OECD (2017), OECD/IMF Report on Tax Certainty, Paris. www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf

[4] IMF/OECD (2018), OECD/IMF Report on Tax Certainty - 2018 Update, Paris. www.oecd.org/ctp/tax-policy/tax-certainty-update-oecd-imf-report-g20-finance-ministers-july-2018.pdf

tax certainty if it is not accompanied by coherent, fair and efficient implementation. Uncertainty can also give rise to a poor general relationship between business and the tax authority. In this context, greater transparency with respect to the tax affairs of multinationals, coupled with a more cooperative approach to tax compliance has great potential to reduce uncertainty for low risk companies, assist tax administrations to better focus their resources and promote a culture of greater trust.

The OECD/G20 Project on Base Erosion and Profit Shifting (BEPS) has made significant progress in bringing more substance, coherence and transparency to the international tax system, but most of the fundamentals of the international corporate tax system remained unchanged.

Today, strains on the current system for taxing multinational enterprises in the face of the digitalisation of the economy have become more salient than ever, leading to an increased need to continue the focus on certainty in tax matters, with uncoordinated measures jeopardising the considerable co-operation that the BEPS project has achieved. For some countries, addressing the challenges arising from digitalisation seems to be a political imperative, given domestic perceptions of under-taxation and pending some longer-term global solution. These strains in international tax relations may heighten tax uncertainty.

Addressing the tax challenges of digitalisation is the subject of extensive discussions in the OECD/G20 Inclusive Framework on BEPS, which is working to deliver a long-term, consensus-based solution to the G20 by 2020[5]. The IMF has also contributed to the debate with a paper on the broad directions for reform (IMF (2019)[6]. The OECD's TFDE and Inclusive Framework embody a cooperative multilateral approach and IMF (2019) specifically stresses the need to maintain and build on the progress in international co-operation on tax matters that has been achieved in recent years. This strong urging towards international co-operation has already arguably had an immediate impact with a number of countries now actively engaged and focused on the multilateral process. For example, Australia announced in March 2019 that it had decided to continue to focus its efforts on engaging in the OECD multilateral process and not to proceed with an interim measure, such as a DST.

Tax certainty is increasingly part of the policy agenda for both G20 and OECD countries as well as developing countries. There is good, concrete work going on in a number of areas and the IMF and the OECD will continue to take forward the work on these fronts.

This report provides an update on the tax certainty agenda by building on the 2017 Report and 2018 Update in two dimensions[7]: firstly, it reports on further progress made to enhance tax certainty, including with respect to the work the IMF and OECD have taken forward; and secondly, it describes some new initiatives in relation to combatting corruption in tax

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[5] www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf

[6] www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650

[7] There have also been some relevant analytical contributions: Davig and Foerster (2018) show how the possibility of 'fiscal cliffs'—pre-announced large changes in tax policy—can depress economic activity ("Uncertainty and fiscal cliffs," Federal reserve Bank of San Francisco Working Paper 2018-12); Keen and Hines (2018) characterise circumstances in which ex ante tax rate uncertainty reduces/increases expected profits, output and input ("Certain effects of uncertain taxes," National Bureau of Economic Research Working Paper 25388).

administrations, and identifying and building tax morale, particularly given corruption is closely linked to tax certainty, and tax certainty is a component of tax morale.

Update on the status of Country-by-Country reporting

Improved and better-coordinated transfer pricing documentation will increase the quality of information provided to tax administrations, which aims to boost tax authorities' risk-assessment capabilities and help reduce tax uncertainty for tax administrations. More targeted audits and standardised documentation will also limit the compliance burden on businesses. OECD/G20 BEPS Action 13 on Country-by-Country (CbC) reporting establishes a three-tiered approach to transfer pricing documentation, comprising a master file with an overview of an MNE'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.

OECD/G20 BEPS Action 13, which is one of the BEPS minimum standards, recommends that CbC reports be required for the fiscal years of multinational enterprises (MNEs) beginning on or after 1 January 2016. But it also recognises that some jurisdictions may need more time to make the necessary adjustments to their law. Fifty-eight of the OECD/G20 Inclusive Framework members required or permitted CbC reports to be filed by MNEs for fiscal years commencing in 2016, and almost 80 Inclusive Framework members have already introduced a CbC reporting filing obligation into law. Around 25 further members currently have draft laws to introduce an obligation in the near future.

In total, over three quarters of 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 USD750 million is already within the scope of CbC reporting, and the remaining gaps are rapidly being closed.

The exchange of CbC reports is generally facilitated through the automatic exchange of information. There are currently in excess of 2,000 bilateral relationships for the exchange of CbC reports in effect. Further work is needed to support jurisdictions, in particular those with limited capacity, in putting exchange relationships in place and in meeting the conditions for obtaining CbC reports, but already tax administrations have access to unprecedented information on foreign MNEs that pose the greatest potential BEPS risk to their jurisdictions.

It is vitally important that tax administrations use the information in CbC reports effectively in the assessment of transfer pricing and other BEPS-related risks. The OECD Forum on Tax Administration (FTA) has undertaken a number of initiatives to support tax administrations in using CbC reports to provide greater certainty to MNEs, which will benefit all Inclusive Framework members receiving CbC reports from resident entities or from other tax administrations. These include:

- ***CbCR risk assessment workshops:*** Since January 2017, a series of risk assessment workshops have been held to consider how CbC reports can be best used in risk assessments. These include a September 2018 workshop in the People's Republic of China, co-hosted with the State Tax Administration, attended by representatives of 21 tax administrations and 10 MNEs and business groups.
- ***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.

- ***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.
- ***Tax Risk Evaluation and Assurance Tool (TREAT):*** TREAT is a tool under development 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 will incorporate training materials drawing on experience in ICAP and CoRA, to assist tax administrations in the risk assessment of MNEs.

Update on the progress in the International Compliance Assurance Programme

The OECD's International Compliance Assurance Programme (ICAP) is a voluntary programme for a multilateral co-operative risk assessment and assurance process. It is designed to be an efficient, effective and co-ordinated approach to provide MNEs willing to engage actively, openly and in a fully transparent manner with increased tax certainty with respect to some of their activities and transactions. ICAP does not provide an MNE with the same degree of legal certainty as may be achieved through an advance pricing agreement (APA), but the spirit of both are similar. APAs provide an opportunity for both tax administrations and taxpayers to consult and cooperate in a non-adversarial spirit and environment. The opportunity to discuss complex tax issues in a less confrontational atmosphere than may be the case in an audit context can stimulate a free flow of information among all parties involved for the purpose of coming to a legally correct and practicably workable result. Similarly, ICAP gives comfort and assurance where tax administrations participating in an MNE's risk assessment consider a covered risk to be low risk. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of actions taken outside the programme, if needed.

There are six key drivers behind the development of the ICAP risk assessment and assurance process, which are: 1) providing a pathway to improved tax certainty for MNEs 2) more effective dispute resolution 3) well-established MNE compliance frameworks 4) advances in international collaboration 5) better and more standardised information for transfer pricing risk assessment and 6) capitalising on greater opportunities for multilateral engagement to provide improved assurance for tax administrations and taxpayers. Some of these aforementioned drivers concern the imperative for mechanisms to provide greater certainty for MNEs and tax administrations, building on the outcomes of the OECD/G20 BEPS project and the establishment of the OECD/G20 Inclusive Framework on BEPS. Others concern the trend for greater collaboration and co-operation between different tax administrations, and between tax administrations and MNEs, which supported the development of such mechanisms.

As tax administrations and MNEs enter an era of increased transparency, new opportunities arise to use the increased flow of information to support open, co-operative relationships between taxpayers and tax administrations, providing routes towards greater comfort or certainty, and a more effective use of resources. The benefits of ICAP include helping tax administrations reach early decisions about the level of tax risk, if any. It may also improve consistency in the understanding of MNEs with similar transactions in multiple jurisdictions. ICAP will also facilitate an efficient use of resources and a faster, clearer route to multilateral tax certainty with a process overall to be completed within 24-28 weeks following delivery of the main documentation package.

This is a novel approach to tax administration, and as such there is a need to run pilot projects in order to test different ideas and approaches with a small number of tax administrations and MNEs. The first ICAP pilot was launched in Washington D.C. in January 2018 where a pilot handbook was introduced.[8] It brought together eight tax administrations, from Australia,

[8] ICAP pilot handbook available at: www.oecd.org/tax/forum-on-tax-administration/publications-and-products/international-compliance-assurance-programme-pilot-handbook.pdf.

Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States, with a number of MNEs headquartered in these jurisdictions. The ICAP process has since been updated to reflect the experience and feedback of these tax administrations and MNEs, gathered as the first pilot progressed. A second ICAP Pilot (ICAP 2.0) was announced in March 2019 at the OECD Forum on Tax Administration Plenary held in Chile and a second ICAP handbook was released[9], which includes an assessment of the learnings from the first ICAP pilot and how this influenced ICAP 2.0. The tax administrations participating in ICAP 2.0 are from the following jurisdictions: Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Spain, United Kingdom, United States and others are actively considering joining at a later stage.

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[9] ICAP 2.0 pilot handbook available at: www.oecd.org/tax/forum-on-tax-administration/publications-and-products/international-compliance-assurance-programme-pilot-handbook-2.0.pdf

Advance Pricing Arrangements

Advance Pricing Agreements (APAs) can improve certainty for businesses and tax authorities. An APA between a given taxpayer and tax administration(s) determines, in advance of controlled transactions, an appropriate set of criteria (*e.g.*, method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.

APAs often require considerable time and effort to conclude and—as with cooperative compliance programs—countries with limited capacity need to think carefully before entering into them, particularly if limited resources would be diverted away from other core activities (such as compliance efforts). They can also, for instance, take several years to negotiate, and issues of asymmetric information can pose significant risks to the tax authorities. However, such upfront diligence and costs can result in future time-savings and prevent disputes from arising in the first place. For example, some MAP-intensive jurisdictions deal with the vast majority of their caseloads via APAs while MAP is only required for a fraction of such cases. Therefore, the more that jurisdictions are willing to expend the initial effort to conclude APAs in the first place, the more certainty will be provided to taxpayers and tax administrations later on down the road.

Transfer pricing developments

The interpretation and application of transfer pricing rules can be a significant source of uncertainty in tax matters, as well as be at the origin of international tax disputes. Using APAs is one approach to reduce uncertainty in this area, but there is also considerable work on-going to make the transfer pricing rules themselves simpler and easier to administer. The OECD continues to work on strengthening the OECD Transfer Pricing Guidelines (TPG) and on the implementation of BEPS Actions 8-10 work streams, including work on hard-to-value intangibles (HTVI), low value-added intra-group services (LVAS) implementation, and in respect of financial transactions and the application of the transactional profit split method (TPSM). The OECD is also studying variations in the application of the authorised OECD approach (AOA) to attribution of profits to a permanent establishment or non-AOAs to provide clarity/certainty on country approaches.

In June 2018, the G20/OECD Inclusive Framework issued guidance on the application of the approach to HTVI and the TPSM, which have been formally incorporated to the TPG. The revised guidance on the TPSM clarifies and significantly expands the guidance on when the TPSM may be the most appropriate method. In addition, the guidance elaborates on how the TPSM should be applied. Numerous examples have also been included to illustrate the implementation of the new guidance.

The HTVI guidance for tax administrations is aimed at reaching a common understanding and practice among tax administrations on how to make adjustments resulting from the application of the approach to HTVI. The guidance includes a number of examples to clarify the application of the HTVI approach in different scenarios and addresses the interaction between the HTVI approach and the access to the mutual agreement procedure under the applicable tax treaty. Further, the OECD/G20 Inclusive Framework has put in place a monitoring process of the implementation of the HTVI approach by jurisdictions, which will also feed into a future revision of the guidance in 2020.

The OECD/G20 Inclusive Framework is also currently developing guidance on the transfer pricing aspects of financial transactions. The project, which started in 2016, produced a discussion draft that was released for public consultation in July 2018. That discussion draft, which did not represent a consensus position of the Inclusive Framework or its subsidiary bodies at that time, clarified the application of the principles included in the TPG, in particular, the accurate delineation analysis under Chapter I to financial transactions. The work also addressed specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance. Significant progress has been made on this project, completion of which is expected by end-2019.

The OECD is also engaged in monitoring the application of the TPG and the recommendations resulting from the BEPS Actions 8-10 and 13. Accordingly, the OECD has gathered and published Transfer Pricing Country Profiles[10] containing information on the key features of countries' transfer pricing systems. Further analysis of the information collected from tax administrations in more than 50 OECD/G20 Inclusive Framework members has been conducted with a view to assessing the effectiveness of the measures adopted as well as the impact on both compliance by taxpayers and proper administration by tax authorities.

On 10-12 October 2018, a workshop on the use of safe harbours in transfer pricing was organised jointly by the OECD and the Ministry of Finance of Slovakia in Velky Meder, Slovak Republic. This event presented the opportunity for transfer pricing policy experts responsible for design and implementation of transfer pricing rules as well as transfer pricing methodology to explore and discuss the benefits and concerns related to the use of safe harbours in transfer pricing. It also allowed them to exchange views on the necessary steps to take and the practical aspects of designing a transfer pricing safe harbour regime. A number of jurisdictions expressed interest in further practical guidance on safe harbours to better inform their decision to adopt safe harbours and guide them in their development.

Other events were organised and delivered by the OECD on Transfer Pricing Documentation and Risk Assessment:

- Transfer Pricing Documentation and Country-by-Country Reporting (China, 26-30 March 2018).
- Implementing documentation and reporting obligations and performing risk assessment analyses (Ankara, 11-14 September 2018).
- Transfer Pricing Documentation and Country-by-Country Reporting (Malaysia, 11-15 March 2019).

Finally, the OECD is also conducting a survey on how the transfer pricing rules can be made simpler, with a view to identifying and formulating specific best practices of simplification measures. The OECD will also engage with the business community on their experience with existing transfer pricing simplification measures and to gather ideas on potential measures that could be further explored, including in respect of transfer pricing documentation that gives rise to uncertainty.

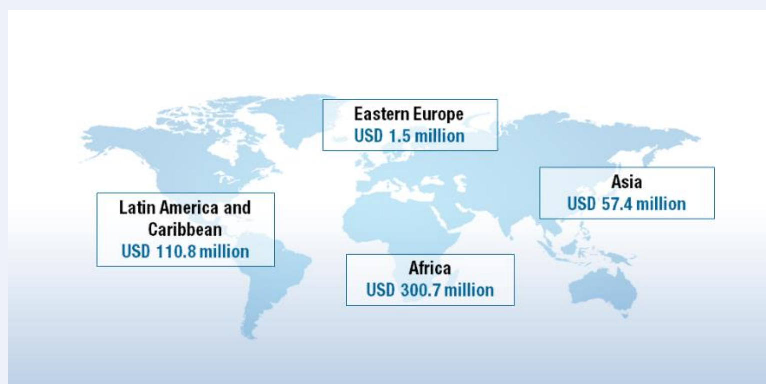
[10] www.oecd.org/ctp/transfer-pricing/transfer-pricing-country-profiles.htm

Box 8. Tax Inspectors Without Borders

Tax Inspectors Without Borders (TIWB), a joint-OECD/United Nations Development Programme (UNDP) initiative, which was launched in Addis Ababa in July 2015, has further strengthened and expanded its reach across the globe in the past year. With 61 programmes currently underway or completed and over 28 upcoming programmes, TIWB audit assistance continues to provide tax administrations in developing countries with much needed assistance in building capacity to implement BEPS solutions and generate more revenues, in many cases with respect to transfer-pricing audits.

To date, cumulative increases in revenue collected since 2012 amount to approximately USD 470 million. On average, for every USD 1 spent on TIWB activities between 2013 and 2018, there was a more than USD 100 increase in tax revenues collected by Host Administrations (see Box Figure 1 on regional reported revenue increases). Beyond the increase in tax revenues collected, TIWB programmes have been a major confidence builder for tax administrations, and a deterrent against tax avoidance strategies by MNEs, helping to create behavioural changes and a culture of voluntary compliance as well as an environment where businesses know what to expect from tax administrations.

Box Figure 1. Regional Reported Revenue Increases from TIWB Assistance



The TIWB initiative has continued to evolve to meet the needs of developing countries. One of those needs has been for greater input from industry experts, e.g. from the diamond, floriculture, oil and gas, forestry and mining sectors. The enhanced sectoral focus of TIWB on the mining sector will be bolstered by the OECD's strengthening partnership with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). IGF will provide industry experts, raise demand for TIWB programmes among its 71 members and promote inter-agency co-operation in the host countries undertaking TIWB programmes in the mining sector. The TIWB initiative also places an increasing emphasis on enhancing South-South co-operation to help ensure developing country perspectives remain at the forefront in the audit assistance provided.

TIWB is currently looking into further areas where its model can apply. For instance, five pilot programmes on tax crime are due to begin in 2019. Other areas being explored include the use of TIWB for joint audits and support for Common Reporting Standard (CRS) data interpretation.

Direct assistance to developing countries on transfer pricing

The OECD has been actively building capacity through demand-led bilateral programmes in 2018, to support the application of the BEPS actions and international transfer pricing norms and

standards through tailored country-level assistance. In many cases, this support was provided in partnership with ATAF, the EC and the WBG.

These programmes, while typically focussed on transfer pricing (regularly a top international tax priority for developing countries) also address other BEPS-related issues, so that a holistic approach is taken to building capacity and improving tax collection in the international area. These programmes continue to evolve to meet the needs of developing countries. For example, in 2018 greater use was made of industry experts, as an understanding of the industry concerned and its value chain is an important element in complex transfer pricing cases. These initiatives have, in some cases, also built a more collaborative and productive relationship between tax administrations and businesses that have shown a willingness to comply.

Some of the major impact indicators for these bilateral programmes include; 90% of the recipient countries are in the process of, or have enacted, legislative changes to address BEPS risks, particularly in the areas of transfer pricing and limiting excessive interest deductibility. These laws are helping governments to better protect their tax bases in ways which accord with international tax norms. Countries are also increasingly issuing guidance for taxpayers and tax administrations on the implementation of the new rules, increasing tax certainty.

Box 9. Country Examples

In 2018, Zambia published new Transfer Pricing Regulations and a Transfer Pricing Practice Note to supplement its existing legislation and regulation. The new regulations provide rules on a wide range of transfer pricing issues, as well as documentation requirements for taxpayers. The Practice Note sets out the Commissioner-General's interpretation of Zambia's transfer pricing rules. Together these provide Zambian taxpayers with much greater clarity on how to comply with Zambia's transfer pricing rules.

Over the last year in Nigeria, businesses reported a remarkable improvement in the skills of auditors of the Federal Inland Revenue Service and that, as a result, audits are now being conducted in a much more efficient and collaborative manner.

The knowledge and experience from these programmes is having a major impact on the standard-setting work of the OECD/G20 Inclusive Framework, increasing developing countries' confidence that international standards are indeed fit for purpose given the specific challenges they face and encouraging greater participation by such countries in the further development of those standards.

The effectiveness of these programmes has led to increased demand from other countries for similar assistance. Since 2012, over 30 developing countries have received OECD support on transfer pricing and other BEPS related issues.

The IMF, in its technical assistance, also frequently supports developing countries in strengthening their tax law framework to improve the implementation of transfer pricing rules, commonly in the context of broader based tax reforms (discussed further in the section dealing with improving tax law systems and their implementation by tax administrations).

Tax certainty through joint audit

The report *Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty*[11] was published in March 2019 at the Forum on Tax Administration (FTA) Plenary in Chile. This report focuses on the most advanced form of audit-related tax co-operation with the highest levels of integration and coordination. It identifies both the benefits that can arise from the greater use of joint audits as well as the challenges that need to be overcome to ensure that those benefits can be realised as effectively and efficiently as possible for both tax administrations and taxpayers.

A number of key benefits of joint audits have been identified. More specifically, a joint approach to fact finding involving the participating tax administrations and the taxpayer helps to:

- avoid misunderstandings, different versions of reality and ensuring that there is one conversation, rather than several conversations with potentially different outcomes.
- achieve a holistic overview of taxpayers' business structures as well as cross-border transactions due to a better quality of information that is exchanged during a Joint Audit procedure that allows more targeted examinations in the future
- ensure more efficient and faster processes compared to separate audits followed by MAP.
- reduce burdens for taxpayers and tax administrations compared to separate audits, especially where they subsequently result in a MAP case
- prevent the need to undo decisions that have already been taken.

Furthermore, joint audits offer the ability to leverage the auditing experience and expertise of other tax administrations that can also support the improvement of each tax administrations' own case selection and auditing methods. They also provide a better understanding of the differences in legislation that can subsequently support better risk assessment and a better allocation of resources. Moreover, joint audits enhance the compliance of MNEs when early tax certainty can be achieved and a higher tax risk posture becomes increasingly unattractive.

The report identified a number of best practices to support international co-operation and in particular the conduct of Joint Audits. In this context the participants of the Joint Audit Project 2018/2019 developed a Joint Audit Implementation Package that includes relevant templates and model agreements that can facilitate and streamline any practical aspects of the conduct of a Joint Audit. This will be kept up to date on a regular basis.

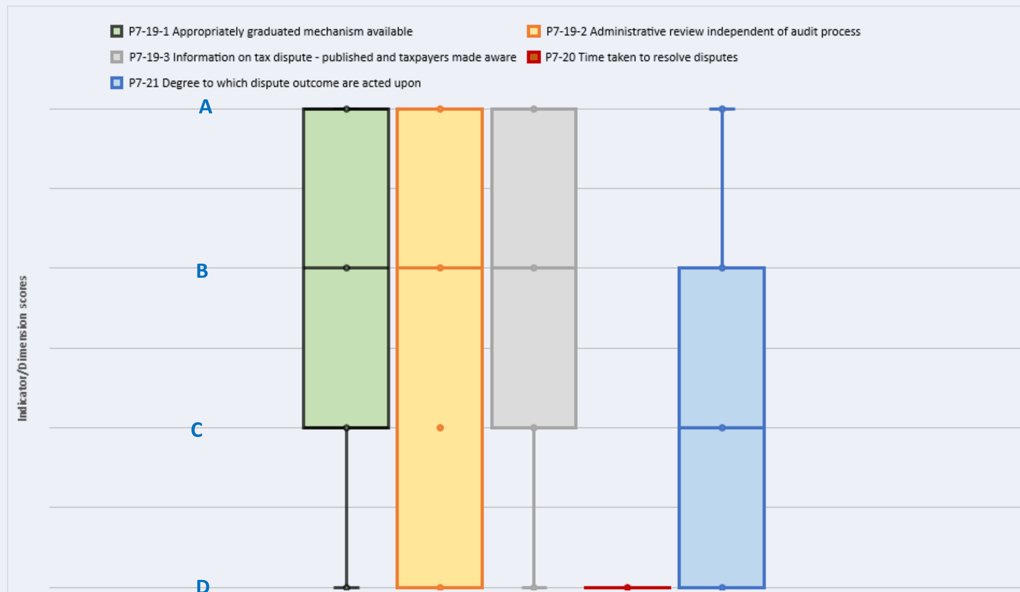
Diagnostic findings from TADAT

As described in the 2018 Update, the Tax Administration Diagnostic Assessment Tool (TADAT) can be used to evaluate the tax dispute resolution process of countries. With assessments now available for an additional thirteen countries (Box 3), the broad conclusions remain as before (see Box 7 of the 2018 Update). The design of the systems is good overall. Generally, a three-tiered approach is adopted: (i) administrative management of disputes; (ii) appeal to a quasi-judicial body or committee at the second level; and (iii) appeal to a judicial level for interpretation of the law, and increasingly, considering facts of the dispute as well. However, systems seem to falter during implementation—evidence available suggests that it takes too long to address disputed cases even though the processes may be in place. Additionally,

[11] OECD (2019), *Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty: Forum on Tax Administration*, OECD Publishing, Paris, https://doi.org/10.1787/17bfa30d-en

monitoring of case-status appears to be generally poor. Causes of delay may be a combination of issues that may include: caution exercised by tax officials who may perceive that quick resolution may result in errors and taxes given away; cases may be complex and take longer than anticipated; inadequate numbers or skill levels of tax administration staff; or the inadequacy of the facilities (and related infrastructure) necessary to dispense justice.

Box 3. TADAT – Updated Dispute Resolution Scores, for 65 countries



The figure reflects a four-point 'ABCD' rating scale where 'A' represents adherence to good international tax administration practice and 'D' suggests that the fundamentals are either not in place or the evidence required is unavailable or unreliable.

The figure summarises performance in three TADAT dimensions:

P7-19: Existence of an independent, workable, and graduated resolution process. For this indicator three measurement dimensions assess: (1) the extent to which a dispute may be escalated to an independent external tribunal or court where a taxpayer is dissatisfied with the result of the tax administration's review process; (2) the extent to which the tax administration's review process is truly independent; and (3) the extent to which taxpayers are informed of their rights and avenues of review.

P7-20: Time taken to resolve disputes. This indicator assesses how responsive the tax administration is in completing administrative reviews.

P7-21: Degree to which dispute outcomes are acted upon. This indicator looks at the extent to which dispute outcomes are taken into account in determining policy, legislation, and administrative procedure.

See Box 7 of the 2018 Update for more detail.

Preliminary results from a May 2019 TADAT Impact Evaluation Survey[12] across the range of tax administration stakeholders provide useful insights into tax administrations' reform effort, bearing directly on assuring improved tax certainty:

- *Entities observed using the TADAT framework to implement reforms.* The TADAT framework (and related principles) is being used in various settings—predominantly in tax administrations, but also in customs administrations, subnational tax administrations and some government departments that are not of a tax/revenue administration nature.
- *Key reform areas countries are focusing on*. The reform of processes and procedures appears to be the predominant thrust, particularly for taxpayer registration, risk management, filing for declarations and payment of taxes, and in efficient revenue management/accounting. Legal and regulatory reform focus appears to be more in the dispute resolution area and not unsurprisingly, customer outreach and support under voluntary compliance initiatives.
- *Areas in which reform initiatives are still a challenge*. Challenges are experienced where the 'leadership' does not seem to be committed or does not prioritise, and therefore allocate resources, to the areas being focused upon. Other slow progress areas include: (i) entrenched policy, such as tax amnesties; (ii) management of the taxpayer register; (iii) risk management/analysing available data; and (iv) following up the timely payment of taxes and related collection enforcement.
- *Improvements in the exchange of information within and outside of the tax administration.* Most respondents (83 percent) indicate that the concepts of TADAT have helped improve the exchange of knowledge and experiences within the tax administrations (intra-organisational). This response confirms that the TADAT framework provides a holistic view on the functions of a tax administration. However, only 35 percent of the respondents indicated that the concepts espoused by the framework have been used to strengthen networks or interactions with other tax administrations. For those who have interacted with other tax administrations, the common channels used have been WhatsApp groups, email, LinkedIn, and face-to-face in workshops—in that order. Facebook and Twitter platforms were also mentioned.

[12] A full survey report will be published by end 2019.

Combatting corruption in tax administrations

Corruption—the abuse of public office for private gain—weakens key functions of the public sector, including the ability to collect and enforce taxes or to make expenditure choices in a fair, efficient and certain way. The widespread acknowledgment that tackling corruption is critical for macroeconomic performance and economic development has also led to its inclusion in the United Nations Sustainable Development Goals; it has also prompted several initiatives, including the Framework for Enhanced IMF Engagement in Governance (IMF 2018)[13] and the OECD's work through its Forum on Tax Administration (FTA) to examine tax administration governance arrangements in place in FTA countries (Box 4).

To reduce opportunities for corruption, institutions need to be upgraded continuously, to keep pace with new challenges as technologies and opportunities for wrongdoing evolve. It is necessary to ensure integrity of processes, especially in higher-risk areas (for example, procurement, tax administration, public enterprises), and to promote effective internal controls. The chances of success are higher when countries improve several, mutually supporting institutions. For example, reforms to tax administration will have greater payoff if tax laws are simplified with more certain application and the scope for discretion by tax officials is reduced. Other features that can promote better governance include institutional efforts to promote integrity. Appendix A describes the key features of good governance in revenue administration to reduce vulnerability to corruption and promote integrity, thereby contributing to—indeed providing a prerequisite for—tax certainty.

The April 2019 Fiscal Monitor[14] of the IMF focused on corruption, emphasising tax aspects. One finding, for example, is that both advanced and low-income countries in the top quartile in terms of control of corruption raise 4 percent of GDP more in tax revenue than do those in the lowest. There are thus strong signs that measures which reduce vulnerabilities to corruption in tax policy and tax administration can make a real contribution to revenue mobilisation. Indeed, corruption can harm revenue collection at both the legislative and collection stages. For example, the introduction of tax exemptions or other tax loopholes in exchange for bribes reduces revenue potential. Furthermore, a complex and opaque tax system enables corruption by requiring more discretion in its administration. The distortion of tax laws and the corruption of tax officials, by reducing trust in the state, weaken the culture of tax compliance.

The IMF has built up comprehensive diagnostics on the quality of fiscal institutions, supplying a wealth of information on many aspects of fiscal governance, including public financial management and revenue administration. These tools have been part of the IMF's capacity-building work across its membership. They help strengthen core institutional processes, promote integrity and certainty in public administration, and promote fiscal transparency. This work has been undertaken in co-operation with other international institutions (for example, the World Bank) and donors.

Fiscal Transparency Evaluations (FTEs) assess fiscal transparency practices against the principles outlined in the Fiscal Transparency Code with a focus on four pillars: (1) fiscal

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[13] https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance

[14] *Fiscal Monitor: Curbing Corruption* (www.imf.org/en/Publications/FM/Issues/2019/03/18/fiscal-monitor-april-2019)

reporting; (2) fiscal forecasting and budgeting; (3) fiscal risk analysis and management; and (4) resource revenue management for specific needs of resource-rich countries. As of February 2019, 25 FTEs were publicly available.

Tax Expenditure Assessment (TEA) helps to improve transparency. Governments should devote the same attention to controlling financial support to the economy through the tax system, as they devote to outlay expenditures. Tax expenditures are alternative policy means, and they do not appear on the expenditure side of the budget. Therefore, the cost of tax expenditures should be identified, measured and reported regularly, and in a way that enables comparison with outlay expenditures. The TEA Program is designed to provide step-by-step capacity development for countries to the production of tax expenditure reports, complementing the PCT report on designing and implementing tax incentives for investment in low income countries in ways that are efficient and effective that was published in 2015.[15]

Another diagnostic tool related to resource revenue management is the Fiscal Analysis of Resource Industries framework, which assists countries in designing fiscal regimes for natural resources.

A similar suite of tools is available to assess the performance of tax and customs administrations. The *Tax Administration Diagnostic Tool* (TADAT) is designed to provide an objective assessment of the health of key components of a country's system of tax administration. TADAT assessments identify relative strengths and weaknesses, which helps in setting and prioritising reform agendas and facilitating external support for reforms. Other IMF diagnostic tools for revenue administration include the *Revenue Administration Fiscal Information Tool* (RA-FIT/ISORA), which compiles a set of performance indicators for more than 150 tax administrations, thanks to a joint IMF-OECD-CIAT-IOTA partnership; a similar tool (International Survey on Customs Administration, ISOCA, will soon be launched in partnership with the WCO). The *Revenue Administration–Gap Analysis Program* helps countries estimate the size of tax gaps for major taxes; it provides a better understanding of factors affecting the size of, and changes in, those gaps—in particular, those stemming from taxpayer noncompliance.

[15] http://documents.worldbank.org/curated/en/794641468000901692/Options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment-a-report-to-the-G-20-development-working-group-by-the-IMF-OECD-UN-and-World-Bank

Box 4. Examination of tax administration governance arrangements though the Forum on Tax Administration (FTA)

The OECD has been working through its Forum on Tax Administration (FTA) to examine tax administration governance arrangements in place in FTA countries. The results were provided to the Commission of Inquiry Into Tax Administration and Governance by the South African Revenue Service, and highlighted a number of elements that are often found in FTA members' tax administrations, including:

- the need for government oversight of the budgetary approval and review process,
- the publication of an annual report audited by an independent national audit function,
- the existence of an internal accountability and control framework with automatic checks to prevent internal fraud, and
- independent risk assessment of the accountability and control framework, including both performance and financial reporting, systems of risk oversight and management, and systems of internal control.

These measures contribute to ensuring a transparent and accountable environment that can guard against corruption in tax administrations and reinforce taxpayers' confidence in the tax administration generally.

Tax certainty also calls for a tax law framework with modernised features reflecting international good practice to better ensure the effective and efficient operation of the tax administration. The IMF has a well-developed program of providing technical assistance (TA) and training to IMF member countries, which contributes to tax certainty. This includes drafting new laws or amendments to existing laws containing safeguards to strengthen the governance of tax administrations, anti-corruption efforts and taxpayer protection (see Box 5).

Following the approval of a Framework for Enhanced Fund Engagement in Governance, the IMF has stepped up its involvement in governance issues, providing more candid, evenhanded, and actionable advice to its members in the context of surveillance and programs, with supporting capacity development in various areas of governance.

Box 5. Case Study Sri Lanka

A new Inland Revenue Act (IRA) was adopted effective April 1, 2018 with modernised features reflecting international good practice to better ensure the effective and efficient operation of the tax administration. The existing IRA was simplified and modernised and became a flagship reform under Sri Lanka's IMF supported program, with integrated tax policy and law design and drafting TA.

Importantly, the new IRA contained safeguards to strengthen governance, anti-corruption efforts and taxpayer protection. For example, the IRA removed most existing discretionary tax incentives and replaced them with a limited number of tax incentives with well-defined eligibility criteria and conditions, and introduced new offences and penalties to assist with anti-corruption efforts. Ongoing IMF TA is being provided to assist with the implementation of the IRA. All these efforts, together with enhancements under the 2019 budget, have made the administration of income taxes more predictable and transparent and better enabled Sri Lanka to effectively manage large-scale capital projects by avoiding ad hoc and discretionary tax exemptions. The revenue administration IT system is also being upgraded for compatibility with the IRA, with electronic filing and processing under this system designed to help reduce discretion and leakage.

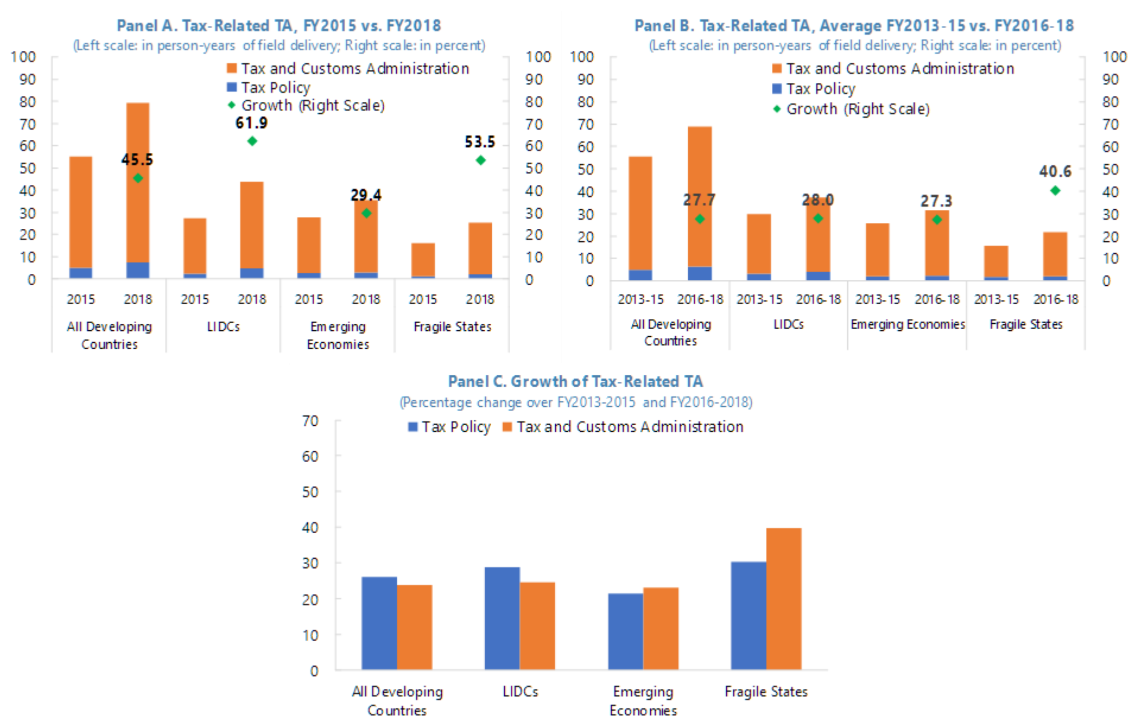
Improving tax law systems and their implementation by tax administrations

Building capacity and providing training in key tax system components—tax policy, revenue administration, and legal design and drafting of tax legislation—including in the taxation of natural resources, is central to the tax certainty agenda. The focus continues to be on developing a fair, stable and predictable tax system, based on each country's context and capacity and a coherent medium-term strategy.

The IMF committed to expanding its support for nationally-owned efforts to strengthen domestic tax systems and to broaden the use of a range of recently-developed diagnostic and analytical tools to improve the quality of those systems. IMF support for national efforts to strengthen tax systems in order to boost domestic revenue mobilisation (DRM) has increased sharply in recent years, facilitated by substantial donor support:

- The volume of assistance provided to developing countries, measured in "person years," in FY2018 was 46 percent higher than in FY2015; average levels of support during FY2016–18 were almost 28 percent higher than in FY2013–15 (Figure 1).
- Between FY2013–15 and FY2016–18, the volume of assistance increased by 28 percent for LIDCs, 27 percent for EMs, and 41 percent for fragile states.
- Patterns of support differ across country groupings, with large increases in TA for building tax/customs administrations across the board, as well with respect to the design and drafting of tax and fiscal legislation.

Figure 1. Tax-Related TA in Developing Countries



Note: The IMF's fiscal year is May 1 through April 30.
Source: IMF staff estimates, based on data available from the Travel Information Management System (TIMS).

IMF support has made use of various diagnostic and analytical tools (Box 6). TADAT is a publicly available instrument, with separate donor financing and a Secretariat housed within the IMF; 78 assessments (including subnationals) have been conducted since the official TADAT roll-out in November 2015. Analyses of VAT gaps, using the Gap Analysis tool, have been conducted in 36 countries and the methodology has now been expanded to cover the corporate income tax. The Fiscal Analysis of Resource Industries (FARI) tool has been applied in about 50 countries, while capacity building support on how to use FARI to strengthen fiscal regime analysis and revenue forecasting has been provided in 23 countries. As part of a joint initiative with the World Bank, the two institutions agreed to work towards developing a tax policy diagnostic framework (TPAF) that could assist countries and TA providers in systematically analysing existing tax policies in accordance with good practices. Initial online modules are in varying stages of development, with one, the VAT module, now available.[16]

Technical support is being provided to 10 countries in various regions on developing medium-term revenue strategies (MTRS).[17] The MTRS approach was developed for the G20 by the PCT and provides a comprehensive approach to boosting tax revenues over the medium term, aligning tax policy, revenue administration and legal reforms around a coherent plan embraced by all of government, as well as other stakeholders. A key requirement is high-level

[16] www.imf.org/external/np/fad/tpaf/pages/vat.htm

[17] The MTRS concept was introduced in a report to the G20 on "Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries," prepared by the Platform for Collaboration on Tax (IMF, OECD, UN and WBG) for the July 2016 G20 Finance Ministers meeting (www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Enhancing-the-Effectiveness-of-External-Support-in-Building-Tax-Capacity-in-Developing-PP5059). An update on experience with the development of MTRSs is provided in the PCT's progress report to the G20 of June 2019.

political support over an extended period, with revenue goals being aligned with spending/development needs. The MTRS also serves as a vehicle to align the efforts of multiple capacity building partners active in the reforming country. Papua New Guinea and Uganda are examples of countries that are developing or have adopted a MTRS. Since the 2018 Update, Indonesia published a MTRS that aims to raise tax revenue by 5 percentage points of GDP in five years, with a detailed tax system reform proposal, supported by a plan to achieve coherent, fair and efficient implementation.

Box 6. Strengthening Tax Capacity

The IMF, working with development partners, has developed various assessment and other tools to continue to help countries seeking to strengthen their tax systems. These include:

- *Tax Administration Diagnostic Assessment Tool (TADAT)* to assess key functions, processes and institutions of tax administration systems.
- *Revenue Administration Gap Analysis Program (RA-GAP)* to assess gaps in value-added tax (VAT) and corporate income tax (CIT).
- *Revenue Administration Fiscal Information Tool (RA-FIT/ISORA),* a survey-based dataset on revenue administration practices, soon to include customs data (ISOCA).
- *Fiscal Analysis of Resource Industries (FARI)* to provide a framework for extractive sector fiscal regime policy advice. FARI, developed in 2007, continues to be used in TA as a fiscal analysis tool to provide policy advice.

These tools help inform diagnostics for the formulation of tax system reforms, notably in formulating a MTRS.

Countries that have received extensive IMF support in building tax systems include a mix of EMs and LIDCs (the latter including many fragile states). The Revenue Mobilisation Thematic Fund (RMTF), financed by bilateral donors, is supporting a second phase of technical assistance to developing countries on revenue issues. In this work-stream, emphasis has been placed on providing intensive support to selected countries, with assistance phased over time. This assistance is in several cases providing the basis for developing MTRSs. The Managing Natural Resource Wealth Thematic Fund (MNRW) supports capacity building in resource-rich low and lower-middle income countries. The key emphasis is on the design, implementation and administration of the tax and non-tax fiscal regime for extractive industries and in an integrated manner also supporting macro-fiscal revenue management and statistics. Box 7 includes brief descriptions of three case studies that illustrate the breadth of work being done to produce tangible improvements in various aspects of national revenue systems, with implementation support to enhance tax certainty.

Box 7. Examples of Revenue Capacity Building to Enhance Tax Certainty

Tax administration reform in Mongolia. A three-year project began in 2017 under the RMTF to help the authorities increase taxpayer compliance. Through December 2018, nominal tax yields increased by 22 percent—in part due to increases in commodity prices, but also reflecting administrative reforms. The VAT compliance gap was reduced by a quarter, helped by the introduction of mandatory electronic receipts and compliance enforcement strategies. The tax coverage ratio (taxpayers who paid as a share of those expected to pay) increased modestly for the major taxes, while audit assessments increased by 300 percent.

Sierra Leone's Extractive Industries Revenue Act. In 2012, Sierra Leone set out to establish a standard framework for the taxation of extractive industries (EI), having long experienced revenue losses from discretionary and project-specific changes to its fiscal regimes for mining and petroleum. Reforms were delayed by the Ebola outbreak of 2013–2015 and the collapse of commodity prices in 2014–2015, but, with technical support financed through the MNRW, a new fiscal regime responding automatically to changes in project profitability was developed. The authorities, with IMF support, used the FARI modelling system to build capacity and to analyse and simulate mining and petroleum revenues. In July 2018 Parliament passed the Extractive Industries Revenue Act, which provides predictability, eliminates discretion, and promotes investment while protecting tax revenues.

Central African Economic and Monetary Community (CEMAC) changes in regional tax policy and legislation. The marked decline in commodity prices from mid-2014 underscored the need for CEMAC countries to build tax systems less dependent on resource revenues. The regional tax policy framework—mainly a set of directives governing the design of major national taxes (such as VAT and income taxation)—was outdated and ill-suited to helping member countries boost tax revenues. In 2016, a five-year reform prepared, with technical assistance to implement being supported by the RMTF. As of February 2019, the regional double taxation treaty has been updated to include the minimum standards under the BEPS project and to limit tax avoidance through 'treaty shopping'; excise taxation has been reformed; and a revised VAT directive is under preparation.

In both advanced and developing countries, the design issues relating to taxation and stability of legislative frameworks to enhance tax certainty are also dealt with in IMF surveillance. For example, the expansion of coverage of international corporate taxation issues in IMF surveillance continues to also be implemented with both developed and developing countries. Discussions with 24 countries had been completed as of early-FY19, with additional cases to be taken up during the remainder of FY2019 and in FY2020. Conclusions from these discussions have fed into the IMF's wider analysis of international tax issues and informed its policy advice to individual countries, including in IMF (2019). Further, IMF TA and staff publications continue to focus on adopting a rules-based approach to designing and developing legislative frameworks to enhance implementation certainty, with a recent focus on the design and drafting of interest and tax penalty regimes (Box 8), being an example of an area where there is a clear need to ensure fairness and certainty for taxpayers by ensuring that administration of income taxes becomes more predictable and transparent.

Box 8. IMF technical assistance on designing interest and tax penalty regimes

When designing and drafting interest and tax penalty regimes, there is a clear need to ensure fairness and certainty for taxpayers. In January 2019, the IMF issued a new Tax Law IMF Technical Note[18] on the design and drafting of interest and tax penalty rules and guidance in relation to their application, which is also applied when delivering IMF TA. Nearly all tax systems have some form of interest and tax penalty regimes. Interest payable on any late or underpayment of tax seeks to protect the present value of the tax amount to the government budget, whereas penalties are intended to deter taxpayers from defaulting on their tax obligations—and to punish them if they do—to achieve horizontal equity vis-à-vis compliant taxpayers. The recent Tax Law IMF Technical Note focuses on the key issues that should be taken into consideration in designing interest and penalty regimes in tax legislations in order to preserve fairness and enhance tax certainty, with sample legislative provisions in order to promote consistency, international comparability, and therefore enhance tax certainty.

As TA on improving tax law systems and their implementation by tax administrations has substantially increased, several lessons (not all new) are informing work on the design and delivery of future assistance to enhance tax certainty:

- Success in building tax systems should be assessed not only by the revenue levels achieved, but also by the improvements in the quality of tax system—minimising economic distortions, while ensuring predictability, fairness, and simplicity.
- Tax policies, tax administration, and the legal framework within which they operate are closely intertwined; a reform strategy needs to address these in an integrated fashion. For example, a modern and robust tax law framework that conforms to international good practices will: (i) support greater domestic revenue mobilisation; (ii) ensure international compatibility; (iii) better preserve the policy intention of the law by minimising tax avoidance opportunities; and (iv) simplify the application and administration of the provisions in order to enhance tax certainty.
- National ownership in various forms is needed to achieve lasting success in building tax systems that are sustainable and certain. Strong sustained support from finance ministries is essential, as is keeping capable managers and teams in place for an extended period; reform efforts need to be sustained beyond the life of a single government as institutional reforms can take years to fully implement; new governments must get behind ongoing reform programs quickly to avoid losing momentum.
- Sustained multi-year support from TA providers is essential to achieve effective and more certain results.

Dispute resolution: Developments under Mutual Agreement Procedures and arbitration

The genesis for the Action 14 Minimum Standard on dispute resolution was developed from a recognition that the actions to counter BEPS must be complemented with actions that ensure

[18] https://www.imf.org/en/Publications/Tax-Law-Technical-Note/Issues/2019/04/04/Designing-Interest-and-Tax-Penalty-Regimes-46648

certainty and predictability for businesses and individuals. It was therefore necessary to develop robust dispute settlement resolution processes across jurisdictions to ensure that disputes are resolved in a timely, effective and efficient manner. This includes standards on mutual agreement procedures (MAP) and the option of arbitration.

Mutual Agreement Procedures

The Action 14 Minimum Standard seeks to strengthen the effectiveness and efficiency of the MAP process through a rigorous stage 1 peer review process that is then followed up one year later in a stage 2 monitoring report. The peer review process is now well underway. Already, 45 jurisdictions have been peer reviewed under stage 1 of the process, eight more are currently in the process of being finalised and another 26 jurisdictions are scheduled for review (see Table 1).

For the 45 jurisdictions reviewed thus far, around 990 recommendations have been issued, including recommendations for jurisdictions to maintain compliance with certain elements of the minimum standard as well as increasing resources to support the MAP function. At the same time, the BEPS Action 14 Minimum Standard is already having a broader impact on dispute resolution worldwide, thus contributing further to enhanced tax certainty in the international environment:

- There has been a marked increase in the number of cases dealt with by competent authorities and almost 80% of the reporting jurisdictions with more than 10 MAP cases closed more cases in 2017 than in 2016. This is likely the result of an increase in resources for many competent authorities as a result of the peer review process or, in some cases, for jurisdictions that anticipate their own upcoming peer review.
- The peer review process has spurred on changes regarding the structure and organisation of competent authorities to streamline better their processes for resolving MAP cases in a timely manner (e.g. hiring of more resources or reorganisation of competent authority staff per type of cases).
- The number of Inclusive Framework MAP profiles published on the OECD website continues to increase. In addition, many jurisdictions introduced MAP guidance to provide taxpayers with clear rules and guidelines on MAP.
- Access to MAP is now granted for transfer pricing cases even where the treaty does not contain Article 9(2) of the OECD Model Tax Convention, especially in those jurisdictions that did not provide access to MAP in such cases in the past.

In addition to these broader changes, the monitoring process under stage 2 has already begun. The reports for the six jurisdictions that were peer reviewed in batch 1 have recently been discussed and approved by the FTA MAP Forum[19]. These stage 2 reports are the first glimpse into how well jurisdictions are implementing the specific recommendations issued to them during stage 1 of the Action 14 peer review process, the results of which contribute to enhancing to tax certainty in a number of ways.

The results of this stage 2 monitoring process available thus far indicate that jurisdictions are making tangible progress. In general, the six batch 1 jurisdictions are considered to be compliant under most of the criteria of the Action 14 minimum standard with respect to the prevention of disputes, availability and access to MAP, the resolution of MAP cases and the

[19] www.oecd.org/tax/beps/beps-action-14-peer-review-and-monitoring.htm

implementation of MAP agreements. In this regard, a few noteworthy developments can be highlighted as follows:

- All six jurisdictions provide for the possibility of roll-back of bilateral APAs.
- All six jurisdictions have a documented bilateral notification and/or consultation process in place to notify the other jurisdictions in cases where they consider a MAP request to be not justified.
- Many of the jurisdictions have updated their publicly available MAP guidance to provide more clarity and details to taxpayers.
- Each of the six jurisdictions decreased the amount of time needed to close MAP cases and five of the six jurisdictions met the sought-after 24-month average timeframe to close MAP cases.
- Only one jurisdiction has a potential difficulty with implementing MAP agreements given that almost none of its tax treaties contain a provision stating that MAP agreements shall be implemented notwithstanding any domestic time limits, which may result in such agreements not being implemented.

In the future, more insights into progress will come not only from the MAP statistics but also from the release of each stage 2 monitoring report following up on any stage 1 recommendations.

Table 1. Timeline of the Mutual Agreement Procedures Peer Review

Stage 1 completed						Stage 1 ongoing		Not yet started	
1st batch 5 December 2016	2nd batch 7 March 2017	3rd batch 7 July 2017	4th batch 29 December 2017	5th batch 10 April 2018	6th batch 31 August 2018	7th batch 31 December 2018	8th batch By April 2019	9th batch By August 2019	10th batch By December 2019
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Bahrain
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Anguilla	Barbados
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	Bahamas	Kazakhstan
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	Bermuda	Oman
United Kingdom	Liechtenstein	Norway	Malta	Romania	India	Indonesia	Jersey	British Virgin Islands	Qatar
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Cayman Islands	Saint Kitts and Nevis
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino	Macau (China)	Thailand
		Spain	Portugal	Turkey	South Africa	Saudi Arabia	Serbia	Tunisia	Trinidad and Tobago
								Turks and Caicos Islands	United Arab Emirates

Source: OECD/G20 Inclusive Framework on BEPS Progress Report, 2018-2019

Arbitration

While specific measures for preventing disputes will reduce the number of cases going through the MAP, mechanisms are also necessary to ensure that cases are resolved in a timely manner once they are being dealt with in this procedure. For this reason a mandatory and binding arbitration procedure was added as a final stage to the MAP of Article 25 of the OECD Model Tax Convention in 2008. Competent authorities involved are, pursuant to Article 25(5),

given a two-year term to reach an agreement on how to resolve a situation of taxation not in accordance with the provisions of a tax convention. In the absence of such an agreement, taxpayers can request the initiation of the arbitration procedure for the unresolved issues of the case. The outcome of that procedure is binding for the competent authorities concerned.

It should be noted that the mere existence of including an arbitration provision in the text of a tax treaty incentivises competent authorities to reach an agreement during the MAP phase. Furthermore, if a mandatory and binding arbitration provision is included, taxpayers are assured of an outcome within a fixed amount of time. However, some countries still appear to have strong reservations about mandatory and binding arbitration. Efforts continue to be made to better understand these concerns and, where necessary and possible, address them. The number of treaties that contain such an arbitration continues to increase, thanks in large part to the Multilateral Instrument (MLI).

An optional arbitration provision was developed as part of the MLI. Part VI of that instrument contains the optional provision setting out rules on timelines for the procedure, the appointment of arbitrators and type of arbitration process. In total 29 jurisdictions have so far opted for Part VI that will apply to a treaty only if both treaty partners to that treaty choose to apply it. This figure represents 33% of current signatories. Via the MLI, nearly 200 treaties will incorporate this arbitration procedure, a number that is expected to increase over time, thus providing ever more certainty to taxpayers that their MAP dispute will be resolved within a fixed amount of time.

Tax certainty as a component of tax morale

The need for tax certainty in developing countries is just as pronounced as in developed economies and plays an important role in investment decisions. The 2018 report looked at the results from the OECD tax certainty survey of business; this year, the focus shifts towards examining both tax morale and tax certainty. There are plans for country level work, as well as for new work to see how tax administrations in developing countries view some of the tax certainty/tax morale issues.

The notion of tax morale – confidence among taxpayers in the tax system to deliver fair and transparent results – is closely linked with tax certainty and, combined, they constitute key ingredients to mobilising domestic resources in developing countries. Tax morale is an area of increasing interest for tax policy, though relatively little work has been done on the tax morale of businesses. In part this is because measuring the tax morale of businesses is difficult, the public attitudes surveys used to track tax morale of individuals cannot be used to track businesses tax morale.

To overcome this challenge most research has used proxies for tax morale. One commonly used method is the fraction of sales concealed from tax authorities, though the source for this information, the Business Environment and Enterprise Performance Survey (conducted by the European Bank for Reconstruction and Development and the World Bank Group) has discontinued data on this topic since 2014.

In the absence of a clear measure for business tax morale, the OECD has alternatively been using the results of the OECD tax certainty survey of business as an entry point to generate a discussion on perspectives and attitudes to paying tax, especially in developing countries. This has included a conference held on 25 January 2019, which discussed issues of tax morale in both businesses and individuals, and the range of tools available to build tax morale.

The conference heard from a range of perspectives, which have been incorporated into a draft report which was prepared for discussion at the conference and is currently being revised following public consultation (final publication due later in 2019). A summary of the conference can be found in Box 9.

Box 9. Summary of OECD Tax Morale and Development Conference – 25 January 2019

The conference was organised by the Task Force on Tax and Development, the OECD's multi-stakeholder body that brings together governments from OECD and developing countries, as well as business and civil society. It featured over 125 delegates from over 65 delegations representing countries, jurisdictions, civil society, business and academia.

There was substantial discussion on the interplay between the determinants of tax morale, cooperative tax compliance and enforcement. Strategies that focus on one element alone are unlikely to succeed. Reciprocity (the provision of public goods in return for taxes paid), effective enforcement to support tax morale, the ease of paying tax, and an understanding of different groups of taxpayers (e.g. women) can work together in a virtuous circle of voluntary compliance. Participants emphasised the importance of developing enforcement strategies that seek to support social norms, and a willingness to comply, in reinforcing tax morale. This has advantages over purely deterrence-based enforcement.

As regards businesses, the challenges for different types of businesses were set out. For MNEs, there was support for using tax certainty as a proxy for tax morale; most companies want to comply, but also need predictability. In the informal sector, the challenges can look very different, with literacy (including financial) a significant challenge for many not in the tax system. The solutions are therefore likely to look different, with a role for social enterprises in supporting formalisation. The challenge of language was also highlighted, especially in developing countries where a high number of spoken languages can make it difficult to reach taxpayers in their mother tongue.

Participants showcased a number of tools to build tax morale. Nudging, or behavioural economic, approaches were shown to have the potential for significant impact, at least in the short run, with low cost interventions. The long run impact of such measures, likely to be contingent on other measures, including enforcement and education, were also discussed. The difference between short and long run impacts was also evident in the use of earmarked or hypothecated taxation, where there are clear political benefits in the short run for getting support for increased taxation, but over time the rigidities earmarking creates were shown to cause some significant problems.

A number of examples were given of how citizens can be engaged on tax issues, to build support for both paying taxes, and for developing fair and effective tax systems. Some of the key lessons from taxpayer education programmes at school/university level were highlighted, including the need for such strategies to be properly resourced, based on strong relationships with partners (e.g. schools and universities) and to have an inclusive approach, not just on tax, but to citizenship values, and the frameworks of transparency and accountability. Civil society also presented examples of how civil society organisations can support citizens to engage in the tax system, building support for progressive tax systems that deliver development outcomes and address inequality.

Following this conference the OECD is pursuing a number of work streams that will provide further insight and analysis into issues of both tax certainty and tax morale. Plans are being developed with several countries for more detailed work at the country level to understand the specific challenges being faced, and to help identify tools and approaches that could be adopted. In some countries this work is being coordinated with the World Bank Group, which is also active in this area through their new innovations in tax compliance work stream.

The activity most closely related to the tax certainty agenda is a new survey of revenue authorities, focussing on officials from developing countries (see next section dealing with how adherence to responsible tax principles by business can help tax certainty). In addition, the OECD is facilitating relationships between revenue authorities and research academics to run behavioural economics experiments, as well as exploring more traditional tax morale survey work.

The OECD has also sought to draw the linkages between tax morale and the integrity and anti-corruption agenda, organising a side event at the annual Anti-Corruption and Integrity Forum in March 2019. This event looked at a range of ways in which corruption and integrity can affect tax morale, from the immediate activities of the revenue authorities themselves, through to overall government performance in transparency, accountability and delivering public services.

How adherence to responsible tax principles can help tax certainty

While the 2018 Update looked at the view of tax certainty in developing countries from the perspective of businesses, this series has not yet looked at the issue from the perspective of revenue authorities, and to what extent businesses are themselves supporting tax certainty in developing countries.

A growing number of businesses have indicated their commitment to supporting tax certainty in developing countries, and their role in delivering it. The most common way in which large businesses have done this is to signal their commitment to certain principles and/or best practices. A range of principles and best practices have been developed by a range of actors, including businesses, business groupings, and civil society organisations. These principles go beyond a narrow focus on tax certainty, and cover a range of aspects of businesses tax practices, including relationships with the tax authorities, transparency, and approach to tax incentives. The most significant of these are the BIAC Statement of Tax Best Practices for Engaging with Tax Authorities in Developing Countries[20,] produced by the Business and Industry Advisory Committee to the OECD, and the B Team Responsible Tax Principles, produced by the B Team (a not-for-profit initiative formed by a global group of business leaders)[21].

A growing number of businesses have committed to such principles and best practices. The BIAC principles having been agreed by all members of BIAC. Since the B-Team launched its Responsible Tax Principles, 12 companies have endorsed them and many more have engaged and expressed interest. However, there has not yet been any attempt to monitor adherence to them, as such it is difficult to judge the impact that such principles have had on tax certainty in developing countries. To rectify this the OECD is planning to undertake a survey of revenue authority officials to see how they perceive adherence to the BIAC principles in their country.

The BIAC principles have been chosen as they are both the most widely endorsed, and oldest, having been agreed in 2013. The survey will be undertaken by officials participating in the OECD Global Relations Programme multilateral training events. Around 2000 officials participate in events under this programme every year, providing a significant sample; this may be complemented further by

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20 http://biac.org/wp-content/uploads/2017/06/Statement-of-Tax-Best-Practices-for-Engaging-with-Tax-Authorities-in-Developing-Countries-2016-format-update1.pdf

21 www.bteam.org/plan-b/responsible-tax/

encouraging officials taking part in OECD e-learning programmes to also complete the survey. The survey is currently being piloted and will be launched later in 2019. It will run alongside the Global Relations Programme through into 2020. The results are expected later in 2020.

Platform for Collaboration on Tax - Toolkits

Inconsistent or unpredictable treatment by tax authorities, lack of expertise in international taxation, and inconsistencies or conflicts between tax authorities on their interpretations of international tax standards continue to be high priority concerns of businesses in relation to developing countries. In this context the toolkits being developed by the Platform for Collaboration on Tax (PCT), which consists of the IMF, OECD, UN, and WBG are potentially useful. These toolkits, being delivered as part of a mandate from the G20 Development Working Group, are designed to help developing countries address key issues in international corporation tax that they have identified as high priority.

Two toolkits have already been published, with the remaining being developed over the next two years (Box 10). Each toolkit individually can help contribute to building tax capacity. This can in turn support tax certainty through providing clear options for developing countries to use, that are consistent with international standards.

Box 10. Platform for Collaboration on Tax - Toolkits

A report on **designing and implementing tax incentives for investment** in low income countries in ways that are efficient and effective was published in 2015. In addition to providing information on good practices for the design of incentives to encourage investment, the report also sets out the importance of good governance in their implementation: measures which would include greater transparency and certainty around the eligibility criteria and conditions which apply to incentive regimes.

Following this, a toolkit for **addressing difficulties in accessing comparable data for transfer pricing analyses** was completed in 2017. This toolkit provides step-by-step guidance on interpretation of the arm's length principle in accordance with international norms, including in cases where comparables are difficult to find. A lack of comparable data needed to apply transfer pricing rules is a common source of uncertainty and the toolkit aims to reduce the likelihood of inconsistent or arbitrary approaches in such scenarios. The toolkit also includes a supplementary report addressing **information gaps in pricing of minerals sold in an intermediate form**, which provides a solid analytical framework to help determine appropriate pricing for mineral products in the absence of directly applicable market prices.

A toolkit on **offshore indirect transfers of interests** has undergone two rounds of public consultation and is expected to be finalised in 2019. This toolkit will address the legal and practical difficulties that may be involved in taxing the transfer of shares in foreign entities which hold, directly or indirectly, valuable local immovable property. A variety of domestic practices currently exist in relation to such scenarios and this toolkit will provide developing countries with practical solutions and international best practices.

A toolkit on **implementing effective transfer pricing documentation** is due to be released for public consultation shortly. It will describe policy choices and rationales involved in developing a transfer pricing documentation regime as well as providing sample legislative provisions which would be effective and efficient in meeting those policy goals. It will facilitate the use of the standardised documentation package as recommended in the OECD Transfer Pricing Guidelines and the UN Practical Manual on Transfer Pricing by providing legislative models. The existence of coherent documentation rules in a country enhances tax certainty by ensuring tax administrations have access to necessary information in a timely fashion in order to conclude assessments.

Further toolkits on **treaty negotiation, BEPS risk assessment and base eroding payments** are also planned. As with the above, these toolkits will aim to provide developing countries with examples and best practices for addressing their international tax priorities in coherent and more standardised ways.

The planned toolkit on **supply chain restructuring** has been dropped, in response to feedback that many of the issues that would have been addressed in this toolkit have been addressed elsewhere, including through the BEPS Actions.

OECD capacity building work

The OECD has developed a range of capacity building, training and technical assistance programmes. These effectively contribute to the development of tax certainty through the creation of a virtuous circle between the inclusive international standards developed in the OECD forums, and the guidance, data and multilateral training that facilitates and accompanies country level capacity building. The lessons learned from each stage feeds into the others, creating positive feedback, and supporting the continued development of effective international standards that can be effectively implemented in all countries.

The OECD capacity building work operates at both the multilateral and bilateral level, and offers a range of tools and approaches to developing countries:

- Bilateral country level capacity building. This is provided in a number of areas including:
  - transfer pricing and BEPS issues - assistance provided to over 30 countries in response to demand, includes support to both legislative changes and organisational structures/skills)
  - exchange of information – assistance provided to over 60 countries, primarily supporting new members of the Global Forum implement the standard and make effective use of information.

These programmes are frequently provided in partnership with others, including Regional Tax Organisations, and other International Organisations (primarily the World Bank).

- Tax Inspectors Without Borders (see Box 1) – in partnership with UNDP.
- Multilateral Training. This is provided in a number of areas (e.g. BEPS, Exchange of Information, VAT, Platform Toolkits, Tax and Crime), through three main routes:
  - The Global Relations Programme – established in the 1990s the Global Relations Programme trains around 2000 officials per year through the Multilateral Tax Centres in Ankara, Budapest, Korea, Mexico City, Vienna and Yangzhou.
  - E-learning – the OECD has recently established e-learning modules open to tax officials anywhere in the world, delivered through the Canadian sponsored Knowledge Sharing Platform.
  - Tax and Crime Academies – established in Italy in 2013 the Tax and Crime academies are designed to enhance the ability of law enforcement authorities to investigate tax crimes and other financial crimes, building on the 10 Global Principles. To date over 700 officials from over 95 countries have been trained, and new academies have been established in Africa (Kenya), Latin America (Argentina) with Asia (Japan) due to be launched shortly.
- Peer Review – for countries that voluntarily choose to commit to OECD standards the peer review process provides a structure for reform, as well as dedicated support to developing countries to assist them with the processes.

Appendix A

Key Features of a Good Governance Framework in Revenue Administration[22]

Given the revenues at stake, governments need to invest in modernising revenue administration and creating greater legitimacy in the collection of revenues. This will help reduce vulnerabilities to corruption and promote integrity, thereby contributing to—indeed providing a prerequisite for—tax certainty. A broader approach (whole of government) will be crucial to creating an environment conducive to greater integrity. The following describes the key features of good governance in revenue administration which will promote greater tax certainty:[23]

Good Governance in Revenue Administration	How These Features Reduce Vulnerabilities to Corruption
Sound Policy and Legislation	
Revenue policy designed based on principles of equity, efficiency and neutrality, simplicity, and transparency.	Raises revenue in non-distortive manner; creates a revenue system that is easily understood and harder to avoid or evade.
A common set of administrative and procedural laws that are simple and reliable for different tax types.	Provides common basis for administration of all taxes regardless of tax types, thus promoting fairness and ease of understanding and application by tax officers.
Legal framework provides appropriate balance between the rights of taxpayers and powers of revenue administration, supported by effective dispute settlement procedures (for example, independent tribunal/court or a tax ombudsman) and legal safeguards against the improper exercise of powers by revenue administration (for example, opportunity for taxpayers to pay overdue taxes before forced sale of property seized through distraint).	Supports the building of society's trust in revenue administration.
A system of tax self-assessment is in place, promoting voluntary compliance by taxpayers.	Minimizes intrusion of revenue officials in the affairs of compliant taxpayers.
Clarity and stability of laws, rules, and processes, including minimal discretionary power vested in the revenue administration, and where discretion is unavoidable, there are clear conditions on how discretion will be exercised.	Increases transparency; provides certainty to avoid disputes; and reduces discretion that can be misused by dishonest officials.
Legal and human resource frameworks allow for firing of officers behaving unethically and provides a suite of appropriate sanctions for cases of lower culpability, with prosecution for criminal activities.	Provides basis for effective human resource practices to curb corruption.
Legislation allows for the adoption of modern systems and processes and technology in tax administration and sets out key aspects of organisation and management (including the relationship between the ministry and the	Provides legal basis for effective administration to minimize interference and opportunities for corruption.

[22] Source: IMF *Fiscal Monitor: Curbing Corruption* (April 2019).

[23] Although the term revenue administration covers both tax and customs administrations, some of the information in this table is more specific to the features of tax administration.

revenue administration), including express legislative requirements for revenue administration to provide and publish reports on its operations and financials on a regular basis.	
Modern Systems and Processes	
Revenue administration work plans, budget, performance objectives, and outcomes are regularly reported to the public.	Increases transparency and public accountability of revenue administration.
Collection systems and procedures are streamlined to secure timely revenues without imposing undue compliance costs and inconvenience to the business.	Minimizes intrusion of revenue officials in the affairs of compliant taxpayers, avoiding rent-seeking behaviors.
Service-oriented approach ensuring taxpayers have the information (quantity, quality, comprehensiveness) and support they need to meet their obligations voluntarily.	Empowers taxpayers; reduces interactions with officials; and reduces vulnerability to corruption by dishonest officials making unlawful demands.
Availability of a tax ruling function with clear and straightforward rules to avoid distinct tax treatments that deviate from the general rules and pose transparency concerns (Christophe and Hillier 2016).	Provides certainty for tax treatment of transactions; empowers taxpayers in discussions with revenue officials.
A general risk-based approach is adopted in the administration aimed at detecting and acting on taxpayers who present the greatest risk to the revenue system.	Removes discretion and minimizes intrusion of revenue officials in the affairs of compliant taxpayers.
Special programs using modern and transparent approaches to manage the compliance of the largest contributors, including large businesses, high-wealth individuals, and high-income earners. They have complex tax affairs with a high amount of revenue at stake and the opportunity to undertake aggressive tax planning.	Focuses resources on highest risks to revenue; helps preserve the integrity of the tax system by ensuring that the wealthy in society pay their fair share.
Effective and impartial dispute resolution process is available and publicized.	Protects taxpayers from unsubstantiated or corrupt tax assessments.
Streamlined Organisation and Management	
Revenue administration is established with independence from political direction; for example, the administration reports to the minister of finance, who has overall fiscal responsibility, rather than to the prime minister or president.	Reduces political interference in taxpayer affairs; increases the ability of revenue administration to act independently in enforcing the laws.
A function-based organisation design with separation of duties and appropriate numbers of staff assigned to each function based on workload.	Removes one-to-one relationship between taxpayer and official; reduces under-employment and risk of corrupt behavior.
Strong headquarters function providing oversight and uniform operations across the field network.	Helps reduce vulnerability by establishing nationwide clear standardised processes and monitoring of operational performance of field offices.
Streamlined field operations and organisational alignment to key taxpayer segments.	Improves quality of professional interaction with taxpayers; focuses resources on highest risks to revenue.
Effective internal audit and investigation/anti-corruption units are established, with relationships and co-operation with public-service-wide anti- corruption activities and bodies.	Creates effective processes to identify and curb corruption.
Strong oversight of revenue administration by external bodies (general audit office, ministry of finance) focused on monitoring performance but not allowed to interfere	Increases accountability of revenue administration.

in specific taxpayers' affairs.	
Extensive Use of Technology	
Revenue administration processes are digitalised and automated to the extent possible.	Reduces face-to-face interactions; minimizes intrusion of revenue officials in the affairs of compliant taxpayers.
Robust automated system of internal control checks and monitoring of processes, with access controls and audit logs.	Ensures integrity of decisions; allows for review and audit of actions taken by revenue officials.
Automated risk assessment and case selection is in place.	Removes personal influence and staff discretion.
Technology supports notification of citizens about their obligations and correct procedures for revenue administration.	Increases transparency and accountability of revenue administration.
Technology supports collection of feedback from the public on interactions with revenue administration staff, including reporting of unethical behavior, for example, through a dedicated integrity hotline.	Supports detection and prevention of unethical and unprofessional behaviors.
Human Resources Management	
Human resource policies and processes ensure merit-based selection, appointment, appraisal, and promotion of revenue officials.	Improves quality and professionalism of staff.
Senior management of revenue administration is appointed for a fixed period (tenure).	Reduces vulnerability to cronyism.
Management process built on minimal management layers with appropriate spans of control, and internal control is one of the core management functions.	Ensures close monitoring of operations; reduces opportunities for corrupt behavior.
Salaries set at a sufficient and competitive level.	Reduces incentive for corrupt behavior.
A formal rotation policy supports staff development, with a cycle to allow staff to build expertise and contribute to the respective function's performance.	Increases officials' performance incentives and knowledge and expertise across all levels; increases taxpayer trust and satisfaction.
Ongoing staff training programs are delivered so officials know their duties, conditions of service, and sanctions for wrongdoing.	Informs staff of required behaviors and risks of noncompliance.
Institutionalised Promotion of Integrity	
Staff is regularly informed about and supported in adopting positive behavior; corporate practice, including through an enforced code of conduct, strongly signals zero tolerance of low staff integrity.	Management leads by example; creates a positive organisational culture and fosters "esprit de corps;" and supports the prevention of unethical behaviors.
Technology solutions to detect unethical behavior are routinely used.	Detects and prevents unethical behavior.
Legal sanctions are effectively applied on each detected corrupt behavior and publicly announced.	Addresses and prevents unethical behavior; instills greater public confidence in revenue administration.

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