

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

Riyadh, Saudi Arabia
February 2020



G20 

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Corrigendum notice (14 February 2020)

The section “Progress Note on Pillar Two” has been corrected on page 11 to remove the reference to a further public consultation in April.

Note by Turkey

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

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

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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Overview

Over the past 10 years, the G20 has supported multilateral co-operation for a globally fair, sustainable and modern international tax system, which translated into successful deliverables. Thanks to this momentum, significant progress has taken place to combat tax evasion, Base Erosion and Profit Shifting (BEPS), and ensure that all economies benefit from these developments.

As per your mandate, the urgent priority is now to reach a consensus-based solution to address the tax challenges arising from the digitalisation of the economy by the end of 2020. During the second half of 2019, political tensions around unilateral measures mounted and provided a glimpse of the difficulties that would arise should progress on finding a global solution by the end of 2020 hit a standstill. These tensions highlight again the urgency to advance the multilateral negotiations.

The year 2020 got off to an encouraging start. **On 29-30 January 2020 at their plenary meeting, the 137 countries and jurisdictions of the G20/OECD Inclusive Framework on BEPS (hereafter G20/OECD IF) reaffirmed their commitment to reach a consensus-based solution and endorsed the “Outline of the Architecture of a Unified Approach on Pillar One.”** For almost two years, the G20/OECD IF had been considering three competing proposals under Pillar One. Such proposals related to new rules on where MNEs should pay tax (“nexus” rules) and on what portion of profits they should be taxed (“profit allocation” rules). In order to unlock the conversation, the OECD Secretariat released its proposed “Unified Approach” in October 2019¹, which drew on certain elements from the previous proposals and includes new nexus and profit allocation rules.

This work continues not without difficulties, and some of the 137 members have divergent views on how best to address the tax challenges arising from digitalisation. There are still certain gaps that need to be bridged, one of which is a proposal from the United States as articulated in a letter to me by the U.S. Secretary of the Treasury dated 3 December 2019 to make Pillar One be implemented on a “safe-harbour” basis. In recognition of this, the G20/OECD IF noted in its statement² that resolution of this issue is crucial to reaching consensus. In particular, many G20/OECD IF members expressed concerns that implementing Pillar One on a ‘safe harbour’ basis could raise major difficulties, increase uncertainty and fail to meet all of the policy objectives of the overall process. However, they noted that a final decision on the matter will be taken only after the other elements of the consensus-based solution have been agreed upon.

¹ www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf

² OECD (2020), Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf.

Concurrent with the work on Pillar One, much progress on Pillar Two has been made since the last time I reported to you, notably a public consultation and working groups meetings. This work focusses 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. At its plenary meeting in January 2020, the G20/OECD IF agreed a Progress Note on Pillar Two, under which various design options remain under consideration and further work on these options will continue in the months ahead.

In the coming months, more data on the economic analysis and impact assessment will be available for the G20/OECD IF to take informed decisions. This timeline is ambitious but failure to reach agreement would greatly increase the risk that countries will act unilaterally, with negative consequences on an already fragile global economy. Critical meetings will take place in the months ahead where difficult decisions will need to be taken on the technical design of both pillars. **Although it will be challenging, with your continued political support, I remain optimistic that agreement on key policy issues that would form the basis of a political agreement can be found at the G20/OECD IF’s next plenary meeting scheduled for 1-2 July 2020 in Berlin, Germany.**

Other activities

With the continuous G20 support since 2008, multilateral co-operation delivered significant results, notably the end of bank secrecy marking a new era of tax transparency, with close to 100 jurisdictions exchanging information on financial accounts in 2019. While in 2008, only 40 exchange of information (EOI) relationships were in place between secretive jurisdictions and other countries; in 2019, more than 6 100 bilateral automatic exchanges of information (AEOI) took place between 95 jurisdictions. In September 2018, information was exchanged automatically on almost 50 million financial account, with a total value of almost EUR 5 trillion. Over EUR 100 billion of additional tax revenue have been identified for collection by tax administrations around the world. There is no place left to hide and the ongoing implementation of AEOI will continue to increase tax revenues for tax administrations worldwide in the coming years.

Through multilateral co-operation, changes are massive in countering BEPS by multinational enterprises (MNEs). The landscape is now more transparent in respect of the tax affairs of MNEs, with almost 30 000 information exchanges on previously secret tax rulings since 2016 (which is 5 000 more since I last reported in October 2019); and with 84 jurisdictions having engaged in the exchange of Country-by-Country reports (CbCRs) on the activities, income and assets of MNEs, which began in June 2018. Jurisdictions have also amended or abolished an important number of preferential tax regimes, which allowed MNEs to avoid tax on their international activities, contributing to base erosion. Since 2015, almost 290 regimes have been reviewed and virtually all of the regimes that were identified as harmful have been amended or abolished. Finally multilateral co-operation to prevent treaty shopping has become a reality with the Multilateral Convention to Implement Tax Treaty Measures to Prevent BEPS (the BEPS Multilateral Instrument), covering 94 jurisdictions, 41 of which ratified it. At this stage, all treaty shopping hubs have signed the BEPS Multilateral Instrument and tax administrations are reporting that they can see meaningful behavioural changes among taxpayers. **The year 2020 is a crucial year with the review of the BEPS Minimum Standards, which could lead to further improvements.**

As per your mandate, much work is being carried out to ensure that developing jurisdictions benefit from the tax transparency and BEPS standards and are part of the discussions on the tax and digitalisation project. In addition to tailored capacity building activities and regional outreach activities, capacity building activities are carried out in tax crime and financial crime. As of the end of 2019, almost 1 000 financial crime investigators from almost 100 countries have been trained in centres of the OECD’s International Academy for Tax and Financial Crime Investigations in Italy, Kenya, Argentina and in Japan. The

OECD/UNDP Tax Inspectors without Borders (TIWB) initiative continues to grow, with 29 programmes completed, 47 ongoing and 20 forthcoming as of 3 February 2020. Through the TIWB programme, more than USD 532 million in additional tax revenues are being recovered from an overall tax assessment of over USD 1.7 billion to date. Finally, the Platform for Collaboration on Tax (PCT) – the International Monetary Fund (IMF), OECD, United Nations, and World Bank Group – 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 developing toolkits, with practical implementation guidance on BEPS issues of particular relevance to developing countries.

Part I

The OECD's International Tax Agenda

1 Addressing the tax challenges arising from digitalisation

“We welcome the recent progress on addressing the tax challenges arising from digitalization and endorse the ambitious work program that consists of a two-pillar approach, developed by the Inclusive Framework on BEPS. We will redouble our efforts for a consensus-based solution with a final report by 2020”.

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

Background

In 2015, the BEPS Action 1 Report³ recognised the tax-related complexity surrounding the digitalisation of the economy and called for continued work in this area. In March 2017, the G20 Finance Ministers called on the G20/OECD IF to advance the work and to deliver an Interim Report on the issue. This report delivered in March 2018, further identified the specific characteristics and tax challenges of the digitalisation of the economy. The members of the G20/OECD IF committed to continue working together to deliver a consensus-based solution by the end of 2020.

In May 2019, the G20/OECD IF adopted a Programme of Work which was endorsed by the G20 Finance Ministers and G20 Leaders at their respective meetings in Fukuoka⁴ (8-9 June) and Osaka⁵ (28-29 June). The Programme of Work draws extensively on the Policy Note⁶ approved by the G20/OECD IF on 23 January 2019, which grouped proposals 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.

Key dates

October 2015 – BEPS Action 1 report

March 2018 – Tax Challenges Arising from Digitalisation: Interim Report

January 2019 – Policy note agreed by the Inclusive Framework and public consultation in February/ March

May 2019 – Program of Work to Develop a Consensus Solution

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

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

29-30 January 2020 – Plenary meeting of the G20/OECD IF

³ 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>

⁴ Paragraph 11 of the Communiqué, G20 Finance Ministers and Central bank Governors Meeting, Fukuoka. (Jun.8-9,2019): https://www.mof.go.jp/english/international_policy/convention/g20/communique.htm

⁵ https://www.mof.go.jp/english/international_policy/convention/g20/communique.htm

⁶ www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf

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

The Programme of Work, endorsed by the G20 Finance Ministers in June 2019, included three different proposals under Pillar One. Recognising the ambitious timelines of the project, the Programme of Work stressed the need for the outline of the architecture of a consensus-based solution to be agreed by January 2020, including a reduction of the number of options pursued under Pillar One. In October 2019, the OECD Secretariat issued a proposal for a “Unified Approach” under Pillar One with a view to take the negotiations forward.

The “Unified Approach” was built on the strong commonalities amongst previous proposals. Subsequently, the draft underwent a public consultation process culminating with meetings in both Paris and Manila in November 2019, where more than 500 representatives from governments, business, civil society and academia attended. More than 300 submissions exceeding 3 000 pages covering both technical and policy aspects of the proposal were received, in which some commentators raised concerns on certain technical aspects of the proposed approach. Most; however, were supportive of its objectives and guiding principles as long as it would effectively prevent the proliferation of unilateral measures, avoid double taxation and excessive compliance burdens and restore stability and increase certainty to the international tax system. At their October 2019 meeting in Washington DC, the G20 Finance Ministers welcomed the Secretariat’s efforts for this proposal and invited the G20/OECD IF to make further progress on both pillars.

November 2019 Public Consultation on Pillar One

- 304 submissions received (3 000 pages of comments)
- More than 500 stakeholders’ representatives in attendance

Agreement of the G20/OECD Inclusive Framework on BEPS

In its Statement of 30 January 2020 (Statement), the G20/OECD IF “agreed upon an outline of the architecture of a Unified Approach on Pillar One (the Outline) as the basis for negotiations and welcomed the progress made on Pillar Two”. In paragraph 1 of the Statement, the G20/OECD IF “affirmed their commitment to reach an agreement on a consensus-based solution by the end of 2020”. In addition, “in further developing the two Pillars, the Inclusive Framework has therefore agreed upon an outline of the architecture of a Unified Approach on Pillar One as the basis for negotiations and welcomed the progress made on Pillar Two”. More specifically, paragraph 2 states that “with respect to Pillar One, the [G20/OECD] IF endorses the Unified Approach as the basis for the negotiations of a consensus-based solution to be agreed in 2020. The proposed reallocation of taxing rights under Pillar One would require improved tax certainty, including effective and binding dispute prevention and resolution mechanisms. In the design and implementation of the solution, the IF also acknowledges the need to minimise complexity”.

The Statement includes in its Annex 1 the Outline, which includes two annexes: Annex A, **which includes the agreed Revised Programme of Work to Develop a Consensus Solution to Pillar One Issues** (the Revised Programme of Work) which organises the remaining work to be concluded by the end of 2020; and Annex B which includes a flowchart on MNE Groups Impacted by Amount A. Finally, the Statement includes in its Annex 2 the Progress Note on Pillar Two. The Statement is available in Annex A to this report.

Outline of a Unified Approach under Pillar One

The agreed Outline aims to expand the taxing rights of market jurisdictions (which, for some business models, is the jurisdiction where the user is located) **over certain defined business activities in the scope in exchange for improved tax certainty**. To achieve this result, it creates a **new taxing right (“Amount A”)**, largely unconstrained by physical presence requirements, focusing on large MNEs providing automated digital services and/or selling goods or services to consumers (i.e. consumer-facing businesses). This reallocation recognises that the profits from sustained and remote participation of a business in the economy of a market jurisdiction needs to be taxed in that jurisdiction. The amount of this reallocation of profits would be determined through a formula and based on the consolidated financial accounts of MNE groups, with no connection to the current transfer pricing principles.

In addition, the agreed Outline seeks to simplify and improve the operation of existing rules that are based on the current transfer pricing principles. First, by determining a fixed return for certain distribution and marketing activities (**“Amount B”**). Second, by increasing tax certainty through timely, mandatory and binding dispute prevention and resolution mechanisms for the different aspects of the Unified Approach. Finally, the agreed Outline (and the accompanying Statement by the G20/OECD IF also approved on 30 January 2020) identifies a number of critical policy issues that need to be resolved before any agreement is reached on the consensus-based solution. These pending issues include an alternative global “safe harbour” system, where taxpayers would elect, on a global basis, whether to be subject to the requirements of Pillar One, as well as the scope of any binding dispute prevention and resolution mechanisms.

The Revised Programme of Work will replace the earlier Programme of Work on Pillar One. It lists the remaining technical and policy issues that need to be resolved (i.e. eleven work streams) and allocates this work to appropriate technical working groups. The objective agreed by the G20/OECD IF is to deliver the key policy features of the Pillar One solution for a political agreement in July 2020, and the technical details of this solution in a final report by the end of 2020.

Progress Note on Pillar Two

Pillar Two (also referred as the Global Anti-Base Erosion proposal or “GLoBE” proposal) focuses on the remaining BEPS risks 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. The Programme of Work, provides that the GloBE proposal be composed of four rules: a) the income inclusion rule; b) the switch-over rule; c) the undertaxed payment rule; and d) the subject to tax rule. On 29-30 January 2020, the 8th meeting of the G20/OECD IF discussed the status of Pillar Two and the progress on these rules. During the meeting a Progress Note on Pillar Two was approved, which is attached in Annex A of this report.

Economic analysis and impact assessment

Work on the economic and tax revenue implications of the Pillar One and Pillar Two proposals is ongoing. The final outcomes of this impact assessment will depend on the reform design and the behavioural responses of countries and MNEs as well as ongoing refinements to the data and analysis. Jurisdictions have been informed of the preliminary results from the analysis for both Pillar One and Pillar Two. This work is being supported by ongoing bilateral discussions with all members of the G20/OECD IF on jurisdiction-specific data and results.

Preliminary findings suggest that the combined effect of Pillars One and Two would lead to a significant increase in global tax revenues as well as a redistribution of taxing rights to market jurisdictions.

- Pillar Two would yield a significant increase of corporate income tax revenue globally.
- Pillar One involves a significant change to the way taxing rights are allocated among jurisdictions but it would also lead to a modest increase in tax revenues.

MNEs in digital-oriented and intangible-intensive sectors could be significantly impacted by both pillars, though these results will depend on the final scope and design of the reforms.

On average, low and middle-income economies would gain from Pillar One, experiencing a higher rate of increase in revenues than high-income economies, even though larger market jurisdictions will benefit more in absolute terms. **Investment hubs, where the analysis suggests that levels of residual profit are high, would experience significant losses in tax base from Pillar One.** For Pillar Two, the analysis suggests that, on average, all jurisdictions would experience increases in tax base and tax revenues, though these results depend significantly on Pillar Two design and on the responses of MNEs and governments. Overall, the combined revenue gains from both Pillars are broadly similar across high, middle and low-income jurisdictions.

Pillar One is unlikely to have significant effects on global investment levels. Pillar Two may lead to an increase in effective tax rates for some MNEs, especially those engaged in profit shifting. Both pillars would reduce the dispersion of effective tax rates and reduce the profit-shifting incentives of MNEs. This would be particularly beneficial for low and middle-income countries that often experience greater losses from profit-shifting. Given that the counterfactual to a consensus-based solution would be a proliferation of uncoordinated and unilateral measures and an increase in tax disputes, the package would not adversely affect the investment environment overall, but would instead provide greater tax certainty.

Regional outreach

Efforts to ensure outreach and broad consultation have also ramped up, with a particular focus on supporting the effective participation of developing countries in this fast-paced and technically complex work. To this end, in the second half of 2019, the OECD Secretariat co-hosted or took part in 14 regional meetings where the work on addressing the tax challenges of digitalisation was discussed, taking place in all regions of the world and involving some 115 jurisdictions in total (comprised of both members and non-members of the G20/OECD IF), including 89 developing countries.

These regional meetings offer an opportunity for participants to discuss the current proposals and also provide an additional avenue for feedback on the work. While generally focused on supporting governments to effectively participate in the negotiations, many of the meetings also included sessions open to civil society and business representatives to ensure that the views of all stakeholders are reflected.

Next steps

The work needs to continue at a fast pace in the coming months under the revised Programme of Work and on the key design of Pillar Two to be able to reach a political agreement on the architecture of a solution with both pillars. The G20/OECD Members reaffirmed “their commitment to bridge the remaining differences to reach agreement on a consensus-based solution by the end of 2020, noting that this agreement will depend on the further concurrent work which will be carried out on both pillars”. The next step will be the G20/OECD IF meeting in 1-2 July, “at which it is intended to reach agreement on the key policy features of the solution which would form the basis of a political agreement”.

Indirect taxes and digitalisation

Significant progress has been made in the implementation of the recommended solutions for the effective collection of VAT on online trade, following the 2015 BEPS Action 1 Report. In addition to supporting the implementation of these standards, detailed guidance has been developed to adapt the solutions to the emerging challenges of the digital economy. The guidance focuses on reporting and VAT-collection obligations for e-commerce marketplaces and other digital platforms. Current work focuses on the sharing and gig economies.

Over 50 countries worldwide have already implemented these standards, with very positive results in terms of compliance and additional revenues collected. The European Union reported a constant growth of the VAT revenues collected from these measures, from **EUR 3 billion in 2015 to more than EUR 4.5 billion in 2018**. Australia reported AUD 728 million of new revenues collected from the implementation of the OECD standards on online sales of services and digital products for the first two years of their operation; the measures targeted at online sales of goods raised AUD 348 million in their first year of operation (significantly higher than budgeted). South Africa has raised ZAR 3 billion, approximately USD 210 million, in the first five years since the introduction of the OECD standards on online sales of services and digital products.

To support developing countries wishing to implement these standards, the OECD Secretariat has committed to develop regional toolkits. These toolkits will provide further detailed, practical guidance for the implementation of the internationally agreed VAT standards and best-practice solutions, targeted at developing countries. The toolkits will be developed in an inclusive process, involving all interested tax authorities and all relevant international and regional organisations. The Latin America and Caribbean project was launched in December 2019, in co-operation with the World Bank Group (WBG), the Inter-American Development Bank (IDB) and the Inter-American Center of Tax Administrations (CIAT). A similar project for the Asia-Pacific will be launched in early 2020, with the WBG and the Asian Development Bank as partners.

2 Tax transparency developments

“We also welcome an updated list of jurisdictions that have not satisfactorily implemented the internationally agreed tax transparency standards. We look forward to a further update by the OECD of the list that takes into account all of the strengthened criteria. Defensive measures will be considered against listed jurisdictions. In this regard, we recall the 2015 OECD report inventorying available measures.”

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

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

To ensure a level playing field, you have asked the OECD to regularly report on the jurisdictions which fail to comply with the tax transparency standards. **This process sees steady progress in the implementation of the tax transparency standards.** While in June and October 2019, eight and then seven jurisdictions respectively, had not satisfactorily implemented the tax transparency standards, I can report that **currently only five jurisdictions (Brunei Darussalam, Dominica, Niue, Sint Maarten and Trinidad and Tobago) are failing to comply with the international tax transparency standards**, as two jurisdictions⁷ have complied with the standards since October 2019. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes is working closely with all of these jurisdictions to provide whatever assistance and guidance is necessary to ensure a global level playing field. Further details on the application of the objective criteria are included in Annex B to this report.

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

Other progress on tax transparency

Measuring the impact of automatic exchange of information

A recent OECD study⁸ has examined the impact of increasing tax transparency and exchange of information (EOI) on cross-border financial activity using bank deposit data. This paper is one of a fast-growing economic literature that shows the positive impact of tax transparency in reducing offshore activity. The paper suggests that as tax transparency driven by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) has given governments more access to

⁷ Vanuatu and Montserrat

⁸ O'Reilly, P., K. Parra Ramirez and M. A. Stemmer (2019), "Exchange of Information and Bank Deposits in International Financial Centres", OECD Taxation Working Papers, No. 46, OECD Publishing, Paris, <https://doi.org/10.1787/025bfebe-en>.

information on foreign bank accounts, taxpayers have responded by reducing their deposits held in international financial centres (IFCs).

The study shows that there was a global decline in foreign-owned bank deposits in IFCs of 24% (USD 410 billion) between 2008 and 2019. It is also possible to relate this overall decline to expanded exchange of information by examining bilateral data on bank deposits and new EOI agreements coming into effect. Signature of an agreement that enables EOIR between an IFC and a non-IFC is associated with an average reduction in IFC bank deposits owned by non-IFC residents of between 9% and 10% from the first signatures in 2009 until 2014, depending on the specific model used in the analysis. **The commencement of automatic exchange of information (AEOI) in 2017 and 2018 is associated with further average reduction in IFC bank deposits owned by non-IFC residents of 22%.** While these results show the positive impact that EOI, further work is needed to continue to assess the impact of EOI on other asset classes and on tax compliance more generally.

In September 2018, information was exchanged automatically on more than 47 million financial account, with a total value of around EUR 4.9 trillion. With a new round of exchanges in September 2019, much more information has been exchanged as the number of bilateral relationships increased from 4 500 in 2018 to 6 100 in 2019. The figures are currently been computed and will be ready for my next report to the G20 Finance Ministers.

Tax transparency challenges arising from new technologies

The OECD is advancing its work to develop model reporting rules and an automatic exchange framework for digital platforms facilitating transactions in the sharing and gig economies. This will allow tax administrations to better track income generated through the use of such platforms, foster compliance by those active on digital platforms and avoid unnecessary compliance costs stemming from the proliferation of different unilateral reporting rules. The OECD expects that the work on the model reporting rules will be concluded in the first half of 2020.

In addition, **the OECD is addressing the need for greater tax transparency in the area of digital financial markets, in particular in light of the tax compliance risks posed by crypto-assets, e-money and other new financial products.** In this respect, the OECD is currently developing technical proposals in order to ensure an adequate and effective level of reporting with respect to both the value of crypto-assets and e-money, as well as the income derived from such assets. This work is part of the first comprehensive review of the G20/OECD Common Reporting Standard (CRS) since its adoption in 2014, with the prime objective of ensuring that the CRS remains an effective global firewall against international tax evasion in an increasingly digital financial age.

3 Implementing the Base Erosion and Profit Shifting measures

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

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

Update on the membership and governance of the G20/OECD Inclusive Framework on BEPS

Since June 2019, eight jurisdictions joined the G20/OECD IF, which currently includes 137 members. Given the important work which remains to be carried out, including the assessment of the minimum standards and their peer reviews, it was agreed in October 2019 to extend the BEPS project until 2025. This extension is necessary to continue the work underway on a long-term solution to the tax challenges arising from the digitalisation of the economy, including the implementation aspects of such a solution.

Implementation of the four BEPS minimum standards

The core elements of the BEPS package are the four minimum standards. Significant progress has been achieved in their implementation. The positive impacts keep growing.

Combating Harmful Tax Practices	Countering Tax Treaty Abuse	Country-by-Country reporting	Improving Dispute Resolution
Over 285 tax regimes reviewed – virtually all harmful regimes amended or abolished	BEPS Multilateral Instrument signed by 94 jurisdictions and covering over 1 600 tax treaties	Almost 85 jurisdictions introduced Country-by-Country reporting filing requirements	60 jurisdictions have been reviewed and 1 315 recommendations have been made

Action 5: Exchange of tax rulings and preferential tax regimes

The OECD Forum on Harmful Tax Practices (FHTP) continues to ensure that where a tax benefit is given or is subject to a zero or only nominal rate, highly mobile income must be earned through the value creating activities in the jurisdiction itself. In this respect, in 2019, the G20/OECD IF further expanded its work in ensuring the link between income and substance, and delivering a level playing field in harmful tax practices. Within a year of agreeing the new standard on substantial activities in no or only nominal tax jurisdictions, the relevant G20/OECD IF members had legislated to meet the standard, and had been reviewed by the FHTP. At the same time, **the FHTP has now reviewed almost 290 preferential tax regimes since 2015 and has driven widespread legislative changes by jurisdictions seeking to meet the standard.** The FHTP will continue its work, examining the effective implementation of these changes in practice.

Almost 290 preferential tax regimes reviewed

30.000 Information exchanges on previously secret tax rulings

In addition, since my last report in October 2019, **an additional 5 000 exchanges of information on tax rulings have taken place, which brings the number now to a total 30 000 exchange of information on tax rulings since 2016.** This further enhances the transparency and governance of granting tax rulings, as well as equipping tax administrations with a more complete picture of the tax risks facing them. This standard will be reviewed in 2020, to consider how the standard can be further streamlined for meeting these goals.

Action 6 and Action 15: Prevention of Tax treaty abuse and BEPS Multilateral Instrument

On tax treaty abuse, the majority of the OECD/G20 IF 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). **The BEPS Multilateral Instrument entered into force on 1 July 2018 and now covers 94 jurisdictions and, once all signatories have ratified, will impact over 1 600 tax agreements.** As of January 2019, 41 jurisdictions have already finalised their ratification process, including eight G20 members⁹ and 23 OECD members¹⁰. All countries that have not yet ratified the BEPS Multilateral Instrument, are encouraged to do so without delay.

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

Jurisdictions continue to introduce Country-by-Country (CbC) reporting filing requirements for MNEs, bringing the current total to around 85 jurisdictions. Approximately 25 more are in the process of introducing rules. **There are now almost 2 500 bilateral relationships in place for the exchange of CbCRs among jurisdictions.**

⁹ Australia, Canada, France, India, Japan, Russian Federation, Saudi Arabia and the United Kingdom

¹⁰ Australia, Austria, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Slovak Republic, Slovenia, Sweden, Switzerland and the United Kingdom

The second annual peer review of the implementation of CbC reporting by members of the G20/OECD IF¹¹, released in September 2019, covers the implementation results of 116 jurisdictions.

The BEPS Action 13 Final Report included a mandate for a review of this BEPS minimum standard. As part of this review, a public consultation is planned in Paris in March 2020 which will address, *inter alia*, whether modifications to the content of CbC reports should be made or if there should be reporting of additional or different data. Other matters for discussion include the appropriateness of the applicable revenue threshold (currently EUR 750 million) and the effectiveness of the current filing and dissemination mechanisms for CbC Reports (CbCRs).

The use of CbCRs in tax risk assessment is supported by the OECD Forum on Tax Administration (FTA), through its Handbook on the Effective Use of CbC Reports in Tax Risk Assessment¹², the development of risk assessment tools and through a pilot for the International Compliance Assurance Programme (ICAP), which provides a framework for the co-ordinated risk assessment of large MNEs by tax administrations in jurisdictions where they have activity. Moreover, the first aggregated and anonymised statistics prepared from data collected on CbCRs is already showing some interesting patterns of where MNEs activity is located, where profits are reported and the amount of tax paid.

Action 14: Mutual Agreement Procedures

The work on dispute resolution, aimed at improving Mutual Agreement Procedures (MAP) is delivering encouraging results. Already 60 jurisdictions have been reviewed, around 1 315 recommendations for improvement have been issued and the stage two process, which monitors whether jurisdictions are delivering on the recommendations, has already begun. Early outcomes of stage two show that jurisdictions are making tangible progress in addressing the recommendations and improving their dispute resolution mechanisms. Notwithstanding this progress, further efforts to improve are necessary. The work on the 2020 review, including the review of the assessment methodology that led to the deferral of the peer review of 46 developing countries, is in progress.

Tax certainty

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

In this spirit, the OECD Forum Tax Administration's International Compliance Assurance Programme (ICAP) provides a framework for the co-ordinated risk assessment of large MNEs by tax administrations in jurisdictions where they have activity. ICAP currently includes 19 participating tax administrations, up from eight tax administrations when it was first launched in January 2018.

¹¹ OECD (2019), *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2): Inclusive Framework on BEPS: Action 13*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/f9bf1157-en>

¹² OECD (2017), *Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment*, OECD, Paris, www.oecd.org/tax/beps/country-by-country-reporting-handbook-on-effective-tax-risk-assessment.pdf

In addition, a first OECD Tax Certainty Day¹³ was held on 16 September 2019 in Paris. The event provided an opportunity for tax policy makers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move towards further improvements in both dispute prevention and dispute resolution. As a follow-up, work has commenced on three projects to support greater tax certainty for MNE groups through: (i) improvements to advance pricing agreement (APA) processes, (ii) greater use of multilateral dispute resolution and APAs and (iii) the use of standard benchmarks in common transfer pricing situations.

Binding dispute prevention and resolution is also an essential part of any solution for the work on addressing the tax challenges arising from digitalisation (see Part 1). This is to avoid a situation where an MNE group could be subject to multilateral audit or separate dispute resolution on Amount A under Pillar One involving potentially in excess of 100 jurisdictions. Work is underway to design innovative approaches to ensure this is avoided.

¹³ www.oecd.org/tax/oecd-tax-certainty-day-16-september-2019.htm

4 Capacity building – Supporting developing countries

“We continue to support tax capacity building in developing countries, including coordinating through the Platform for Collaboration on Tax (PCT) and by applying the experience with medium-term revenue strategies and tailoring efforts to support domestic resource mobilization in countries with limited capacities. We welcome the first progress report of the PCT, as well as the Asia-Pacific Academy for Tax and Financial Crime Investigation in Japan.”

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

Capacity building efforts for the implementation of the BEPS package

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

In addition to the BEPS minimum standards, such programmes cover other BEPS topics that are of particular interest to the concerned country, such as transfer pricing or limiting excessive interest deductions. In 2019 for the first time, a regional approach to induction was undertaken, allowing tailored support to be provided in an efficient way to a range of small island developing states in the Caribbean.

In-depth, bilateral technical assistance and capacity building support to build domestic resource mobilisation was also provided in 29 developing countries in 2019, often in collaboration with regional and other international partners such as the African Tax Administration Forum (ATAF), the European Union (EU), WBG and the Inter-governmental Forum on Mining, Minerals, Metals and Sustainable Development. While many of these programmes focus on key BEPS risks such as transfer pricing, in some cases they have also evolved to provide a sectoral focus, including “deep dives” on the mining industry in a number of resource-rich developing countries.

Capacity building activities

- 39 bespoke induction programmes for new members
- Bilateral technical assistance activities for 29 developing countries
- Collaboration with regional and international partners such as ATAF, the EU and WBG

The Secretariat has also instituted a programme of briefings for developing countries ahead of key G20/OECD IF meetings relating to the work on the tax challenges of digitalisation. These provide information to participants on the key issues to be discussed at the meeting as well as access to technical specialists to clarify the proposals on the table, and answer questions. They also offer a forum for developing countries to exchange views with peers ahead of the formal meeting sessions.

Update on the Academy for Tax and Financial Crime Investigation

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

OECD International Academy for Tax and Financial Crime Investigation

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

OECD Asia-Pacific Academy for Tax and Financial Crime Investigation

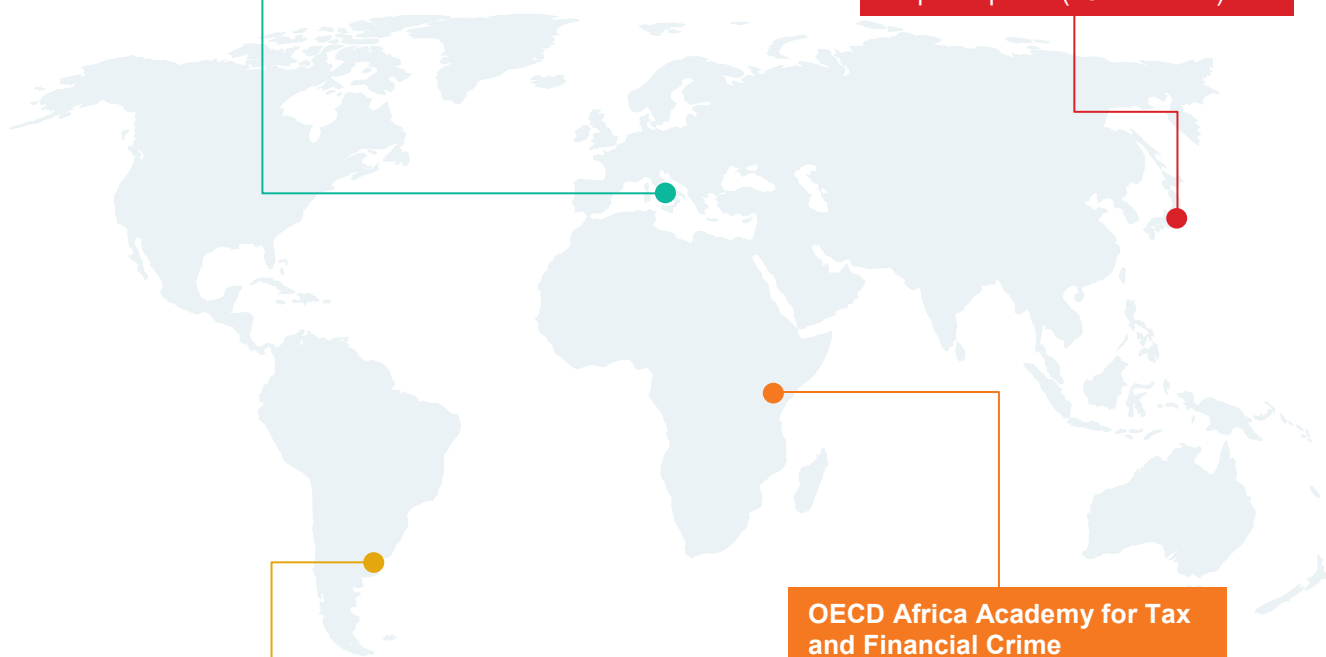
Tokyo, Japan
Established in 2019
47 participants (15 countries)

OECD Latin America Academy for Tax and Financial Crime Investigation

Buenos Aires, Argentina
Established in 2019
120 participants (13 countries)

OECD Africa Academy for Tax and Financial Crime Investigation

Nairobi, Kenya
Established in 2017
216 participants (21 countries)



4 Tax Academies

1 000 Tax Officials

100 Countries

As of the end of 2019, almost 1 000 financial crime investigators from almost 100 countries have been trained in centres of the OECD's International Academy for Tax and Financial Crime Investigations in Italy, Kenya, Argentina and in Japan. As well as expanding the geographical centres of the Academy, the course offering continues to develop to meet demand. This includes courses not only on conducting and managing financial crime investigations, but dedicated courses on asset recovery, VAT/GST fraud, the cash economy, anti-money laundering and the effective use of banking information. These courses assist not only tax crime investigators, but also those investigating corruption and other financial crimes – which is of critical importance in building an effective response to illicit financial flows.

The OECD continues to work to ensure the effectiveness of its capacity building in tax crime and financial crime. This includes finding new ways to equip investigators in developing countries to train their colleagues at home; the creation of an International Tax Crime Advisory Board to bring developing countries, donors and trainers into the strategic decision making for the future; the development of new pilot programmes for bilateral capacity building in tax crime for developing countries, including a module drawing on the successes of the Tax Inspectors Without Borders programme.

Update on Tax Inspectors Without Borders

The OECD/UNDP Tax Inspectors Without Borders (TIWB) initiative continues to grow, with 29 programmes completed, 47 ongoing and 20 forthcoming as of 3 February 2020. This increase in the number of programmes is due to growing demand for general audits and for sector-focused programmes from host countries.

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



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

Update on the Platform for Collaboration on Tax

The partners in the Platform for Collaboration on Tax (PCT) – the International Monetary Fund (IMF), OECD, United Nations, and the World Bank Group – 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 the delivery of the Action Plan, and is preparing a full update on activities for the G20 to be delivered later in the year. Progress has been made on the toolkits being developed by the PCT under a mandate from the G20. These toolkits provide practical implementation guidance on BEPS issues of particular relevance to developing countries, with a public consultation recently concluding on the toolkit on transfer pricing documentation. The PCT continues to support the Medium Term Revenue Strategy (MTRS) concept, as an approach to help developing countries move towards a more effective and comprehensive approach to the reform of their tax systems.

Annex A. Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy

As approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020.

1. In light of the strong support from the Inclusive Framework on BEPS (IF) members for reaching a multilateral agreement with respect to Pillar One and Pillar Two, and drawing on the technical work of the Working Parties, comments from the public consultation, as well as the discussion at a number of Steering Group meetings, and recognising the concurrent work on a without prejudice basis on the two pillars, **members of the Inclusive Framework affirm their commitment to reach an agreement on a consensus-based solution by the end of 2020. In further developing the two Pillars, the Inclusive Framework has therefore agreed upon an outline of the architecture of a Unified Approach on Pillar One as the basis for negotiations and welcomed the progress made on Pillar Two (which follows the outline of Pillar Two in the PoW) contained in Annexes 1 and 2 of this statement.**

2. With respect to Pillar One, the IF endorses the Unified Approach (set out in Annex 1) as the basis for the negotiations of a consensus-based solution to be agreed in 2020. The proposed reallocation of taxing rights under Pillar One would require improved tax certainty, including effective and binding dispute prevention and resolution mechanisms. In the design and implementation of the solution, the IF also acknowledges the need to minimise complexity.

3. Members note the technical challenges to develop a workable solution as well as some areas where critical policy differences remain which will have to be resolved to reach an agreement. They note a December 3 letter from the US Treasury Secretary to OECD Secretary-General Gurría reiterating the US political support for a multilateral solution and including a proposal to implement Pillar One on a 'safe harbour' basis. Many IF Members express concerns that implementing Pillar One on a 'safe harbour' basis could raise major difficulties, increase uncertainty and fail to meet all of the policy objectives of the overall process. The IF members note that, although the final decision on the matter will be taken only after the other elements of the consensus-based solution have been agreed upon, resolution of this issue is crucial to reaching consensus.

4. IF Members also recognise there are a number of other issues where significant divergences will have to be resolved. These include (i) the binding nature of dispute prevention and resolution mechanisms as well as the scope of the dispute resolution mechanisms under Amount C; (ii) the suggestion by some members to weight the quantum of Amount A to account for different degrees of digitalisation between business activities (so-called “digital differentiation”); and (iii) the suggestion by some countries to account for regional factors in computing and allocating Amount A (through regional segmentation). Members note that concerns have been expressed by some jurisdictions and businesses about the continued application of Digital Service Taxes (DSTs).

5. With respect to Pillar Two, the IF welcomes the significant progress the working parties have been able to achieve on the technical design of the Pillar noting that more work needs to be done, as described in more detail in Annex 2.

6. The IF notes the good progress on the economic analysis and impact assessment of Pillars One and Two. The IF calls for continued efforts to strengthen the analysis with caution due to data limitations and for more detailed analysis on the investment and growth impacts of the proposals before the end of March 2020.

7. In this environment, IF members reaffirm their commitment to bridge the remaining differences and reach agreement on a consensus-based solution by the end of 2020, noting that this agreement will depend on the further concurrent work which will be carried out on the two pillars. An important step will be its next meeting in early July, at which it is intended to reach agreement on the key policy features of the solution which would form the basis for a political agreement.

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

1. Introduction

1.1. Background

1. The tax challenges of the digitalisation of the economy were identified as one of the main areas of focus of the Base Erosion and Profit Shifting (BEPS) Action Plan, leading to the 2015 BEPS Action 1 Report.¹ For direct taxes, the Action 1 Report observed that while digitalisation could exacerbate BEPS issues, it also raises a series of broader tax challenges, which it identified as “nexus, data and characterisation”. The latter challenges, however, were acknowledged as going beyond BEPS, and were described as chiefly relating to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions. Possible options to address these concerns were identified, but none were agreed or ultimately recommended as part of the BEPS package. Instead, the Action 1 Report called for continued work in this area with a further report to be delivered by 2020.

2. In March 2017, this timeline was accelerated at the initiative of the G20 Finance Ministers, who asked the OECD/G20 Inclusive Framework on BEPS (hereafter Inclusive Framework), working through its Task Force on the Digital Economy (TFDE), for an Interim Report, which was delivered in March 2018 (the Interim Report).² It contained an in-depth analysis of new and changing business models and possible implications for the international tax system (in particular nexus and profit allocation rules). The Interim Report also repeated the conclusion from the Action 1 report that it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy. While members of the Inclusive Framework did not agree on the conclusions to be drawn from this analysis, they committed to continue working together on the development of a consensus-based long-term solution by 2020, with an update in 2019.

3. To advance progress towards a consensus-based solution, Inclusive Framework members made a number of proposals, some of which focused on the allocation of taxing rights through modifications to the rules on nexus and profit allocation,³ and others on unresolved BEPS issues.⁴ The Inclusive Framework agreed a Policy Note in January 2019 that grouped the proposals into two pillars – one of nexus and profit allocation and another on ensuring a minimum level of taxation – and contained an

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.

² 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.

³ Namely, the “user participation” proposal, the “marketing intangibles” proposal and the “significant economic presence” proposal (see Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019, OECD).

⁴ The Global anti-base erosion proposal (see Public Consultation Document, *Addressing the Tax Challenges of the Digitalisation of the Economy*, 13 February – 6 March 2019, OECD).

agreement to examine them as a possible basis for consensus.⁵ On Pillar One, the Policy Note recognised that in the balance are: the allocation of taxing rights between jurisdictions; fundamental features of the international tax system, such as the traditional notions of permanent establishment and the applicability of the arm's length principle; the future of multilateral tax co-operation; the prevention of unilateral measures; and the intense political pressure to tax highly digitalised MNEs.

4. Following the January Policy Note, the Inclusive Framework continued working on the proposals on a without prejudice basis, considering how the gaps between the different positions of jurisdictions could be bridged, and in March 2019 sought input from external stakeholders through a public consultation process.⁶ Based on those inputs, the Inclusive Framework delivered a detailed Programme of Work (May PoW)⁷ in May 2019. This was endorsed by the G20 Finance Ministers and Leaders in June 2019.

5. For Pillar One, the May PoW identified and allocated work to explore the different proposals articulated by members of the Inclusive Framework. It acknowledged the commonalities between the proposals, but noted that options available would need to be reduced and some gaps bridged in order to deliver a consensus-based solution on Pillar One. It further emphasised the need for an agreement on the outlines of the architecture of a unified approach by January 2020, to arrive at a consensus-based solution by the end of 2020.

6. Mindful of this goal, the Secretariat developed an approach to facilitate progress towards consensus on Pillar One (the so-called "Unified Approach") which built on the commonalities identified in the PoW, taking account of the views expressed during the March public consultation, and the need to deliver a solution that is acceptable to all members of the Inclusive Framework. After discussions at the Steering Group of the Inclusive Framework (SGIF) the proposal was discussed by the TFDE and further in the SGIF meetings in September and October 2019, and subsequently released to the public for comments on 9 October 2019.⁸

7. In less than five weeks, the Secretariat received 304 submissions exceeding 3,000 pages, covering both technical and policy aspects of the proposal. Stakeholders also expressed their views at the November Public Consultation meetings organised in Paris and Manila, which were attended by more than 500 representatives from governments, business, civil society and academia. During these consultations, respondents raised concerns on certain technical aspects of the proposed approach, including its complexity. Addressing these concerns and working on issues such as tax certainty, simplified compliance, dispute prevention and resolution, and elimination of double taxation, is essential and this note identifies different work streams to achieve this. Nevertheless, many were supportive of its objectives and guiding principles, provided it would effectively prevent the proliferation of unilateral measures, avoid double taxation and excessive compliance burdens, and restore stability and certainty to the international tax system.

⁵ *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note*, as approved by the Inclusive Framework on BEPS on 23 January 2019, OECD 2019.

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

⁷ 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.

⁸ Public consultation document, *Secretariat Proposal for a "Unified Approach" under Pillar One*, 9 October 2019 – 12 November 2019.

1.2. Taking the Unified Approach forward

8. The Inclusive Framework welcomes the Secretariat's work to develop a "Unified Approach" to Pillar One. This document contains an outline of the architecture of a unified approach to Pillar One to use as the basis for the negotiation of a consensus-based solution to be agreed by mid-2020. This document is complemented by a separate revised Programme of Work for Pillar One (revised PoW) that defines the remaining work that needs to be undertaken by the end of 2020 (see Annex A). This revised PoW replaces the earlier Pillar One PoW that the Inclusive Framework adopted in May 2019.

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

2. Overview

10. The unified approach outlined in this document is designed to adapt taxing rights by taking into account new businesses models and thereby expand the taxing rights of market jurisdictions (which, for some business models, is the jurisdiction where the user is located).⁹ This is intended to re-stabilise the international tax system, assisted by enhanced dispute prevention and resolution procedures. To achieve these results, the approach encompasses three types of taxable profit that may be allocated to a market jurisdiction: these are described as Amount A, Amount B and Amount C.

- **Amount A** – A share of residual profit allocated to market jurisdictions using a formulaic approach applied at an MNE group (or business line) level.¹⁰ This new taxing right can apply irrespective of the existence of physical presence, especially for automated digital services. It reflects profits associated with the active and sustained participation of a business in the economy of a market jurisdiction, through activities in, or remotely directed at that jurisdiction, and therefore constitutes the primary response of the unified approach to the tax challenges of the digitalisation of the economy.
- **Amount B** – A fixed remuneration based on the ALP for defined baseline distribution and marketing functions that take place in the market jurisdiction.
- **Amount C** – The return under Amount C covers any additional profit where in-country functions exceed the baseline activity compensated under Amount B. A further aspect of Amount C is the emphasis it gives to the need for improved dispute resolution processes. The scope of Amount C is still being discussed and considered as a critical element in reaching an overall agreement on Pillar One (see Section 5. below).

11. Whilst some overlaps are possible (see Section 3.4. below), each of these three types of taxable profit have a different scope. Further, unlike Amount A, Amounts B and C do not create any new taxing rights. The taxable profits potentially allocable to market jurisdictions under Amounts B and C are based on the existing profit allocation rules (including the reliance on physical presence), and reflect efforts to improve the practical application of the ALP. The formula-based approach (with no connection to the ALP) is therefore applied only in the case of Amount A.

⁹ For the purpose of this paper, user/market jurisdictions (henceforth "market jurisdictions") are jurisdictions where an MNE group sells its products or services or, in the case of highly digitalised businesses, provides services to users or solicits and collects data or content contributions from them.

¹⁰ The residual profit used for Amount A will be the result of simplifying conventions agreed on a consensual basis.

12. The following sections describe in more detail the key components of this unified approach, including a number of important pending questions, on which further work will be required to arrive at a political agreement by mid-2020.

3. The New Taxing Right (Amount A)

13. As noted, the primary response to the tax challenges of the digitalisation of the economy is a new taxing right over a portion of residual profits allocable to market jurisdictions. This will be limited to large MNE groups in scope which meet a new nexus test in the market jurisdiction concerned (3.1.), and to the agreed quantum of profit represented by Amount A (3.2.). These parameters need to be designed in a way that is simple, avoids double taxation (3.3.), and can be designed to work alongside the ALP, including as represented by Amounts B and C (3.4.). To clarify the scope and possible impact of Amount A on MNE groups, a decision tree is available in Annex B.

3.1. Scope and nexus

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

3.1.1. Scope

Policy issue

15. In a digital age, the allocation of taxing rights and taxable profits can no longer be exclusively circumscribed by reference to physical presence. Due to globalisation and the digitalisation of the economy, there are businesses that can develop an active and sustained engagement in a market jurisdiction, beyond the mere conclusion of sales, without necessarily investing in local infrastructure and operations. This means that the profits attributable to the physical operations that a business undertakes in a jurisdiction, in accordance with Articles 5, 7 and 9 of the OECD and UN Model Tax Conventions, may no longer be reflective of its sustained and significant engagement in the market.

16. Amount A seeks to respond to that situation, through the allocation of a portion of the residual profits of a business to market jurisdictions. The amount so allocated is over and above the arm’s length return that might be allocable to in-market activities such as baseline marketing and distribution, but is not an additional remuneration in respect of those same in-market activities.¹¹

17. This policy issue is of relevance to businesses that can, with or without the benefit of local physical operations, participate in a sustained and significant manner in the economic life of a jurisdiction. Such participation is attributable to the nature of what is being supplied, how it is being supplied and the nature of the active interaction or engagement with market jurisdictions. Accordingly, the policy objective pursued by the new taxing right is most relevant to two broad sets of business.

18. First, it is of relevance to businesses that provide automated and standardised digital services to a large and global customer or user base. These are businesses that, in general, are able to provide digital services remotely to customers in markets using little or no local infrastructure. In these situations, they generally benefit from exploiting powerful customer or user network effects and generate substantial value from interaction with users and customers. They often benefit from data and content contributions made by users and from the intensive monitoring of users’ activities and the exploitation of corresponding data.

¹¹ See also paragraph 55 and 56 below.

In some models the customers may interact on an almost continuous basis with the supplier's facilities and services. These characteristics are exhibited more strongly within certain types of digital service provision. However, the ability to develop an active and sustained presence in remote markets through the channels identified above can be considered of general applicability to businesses that provide an automated service on a digital platform.

19. Second, the policy issue outlined above has relevance to other businesses that generate revenues from selling goods or services, whether directly or indirectly, to consumers (i.e. consumer facing businesses). This is a broad set of businesses that includes traditional businesses that have been disrupted to a lesser degree by digitalisation, e.g. businesses that manufacture physical products, sell those products through physical distribution channels and support sales with less sophisticated marketing methods such as television and banner advertising. However, there is an increasing use by these businesses of digital technologies to more heavily interact and engage with their customer base. That could be through building more sustained relationships with individual customers, through more targeted marketing and branding, and through the collection and exploitation of individual customer data. This is particularly true of businesses that are selling connected products and those using online platforms as a principal means of selling and marketing to consumers.

20. The fact that this customer interaction and engagement can be carried out from a remote location means that these businesses are increasingly able to have an active non-physical presence in market jurisdictions¹² through which they substantially improve the value of their products and increase their sales.

Businesses in scope

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

Automated digital services

22. These services will cover businesses that generate revenue from the provision of automated digital services that are provided on a standardised basis to a large population of customers or users across multiple jurisdictions.¹³ This would be expected to include the following non-exhaustive list of business models:

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

23. Further work will be required on the definition of an automated digital service, especially for business models that deal mostly with other businesses, and on the distinction between such digital service businesses and businesses whose services might be delivered to a customer online but involve a high

¹² This issue is also potentially relevant in situations where the MNE group has a physical taxable presence in the market jurisdiction. This is because existing rules (Articles 5, 7 and 9 of the OECD and UN Models) do not allocate profit to that taxable presence based on the group's profit or on its overall engagement with that market jurisdiction, which can also be carried out from a remote location.

¹³ Including revenue associated with the monetisation of data.

degree of human intervention and judgement. The latter types of business typically include professional services such as legal, accounting, architectural, engineering and consulting, which do not fall within scope of this definition.

Consumer-facing businesses

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

25. This would bring into the scope of the new taxing right not only businesses that sell goods and services directly to consumers, but also those that sell consumer products indirectly through third-party resellers or intermediaries that perform routine tasks such as minor assembly and packaging.

26. Businesses selling intermediate products and components that are incorporated into a finished product sold to consumers would be out of scope, subject to a possible exception for intermediate products or components that are branded and commonly acquired by consumers for personal use.

27. Finally, the intention is to bring into scope businesses that generate revenue from licensing rights over trademarked consumer products and businesses that generate revenue through licensing a consumer brand (and commercial know-how) such as under a franchise model.

28. For example, the definition of a consumer-facing business would be expected to bring into scope the following non-exhaustive list of businesses:

- personal computing products (e.g. software, home appliances, mobile phones);
- clothes, toiletries, cosmetics, luxury goods;
- branded foods and refreshments;
- franchise models, such as licensing arrangements involving the restaurant and hotel sector; and
- automobiles.

29. Further work will be needed on the definitions of some of the key terms identified above.

Specific considerations

30. Extractive industries and other producers and sellers of raw materials and commodities will not be within the consumer-facing definition, even if those materials and commodities are incorporated further down the supply chain into consumer products. Taxes on profits from the extraction of a nation's natural resources can be considered to be part of the price paid by the exploiting company for those national assets, a price which is properly paid to the resource owner. Extractives and other commodities such as agricultural and forestry products are generally generic goods which are sold, and whose price is determined, on the basis of their inherent characteristics. For example, the sale of sacks of green coffee beans will not be within the scope of the new taxing right, whereas the sale of branded jars of coffee will be.

31. Most of the activities of the financial services sector (which includes insurance activities) take place with commercial customers and will therefore be out of scope. However, there is also a compelling case for the consumer-facing business lines such as retail banks and insurance within financial services businesses to be excluded from scope given the impact of prudential regulation and, for example, bank/insurance licensing requirements that are designed to protect local deposit/policy holders in the market jurisdiction. This typically ensures that residual profits are largely realised in local customer markets and therefore justifies that these activities should be excluded from scope. Consideration might, however, be given to whether there are any unregulated elements of the financial services sector or related to the sector which require special consideration, such as digital peer-to-peer lending platforms.

32. The effect of nearly all bilateral tax treaties is to assign exclusive taxing rights over the profits of an enterprise from the operation of ships and aircraft in international traffic to the state of residence of the enterprise. This long-standing practice has its own rationale, and it is therefore considered inappropriate to include airline and shipping businesses in the scope of the new taxing right.

Interaction with other elements of the Amount A design

33. There will be many groups with diverse activities, some of which will meet the definitions above, some of which will not. This may be addressed by the segmentation of those activities into different business lines to which Amount A would be separately applied. Further work will be required to determine what level of segmentation is practicable and verifiable.

34. Even within business lines, sales of a product or service may be made to both consumers and business customers. An example would be a seller of personal computers whose customers include small businesses and consumers. As stated in paragraph 24, if the product is of a type that is commonly sold to consumers it would be expected to fall within the definition of a consumer-facing business.

Thresholds

35. In order to ensure that the compliance and administrative burdens are proportionate to the intended benefits, the new taxing right will operate with a number of thresholds. First it will be limited to MNE groups that meet a certain gross revenue threshold. This threshold could, for instance, be the same as for Country-by-Country (CbC) reporting pursuant to BEPS Action 13 (i.e. MNE groups with gross revenue exceeding EUR750M). This avoids unnecessary compliance costs for smaller businesses and also provides a possible infrastructure for filing and exchange of information. Second, even for those MNE groups that meet the gross revenue threshold a further carve-out will be considered where the total aggregated in-scope revenue is less than a certain threshold. Third, consideration will be given to a carve-out for situations where the total profit to be allocated under the new taxing right would not meet a certain *de minimis* amount.¹⁴ Finally, the effective computation of Amount A (see paragraph 46 below) and application of the new nexus rule (see paragraph 37 below) will involve additional thresholds. An overview of the impact and combination of these multiple thresholds is available in Annex B.

3.1.2. Nexus

36. For MNEs in scope a new nexus rule will be created based on indicators of a significant and sustained engagement with market jurisdictions. The rule will be contained in a standalone rule to limit any unintended spill-over effects on other existing tax or non-tax rules. The implementation and administration of the new nexus rule will be designed so as to eliminate (or limit to a bare minimum) any filing and other tax related obligations arising from the allocation of the new taxing right to multiple market jurisdictions. This will include exploration of simplified reporting and registration-based mechanisms (such as a “one stop shop”) and exclusive filing in the ultimate parent jurisdiction (following the approach used for Action 13 CbC reporting).

37. The generation of in-scope revenue in a market jurisdiction over a period of years would be the primary evidence of a significant and sustained engagement. The revenue threshold would be commensurate with the size of a market, with an absolute minimum amount to be determined. The final agreement will include precise figures for the amount of the threshold.

38. For automated digitalised businesses in scope, the revenue threshold will be the only test required to create nexus. This recognises the fact that in a digital age, with scale without mass and unparalleled

¹⁴ For example, this might cover the situation of a large, domestically-focused business with a minimal level of foreign income.

reliance on intangibles, the supply of automated digital services generally involves the level of active and sustained engagement with customers described above, even when the service is provided remotely.

39. For other in-scope activities, e.g. the sale of tangible goods, the proposal will not create a new nexus if the MNE is merely selling consumer goods into a market jurisdiction without a sustained interaction with the market. This recognises that the cross-border sale of tangible goods into a market jurisdiction does not in itself amount to a significant and sustained engagement in that jurisdiction. Further work will be required to explore the use of possible additional or “plus” factors, such as the existence of a physical presence of the MNE in the market jurisdiction or targeted advertising directed at the market jurisdiction. The overriding objective, in combination with the different thresholds, is to avoid encompassing mere sales and to avoid or minimise additional compliance burdens, especially in situations where an MNE is not already present in a market or has not specifically targeted that market from abroad.

40. The rules will also be designed to avoid spill-over effects on any other (existing) nexus rule so that the new nexus remains exclusively applicable to the new taxing right (and cannot be used as a basis for creating a nexus for other taxes, whether income or non-income taxes, customs duties nor in any other non-tax context).

41. The future work will design clear and administrable rules that will source revenues to market jurisdictions for the purposes of establishing the nexus revenue threshold in, and also for the purposes of allocating profits to, that jurisdiction. This work will take into account the manner in which different automated digital services and consumer-facing businesses operate in market jurisdictions. It is of particular importance to deliver sourcing rules to cover certain digital transactions, for example by sourcing the revenue from online advertising services where the users (“eyeballs”) are located and revenue from other in-scope digital services where they are consumed. It will also be necessary to specify how revenues are sourced when products are sold via intermediaries before reaching their ultimate consumer.

3.2. Quantum of Amount A

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

3.2.1. The tax base

43. In contrast to the traditional transfer pricing “separate entity” approach, the calculation of Amount A will be based on a measure of profit derived from the consolidated group financial accounts. While MNE groups produce consolidated financial statements under different accounting standards, most of the variations identified between different accounting standards are timing differences which do not affect the aggregate amount of income reported over time. This means that the type of adjustments required to harmonise the use of different financial accounting standards across different jurisdictions are likely to be kept to a minimum and relate only to material items, meaning differences that are significant in amount and duration. It also assists the calculation of a measure of profit on a broadly consistent basis across jurisdictions.

44. Among the different profit level indicators available, the public consultation process and various discussions with governments, taxpayers and advisors, indicate that profit before tax (“PBT”) is the preferred profit measure to compute Amount A as, in most cases, it most closely approximates the measure of profits by reference to which corporate income tax is normally levied. It will be applied consistently from

year to year. To ensure that losses are brought into consideration, these rules will apply to both profits and losses, and will include loss carry-forward rules.¹⁵

45. Where the out-of-scope revenues of a multinational group are material, segmented accounts may be required to capture only in-scope business segments in the allocation of Amount A profits. In some cases, segmentation among multiple regions and/or in-scope business lines may be required where a taxpayer's profitability varies materially between different business lines or regions. The rationale and technical feasibility of regional segmentation will be further explored for a policy decision to be made on its viability. At the same time, consulted parties have also emphasized that the design of any segmentation rules must balance the need for simplicity and accuracy and take account of compliance burdens. Submissions in the public consultation process also asked for consideration of *de minimis* thresholds as well as the ability for taxpayers to elect into business line segmentation among in scope businesses (e.g. across regions or products).

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

3.2.2. *The allocation key*

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

3.3. *Elimination of double taxation*

48. Where profits are now allocated on the basis of the ALP, Amount A is an overlay to that system. As the ALP already allocates the full MNE group profit (which is, thus, already subject to tax), it is essential that there are appropriate mechanisms to eliminate double taxation. Common approaches to addressing international juridical double taxation, in both tax treaties and domestic law, are for one jurisdiction (the residence jurisdiction, where the owner of the income is tax resident) to exempt the income from tax, or to provide a credit against its own tax for the tax paid in the other jurisdiction (the source jurisdiction, where the income is treated as arising). Additionally, to eliminate economic double taxation resulting from transfer pricing adjustments, tax treaties typically oblige the jurisdiction in which the associated enterprise is

¹⁵ The design of the loss rules will explore how to take account of pre Amount A regime losses, as well as losses that arise after the inception of the Amount A taxing right.

resident to make a corresponding adjustment to the profits it taxes in the hands of that enterprise (provided it agrees with the transfer pricing adjustment in the first jurisdiction).

49. The application of those mechanisms to eliminate double taxation resulting from Amount A is not straightforward, however, as the calculation of Amount A applies to the profits of an MNE group (or business line) as a whole, rather than on an individual entity and individual country basis.

50. In particular, it will not be possible to use a corresponding adjustment approach (similar to the provisions in Article 9(2) of the OECD or UN Model Tax Convention) to eliminate double taxation in all (or many) cases, as Amount A is not premised on there being identifiable transactions between particular group entities.¹⁶ This will also prevent any unintended impact and issues with custom duties applied to imported goods.

51. Further, while it seems possible that existing domestic and treaty mechanisms (i.e. the credit or exemption method) could continue to relieve international juridical double taxation effectively, it will be necessary to determine which jurisdiction will have an obligation to eliminate any resulting double taxation; and, if there is more than one jurisdiction, the quantum of the relief to be provided by each. It is also critical to take into account the fact that Amount A will affect multiple jurisdictions that may not have existing bilateral treaties between them. This, in turn, requires addressing gaps in treaty coverage (as will be explained in Section 6. below) and the identification of the particular member(s) of an MNE group which are to be treated as owning the deemed residual profits corresponding to the profits taxable in market jurisdictions under Amount A.

52. The unified approach will therefore establish approaches to identifying these taxpayer entities in a way that is both administrable and fair.¹⁷ This will involve further work on: approaches to identify the taxpayer entities by reference to measures of profitability; methods for allocating Amount A liabilities between these entities where there is more than one within a group (including the feasibility of pro-rata allocations); and assessing the extent to which identifying the relevant taxpayer in this way would allow existing mechanisms for eliminating double taxation (the credit or exemption method) to continue to operate effectively.

3.4. Interactions and potential for double counting

53. As set out above, Amount A is part of the three-tier profit allocation system that makes up the unified approach. In practice, this means that an MNE group would first apply the ALP-based profit allocation rules (including Amounts B and C) to determine an initial allocation of profit between different entities and hence between jurisdictions. The relevant Amount A of in-scope MNE groups would then be allocated to eligible market jurisdictions as an overlay or partial override to the ALP-based profit allocation rules.

54. It is therefore important to identify any possible interactions between Amounts A, B and C that are not appropriately dealt with by the mechanisms to eliminate double taxation described above (see 3.3. above). These mechanisms to eliminate double taxation are the primary way in which potential interactions between Amounts A, B and C are addressed.

¹⁶ The system of primary and corresponding adjustments under Article 9 is premised on an underlying transaction, which is absent in the Amount A charge. Instead, other methods based on specific deductions or allowances that are not premised on identifiable transactions could be contemplated, such as exemption methods.

¹⁷ One way to achieve this would be to take into account where the profits reallocated under Amount A are recorded in the existing system (or where located under the ALP, before application of Amount A).

3.4.1. Interactions between Amounts A and B

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

3.4.2. Interactions between Amounts A and C

56. An important question is whether double counting may arise where both Amount A and Amount C are allocated to a market jurisdiction because the MNE group already has a taxable presence in that jurisdiction. In such a case, it is suggested that instances of double counting might arise if there is an overlap between Amounts A and C. Areas in which possible double counting might need to be considered relate to: (1) marketing intangibles in the local jurisdiction; (2) comparability adjustments under the ALP; and (3) uncommon interpretations of the ALP. While further consideration of these possible instances of double counting will be required, no instances of possible double counting should give rise to double taxation given the application of mechanisms to eliminate double taxation (see 3.3. above).

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

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

58. Amount B aims to standardise the remuneration of distributors (whether constituted as a subsidiary or a traditional permanent establishment) that buy products from related parties for resale and, in doing so, perform defined “baseline marketing and distribution activities”. It proposes a fixed return to distributors that fall within this definition – a fixed return that is based on the ALP (i.e. Amount B would not be optional nor a safe-harbour). Against this backdrop, Amount B would seek to simplify the computation of the return to activities within scope, and reduce disputes and uncertainty about the pricing of certain types of distribution activities. The overall purpose of Amount B is therefore to:

- achieve a greater degree of simplification in the administration of transfer pricing rules for tax administrations and lower compliance costs for taxpayers; and
- enhance tax certainty about the pricing of transactions, which should lead to a reduction of controversies between tax authorities and taxpayers.

59. Ultimately, it is expected that this fixed return model will allow tax administrations and taxpayers to make more efficient use of resources, focusing on high-risk cases with the potential to raise substantial tax revenue.

60. The fixed return a market jurisdiction would receive through Amount B for baseline distribution and marketing activities would deliver a result that is based on the ALP. To that aim, the work will explore how to account for different functionality levels, as well as differentiation in treatment between industries and regions. The design of Amount B will need to ensure the baseline distribution and marketing activities are only remunerated in Amount B and not (again) in Amount C. This is to be achieved by clear definitions of what constitute baseline activities.

61. The definition of baseline distribution activities will likely include distribution arrangements with routine levels of functionality, no ownership of intangibles and no or limited risks. Defining what entities and activities would qualify could be achieved by using a positive definition based on qualitative and quantitative factors, together with a list of activities and entities that would be out of scope. The transfer pricing distribution regimes of some countries could provide useful guidance.

62. Reaching agreement on the amount of the fixed percentage will require countries to make trade-offs between strict compliance with the arm's length principle and the administrability of Amount B. That is, while the fixed percentage approach may not encapsulate all the facts and circumstances of each individual case, it does have the potential to significantly simplify the determination of the return for the activities within its scope.

63. The expectation is that treaty changes will not be required to implement the Amount B regime, which should simplify its implementation. Rather, as the Amount B regime, as set forth in section 4, is expected to be in accordance with the ALP, existing treaty provisions should suffice to support its adoption.

64. Accordingly, a number of key technical aspects of Amount B will need to be progressed so that member countries of the Inclusive Framework are in an informed position to support its implementation. Key technical matters to be advanced as part of the revised PoW include:

- definition of baseline activities;
- consideration of an appropriate profit level indicator;
- structuring the return as a fixed percentage at an agreed profit level (e.g. the median);
- utilisation of benchmarking studies based on publicly available information to support the amount of the fixed percentage; and
- the degree to which there may need to be a differentiation in treatment between industries and regions in order to remain in broad conformity with the ALP.

5. Tax Certainty: Dispute Prevention and Resolution

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

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

66. The prevention of disputes with respect to Amount A will therefore begin with the design of clear and simple rules.

67. Compared with the arm's length principle, the new approach adopts a different method for the allocation of taxing rights, based on a globally agreed formula. While the risk of disputes under that approach can be reduced using mechanical rules based on clearly articulated formulae and detailed guidance, it cannot be eliminated.

68. It would be impractical (if not impossible) to allow all affected tax administrations to assess and audit an MNE's calculation and allocation of Amount A and to address potential disputes through existing bilateral dispute resolution mechanisms (however much they have already been improved and might be enhanced) because they generally operate after the event. Any dispute between two jurisdictions over Amount A will likely affect the taxation of Amount A in multiple jurisdictions. Resolving such differences under the existing bilateral system would therefore require multiple mutual agreement procedures involving several jurisdictions where the MNE has meaningful activities or sales, an outcome which would be uncoordinated, inefficient and lengthy.

69. To avoid such an outcome, the new approach would be supported by a clear, administrable and binding process for early dispute prevention. Work will be undertaken to fully develop the details of such a process.

70. It should provide early certainty, before tax assessments are made, to prevent disputes from arising. Certainty should be available over all aspects of Amount A, such as whether an MNE is in scope, the correct delineation of business lines, allocation of central costs and tax losses to business lines, whether a nexus exists in a particular jurisdiction, and identification of the relieving jurisdictions for purposes of eliminating double taxation.

71. It is agreed to explore an innovative approach under which tax administrations of the IF would provide early tax certainty for Amount A, for instance through the establishment of representative panels which would carry on a review function and provide tax certainty. This would require work on the process and governance of such panels to ensure appropriate representation of Members and effective, transparent, and inclusive processes.

72. The design of the process would also need to address the challenge of delivering binding agreements by all tax administrations.

73. Tax administrations' resource constraints will be a factor in the design of these new approaches to dispute prevention. On the other hand, synergies from a multilateral process will ensure that the total resources applied are less than would be needed under the existing separate and uncoordinated system. The new process could provide assistance to panel members from tax administrations with resource constraints – for example through a body of experts, which could also provide assistance with practical aspects of the review process. The new approach will consider the role for the tax administration of the ultimate parent entity and how to secure tax certainty in a timely manner, as well as options for preventing disputes where an MNE has not opted in to the early certainty process.

74. Further, the use of standardised administrative measures (e.g. for information reporting, filing of returns and collection of tax) would help to ensure consistent application and would minimise compliance and administration costs. Detailed guidance on the application of Amount A, reinforced by feedback from the new framework for dispute prevention and resolution outlined below, will also play an important role in preventing disputes.

75. Finally, in the event that a dispute might arise that is not already dealt with by the early dispute prevention process described above, appropriate mandatory binding dispute resolution mechanisms will be developed.¹⁸

5.2. Tax certainty and dispute prevention and resolution for Amounts B and C

76. There is agreement that a new effective and binding dispute prevention and resolution mechanisms is required for amount A as described above in Section 5.1. . The core of the work on tax

¹⁸ This will require reaching consensus on such dispute resolution mechanism.

certainty and dispute prevention and resolution for Amounts B will be to limit disputes by using fixed rates of return on baseline distribution and marketing activities.

77. As noted in section 4. above, under the new approach, the design of Amount B will remunerate the market jurisdiction for routine “baseline” marketing and distribution activities, not for any other activities, and provide for a fixed return. Thus disputes with respect to Amount B while they can still arise, would be limited by the provision of clear and detailed guidance on the scope of Amount B. The work on Amount B will address appropriate dispute resolution mechanisms to the extent they are required.

78. However, there are currently differing positions on the breadth of application of new enhanced dispute resolution mechanisms to other transfer pricing and permanent establishment disputes that will continue to arise. Nevertheless, there is a need to explore innovative approaches that could be used in this regard including exploring the possibility of using the process, or aspects thereof, that may be put in place for providing tax certainty with respect to Amount A. All Inclusive Framework members recognise reaching agreement on the breadth of the application of new enhanced dispute resolution is critical and agree to return to the matter as part of arriving at a consensus-based solution in 2020.

79. As some jurisdictions may have domestic obstacles to the adoption of mandatory binding arbitration, it may be necessary to consider mechanisms that do not present the same issues and that can be adopted by all members of the Inclusive Framework.

80. As with arbitration, the intent of having mandatory and binding dispute resolution procedures is not to rely on them as a main way of resolving disputes. Rather, they are presented chiefly as a backstop, providing a strong incentive for competent authorities to resolve disputes in a timely way under MAP.

81. Enhancing MAP is also an important aspect of the work on tax certainty and dispute prevention and resolution. This could be done by work planned for the 2020 review of BEPS Action 14, as well as other ongoing work to improve the effectiveness and efficiency of multilateral MAP.

82. In addition, specific enhancing measures to be enacted domestically could be explored in the context of Amount C. For example:

- jurisdictions could explore limiting the time during which any adjustments with respect to Amount C could be made; and
- collection could be limited or suspended for the duration of any disputes related to Amount C subject to conditions to be agreed.

6. Implementation and Administration

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

6.1. General

84. Implementing the new approach will require changes to domestic legislation and to tax treaties to remove existing treaty barriers. If different approaches could be envisaged to streamline the implementation of these changes, a new multilateral convention could be negotiated to establish a new multilateral framework for in-scope MNEs to ensure that all jurisdictions can implement the unified approach consistently and at substantially the same time.

85. Unlike the Multilateral Instrument used to implement some BEPS measures, a new multilateral convention would apply between jurisdictions that do not currently have a bilateral treaty, supersede the relevant provisions of existing treaties concluded to eliminate double taxation and contain all the international rules needed to implement the unified approach (scope, nexus, profit allocation, elimination

of double taxation, and dispute resolution) that are central to achieving tax certainty. This approach would better facilitate the coordinated, consistent and effective implementation that is necessary between multiple jurisdictions and would close the gaps in treaty coverage. The application of the different elements of the package (Amounts A, B and C) in relation to jurisdictions that are not currently covered by a relevant bilateral tax treaty, and the required commitment by non-treaty jurisdictions, are issues that will need to be further explored.

86. The conclusion of a true multilateral convention however requires a strong impetus at the highest political level to achieve acceptance from a critical mass of jurisdictions.¹⁹ The implementation of the new taxing right and the allocation of additional profits to the market jurisdiction should also be contingent on the acceptance of the new dispute prevention and resolution rules described above. Meeting this challenge will be necessary not only to address the challenges arising from the digitalisation of the economy, but also to strengthen and ensure the future sustainability of the existing consensual framework to eliminate double taxation.

87. As noted above, it is also important to build the appropriate framework and infrastructure to support a consistent and efficient administration of the unified approach, including its tax certainty measures. This would be aimed at keeping compliance and administrative costs to a minimum, including in situation involving multiple jurisdictions (Amount A), and ensure that appropriate resources can be made available for the administration of the unified approach.

88. It is recognised that the new taxing right creates a number of novel compliance and implementation requirements (e.g. segmentation). In those circumstances, it may be appropriate to introduce the relevant requirements on a phased basis, and/or possibly adopting a simplified approach to the compliance requirements for a designated initial period through transition rules.

89. It is also expected that any consensus-based agreement must include a commitment by members of the Inclusive Framework to implement this agreement and at the same time to withdraw relevant unilateral actions, and not adopt such unilateral actions in the future. The successful implementation of the unified approach hinges on the withdrawal of such actions because their continued application would challenge the legitimacy of the unified approach and undermine the future stability of the agreed framework.

6.2. Further consideration of alternative global safe harbour system

90. In light of the safe harbour proposal referred to in the *Statement by the OECD/G20 Inclusive Framework on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy*, an alternative approach to Pillar One implementation will be considered. Under this alternative global safe harbour system, an electing MNE group would agree, on a global basis, to be subject to Pillar One. As part of this consideration, the PoW sets forth a work plan by which the IF and relevant working parties give due consideration to the critical design options for such an alternative global safe harbour system. The following is a non-exhaustive list of considerations to be addressed by the IF and relevant working parties:

- Whether there are appropriate potential scope modifications to amount A to reflect the nature of this alternative global safe harbour system;
- The need for operating and administration rules for an alternative safe harbour approach;
- Appropriate mechanisms to avoid double taxation in light of a safe harbour approach;

¹⁹ Further work will be required to determine the nature of a critical mass for these purposes, and the consequences of that critical mass not including all jurisdictions.

- Implications for unilateral measures in the context of the specific safe harbour proposal described in this section; and
- Behavioural implications for taxpayers and jurisdictions.

Annex A. Programme of Work to Develop a Consensus-Based Solution to Pillar One Issues

1. This Annex sets out the remaining work that needs to be undertaken to further develop the solution described in the *Outline of the Architecture of a Unified Approach on Pillar One*. It is intended to replace the earlier Programme of Work on Pillar One issues adopted by the Inclusive Framework in May 2019.²⁰

2. This revised Programme of Work is organised in the following sections: 1. the list of remaining work that needs to be undertaken in order to deliver a consensus-based solution by the end of 2020, 2. the related timeline to meet that deadline, and 3. the allocation of the work to appropriate subsidiary bodies.

1. Remaining work

3. As noted in the *Outline of the Architecture of a Unified Approach on Pillar One*, the remaining technical and policy issues to be resolved under Pillar One have been grouped into 11 work streams, namely:

- I. **Scope of Amount A** – The need to address definitional issues for the scope for Amount A (e.g., consumer-facing businesses, automated digital services), develop appropriate revenue and profit thresholds, consider and define carve-outs, examine interactions with other elements of Amount A design and thresholds, and consider whether there are implications for the scope of Amount A of implementing Pillar One on a ‘safe harbour’ basis²¹ (see work stream XI below).
- II. **New nexus rules and related treaty considerations for Amount A** – The need to define a new nexus rule based on indicators of significant and sustained engagement with market jurisdictions, which could in some circumstances be unconstrained by physical presence. However, the mere conclusion of sales of tangible goods in the market jurisdiction would not create the new nexus. In addition, this work will consider how to streamline filing obligations and avoid duplication; explore interactions with existing treaty provisions; develop a standalone rule for nexus to avoid unintended spill over effects; and develop revenue-sourcing rules (see work stream V. below).
- III. **Tax base determinations** – The need to assess the materiality of differences in financial accounting standards and explore mechanisms to address them; confirm that a profit before tax figure is preferred over other profit level indicators and examine whether potential adjustments to the profit before tax in the consolidated financial accounts are required to be made; consider rules for business line and regional segmentation for the purposes of computing Amount A, explore the materiality and impact of regional differences in profit margins; and assess administrability of using simplification measures to limit the burden of the new rules on tax administrations and taxpayers alike while retaining a principle-based approach. This work will also address issues and options in connection with the design of rules for the treatment of losses under Amount A including the calculation and definition of losses and the design of carry-forward rules that govern how losses can be offset against future profits.

²⁰ 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.

²¹ i.e. Where an electing MNE group would agree, on a global basis, to be subject to Pillar One.

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

- XI. **Implementation and administration** – The need to address issues and options in connection with the implementation and administration of the Unified Approach (Amounts A, B and C), such as exploring changes in domestic legislation; exploring feasibility and implications of implementing Pillar One on a ‘safe harbour’ basis; identifying the required changes to tax treaties and exchange of information mechanisms; the design of a multilateral convention (including the applicability of different elements of the solution (Amounts A, B and C) in relation to jurisdictions that are not currently covered by a relevant bilateral tax treaty) with coordinated entry into force provisions; the identification of relevant unilateral measures; measures to limit compliance and administrative costs and maximise certainty, including in situation involving multiple jurisdictions; and options/procedures to make the new taxing right as simple as possible.

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

2. Timeline

4. This revised programme of work (PoW) invites the Inclusive Framework and its subsidiary bodies to develop solutions to these technical and policy issues along the following timeline:

- First, the Steering Group, drawing on the expertise and inputs from various subsidiary bodies, will continue to work towards reaching an agreement in the Inclusive Framework on **the key policy features of a consensus-based solution to the Pillar One issues by July 2020**.
- Second, the Steering Group and subsidiary bodies will continue to work towards producing **a final report by the end of 2020** that will set out the technical details of the consensus-based solution agreed by the Inclusive Framework.

5. The result is that aspects of the work programme will need to be completed in June 2020, where the related output is necessary to support a decision on the relevance and feasibility of key features of the consensus-based solution to Pillar One. This includes for example the definition of the categories of business activities falling within the scope of the new taxing right (see work stream I. above), and the determination of the appropriate thresholds for the percentage(s) of profit that will be reallocated under the new taxing right (see work stream IV. above). Other aspects of the work programme will instead be completed in November 2020, where the related output is only necessary to support the technical design and implementation of the consensus-based solution. This includes for example identifying changes to tax treaties required to remove barriers to the implementation of the new taxing right (see work stream XI. above).

3. Organisation

6. The technical expertise needed to deliver the measures envisaged in this revised PoW is largely found within the Inclusive Framework's existing architecture in the following subsidiary bodies of the Committee on Fiscal Affairs:

- Working Parties 1 and 6;
- The Task Force on the Digital Economy (TFDE); and
- Other subsidiary bodies such as the FTA MAP Forum (responsible for implementation of BEPS Action 14) and Working Party 10 (responsible for exchange of information) as well as other bodies including the CBC Reporting Group.

7. Table 1 below identifies the different subsidiary bodies with primary responsibility for each of the work-streams identified. This responsibility includes addressing all the different issues outlined in Section 2 above within the agreed timeline, as well as organising consultations with other relevant subsidiary bodies. Further, given the broad range of issues covered and the challenging timeline, it will be important to ensure for each work stream an effective participation of all members of the Inclusive Framework, including small and developing economies, as well as inputs from relevant external stakeholders (e.g. businesses) with the necessary skills and expertise. Finally, an effective and efficient coordination of the work programme will be essential, including continued guidance to advance and prioritise aspects of the programme of work that are necessary to support a decision on the key features of the consensus-based solution in June 2020. The economic analysis of these features will be of great importance for decision-making. The Steering Group of the Inclusive Framework, with the support of the TFDE, will therefore continue to steer, monitor and coordinate the work and outputs produced by different subsidiary bodies.

Table 1. Assignment of technical work to subsidiary bodies

	References to the Outline of the Architecture of a Unified Approach on Pillar One	Working Party responsible	Meeting dates ²²
Overall co-ordination		TFDE	March to November 2020
I. Scope of Amount A	3.1.1.	WP1/WP6	April to November 2020
II. New Nexus and related treaty considerations for Amount A	3.1.2.	WP1	April to November 2020
III. Tax base determinations for Amount A	3.2.1.	WP6	April to November 2020
IV. Quantum of Amount A	3.2.1.	WP6	April to November 2020
V. Revenue sourcing under Amount A	3.2.2.	WP1/WP6	April to November 2020
VI. Elimination of a double taxation under Amount A	3.3.	WP1/WP6	April to November 2020
VII. Interactions between Amounts A, B and C and potential risks of double counting	3.4.	WP1/WP6	April to November 2020
VIII. Features of Amount B	4.	WP6	April to November 2020
IX. Dispute prevention and resolution for Amount A	5.1.	WP1/FTA MAP Forum	February to November 2020
X. Dispute prevention and resolution for Amounts B and C	5.2.	WP1/FTA MAP Forum	February to November 2020
XI. Implementation and administration	6.	WP1/WP6/WP10	April to November 2020

²² The first meeting dates of the subsidiary bodies planned so far include: Joint FTA MAP Forum bureau/WP1 extended bureau on February 28, Joint WP1 bureau/WP6 Focus Group on March 30 to April 3, Joint WP1/WP6 on April 20-23.

Annex B. MNE Groups Impacted by Amount A

- 1. Turnover Test**

Only MNEs the turnover of which exceed EUR [x] are taken into account for Amount A liability
- 2. Activities Test**

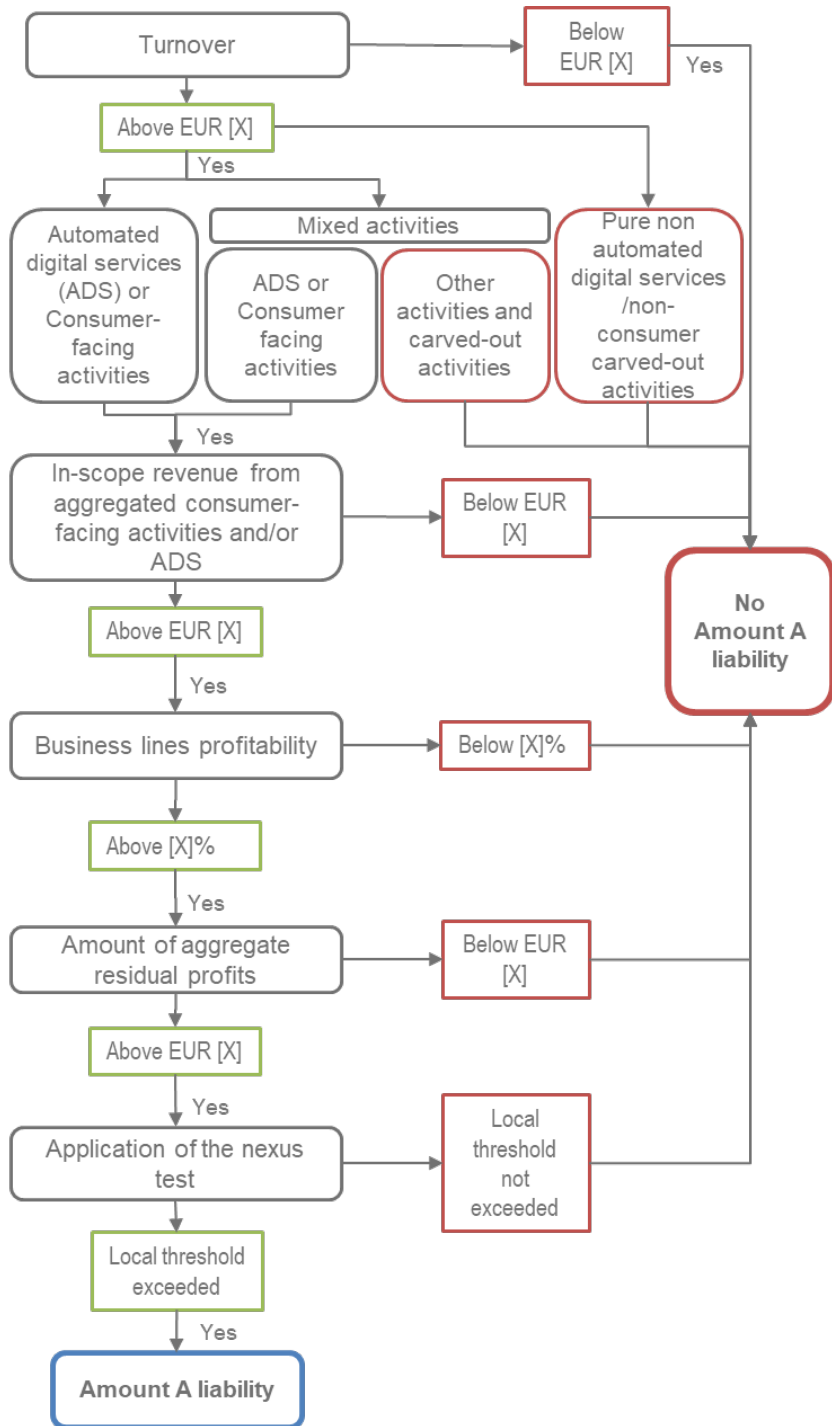
Only automated digital services and consumer-facing activities are taken into account for Amount A liability
- 3. De Minimis Test on In-Scope Revenues**

Only the in-scope revenues from aggregated consumer-facing activities and/or automated digital services exceeding EUR [x] are taken into account for Amount A liability
- 4. Business Lines Profitability Test**

Only the in-scope revenues falling within business lines the profitability of which exceed [X]% are taken into account for Amount A liability
- 5. De Minimis test on Aggregate Residual Profits**

Only if the amount of aggregate deemed residual profits exceeds EUR [x] is Amount A calculated and reallocated
- 6. Nexus Test in each Market Jurisdiction**

Amount A is allocated to market jurisdictions that meet the nexus threshold (local revenue, other factors)



Annex 2. Progress Note on Pillar Two

Introduction

1. In January 2019, the Inclusive Framework issued a Policy Note on Addressing the Tax Challenges of the Digitalisation of the Economy.¹ Under this Policy Note, the Inclusive Framework agreed, on a without prejudice basis, to undertake work on the following two pillars:

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

2. The Inclusive Framework issued a Public Consultation Document on 13 February 2019, which sought input from external stakeholders on the specific proposals examined under Pillar One and Pillar Two.² The response was robust, with more than 200 written submissions running to over 2,000 pages.³ Stakeholders had the opportunity to attend in person and express their views at a public consultation held in Paris on 13 and 14 March 2019, which was attended by over 400 representatives from governments, business, civil society and academia.

3. Following this consultation, and in light of the public comments received, the Inclusive Framework agreed on a Programme of Work⁴ (PoW) at their meeting in Paris on 28-29 May 2019 based around the two Pillars identified in the Policy Note. This was endorsed by the G20 Finance Ministers and Leaders in June 2019. A public consultation on Pillar Two was held on 9 December 2019, which attracted over 200 participants and resulted in the submission of more than 180 written comments running to over 1,300 pages.

¹ [Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note](#), as approved by the Inclusive Framework on BEPS on 23 January 2019, OECD 2019.

² [Public Consultation Document, Addressing the Tax Challenges of the Digitalisation of the Economy](#), 13 February – 6 March 2019.

³ All written submissions made to the Public Consultation Document are available at this [link](#).

⁴ [Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy](#), 28 May 2019, (PoW).

Status of the work and next steps

4. Following the PoW agreed by the Inclusive Framework in May constructive discussion has been conducted under Pillar Two. Unlike in the context of Pillar One where there were competing proposals that needed to be brought together in a “Unified Approach”, the individual components under Pillar Two were already identified in the PoW, noting of course that with respect to a number of the key elements of Pillar Two, various design options remain under discussion. Some countries have suggested to improve further the policy design of Pillar Two to ensure its focus on remaining BEPS issues and take the view that a systematic solution designed to ensure that all internationally operating businesses pay a minimum level of tax would go beyond the policy objective of Pillar Two. These countries further suggested that exploration of improvements in the policy design would therefore be welcomed.

5. The technical tasks regarding Pillar Two are being advanced by the relevant Working Parties which co-ordinate closely. Working Party 11 held a joint session with the Working Party 1 Extended Bureau on 10 December 2019 to ensure full alignment and allow for a common debrief on the public consultation held the previous day. Given the mandate in the PoW to explore simplifications that could reduce compliance costs to businesses, and in particular the use of financial accounts, Working Party 11 has set up a special subgroup on financial accounts. This subgroup brings together experts with tax technical as well as financial accounting expertise.

6. Significant work on key issues is advancing at a fast pace with good technical progress on many aspects of the GloBE proposal but significant work still remains. The Inclusive Framework is aware of the implications that the timelines of the project have imposed on all stakeholders, is very appreciative of all the input received so far and looks forward to continued close engagement.

7. Work will continue with a series of meetings already planned. The remainder of this note provides a short summary of each of the components of the GloBE proposal and a very brief update on the status of the work on some of the related key issues.

Income inclusion rule

8. The basic approach taken by the income inclusion rules will be familiar to many taxpayers and tax administrations as it draws on the design of controlled foreign company (CFC) rules. The income inclusion rule would operate as a minimum tax by requiring a shareholder in a corporation to bring into account a proportionate share of the income of that corporation if that income was not subject to an effective rate of tax above a minimum rate. It would ensure that the income of the MNE group is subject to tax at a minimum rate thereby reducing the incentive to allocate income for tax reasons to low taxed entities. Its effect would be to protect the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to put in place intra-group financing, such as thick capitalisation, or other planning structures that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate.

9. The PoW provides that the inclusion rule would operate as a top-up tax to a minimum rate calculated as a fixed percentage. The actual rate to be applied under the GloBE proposal has not yet been discussed by the Inclusive Framework. Other elements of the rule remain subject to further discussion with different design options under consideration.

10. Extensive work is underway around the use of financial accounts as a basis for the income determination as well as different mechanisms to address temporary differences between tax and financial accounting. The objective would be to limit adjustments for permanent differences to reduce complexity and compliance costs, with benefits for both taxpayers and tax administrations. The work will explore the use of principle-based criteria, including materiality and commonality, to identify the relevant permanent differences. There are detailed discussions around a range of important technical issues which were also

the subject of the December public consultation and where valuable input was provided by stakeholders both at the consultation and in written comments.

11. On the question of blending (i.e., the ability to combine low-tax and high-tax income in determining the effective tax rate) the technical work carried out so far, supported by the public consultation and the written comments submitted by stakeholders, has helped to identify the policy choices that remain under consideration as well as design and compliance challenges of different approaches. It also highlights that there are a range of different elements to the GloBE proposal of which the type of blending is an important dimension but not the only one.

12. Another focus of the work and a key design issue for Pillar Two is the question of carve-outs. Different options are under consideration. The PoW noted that carve-outs for regimes compliant with the standards of BEPS Action 5 on harmful tax practices and other substance based carve-outs would undermine the policy intent and effectiveness of the GloBE proposal. However, some jurisdictions have stressed the importance of including substance carve-outs because, in their view, such carve-outs are necessary to ensure that the focus of Pillar Two is on remaining BEPS issues.

13. Some of the design features under discussion will also be relevant for other elements of the GloBE proposal. For example, the discussions on carve-outs⁵ and the use of financial accounts to determine the tax base are also relevant for the undertaxed payments rule.

Switch-over rule

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

15. A simple switch-over rule is being developed to facilitate implementation of the income inclusion rule, which will need to consider the final design of the income inclusion rule to ensure consistency in scope.

Undertaxed payments rule

16. While the income inclusion rule taxes the parent on the low-tax income of a subsidiary, the undertaxed payments rule operates by denying a deduction or making an equivalent adjustment in respect of intra-group payments. The PoW notes that the undertaxed payments rule should be designed to be effective in achieving its stated objectives; be compatible and co-ordinated with other rules; avoid double taxation and taxation in excess of economic profit; minimise compliance and administration costs; and explore the possible use and effect of carve-outs, including those considered in the context of the income inclusion rule.

17. A number of proposals for the design of the undertaxed payments rule have been considered by both the Steering Group and Working Party 11 which has allowed for these groups to refine and better target the rule. These proposals have been designed to limit complexity, compliance and administration costs and the risk of over-taxation.

⁵ Cf. PoW, page 33.

Subject to tax rule

18. The PoW also includes consideration of a subject to tax rule which could work by subjecting a payment to withholding or other taxes at source and denying treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate.

19. The relevant Working Parties are exploring options and issues in connection with the design of a simple and targeted rule to address the most significant risks from a BEPS perspective. This rule, which is still under discussion, could be based on existing provisions in the Commentary to the OECD Model Convention on Income and on Capital. Further consideration will be given to the scope of the payments covered, the design of the minimum tax rate test, the extent of the adjustment required, the use of a *de minimis* threshold and the role of the subject to tax rule vis a vis the undertaxed payment rule. The PoW also contemplates the exploration of the application of a subject to tax rule to unrelated parties as regards Articles 11 and 12 of the OECD Model Convention.

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

20. There is ongoing work on all aspects of co-ordination, simplification and the compatibility with international obligations such as non-discrimination⁶. This work will address the priority in which the rules would be applied and how they interact with other rules (including existing BEPS measures) in the broader international framework with a view to minimising the risk of double taxation, including simplification measures that would further reduce compliance costs. There are also ongoing work-streams looking into possible thresholds (such as the EUR 750 million revenue threshold used for country-by-country reporting) and carve-outs that would restrict the application of the rules under the GloBE proposal.

⁶ Including, where appropriate, taking into account the implications of EU/EEA law.

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

As at 3 February 2020.

List of criteria

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

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

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

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

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

Criterion 1: Exchange of Information on Request (EOIR)

Exchange of information on request has grown in importance as co-operation in tax matters has spread more widely. The level of compliance with the EOIR standard is high: today, **out of 61 Global Forum members that have been reviewed in the second round of reviews, over 90% are rated at least “Largely Compliant” with the EOIR standard overall.**

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

Of the jurisdictions that are within the scope of the listing exercise, two jurisdictions⁴² do not satisfactorily implement the EOIR Standard and fail to meet the EOIR criterion.

In addition, seven jurisdictions which are within the scope of the listing exercise, have been “partially compliant” with the EOIR standard or have been provisionally rated “Largely Compliant”.

Criterion 2: Automatic Exchange of Information (AEOI)

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

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

In October 2019, seven jurisdictions⁴³ were identified as not having met this sub-criterion. Since the last report in October 2019, Montserrat and Vanuatu commenced automatic exchanges and now meet this sub-criterion.

In total, 95 of the 100 jurisdictions that committed to commence exchanges by 2018 have therefore now exchanged information. **Five jurisdictions have yet to commence exchanges** (Brunei Darussalam, Dominica, Niue, Sint Maarten and Trinidad and Tobago).

It is worth noting that Brunei Darussalam and Niue have now completed all of the necessary legal steps and are linking into the Common Transmission System (CTS) so they may therefore commence exchanges shortly.

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

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

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

⁴² Trinidad and Tobago and Kazakhstan

⁴³ Brunei Darussalam, Dominica, Montserrat, Niue, Sint Maarten, Trinidad and Tobago and Vanuatu

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

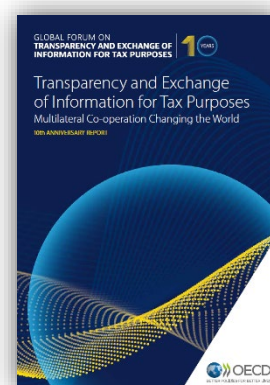
As of 31 January 2020, 136 jurisdictions participate in the Convention on Mutual Administrative Assistance in Tax Matters (the Convention), resulting in over 6 000 exchange relationships. However, **one jurisdiction (Trinidad and Tobago) committed to AEOI still needs to ratify the Convention.**

Part II

Global Forum on Transparency and Exchange of Information for Tax Purposes: Progress Report to the G20

Introduction

In November 2019, the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) held its largest meeting to date. Over 500 delegates from more than 140 jurisdictions, international organisations and regional groups, including over 40 delegations represented at ministerial level, came to Paris (France) to mark a decade since the restructuring of the Global Forum in 2009. This high-level gathering provided an opportunity to celebrate the progress achieved by Global Forum members – with a strong support of the OECD and G20 – in expanding the boundaries of transparency and exchange of information for tax purposes. In ten years, tax cooperation has reached a new level, ensuring that untaxed wealth cannot be easily hidden abroad.⁴⁴



Today, 160 jurisdictions worldwide have joined the Global Forum and made a commitment to ensure an effective implementation of the international standards on transparency and exchange of information for tax purposes. The networks for exchanging information have expanded at unprecedented speed and the volume of the information exchanged, both on request and automatically, has sharply increased. More than 250 000 requests have been received by Global Forum members in 10 years. In addition, nearly 100 jurisdictions are already exchanging information automatically with information on 47 million financial accounts, with a total value of around EUR 4.9 trillion, exchanged in 2018 alone. Rigorous peer review and monitoring processes on the implementation of the exchange of information on request (EOIR) and automatic exchange of information (AEOI) standards, supported by a structured programme of technical assistance, helped make massive improvements in the regulatory frameworks and practices of Global Forum members.

The changes achieved have vastly improved cooperation between tax authorities, and it is critical to ensure that this progress is firmly secured and the risk of back-stepping is prevented. Equally, the remaining gaps and emerging risks cannot be left without close attention. Only through co-ordinated global action, and a swift reaction to new challenges, governments can succeed in the continuous battle against tax evasion and avoidance. This report highlights the key successes in enhancing transparency and exchange of information in tax matters over the past ten years and outlines the next steps.

⁴⁴ Global Forum, "Transparency and Exchange of Information for Tax Purposes: Multilateral Co-operation Changing the World (10th Anniversary Report)" available at www.oecd.org/tax/transparency/global-forum-10-years-report.pdf.

1 Delivering effective Exchange of Information on Request

Since 2009 the Global Forum has been instrumental in improving cooperation between tax authorities around the world. Initially, its attention was focused on building the foundations for effective exchange of information, as embedded in the EOIR standard. Key to the achievements of the Global Forum in the past 10 years has been the wide expansion in networks of exchange agreements, the increased number of requests and the myriad of improvements in the exchange of information laws and practices, which helped secure access to the requested information and its effective exchange.

The network of relationships continues to grow

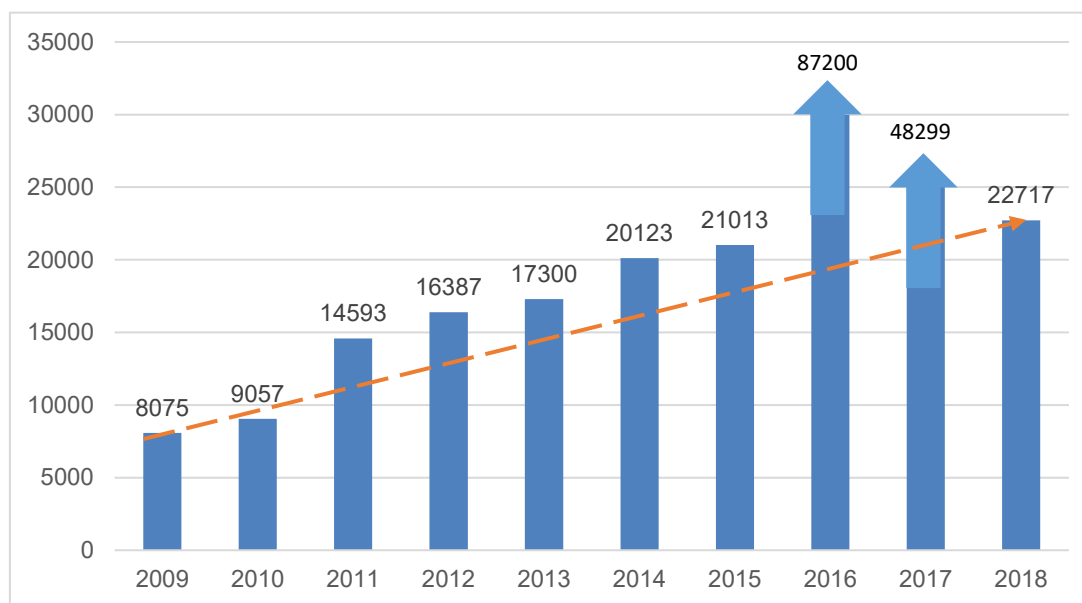
Cross-border exchange of information requires an international legal basis. In 2009, such intergovernmental agreements were sparse and the process of their conclusion was often lengthy and resource-intensive. The Convention on Mutual Administrative Assistance in Tax Matters (the multilateral Convention) has become a game-changer. Since its amendment in 2010, the multilateral Convention has gained increasing recognition as the most advanced and comprehensive multilateral instrument enabling all forms of administrative co-operation in tax matters. It has also vastly simplified the process of putting in place exchange relationships.

Today, 136 jurisdictions participate in the Convention (see **Annex C** “Jurisdictions participating in the multilateral Convention on Mutual Administrative Assistance in Tax Matters”) creating a network equivalent to nearly 8 000 bilateral agreements, and it continues to grow. This figure includes eight jurisdictions (i.e. Benin, Bosnia and Herzegovina, Cabo Verde, Mongolia, Montenegro, Oman, Serbia and Togo), which have joined since the previous report to the G20 Finance Ministers and Central Bank Governors made in June 2019. Almost all of the new signatories are developing countries, as they increasingly recognise the potential benefits of the multilateral Convention.

The number of requests for information is increasing

With the expansion of the exchange of information relationships, the use of these networks has also intensified. Over 250 000 requests for information have been received by Global Forum members in ten years and annual figures are almost universally on the rise (see Figure 1 “Number of Requests Received”). In some instances, such requests concern thousands of taxpayers, and the amounts of tax collected is increasing.



Figure 1. Number of requests received⁴⁵

Peer Reviews ensure progress towards more effective EOIR

Following the success of Round 1 of the EOIR peer reviews (2010-2016), in which the compliance of 119 jurisdictions with the standard had been assessed, the Global Forum commenced a Round 2. The new round, first allows the revisiting of the recommendations already made to verify whether they have been addressed, and, second, sets some new requirements, most notably the requirement to ensure the availability of beneficial ownership information. Since 2016, 61 Round 2 EOIR peer review reports have been published, including 14 jurisdictions rated as “Compliant” with the standard, 41 as “Largely Compliant”, 5 as “Partially Compliant” and 1 as “Non-Compliant”. Overall, 90% of jurisdictions have received a satisfactory rating, which confirms that the implementation of the EOIR standard is on a good track (see **Annex D** “Overall EOIR Ratings of the Global Forum Members”).

⁴⁵ The graph is built on the basis of the figures reported by Global Forum members through the 2019 Global Forum Survey (about 50% of all members have responded). The sharp increase of requests in 2016 and 2017 comes from bulk requests.

2 Tackling opaque ownership structures and transactions

A rigorous peer review of the EOIR standard put in place by the Global Forum in 2010, combined with a strong programme of technical assistance, have triggered far-reaching changes in the availability, access and exchange of information for tax purposes. Banking secrecy, which was embedded in the laws and practices of dozens of member jurisdictions, has been practically eliminated. Massive improvements have also been made in the availability of legal ownership information and accounting records. As a result of these efforts, the information requested can be obtained in all but around 1% of cases. The implementation of the AEOI standard, which commenced in 2014, has built upon this success and taken it one step further.

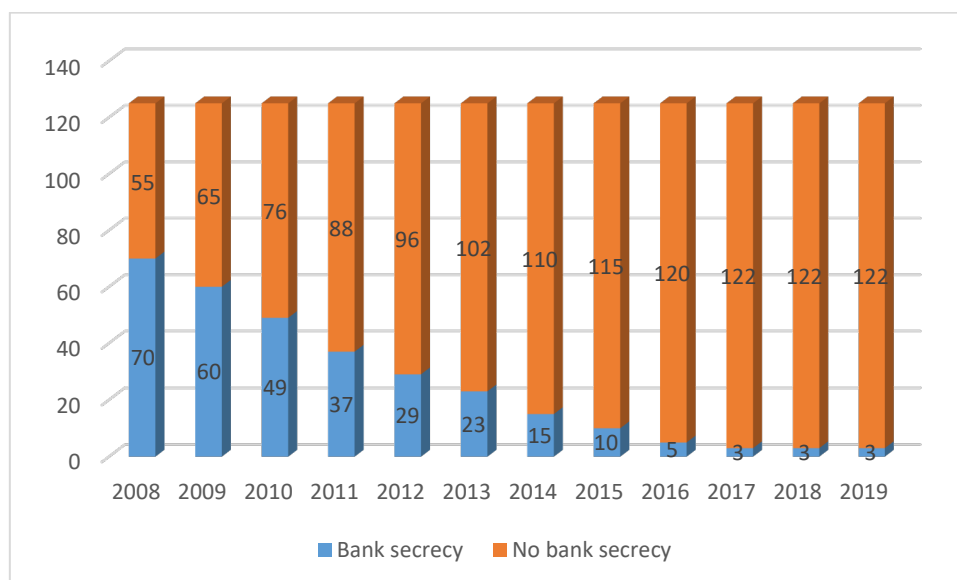
Eliminating banking secrecy

Whilst banking secrecy has a legitimate role to play in protecting the confidentiality of the financial affairs of individuals, legal entities and arrangements, it may also be used as a shield to hide earnings and wealth from tax authorities. Therefore, the EOIR standard includes a specific requirement that competent authorities must have access to banking information for the purpose of exchange of information. The interests of taxpayers are secured through strict confidentiality requirements concerning the handling of taxpayer information and strict rules on the access to this information and purposes for which it can be used.

In 2009, the G20 Leaders declared that “the era of banking secrecy is over”.⁴⁶ Since then, the Global Forum has reviewed 125 jurisdictions against the EOIR standard. As of 2009, the majority of these jurisdictions (70 out of 125) had bank secrecy restrictions on the access to and exchange of banking information. In ten years, 67 jurisdictions have amended their laws to enable the access to banking information for exchange of information purposes and only three still have some type of limitations (see Figure 2 “Elimination of Bank Secrecy for Exchange of Information Purposes”).

⁴⁶ G20 Communique: London Summit – Leaders’ Statement from 2 April 2009.

Figure 2 “Elimination of Bank Secrecy for Exchange of Information Purposes”⁴⁷



The elimination of banking secrecy for the purpose of EOIR has opened doors for exchanging information on the foreign financial accounts of non-residents automatically. The widespread implementation of the AEOI standard has become a turning point that has truly put the era of banking secrecy to an end.

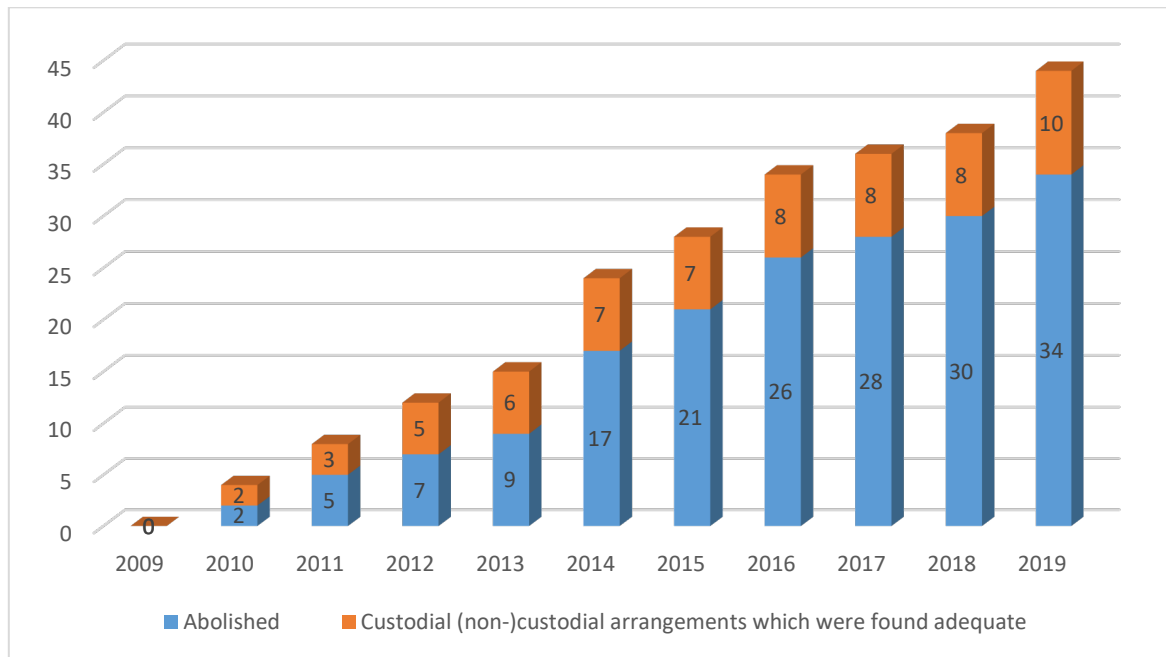
Enhancing the transparency of legal ownership worldwide

Another core element of the Global Forum’s EOIR peer review process concerns the availability of ownership and identity information. In the past years, rapid improvements have been made in the quality of the regulatory framework on legal ownership and identity information. During Round 1 of the EOIR peer reviews, fundamental deficiencies in the legal framework were identified in over 20% of the reviewed jurisdictions, and in Round 2 only about 3% still did not have the required regulation in place.

One of the key successes has been achieved with respect to bearer shares. The latter allows concealing the ownership information and thus carries high risks for tax and law enforcement. Whilst the EOIR standard does not contain an outright prohibition of bearer shares, it requires that any jurisdiction that permits their issuance puts in place appropriate mechanisms that allow for the identification of owners of such shares. Overall, out of the 125 Global Forum members that have been subject to the EOIR peer review so far, about 90% do not or no longer permit the issuance of bearer shares, or have adequate custodial or non-custodial arrangements in place for identification of their owners. To achieve this result, over 40 jurisdictions have changed their regulatory framework (see Figure 3 “Jurisdictions which Abolished Bearer Shares or Introduced Adequate Custodial or Non-Custodial Arrangements”) and more changes are underway.

⁴⁷ The figure is based on the information provided by Global Forum members in the course of EOIR peer reviews.

Figure 3. Jurisdictions which abolished bearer shares or introduced adequate custodial or non-custodial arrangements⁴⁸

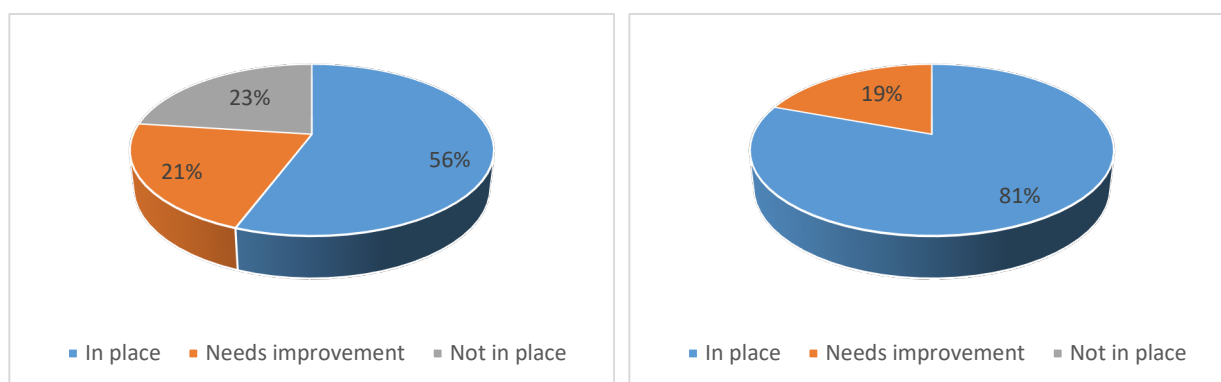


Ensuring the availability of accounting records

Accounting records represent an important piece of information for determining tax liability. In Round 1, over 20% of jurisdictions had sizeable gaps in their legal and regulatory framework, triggering over 200 recommendations. In Round 2, the situation has improved dramatically (see Figure 4 “Availability of Accounting Records: Round 1 vs Round 2”). All 61 jurisdictions reviewed so far have the necessary regulatory framework in place, even if some improvements may still be necessary. Only about two dozen recommendations have been made concerning record-keeping rules. Most recommendations in Round 2 concern the implementation of the legislation in practice, in particular enforcement and supervision mechanisms.

⁴⁸ The figure is based on the information provided by Global Forum members in the course of EOIR peer reviews and follow-up reporting.

Figure 4. Availability of accounting records: Round 1 vs Round 2⁴⁹



Taking on a new challenge – Beneficial Ownership

Whilst the progress achieved in tackling opaque legal structures and transactions is vast, more needs to be done in the future. The focus has now shifted towards ensuring the availability of beneficial ownership information, i.e. the natural person behind a legal entity or arrangement. This requirement is at the heart of both the EOIR and AEOI standards.

The ongoing EOIR peer reviews closely examine a jurisdiction’s legal framework and practices to ensure that beneficial ownership information is available and accessible to tax authorities for the purposes of exchange with treaty partners. This requirement has been incorporated in the EOIR in 2016, and many jurisdictions are still facing a challenge with its effective implementation either in law, or in practice, or in both domains. One third of the total recommendations (164 out of 418) issued so far in Round 2 relate to beneficial ownership. Most of them relate to flaws in the legal framework, closely followed by deficiencies in supervision to ensure the availability of beneficial ownership in practice.

Furthermore, the AEOI standard also includes certain requirements relating to the identification of the beneficial owners of certain entity account holders (or “controlling persons” in the AEOI standard). These rules have been part of the legislative assessments carried out by the Global Forum (see further Section 3 of this report).

⁴⁹ The figure is based on the information contained the EOIR peer review reports.

3 Building the global network of Automatic Exchange of Information

Close cooperation between the G20 and OECD has produced a new standard in the automatic exchange of information on the financial account of non-residents. AEOI is ensuring that tax authorities have visibility on the financial accounts held offshore by their taxpayers.

Nearly 100 jurisdictions are exchanging and the network keeps growing

Following the Global Forum's 2014 call for commitments to implement the AEOI standard in time to commence exchanges by 2018, nearly 100 jurisdictions (95 out of 100 jurisdictions which committed to the 2018 deadline) are now exchanging information on financial accounts – only Brunei Darussalam, Dominica, Niue, Sint Maarten and Trinidad and Tobago have yet to commence exchanges. The volume of the information exchanged is massive with the records of 47 million financial accounts, in a total value of around EUR 4.9 trillion, exchanged in 2018 alone. In 2019, these figures are set to increase even further, since the number of bilateral exchanges have increased to around 6 100, which is 36% more than in 2018.



Monitoring delivery and assessing the legal frameworks for AEOI

In response to a request by the G20 to monitor and review the implementation of the AEOI standard, the Global Forum put in place a mechanism to monitor, assess and assist in the delivery of the implementation of the standard (the so-called “Staged Approach”). As part of this process, the following has been delivered:

Domestic legislative framework. The Global Forum has reviewed each jurisdiction’s domestic legislative framework implementing the AEOI standard, including: (a) the due diligence and reporting rules that financial institutions must follow, and (b) the jurisdiction’s exclusions from the AEOI standard (i.e. the jurisdiction-specific non-reporting financial institutions and excluded accounts to ensure that the frameworks put in place by each jurisdiction fully respects the requirements of the AEOI standard. Where gaps were identified, recommendations have been made and assistance has been provided to address them.

International legal framework. The Global Forum monitors and reviews the international legal framework being put in place by each jurisdiction in real time (i.e. the networks of exchange agreements) to ensure that they contain the requirements set out by the AEOI standard. In addition, the Global Forum also facilitates the process of agreements being put in place and provides a review mechanism to address instances of delays.

IT and operational procedures. The Global Forum monitors the putting in place of the necessary IT and operational procedures, including the linking up to the Common Transmission System managed by the Global Forum, to ensure the data can be exchanged on time and in accordance with the requirements.

Drawing conclusions in relation to the legal frameworks

Following the assessment of the domestic legislative framework implementing the AEOI standard, jurisdictions have had some time to address any recommendations made. The jurisdictions that introduced changes to their legal frameworks will be then reassessed to ensure the recommendations have been adequately addressed. The next step is to draw conclusions with respect to the extent to which each jurisdiction has the legal frameworks in place. This will be in the form of overall determinations which will be assigned in 2020.

Reviewing the effectiveness of AEOI implementation in practice

Once the legal frameworks are in place they must operate effectively in practice. As the automatic exchanges have now been taking place for some time, the Global Forum will assess the effectiveness of each jurisdiction's implementation of the AEOI standard in practice.

In 2018, the Global Forum adopted the Terms of Reference, which define the key components subject to the AEOI peer review, and in 2019 – the methodology to be followed in the process. Accordingly, the peer reviews include (a) the evaluation of the administrative compliance frameworks which each jurisdiction has in place to ensure that financial institutions adhere to the requirements of the AEOI standard; and (b) feedback from each jurisdiction's exchange partners on the timeliness and quality of the information received, including in relation to its completeness and conformity with the technical requirements. These reviews will commence in 2020 with respect to all jurisdictions and the first round will conclude with ratings being issued in 2021.

The Outcomes of the “Staged Approach”:

- Detailed global tracking of AEOI implementation
 - All domestic & international legal frameworks reviewed
 - All jurisdictions assessed in relation to confidentiality and data safeguards pre-exchange
 - Assistance provided where needed
-

Confidentiality and data protection standards are subject to in-depth scrutiny

As the exchange of information intensifies, so does the level of scrutiny over the confidentiality and data safeguards to ensure the information exchanged is kept safe. As part of the “Staged Approach”, the Global Forum carried out pre-exchange assessments of the confidentiality and data safeguard frameworks of all jurisdictions before they commenced exchanging information. It provided assistance to ensure that any gap identified were swiftly closed. It is only when the expected standards are met that jurisdictions can receive information. This process provided preliminary assurance to all exchanging jurisdictions that the confidentiality and data protection standards applied by their peers were adequate.

In 2018, the Global Forum set up a new framework for post-exchange reviews of the confidentiality and data safeguards standards which includes scrutiny of the actual systems and processes being used to

handle automatically exchanged data. These reviews commenced in 2019. The Global Forum's processes also include a mechanism to assess and respond to data breaches. This helps to ensure that any evolving data security threats are properly handled. Whilst no protection can be absolute, the measures taken significantly enhanced the confidence of Global Forum members in the robustness of the protection built around the automatically exchanged information.

4 Supporting developing countries

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

Increasing recognition of political leadership in developing countries

The Global Forum is actively engaging with the political leadership of developing countries to promote the tax transparency agenda. Two declarations signed by African and Latin American authorities demonstrate a growing awareness and political interest:

- The Yaoundé Declaration,⁵⁰ which calls for reinforcing the tax transparency and exchange of information agenda in Africa, has gained more and more support across the continent. The declaration, originally signed alongside the 2017 Global Forum's Plenary in Cameroon, has now grown to 29 signatories, including six new joiners in 2019 (i.e. Morocco, Tunisia, Cabo Verde, Egypt, Kenya and Djibouti). Alongside the Global Forum 10th Anniversary Plenary, a ministerial level meeting was successfully organised for African authorities. The African Union Commission's has joined the Global Forum as an observer, which further demonstrates the increasing political support for the work of the Global Forum in the African continent. The first annual report describing the progress in tax transparency in Africa was published in 2019 and the second report is expected in 2020.
- The Punta del Este Declaration⁵¹ is a Latin American initiative to maximise the effective use of the information exchanged under the international tax transparency standards to not only tackle tax evasion and avoidance, but also corruption and other financial crimes. This initiative will improve international tax cooperation to counter practices contributing to all forms of financial crimes, improve direct access to information of common interest to all relevant agencies, and set out a vision for further strengthening of international collaboration. It was signed at the 2018 Global Forum's Plenary in Uruguay and so far 11 countries have adhered to it.⁵² The first reports on its implementation were shared at the ministerial level regional meeting held alongside the 10th Anniversary Plenary.



⁵⁰ The Yaoundé Declaration (2017), available at www.oecd.org/tax/transparency/yaounde-declaration.pdf.

⁵¹ The Punta del Este Declaration (2018), available at www.oecd.org/tax/transparency/11thmeetingoftheglobalforum.htm.

⁵² Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Panama, Paraguay, Peru and Uruguay.

Global scale of induction programmes and on-demand technical assistance

Over the years, the Global Forum has put in place a structured programme of technical assistance on the implementation of EOIR and AEOI. In 2019 alone, over 50 developing country members have benefitted from this support. In total, 34 members are engaged in tailored country-level induction programmes, which aim at creating awareness of the rights and obligations of members, preparing new members for the review process, and helping put in place the infrastructure needed to benefit from information sharing and so contributing to domestic revenue mobilisation.⁵³ Ten of these programmes have been launched in 2019 alone.⁵⁴ Other assistance programmes are provided on request and encompass various aspects related to the implementation of the EOIR and AEOI standards, including that on beneficial ownership and AEOI implementation.

Assisting members in making Beneficial Ownership information available

To support its members in addressing the gaps related to beneficial ownership, the Global Forum has put in place several measures. In 2019, the Global Forum, in cooperation with the Inter-American Development Bank, published the “Beneficial Ownership Implementation Toolkit”, which contains policy considerations that Global Forum member jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information. In addition, the Global Forum has continued delivering seminars on beneficial ownership. In 2019, such trainings were held in Argentina, Armenia, Bolivia, Burkina Faso, Cameroon, China, Colombia, Korea, Morocco, Tunisia and Turkey.

On the practical level, the Global Forum also supports its members in drafting legislation and reviewing administrative guidance related to beneficial ownership. A number of countries moved to amend their laws on beneficial ownership in 2019, including Botswana, Côte d’Ivoire, Nauru, Peru, Senegal and Tunisia. The gaps in existing laws and practices are identified through peer reviews but also as part of technical assistance provided before the assessment. For instance, as part of its Africa Initiative, the Global Forum has been assisting some of its members in Africa with a gap analysis on beneficial ownership to identify potential areas for attention in preparation for their upcoming EOIR reviews. Similar work is being conducted in other regions, such as Latin America and Central Asia, frequently as part of the ongoing induction programme.

Supporting developing countries progress towards AEOI

Recognising the particular challenges they face to implement AEOI and the lower risk they pose to the level playing field, developing countries that do not host a financial centre were not asked to commit to particular timelines to implement the AEOI standard. Instead, such developing country members have been offered technical assistance to implement AEOI at their own speed. In 2017, the Global Forum published its *Plan of Action for Developing Countries Participation in AEOI*, which details the approach to be taken for enabling developing countries to implement and benefit from the AEOI standard.⁵⁵ So far, about two dozen countries have received technical assistance under this plan. This assistance is provided in parallel and in addition to eight AEOI pilot projects, which have been put in place since 2014, along with a partner jurisdiction, to assist them in implementing AEOI. Six pilot projects are currently underway: Albania and Italy; Egypt and the United Kingdom; Ghana and the United Kingdom; Georgia and Germany;

⁵³ Armenia, Bosnia and Herzegovina, Benin, Cabo Verde, Cambodia, Chad, Côte D’Ivoire, Djibouti, Ecuador, Egypt, Eswatini, Faroe Islands, Greenland, Guinea, Guyana, Haiti, Honduras, Jordan, Lebanon, Madagascar, Maldives, Moldova, Mongolia, Montenegro, Namibia, Niger, Oman, Papua New Guinea, Paraguay, Rwanda, Serbia, Thailand, Tanzania and Togo.

⁵⁴ Bosnia and Herzegovina, Cabo Verde, Eswatini, Guinea, Honduras, Jordan, Montenegro, Namibia, Oman and Serbia.

⁵⁵ Global Forum “Plan of Action for Developing Countries Participation in AEOI”, available at www.oecd.org/tax/transparency/plan-of-action-AEOI-and-developing-countries.pdf.

Morocco and France; and the Philippines and Australia. The pilot projects between Colombia and Spain, and Pakistan and the United Kingdom, came to successful conclusions with Colombia commencing exchanges under the AEOI standard in 2017 and Pakistan in 2018.

More and more developing countries are currently advancing their regulatory frameworks and practices to enable the commencement of AEOI. The number of developing countries that announce a voluntary commitment to implement the AEOI standard is growing. Azerbaijan commenced exchanges in 2018. Albania, Ecuador, Kazakhstan, Maldives, Nigeria and Peru are all expecting to commence exchanges in 2020, and Jordan, Montenegro and Thailand by 2023.

Delivering results

The results of this work shows at various levels. More than 40 developing countries have been reviewed and only a handful of them have been given less than satisfactory EOIR ratings. The number of requests received and made by developing country members is increasing and brings additional tax revenues to developing country members. For instance, in 2016, intelligence from an exchange of information request received by Togo led to the recovery of USD 1 million in taxes. In 2018, a response to a Tunisian request confirmed a taxpayer's undeclared foreign bank account used to hide assets. Subsequent compliance action generated almost USD 2 million in additional tax.

5 Closing remarks

The world's journey towards greater transparency and exchange of information for tax purposes has been remarkably successful. The changes achieved have vastly improved cooperation between tax authorities and enhanced the resilience of tax systems to cross-border evasion and avoidance. In addition to improvements in regulatory frameworks and administrative practices, these measures have delivered measurable gains. As of November 2019, voluntary disclosure programmes and tax investigations helped to identify about EUR 102 billion in additional revenue (tax, interest, penalties). Over 1 million of taxpayers have come forward to voluntarily disclose their assets.

Whilst the progress has been significant, the work is not yet finished. In the coming years, first, the Global Forum will be focusing on the effective implementation of AEOI standard in practice. With about 60% of the jurisdictions still awaiting for their EOIR peer review, including many of them being reviewed for the first time, the Global Forum will continue ensuring that all jurisdictions effectively participate in EOIR. Technical assistance provided to Global Forum member jurisdictions in their efforts to adhere to tax transparency and exchange of information standards will continue. Synergies will be searched from the effective use of the tax transparency mechanisms, such as EOIR and AEOI, which should generate efficiency gains.

Further, the Global Forum needs to remain agile to new risks and respond in a swift manner to the needs and interests of its members. At the 10th anniversary plenary meeting, some jurisdictions expressed interest in the Global Forum exploring some new areas of international tax cooperation, such as the use of tax information to tackle illicit financial flows (IFFs); virtual assets; the exchange of information on request for Value Added Tax (VAT) / Goods and Services Tax (GST) purposes; and cross-border assistance in tax recovery.⁵⁶

All of the above creates a busy and intense agenda for the coming years.

⁵⁶ Global Forum, "Statement of Outcomes of the Global Forum 10th Anniversary Plenary Meeting (26-27 November 2019)", available at www.oecd.org/tax/transparency/statement-of-outcomes-global-forum-10-years.pdf.

Annex C. Jurisdictions participating in the multilateral Convention on Mutual Administrative Assistance in Tax Matters

As at 3 February 2020.

	Jurisdictions	Current status regarding the Convention
121	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⁾ , Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands ⁽¹⁾ , Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao ⁽³⁾ , Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, 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), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat, Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten ⁽⁴⁾ , Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands ⁽¹⁾ , Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, United States ⁽⁶⁾ , Vanuatu	Convention entered into force
15	Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Gabon, Kenya, Liberia, Mauritania, Mongolia, Montenegro, Oman, Paraguay, Philippines, Togo	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 D. Overall EOIR ratings of the Global Forum members

As at 3 February 2020.

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

* 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.

Annex E. AEOI Implementation and Commitments¹

As at 3 February 2020.

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)
Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus ² , 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 ³ , The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam ⁴ , Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica ⁴ , Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue ⁴ , Pakistan ³ , Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten ⁴ , Switzerland, Trinidad and Tobago ⁴ , Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019 (2)
Ghana ³ , Kuwait ⁵
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2020 (6)
Kazakhstan ⁵ , Ecuador ³ , Maldives ³ , Nigeria ³ , Oman ⁵ , Peru ³
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2021 (1)
Albania ³
JURISDICTIONS COMMITTED TO UNDERTAKING FIRST EXCHANGES BY 2023 (3)
Jordan ⁶ , Montenegro ⁶ , Thailand ⁶
DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (47)
Armenia, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Cape Verde, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Egypt, El Salvador, Eswatini, Gabon, Georgia, Guatemala, Guinea, Guyana, Haiti, Honduras, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Mongolia, Morocco, Namibia, Niger, North Macedonia, Palau, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Togo, Tunisia, Uganda, Ukraine, Viet Nam

¹ 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.

² 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.

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

⁴ These jurisdictions have yet to commence exchanges.

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

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



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