OECD/G20 Inclusive Framework on BEPS

Progress report July 2019 – July 2020

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Overview

The Base Erosion and Profit Shifting (BEPS) initiative originally emerged in the aftermath of the 2008 global financial crisis, when confidence in the fairness of the international tax system plunged. The OECD/G20 BEPS Project was developed in 2013 to address these concerns and turned the fallout from the global financial crisis into an opportunity to rewrite the international tax rules to make them more fit for a modern, globalised economy. Halfway through 2020, the world is now facing the prospect of an even more severe economic downturn as the economic impact from the COVID-19 crisis continues to unfold. As a result, the public's tolerance for tax avoidance is expected to reach historic lows. Fiscal measures, many of which are ultimately funded by public revenues, are a critical tool in the fight to mitigate the negative impact from this economic shock, and tax administrations are oftentimes on the front lines of providing relief to taxpayers. Seven years after the OECD/G20 BEPS Project was conceived and nearly five years after BEPS implementation began, the world is relatively better equipped to weather the fiscal fallout from the COVID-19 crisis than if the international tax rules had remained unchanged and aggressive tax planning had continued to proliferate unabated.

The 2013 BEPS Action Plan[1] noted that BEPS behaviours that were prevalent at the time were harming not just governments, but individuals and businesses as well and identified a number of actions that would help governments combat BEPS. The BEPS Action Plan recognised that fundamental changes to the international tax system were needed in order to establish coherence, realign substance with taxation rights, and increase transparency. These three principles provided the foundation for the 2015 BEPS package endorsed by the G20, which represented the first substantial and overdue renovation of the international tax standards in almost a century, and currently provide a lens through which to measure progress nearly five years since BEPS implementation began.

Governments recognised that the consistent and co-ordinated implementation and application of the solutions provided in the 2015 BEPS package[2] would be critical to reduce BEPS and that widespread participation from diverse geographic regions and from developed and developing countries alike would be key. As a result, the OECD/G20 Inclusive Framework on BEPS (OECD/G20 Inclusive Framework) was conceived, which would expand membership on an equal footing beyond just OECD and G20 countries, and include international organisations as well as regional tax organisations.

In June 2016, the OECD/G20 Inclusive Framework came to fruition as the 82 members of the newly established OECD/G20 Inclusive Framework held its inaugural meeting in Kyoto, Japan and the implementation of BEPS began in earnest.

Since then, the membership of the OECD/G20 Inclusive Framework has grown to over 135 countries and jurisdictions, including 66 developing countries (see Annex A) and 14 observer organisations. The ongoing work of the OECD/G20 Inclusive Framework is led by a 24-country Steering Group where developing countries are also well represented. All members of the OECD/G20 Inclusive Framework participate on an equal footing, and the widespread adherence to and further development of the BEPS standards have resulted in tangible progress under the three principles of coherence, substance and transparency as articulated under the original BEPS Action Plan.

The year 2020 is a major milestone because it is the year when the first stocktaking exercises of the BEPS minimum standards were scheduled to begin. The 2020 reviews of the BEPS minimum standards currently underway provide an opportunity to evaluate what has worked well and how the standards could be improved to better counter BEPS practices. This review becomes all the more important in the context of the COVID-19 crisis. The OECD/G20 Inclusive Framework is proving to be a valuable resource as countries collaborate and share best

1. https://www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm

2. https://www.oecd.org/tax/beps-2015-final-reports.htm

practices regarding fiscal policy and tax administration measures to respond to the COVID-19 crisis. Data on over 1 100 measures taken by more than 110 jurisdictions has been shared publicly and the fiscal policy section of the OECD's coronavirus hub[3] continues to be an invaluable resource for countries as they seek the best ways to support their people and their economies through the crisis. The fruits of international collaboration to tackle BEPS have spilled over into other areas, and are a bright spot in an otherwise challenging epoch.

Before the COVID-19 crisis hit, the review of the BEPS minimum standards and their implementation - both their successes and their shortcomings – was well advanced:

- **Action 5** on Harmful Tax Practices **–** Since 2016, over 285 regimes have been reviewed to ensure that there is substance associated with the activities they are intended to attract, and virtually all harmful preferential regimes have been amended or abolished. Furthermore, over 30 000 exchanges of information on rulings, covering over 18 000 rulings, have taken place, thereby ensuring greater transparency of the arrangements between tax administrations and taxpayers. Moving forward, consideration is being given to continue and refine the Action 5 peer review process post-2020. This work has continued during the first semester of 2020 despite the COVID-19 crisis, however the meeting of the Forum on Harmful Tax Practices (FHTP) has been postponed until October 2020. This postponement will also allow the FHTP to consider the implications on this work stream of the Global anti-Base Erosion proposal being developed in the context of the work to address the tax challenges of the digitalisation of the economy.

- **Action 6** on Tax Treaty Abuse – Most OECD/G20 Inclusive Framework members are relying on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) to implement Action 6. To date, the MLI has been signed by 94 jurisdictions, 49 of which have ratified it thereby modifying approximately 300 bilateral tax treaties. Once all signatories have ratified the MLI, around 65% of all agreements between OECD/G20 Inclusive Framework members will be modified to include the minimum standards (and other BEPS treaty related provisions), resulting in over 1 680 treaties being impacted.

- **Action 13** on Country-by-Country Reporting – The first exchanges of Country-by-Country reports (CbCR) took place in June 2018, and as of May 2020, there are more than 2 500 bilateral relationships established for the exchange of CbCR under the Convention for Mutual Administrative Assistance in Tax Matters[4], under bilateral double tax conventions and tax information exchange agreements, and between European Union (EU) Member States. In total, over three quarters of the OECD/G20 Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. As a result of this progress, substantially every Multinational Enterprise (MNE) above the consolidated group revenue threshold of EUR 750 million is already within the scope of CbC reporting and the few remaining gaps are rapidly being closed. Additionally, the first release of aggregated CbCR statistics for 2016 became available in July 2020 for 26 countries, covering nearly 4 000 MNE groups. The 2020 review of Action 13 is also well underway with a public consultation released for public comment in February 2020. Around 80 responses were received from MNE groups, advisors, NGOs and other stakeholders, and a public consultation meeting was held virtually in light of the COVID-19 crisis. The virtual meeting was attended by around 270 business and civil society representatives.

- **Action 14** on Mutual Agreement Procedure – As tax certainty becomes ever more important, this minimum standard is critical to ensuring that tax disputes are resolved in a timely, effective and efficient manner.

3. https://www.oecd.org/coronavirus/en/

4. https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm

Already 82 members of the OECD/G20 Inclusive Framework have been peer reviewed and 46 members have qualified for deferral, with another nine pending deferral. The peer review has led to a significant increase in the number of closed Mutual Agreement Procedure (MAP) cases in almost all jurisdictions under review, and an increasing number of jurisdictions have introduced or updated comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP. Results from the second stage of the peer reviews also demonstrate that most of the jurisdictions reviewed thus far reduced the amount of time needed to close MAP cases. As part of the 2020 review of Action 14, consideration is being given to three components: the minimum standard, reporting of MAP statistics and the assessment methodology. Discussions are ongoing in the Forum on Tax Administration (**FTA**) MAP Forum and will take place at the level of Working Party 1 regarding what changes, if any, should be made to these three components of Action 14.

The year 2020 is also the deadline mandated by the G20 for the OECD/G20 Inclusive Framework to deliver a multilateral, consensus-based solution to the tax challenges arising from the digitalisation of the economy. These tax challenges were first highlighted in the 2013 BEPS Action Plan and 2015 Action 1 Final Report, the latter of which called for continued work in this area with a further report to be delivered by 2020. In March 2017, this timeline was accelerated at the initiative of the G20 Finance Ministers, who asked the OECD/G20 Inclusive Framework, working through its Task Force on the Digital Economy, for an Interim Report,[5] which was delivered in 2018. To advance progress towards a consensus-based solution, OECD/G20 Inclusive Framework members made a number of proposals and the OECD/G20 Inclusive Framework agreed a Policy Note[6] in January 2019 that grouped the proposals into two pillars – one of nexus and profit allocation (Pillar 1) and another on ensuring a minimum level of taxation (Pillar 2). Building on this background, a Programme of Work (PoW)[7] was agreed in May 2019 by the OECD/G20 Inclusive Framework to provide guidance to its technical working groups on a path forward to achieve a multilateral, consensus-based solution.

For Pillar 1, the 2019 PoW identified and allocated work to explore the different proposals articulated by members of the OECD/G20 Inclusive Framework but ultimately none could garner consensus. In an attempt to move the negotiations forward the OECD Secretariat developed its "Unified Approach", which built on the commonalities identified in the PoW. This "Unified Approach" was released for public comment in October 2019[8] and attracted more than 300 submissions exceeding 3 000 pages, and an in-person public consultation was attended by more than 500 representatives from governments, business, civil society and academia in November 2019. A public consultation was also held on Pillar 2 in December 2019, which attracted more than 180 written comments totalling over 1 300 pages and which was attended in person by over 200 stakeholders.

In January 2020, the OECD/G20 Inclusive Framework at its plenary meeting reaffirmed its commitment to reach a consensus-based long-term solution by approving the "Statement by the OECD/G20 Inclusive Framework on BEPS on the Two Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy" (see Annex B). Building on the Unified Approach released by the OECD Secretariat in October 2019, the Statement included an "Outline of the Architecture of a Unified Approach on Pillar One" note as well as an updated Programme of Work, which identified 11 building blocks where further work was required to develop the solution. A progress note on Pillar 2 was also agreed. Throughout the COVID-19 crisis, work has continued both at the Steering Group and Working Parties levels. As a result of the crisis, however, it was agreed to postpone the OECD/G20 Inclusive Framework meeting where a package would be agreed from July 2020 to October 2020.

Other aspects of the Action 1 responses are proving to be valuable. For example, the International VAT/GSTGuidelines[9] developed in 2017 include recommended principles and mechanisms to address the challenges

5. https://www.oecd.org/tax/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm
6. https://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf
7. https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm
8. http://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf.
9. http://www.oecd.org/tax/consumption/international-vat-gst-guidelines-9789264271401-en.htm

for the collection of VAT on cross-border sales of digital products that had been identified in the context of the OECD/G20 Project on BEPS. The benefits from implementing such standards are clear. For example, as a result of the adoption of the VAT/GST Guidelines, EU countries raised EUR 14.8 billion during the first four years of implementation (2015-2019).

Model rules for reporting for platform operators[10] have been developed in response to the growth of the "sharing" and "gig" economies. An increasing number of taxpayers are earning taxable income in the food delivery, transportation and the hospitality industries, among others. Some of these industries such as food delivery may actually see even greater growth so long as COVID-19 persists as a threat, while others such as the hospitality industry may see a decline under similar circumstances. The benefits of establishing such model rules for businesses include shielding them from the compliance burdens that would result from the proliferation of different unilateral reporting regimes and ensuring that platforms have a standardised reporting regime applicable across multiple jurisdictions, thereby decreasing compliance costs. A public consultation document was released for public comment in February 2020 and the final design of the rules reflects the constructive input received from taxpayers, businesses and other stakeholders. These rules could also be considered as part of a comprehensive solution to the tax challenges arising from digitalisation..

As this report will demonstrate, since the BEPS Action Plan was first released and BEPS implementation began, the coherence of the international tax system has been bolstered, taxation is now better aligned with substance, and transparency has increased. But much more remains to be done. Further reform is underway and the results from the ongoing 2020 BEPS minimum standards reviews will allow for a complete stock-take in 2021, when the full results of the 2020 reviews become available and the outcomes from Pillar 1 and Pillar 2 have further crystallised. All of this progresses with a historic level of participation from the 135+ members of the OECD/G20 Inclusive Framework, all of which work on an equal footing in a continuous effort to adapt the international tax rules for the 21st century.

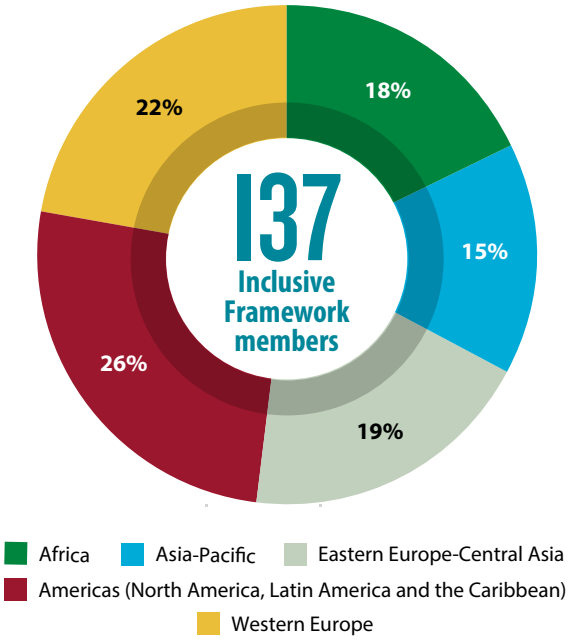
10. http://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm

Part I – Inclusivity and support for developing countries

1.1 GOVERNANCE AND MEMBERSHIP OF THE OECD/G20 INCLUSIVE FRAMEWORK

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

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

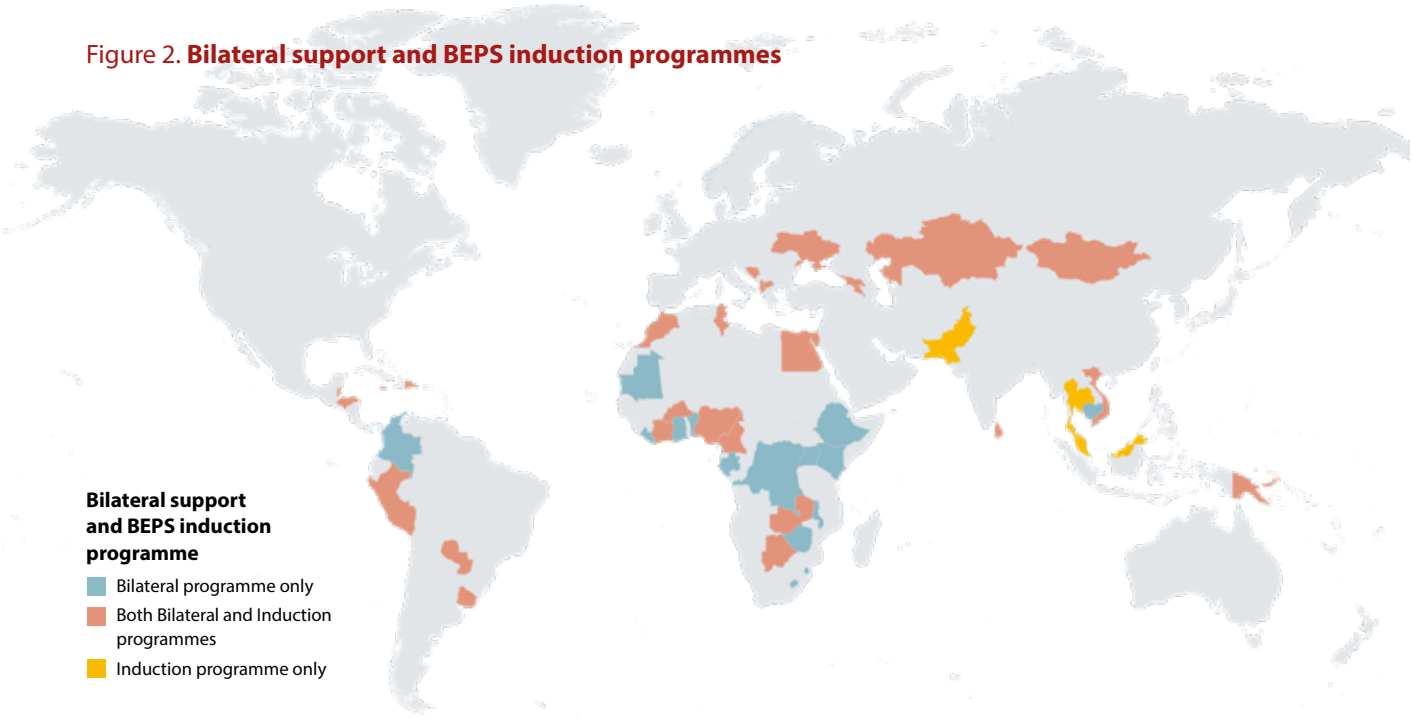


1.2 SUPPORT FOR DEVELOPING COUNTRIES

Although all members of the OECD/G20 Inclusive Framework participate in its work on an equal footing by design, capacity limitations often mean that poorer and smaller developing countries often face greater challenges in their participation. Acknowledging this, a number of mechanisms are in place to support lower capacity developing countries in implementing their BEPS priorities. This support includes bespoke induction programmes to help countries to identify and implement priority BEPS measures, support in the peer review processes relating to the BEPS minimum standards, and support to countries to effectively participate in the ongoing standard-setting process. To date, 41 tailored induction programmes on BEPS have been launched, and additional bilateral support programmes, most of which focus on specific BEPS priorities such as transfer pricing, have been carried out or are ongoing in 35 countries (see Figure 2).

11. https://www.oecd.org/tax/beps/steering-group-of-the-inclusive-framework-on-beps.pdf

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



Toolkits focused on the particular needs and priorities of developing countries in relation to profit shifting and base erosion issues are also being produced, notably through the Platform for Collaboration on Tax (PCT).[12] These toolkits aim at assisting developing countries to translate international tax norms so that they can be effectively implemented in their circumstances, bearing in mind capacity limitations and the practical realities faced by tax administrations in developing countries. A toolkit on offshore indirect transfers of interests was released on 4 June 2020[13] and another toolkit on implementing effective transfer pricing documentation is in the course of being developed.

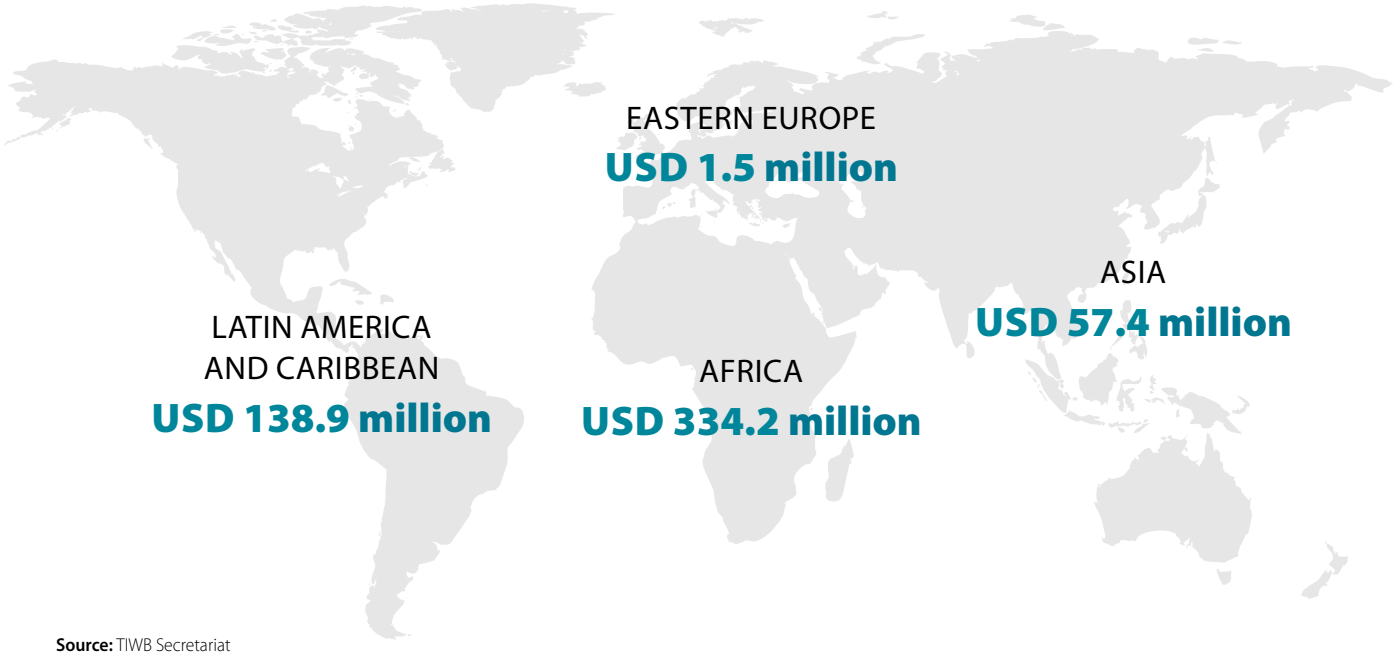
As well as policy-focused support, a range of highly practical support tools are also available to lower capacity countries, notably through the Tax Inspectors without Borders (TIWB)[14] initiative and so-called Deep Dives on mining, which aim to cover all aspects of tax in relation to the mining sector. To date, 76 TIWB programmes in 44 jurisdictions have been completed or are ongoing, and the success of the format has resulted in pilot programmes to expand beyond the original focus of the project on auditing of MNEs, to include tax crime and effective use of automatic exchange of information. The forthcoming TIWB 2020 Annual Report will fully highlight these and other successes in further detail. Figure 3 below sets out the concrete results of TIWB programmes thus far in terms of revenue gains, but the benefits of these initiatives go beyond revenue collections and include skills transfers, development of tools and processes, organisation improvements and increases in taxpayer compliance.

In 2020, the COVID-19 pandemic has meant all of these support initiatives have moved to virtual formats. While this presents many challenges, the move to online channels and remote support has, in some instances, allowed for even broader participation in capacity building events. For instance, the "virtual classrooms" on tax technical topics held in April 2020 reached almost 2 000 participants in over 35 countries.

Much of the support work is delivered in partnership with regional tax bodies and other international organisations. The OECD's commitment to supporting developing countries was recognised by the African Tax Administration Forum (ATAF), which in 2019 named the OECD as its best international partner. Other partners such as the General Authority of Zakat and Tax in Saudi Arabia and the Asian Development Bank are

12. https://www.tax-platform.org/
13.. https://www.oecd.org/tax/taxation-of-offshore-indirect-transfers.htm
14. http://www.tiwb.org/

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



Source: TIWB Secretariat

looking to the OECD to establish hubs or platforms to intensify capacity-building support on a regional basis.

Despite these programmes, it is recognised that many lower capacity countries have yet to benefit fully from the BEPS agenda as we near the five-year mark since BEPS implementation began. For instance, many lower capacity countries are not yet able to access CbC reporting information, and may still be suffering from treaty abuse due to difficulties or delays in ratifying the MLI and/or updating bilateral treaties. Many lower capacity countries are also constrained by limited or unfavourable tax treaty and information exchange networks. In addition, while many developing countries have made excellent progress in building capacity within their tax administrations and implementing effective rules to tackle tax avoidance by MNEs, including in the form of transfer pricing regimes, the complexity of these rules remains a significant challenge. In part as a result of these capacity constraints, simpler, more administrable rules such as those based on BEPS Action 4 (limiting excessive interest deductions) have found favour in many developing countries.

Lower capacity countries also face additional challenges to participate effectively in the complex, highly technical and rapid-pace discussions taking place in the OECD/G20 Inclusive Framework to develop new international tax norms to address the tax challenges arising from the digital economy. The need for such reforms is becoming increasingly acute given the COVID-19 pandemic. The additional strain on public finances as a result of the health crisis is likely to be a particular problem in low income countries with more limited fiscal headroom and debt servicing capacities and will make the need for improvements in domestic resource mobilisation all the more urgent. In addition to further efforts to support effective implementation of existing international tax norms, including through improvements in the efficiency and efficacy of tax administrations and the tax morale of taxpayers, the reallocation of taxing rights is under discussion in the OECD/G20 Inclusive Framework. A forthcoming Tax and Development annual report will further highlight the extensive outreach being conducted to ensure that developing countries' concerns are being fully addressed as BEPS implementation continues to progress.

Part II - Strengthening coherence

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

2.1 BEPS ACTIONS 2-4

Aggressive tax planning (ATP) is a key risk to the tax revenue base and historically ATP schemes have been a significant driver of BEPS. The BEPS package included a common approach to neutralising hybrid mismatches (Action 2) and limiting excessive interest deductions (Action 4) as well as best practices in the design of effective controlled foreign company (**CFC**) rules (Action 3).

Although they are not minimum standards, Actions 2, 3 and 4 have been adopted by a large number of countries. Countries that have adopted these standards now have effective measures in place to limit the impact of profit-shifting through the use of financing and other structures. While it is challenging to measure the impact of these changes on ATP behaviour, anecdotal evidence suggests that the implementation of these recommendations has been effective at reducing ATP by MNEs and provided tax administrations with new tools to address BEPS.

2.1.1 Action 2 on Hybrid mismatches

The Action 2 recommendations targeted mismatches resulting from differences in the tax treatment or characterisation of an instrument or entity. The work on hybrid mismatches was subsequently expanded to deal with similar structures that arise through the use of branches.

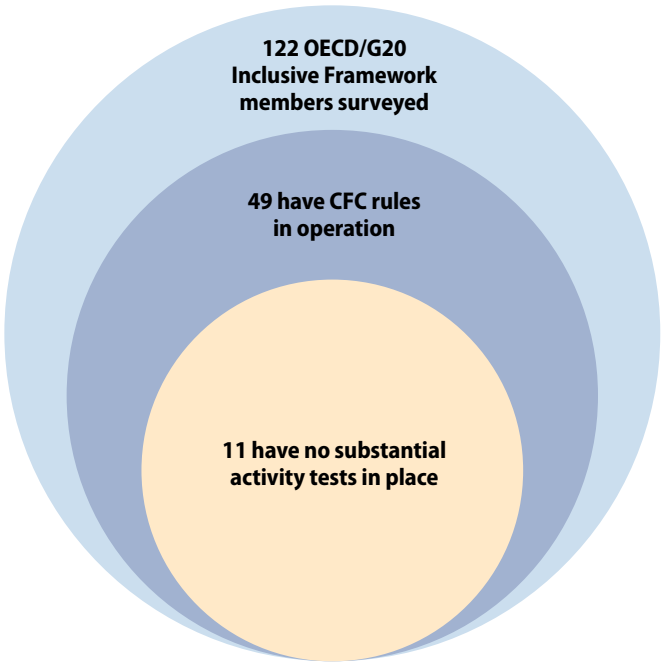
Since the release of the Action 2 recommendations, a number of OECD/G20 Inclusive Framework members have adopted rules to address such hybrid and branch mismatches (e.g., Australia, Costa Rica and New Zealand) or made changes to the existing hybrids regime, such as Mexico and the United Kingdom. Hybrid rules were introduced as part of the 2017 U.S. Tax Cuts and Jobs Act and the ATAD II Directive adopted by the European Union required EU Member States to implement anti-hybrids rules consistent with Action 2 by 2020. As part of the common approach to addressing hybrid mismatches, work continues amongst OECD/G20 Inclusive Framework members to share practical examples of these structures to ensure consistent, comprehensive and coherent outcomes from the application of the new rules.

2.1.2 Action 3 on Controlled Foreign Company rules

The Action 3 recommendations outline best practices in the design of CFC rules to ensure the taxation of certain categories of income of an MNE in the jurisdiction of the parent company in order to counter offshore structures that result in no or indefinite deferral of taxation. Comprehensive and effective CFC rules have the effect of reducing the incentive to shift profits from a market country into a low-tax jurisdiction.

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

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



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

2.1.3 Action 4 on Interest limitation rules

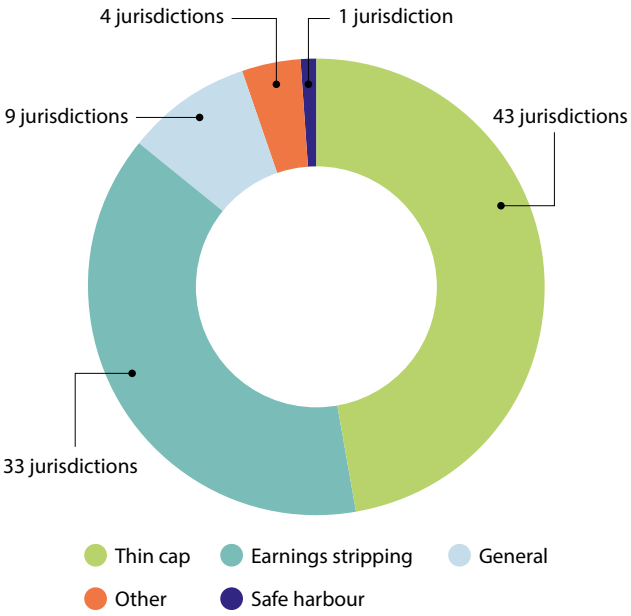
The deductibility of interest can lead to profit shifting through arrangements using third party debt (e.g., where one entity or jurisdiction bears an excessive proportion of the group's total net third party interest expense, or bears the burden of interest deductions on debt used to earn non-taxable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

- A fixed ratio rule based on a benchmark net interest/EBITDA ratio
- A group ratio rule allowing an entity to deduct more interest expense based on the position of its worldwide group
- Targeted rules to address specific risks not addressed by the general rule.

By 2019, 90 OECD/G20 Inclusive Framework members have indicated that interest limitation rules were in place. Interest limitation rules have a variety of forms. Of the 90 jurisdictions that had interest limitation rules, the most common type was thin cap rules (43 jurisdictions), followed by earnings stripping rules (33), rules of a general nature or not specified (9), rules of another type (4) and, finally, safe harbour rules (1).

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

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



Thin cap rules disallow tax deductibility of internal interest payments if the amount of debt passes a permissible threshold, where the threshold is based on debt-to-equity or debt-to-assets ratios. Thin cap rules most commonly reference a debt-to-equity ratio (though debt-to-assets is used in some jurisdictions), where the ratio values range from 0.3:1 in Brazil (i.e., interest payments are fully deductible only if the indebtedness of the Brazilian borrowing does not exceed 30% of the borrower's net equity) to 6:1 in Switzerland (for finance companies), with ratios of 2:1, 3:1 and 4:1 being very common as well.

Earnings stripping rules restrict tax deductibility of interest if the ratio of interest to earnings exceeds a certain threshold. While Action 4 recommends the use of EBITDA as the measure of earnings in the denominator, it also allows for the flexibility to introduce rules based on earnings before interest and taxes (EBIT). There are other interest limitation rules, such as interest caps that do not depend on a ratio or make reference to other ratios, such as the rule in Denmark, that applies the ratio of interest to tax value of total assets. Among the 33 jurisdictions with earnings stripping rules, the most commonly referenced ratio was interest-to-EBITDA (30 jurisdictions), with ratio values ranging from 10% in Romania to 30%, the most common ratio being 30% (24 jurisdictions).

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

There have been further developments with respect to Action 4 in relation to transfer pricing guidance and financial transactions. In October 2015, as part of the final BEPS package, the OECD/G20 published the reports on Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments) and Actions 8-10 (Aligning Transfer Pricing Outcomes with Value Creation). Those reports mandated follow-up work on the transfer pricing aspects of financial transactions. In January 2020, the OECD/G20 Inclusive Framework approved the new Transfer Pricing Guidance on Financial Transactions.[16] The guidance was incorporated into the OECD Transfer Pricing Guidelines after its approval by the OECD/G20 Inclusive Framework. The new report is significant because it is the first time the OECD Transfer Pricing Guidelines include guidance on the transfer pricing aspects of financial transactions, which will contribute to consistency in the interpretation of the arm's length principle and help avoid transfer pricing disputes and double taxation. The report, which reflects the consensus view of the members of the OECD/G20 Inclusive Framework, will strengthen the coherence and stability of the international tax system by providing long awaited guidance that also contributes to enhanced tax certainty, particularly regarding certain issues identified in the Action 4 Final Report.

16. https://www.oecd.org/tax/beps/oecd-releases-transfer-pricing-guidance-on-financial-transactions.htm

2.2 ACTION 5 ON HARMFUL TAX PRACTICES

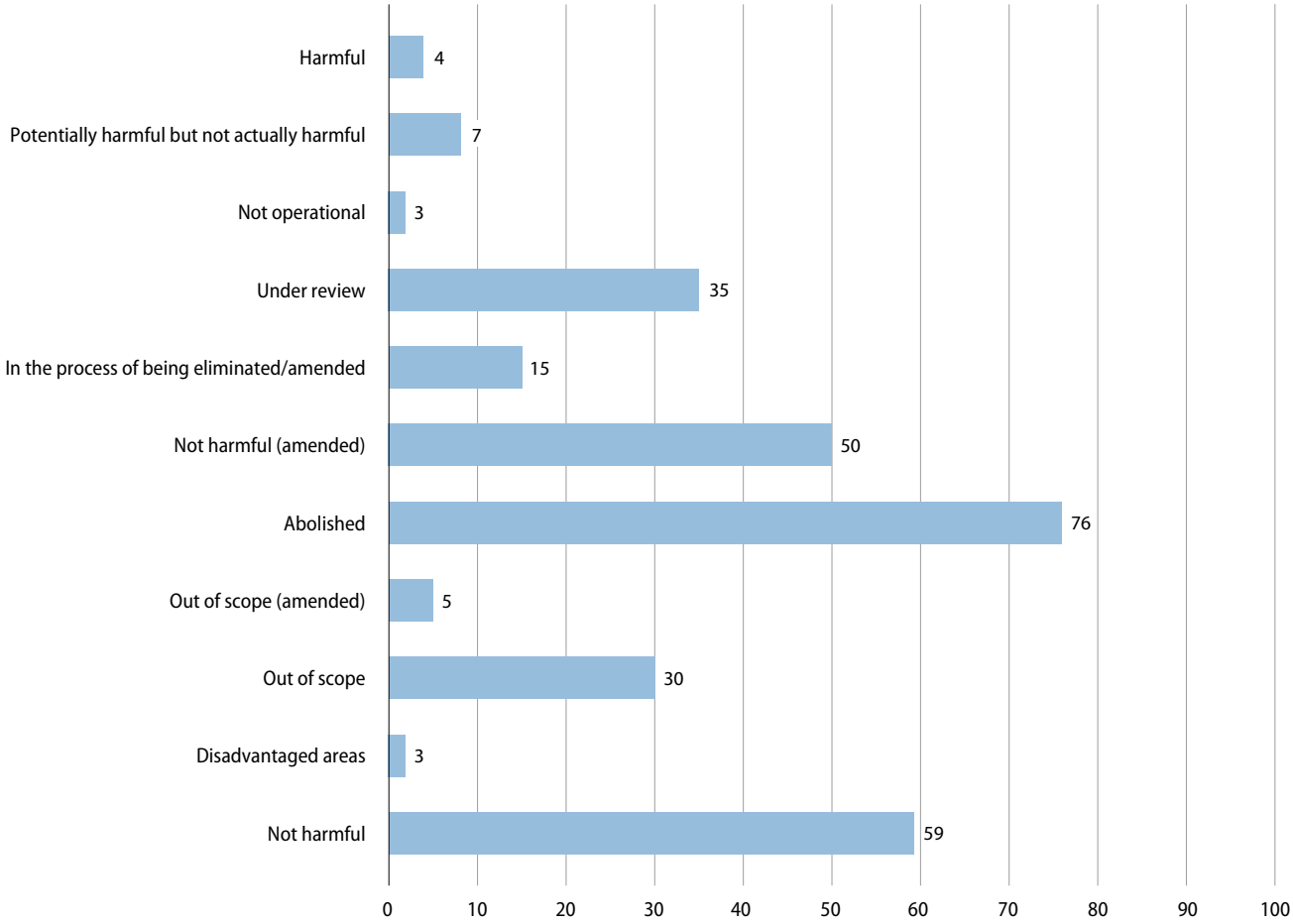
As one of the BEPS minimum standards, Action 5 has been critical in bolstering both coherence and substance with respect to preferential tax regimes, as well as transparency on tax rulings. The BEPS Action Plan also mandated a consideration of revisions or additions to the FHTP framework. The OECD/G20 Inclusive Framework has made significant gains under all three of these areas. First, with respect to preferential tax regimes, the FHTP has reviewed 287 regimes since 2016. This process holds all preferential tax regimes globally to the same standard, and almost all of these regimes that had features inconsistent with the standard have now been amended or abolished to comply with the standard. Second, information on tax rulings is now regularly exchanged between tax administrations on a spontaneous basis, with almost 30 000 exchanges of information on tax rulings conducted between 2016 and 2019. This information exchange has created transparency in the issuance of tax rulings globally, ensuring that tax administrations are in receipt of information on tax rulings pertaining to the tax arrangements of their taxpayers, including multinational groups, to identify and act on any potential BEPS risks.

Most recently, as a key outcome of the work to consider additions or revisions to the FHTP framework, a new standard on substantial activities in no or only nominal tax jurisdictions was agreed in 2018. The legislative frameworks of 12 no or only nominal tax jurisdictions were subsequently reviewed in 2019 by the FHTP, with the domestic legal frameworks of 11 jurisdictions being found to meet all aspects of the standard.

Preferential Tax Regimes

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

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



Source description: http://www.oecd.org/tax/beps/beps-actions/action5/

requires that there be substantial business activities in the jurisdiction offering preferential tax regimes, with the "nexus approach" applicable to the IP regimes[17], and the "substantial activities requirement" for non-IP regimes, whereby tax benefits are only granted where the core activities required to earn the income are undertaken in the jurisdiction.[18] Furthermore, the standard does not permit preferential regimes to have harmful features that have the potential to unfairly impact the tax base of other jurisdictions or are lacking in transparency or in the ability to be subject to exchange of information.

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

Future work

The FHTP will continue to review existing preferential tax regimes, and monitor the introduction of any new regimes or amendment of existing regimes for review. The FHTP's focus on the annual monitoring of regimes

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

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

is a robust process to ensure the effectiveness in practice of legislative changes, including substantial activities requirements amongst other aspects. In this way, OECD/G20 Inclusive Framework members offering relevant preferential regimes are held to a high standard of oversight and enforcement. A scheduled meeting of the FHTP at which these topics could have been discussed has been postponed until October 2020. This postponement will also allow the FHTP to consider the implications of Pillar Two on its work stream.

Exchange of Information on Tax Rulings

The spontaneous exchange of information on tax rulings has now occurred in relation to 18 000 rulings resulting in almost 30 000 exchanges to date. These exchanges create transparency in the tax rulings practices of over 100 countries worldwide, providing timely information to tax administrations that can be used in conducting risk assessments to identify BEPS issues. Furthermore, this transparency continues to deter tax administrations and taxpayers from engaging in rulings practices that may give rise to BEPS concerns.

The conclusion of the third peer review of jurisdictions' transparency frameworks in 2019 saw 112 jurisdictions reviewed, with 80 jurisdictions not receiving any recommendations, demonstrating considerable improvement in the global implementation of the standard. However, the report included 55 recommendations issued to the relevant jurisdictions, and therefore some jurisdictions must continue to improve in their implementation processes.

Future work

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

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

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

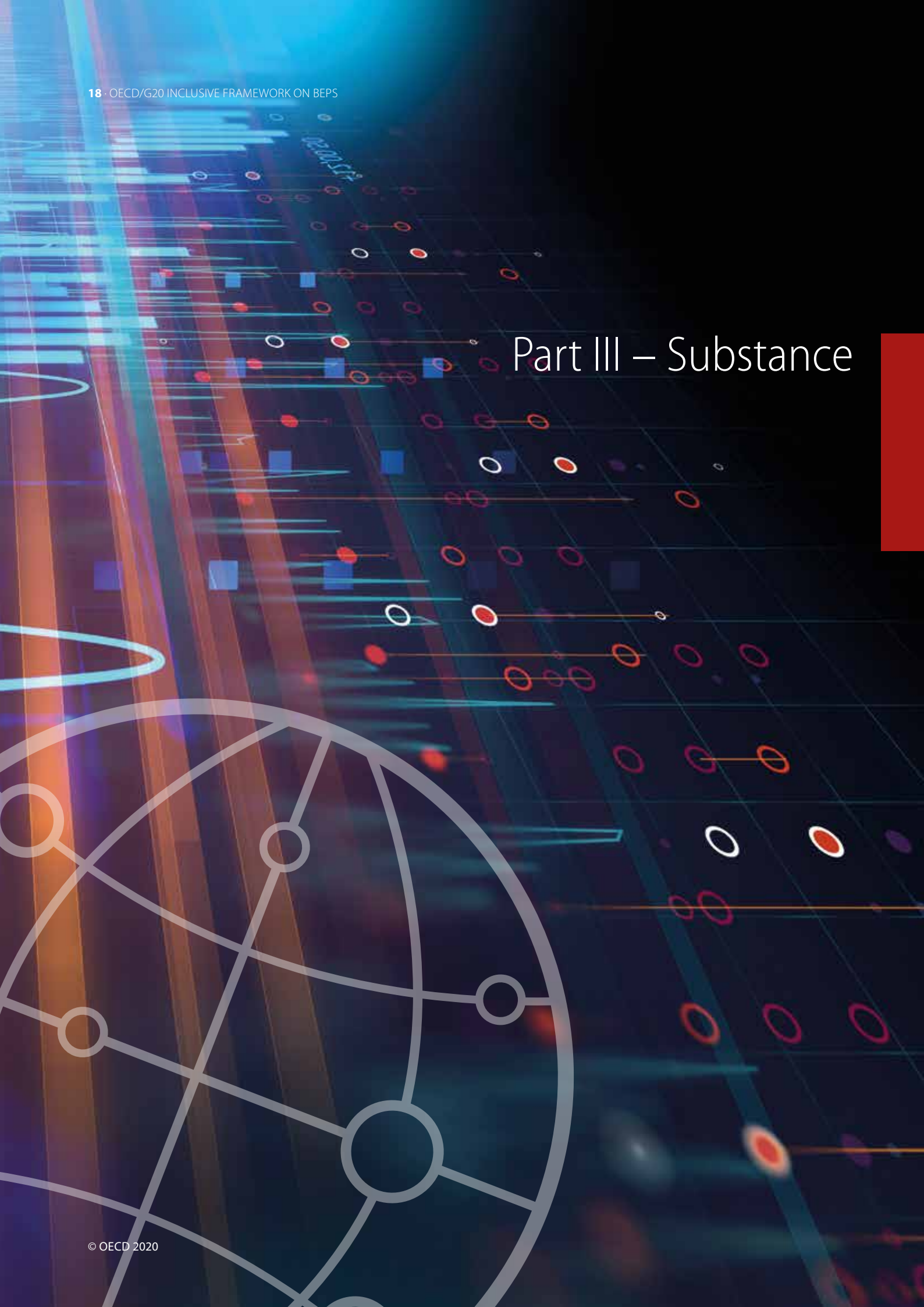
Future Work

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

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

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

21. https://www.oecd.org/tax/beps/substantial-activities-in-no-or-only-nominal-tax-jurisdictions-guidance-for-the-spontaneous-exchange-of-information.htm



Part III – Substance

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

3.1 ACTION 6 ON TAX TREATY ABUSE

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

The MLI is clearly the preferred means of countries to implement Action 6, and the broader benefits of the MLI since its entry into effect are worth elaborating here.

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

Multilateral Instrument

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

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

With respect to Action 6, the 2019 peer review reveals that, by 30 June 2020, 94 OECD/G20 Inclusive Framework members had begun to update their bilateral treaty network and were implementing the Action 6 minimum standard. The data compiled for the 2019 peer review demonstrate that the MLI has been the tool used by the vast majority of jurisdictions that have begun

to implement the minimum standard, although the effectiveness in practice is limited by the large number of jurisdictions that have still not yet ratified the MLI. Once all signatories have ratified the MLI, however, around 65% of all agreements between OECD/G20 Inclusive Framework members will be modified by the MLI to include the minimum standard (and other BEPS treaty related provisions). Other jurisdictions have expressed interest in signing the MLI and, if all waiting agreements[22] become covered tax agreements, this figure could be as high as 85%.

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

3.2 ACTION 7 ON PERMANENT ESTABLISHMENT STATUS

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

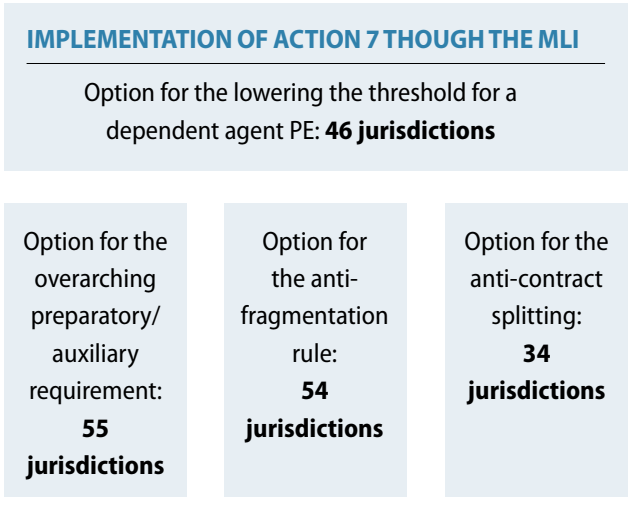
Although the Action 7 Final Report did not include any minimum standards, it did provide general recommendations to address techniques used to inappropriately avoid tax nexus, including via replacement of distributors with commissionaire arrangements, via specific activity exemptions, and via the artificial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

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

3.3 ACTIONS 8-10 ON TRANSFER PRICING

The objective of the 2015 BEPS Report on Actions 8, 9 and 10 was to ensure that the profits of MNEs better align with economic activity and value creation. This work resulted in expanded guidance in Chapter VI of the OECD Transfer Pricing Guidelines on an approach for tax administrations to ensure appropriate pricing of hard-to-value intangibles (HTVI) in situations of information asymmetry. In 2018, additional guidance addressed to tax administrations on the application of the approach to HTVI was also incorporated into the Guidelines as an annex to Chapter VI. Under the general mandate in the 2015 BEPS Report on Actions 8, 9 and 10, a monitoring process specifically for the application of the HTVI approach by jurisdictions was agreed. The first phase of this process was launched in 2019 and it gathered information from over 30 jurisdictions on their

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



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

legislation and practices related to the HTVI approach. This information is expected to be publicly released on the OECD website before the end of 2020, when a preliminary evaluation of the impact of these measures to align substance with value creation might be made.

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

In February 2020 the report *Transfer Pricing Guidance on Financial Transactions: OECD/G20 Inclusive Framework on BEPS: Actions 4, 8-10*[23] was released. The 2015 BEPS package mandated follow up work on the transfer pricing aspects of financial transactions and this report reflects the consensus interpretation of the application of the arm's length principle to such transactions. As a result, for the first time the OECD Transfer Pricing Guidelines include guidance on the transfer pricing aspects of financial transactions, which will contribute to consistency in the interpretation of the arm's length principle and ensure the outcome of controlled financial transactions aligns with value creation and third parties' behaviour.

The report addresses the appropriate level of returns to intra-group funding, which will prevent the use of tax planning strategies associated with the allocation of capital and risks to members of MNE groups that lack a minimum level of functionality. The report emphasises that members of an MNE group that do not control the relevant risks associated with intra-group funding are not entitled to returns higher than a risk-free rate of return – e.g. a return similar to highly rated government issued securities. This will discourage MNE groups from funding their operating units through cash-rich entities that do not have an adequate level of activity.

The new guidance is relevant because it addresses very common scenarios where MNE groups tend to use different financial instruments that often lead to tax base erosion. The report highlights that centralised cash management is generally an ancillary service that often deserves a limited remuneration, which will prevent MNE groups from booking non-arm's length profits in treasury entities usually located in low-tax jurisdictions. Moreover, the report extends its guidance to captive insurance, which has been a frequent cause of concern to tax administrations. The new guidance has tightened the conditions under which a member of an MNE group that provides centralised insurance is entitled to profits from the insurance activity. This addresses tax-planning opportunities where MNE groups book purportedly genuine insurance transactions in entities with low functionality that eventually may benefit from a preferential tax treatment.

Finally, the report outlines long awaited guidance on pricing techniques that will help tax administrations and taxpayers to reduce administrative and compliance burdens associated with pricing controlled financial transactions.

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

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

23. http://www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.htm

Part IV – Evaluation, transparency and tax certainty

The BEPS Action Plan noted that actions to bolster coherence and better align taxation rights with substance also needed to be coupled with greater transparency and increased tax certainty. BEPS Actions 12, 13 and Action 14 were designed to do just that. The availability of timely, targeted and comprehensive information is essential to enable governments to identify BEPS risks and require taxpayers and advisors to disclose aggressive tax planning arrangements in order to help mitigate such risks. Under the implementation of BEPS Action 13[24], the requirement for taxpayers to provide transfer-pricing documentation breaking down the information on a country-by-country basis has helped governments focus their audit strategies. With respect to tax certainty, under Action 14, efforts to make dispute resolution more timely, effective and efficient have facilitated mutual agreement procedures, which has bolstered predictability thereby contributing to enhanced tax certainty.

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

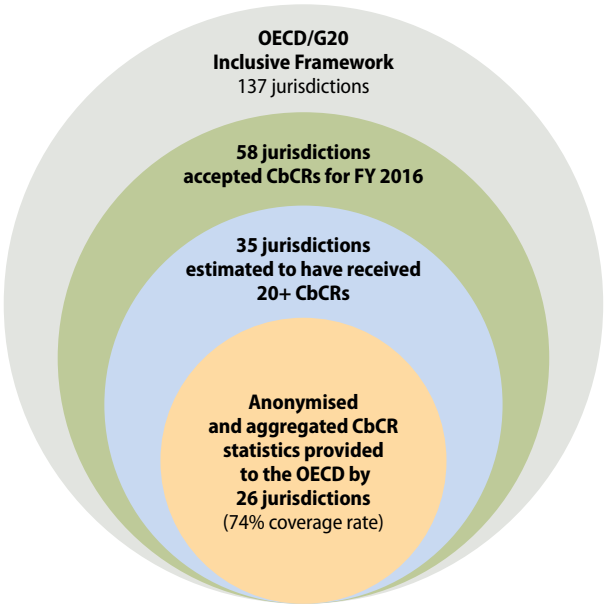
CbC reporting under Action 13 has also contributed to the monitoring and measurement of BEPS, a challenging task that was begun under BEPS Action 11. The aggregated and anonymised information collected from such CbC reporting offers glimpses into BEPS behaviours that will only become more robust with time as more data becomes available, in addition to the data already published in the second edition of *Corporate Tax Statistics*, which includes a report articulating both the benefits and limitations of the existing data. Nearly five years since the BEPS package was released, efforts to monitor and measure BEPS are starting to bear fruit although further work remains to be done to quantify fully the impact of BEPS implementation.

4.1 ANONYMISED AND AGGREGATED COUNTRY-BY-COUNTRY REPORTING STATISTICS

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

The first release of aggregated CbCR statistics includes 2016 data relating to CbCRs filed in 26 jurisdictions, covering nearly 4 000 MNE groups. While this new dataset contains a vast array of information on the global financial and economic activities of MNEs, the data are subject to a number of limitations. Many actions have already been taken to improve the quality of the data, however, some of these changes will only lead to improvements over time. Furthermore, due to the low number of CbCRs filed in a number of jurisdictions, confidentiality requirements have also limited the numbers of jurisdictions that have been able to report their data.

Figure 8. **Coverage of CbCR reports**



Despite these limitations and the fact that it is still too early to draw definitive conclusions about the impact of the OECD/G20 BEPS Project, the forthcoming release of aggregated CbCR statistics is still expected to provide some new insights on BEPS and the activities of MNEs.

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

Second edition of Corporate Tax Statistics

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

4.2 ACTION 12 ON MANDATORY DISCLOSURE RULES

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

25. http://oe.cd/corporate-tax-stats

Box 2. **Mandatory disclosure rules for CRS avoidance arrangements and opaque offshore structures**

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

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

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

The Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (i.e. structures where the beneficial owners are disguised) were approved and published by the OECD in early 2018. **The design of the model rules has drawn extensively on the mandatory disclosure rules of BEPS Action 12 Report** while being specifically targeted at these types of arrangements and structures.

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

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

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

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

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

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

4.3 ACTION 13 ON COUNTRY-BY-COUNTRY REPORTING

Implementation of a CbC reporting filing obligation

Action 13 on CbC reporting has led to a significant increase in both transparency and coherency in international tax, by improving the level and quality of information available to tax administrations on MNE groups in their jurisdiction, and ensuring tax administrations are increasingly able to access and make use of the same information regarding these groups.

Major advances towards the implementation of CbC reporting have been witnessed since 2019. In total, over three quarters of OECD/G20 Inclusive Framework members have introduced or are in the process of introducing a CbC reporting obligation, including all G20 countries. As a result of this progress, substantially every MNE above the consolidated group revenue threshold of EUR 750 million is already within the scope of CbC reporting, and the few remaining gaps are rapidly being closed. Ninety OECD/G20 Inclusive Framework members now require CbCRs to be filed by the ultimate parent entity, with a further 15 OECD/G20 Inclusive Framework members either having introduced laws to require a CbC report to be filed from a defined future date, or having draft laws to introduce such an obligation in the near future.

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

Implementation of a CbC Reporting Exchange Framework

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

Figure 9. **Implementation of a CbC reporting obligation**

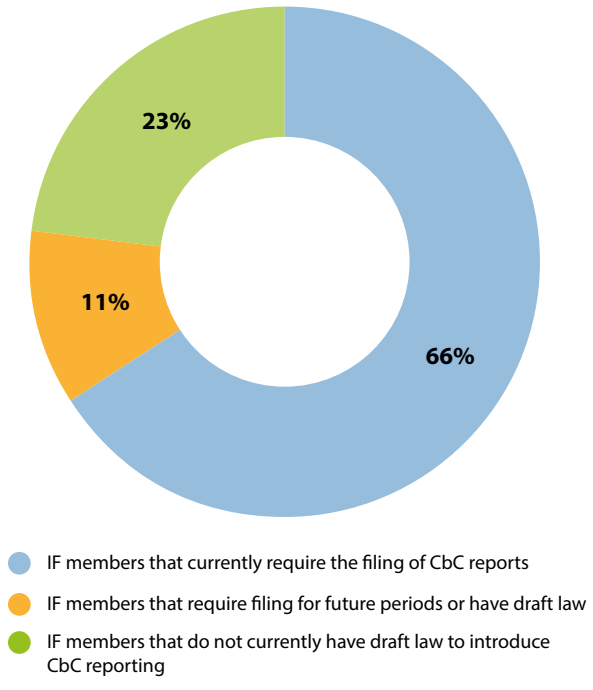
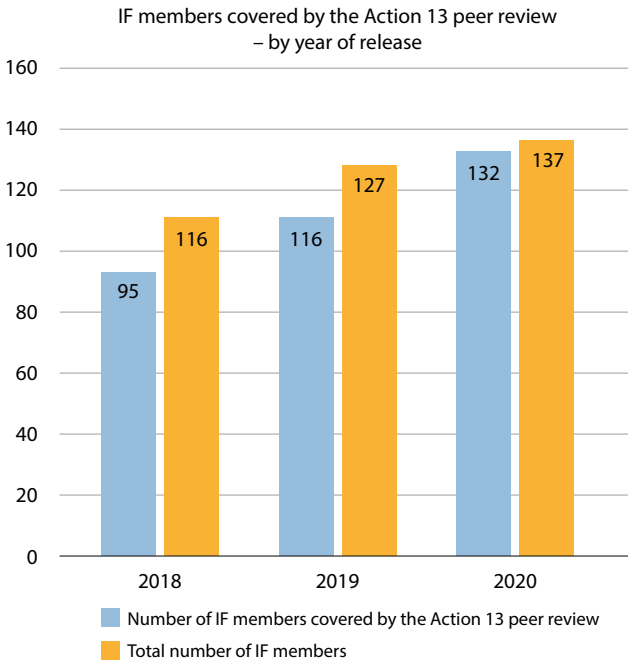


Figure 10. **Number of OECD/G20 Inclusive Framework members covered by the Action 13 peer review**



Box 3. **Key Facts on Action 13 implementation**

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

Peer Review Implementation of BEPS Action 13

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

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

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

CbCR risk assessment workshops: Since January 2017, a series of workshops have been held to consider how CbC reports can be best used in risk assessments. Recent workshops included confidential competent authority sessions under the relevant treaties to facilitate multilateral discussions of specific CbC reports.

Handbook on the Effective Use of CbC Reports in Tax Risk Assessment: This handbook considers how CbC reports may be used within different approaches to tax risk assessment, the key risk indicators that may be detected and what a tax administration should do if a CbC report suggests a tax risk may be present.

- ***International Compliance Assurance Programme (ICAP)***: ICAP is a multilateral risk assessment and assurance

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

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

process, which uses CbC reports and other risk assessment information to provide MNEs and tax administrations with increased tax certainty. A second pilot for ICAP (IACP 2.0), including 19 participating tax administrations, was launched in 2019 and is currently underway.

- ***Comparative Risk Assessment initiative (CoRA)***: Building on the increasingly common information available to tax administrations for tax risk assessment, CoRA is an initiative to drive greater convergence in the perception of risk by tax administrations, and in the understanding of how key risk indicators can be detected, including through an MNE's CbC report. It is expected that the outcomes of this work will be made available to tax administrations by the end of 2020.

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

Facilitating the Implementation and Ensuring the Consistency of CbC Reporting

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

- ***Information on the implementation of CbC reporting by OECD/G20 Inclusive Framework members***: The OECD website includes comprehensive information on how CbC reporting has been implemented by OECD/G20 Inclusive Framework members, the notification requirements that apply in each jurisdiction, and the exchange relationships that have been activated for the exchange of CbC reports. This provides vital support to jurisdictions in meeting their commitments under the minimum standard and to MNE groups in understanding their obligations in jurisdictions where they have constituent entities.

- ***Guidance on the interpretation of Action 13***: As the implementation and operation of CbC reporting has progressed, feedback has been sought from jurisdictions, businesses and other stakeholders on areas where the Action 13 report and implementation package seems incomplete or unclear. This has resulted in the development and release of regular guidance on the interpretation of the Action 13 report, which has proven invaluable in improving consistency in the preparation of CbC reports by MNE groups and helping tax administrations in interpreting the data they contain. For example, in November 2019 guidance[26] was updated noting that dividends from constituent entities should not be included in profit before tax in an MNE group's CbC report. Such guidance should improve the reliability of data both for the purposes of tax risk assessment and for economic and statistical analysis.

- ***Common errors in the preparation of CbC reports***: As CbC reports have been filed by MNE groups, a number of common errors have been identified that have made the interpretation of data more difficult, in particular where a tax administration uses automated risk assessment processes. These errors included multiple currencies being used in the same CbC report, MNE groups

26. https://www.oecd.org/tax/beps/guidance-on-country-by-country-reporting-beps-action-13.htm

excluding the last three digits or six digits from financial data (as is commonly done in the preparation of financial statements) and data being included in the wrong column. A list of these common errors has been compiled and included on the OECD website,[27] to assist MNE groups in avoiding making them when preparing CbC reports and to help tax administrations recognise them when they do arise.

The 2020 review of the Action 13 Minimum Standard

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

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

27. http://www.oecd.org/tax/beps/common-errors-mnes-cbc-reports.pdf

4.4 ACTION 14 ON MUTUAL AGREEMENT PROCEDURE

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

4.4.1 Action 14 Peer Reviews

The Action 14 peer review process began in 2016. By May 2020, 69 jurisdictions have been reviewed under stage 1 of the process, with a final 13 jurisdictions still to be reviewed.[28] In addition, the stage 2 peer monitoring of all 44 countries that have initially committed to the BEPS outputs will be completed by 2020 as required by the Action 14 assessment methodology. The stage 2 peer monitoring of the newest members of the OECD/G20 Inclusive Framework is scheduled to continue into 2021. For the 69 jurisdictions reviewed so far, around 1 500 recommendations have been made, including the need for more resources to process MAP cases, improving timeliness of the resolution of MAP cases and updating domestic rules.

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

- **There has been a significant increase in the number of closed cases in almost all jurisdictions under review.** This is likely the result of an increase in resources or of a more efficient use of resources by competent authorities due to (or in anticipation of) the peer review process.

- **The number of MAP profiles published on the OECD website[29] continues to increase, and now covers over 100 jurisdictions.** This central repository of easily accessible information for taxpayers will facilitate their use of MAP.

- **An increasing number of jurisdictions have introduced or updated comprehensive MAP guidance to provide taxpayers with clear rules and guidelines on MAP.**

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

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

- In addition to bilateral treaty changes, the MLI was signed by 20 of the 21 jurisdictions and has been ratified by all signatories, which brings a substantial number of their treaties in line with the standard.

- All of the jurisdictions have either introduced or updated publicly available MAP guidance to provide more clarity and details to taxpayers.

- Most of the 21 jurisdictions decreased the amount of time needed to close MAP cases and a majority of these jurisdictions met or were close to the sought-after 24-month average timeframe to close MAP cases.

- Following legislative or policy related changes in some jurisdictions since stage 1, most of these jurisdictions are now able to implement MAP agreements notwithstanding their domestic time limits.

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

29. https://www.oecd.org/tax/dispute/country-map-profiles.htm

Table 1. **MAP jurisdictions with completion dates**

STAGE 1 COMPLETED						STAGE 1 ONGOING		STAGE 1 ONGOING		
1st batch 26 September 2017	2nd batch 15 December 2017	3rd batch 12 March 2018	4th batch 0 30 August 2018	5th batch 14 February 2019	6th batch 24 October 2019	7th batch 28 November 2019	8th batch February 2020	9th batch By June 2020	10th batch By December 2020	
Belgium	Austria	Czech Republic	Australia	Estonia	Argentina	Brazil	Brunei	Andorra	Aruba	Thailand
Canada	France	Denmark	Ireland	Greece	Chile	Bulgaria	Curacao	Bahamas	Bahrain	Barbados
Netherlands	Germany	Finland	Israel	Hungary	Colombia	China	Guernsey	Bermuda	Barbados	Trinidad and Tobago
Switzerland	Italy	Korea	Japan	Iceland	Croatia	Hong Kong (China)	Isle of Man	British Virgin Islands	Gibraltar	United Arab Emirates
United Kingdom	Liechenstein	Norway	Malta	Romania	India	Indonesia	Jersey	Cayman Islands	Greenland	Viet Nam
United States	Luxembourg	Poland	Mexico	Slovak Republic	Latvia	Papua New Guinea	Monaco	Faroe Islands	Kazakhstan	
	Sweden	Singapore	New Zealand	Slovenia	Lithuania	Russia	San Marino	Macau (China)	Oman	
13 August 2019	9 April 2020	Spain	Portugal	Turkey	South Africa	Saudi Arabia	Serbia	Morocco	Oatar	
STAGE 2 COMPLETED		By July 2020	By December 2020	By March 2021	By March 2021			Tunisia	Saint Kitts and Nevis	
		STAGE 2 ONGOING				STAGE 2 NOT YET STARTED				

There is still work to be done to bring the tax treaties of reviewed jurisdictions in line with the Action 14 minimum standard. Many of the assessed jurisdictions have however made substantial progress in updating their treaty networks, including through an action plan to prioritise tax treaty negotiations when the treaties are not expected to be modified by the MLI. Further insight into the progress made can be expected from the release of future stage 2 monitoring reports that follow up on any stage 1 recommendations.

2020 Review of Action 14

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

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

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

- The total number of cases received continues to increase at a higher pace than the number of cases resolved. Although half of the jurisdictions managed to decrease their inventory, the total inventory of cases keeps increasing with a total of about 5 000 cases for 2018, with about one third of all cases being over three years old.
- In addition, not all cases eligible for MAP enter into the MAP process.

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

Strengthening the Action 14 minimum standard	Increasing transparency
• Increasing dispute prevention via greater use of bilateral APAs and more focus on training on international tax issues for auditors. • Ensuring availability and access to MAP by determining the limited number of cases in which access can be denied, introducing standardised documentation requirements for MAP requests and examining whether it would be appropriate to suspend tax collection during the MAP process. • Improving resolution of MAP cases by allowing multi-year resolution through MAP of recurring issues with respect to filed tax years. • Ensuring the implementation of all MAP agreements and bringing interest charges / penalties in proportion to the outcome of the MAP process.	• Reporting of additional statistics to provide a complete picture of the cases closed and the ones that remain in inventory. • Providing the full picture of a jurisdiction's efforts regarding dispute prevention and resolution by the addition of statistics on APAs.

- Country specific data also shows that there are important differences in outcomes and average completion times between jurisdictions, with some jurisdictions closing more than 25% of cases without an agreement and some others having an average completion time of 66 months.

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

4.5 TAX CERTAINTY

In addition to the ongoing efforts to increase tax certainty under Action 14, the very first Tax Certainty Day[30] was held in September 2019 at the OECD's headquarters in Paris. Over 200 tax policy makers, tax administrations, business representatives and other stakeholders from over 50 countries participated. This event provided an opportunity for tax policy makers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move towards further improvements in both dispute prevention and dispute resolution. The discussions covered the full suite of tax certainty tools available to tax administrations, including co-operative compliance programmes, advance pricing agreements, ICAP, joint audit as well as MAP. It was also the forum where the 2018 MAP statistics were released.[31] The event also highlighted the relevance of the OECD's report on tax morale,[32] which explores the latest evidence concerning the importance of tax certainty as a determinant of the willingness of individuals and business to engage positively in the tax system, particularly in developing countries.

As a follow up to Tax Certainty Day, work has commenced in relevant focus groups on three specific projects to support greater tax certainty for MNE groups through: (i) improvements to advance pricing agreement (APA) processes, (ii) greater use of multilateral dispute resolution and APAs and (iii) the use of standard benchmarks in common transfer pricing situations. As recognised by G20 Finance Ministers, maintaining and enhancing tax certainty brings benefits for taxpayers and tax administrations alike and is key in promoting investment, jobs and growth. This is particularly the case against the backdrop of the rapid digitalisation of the economy, the emergence of new business models, and increased internationalisation putting pressure on audit practices and driving changes in the international tax rules. Certain measures to enhance tax certainty discussed at the September 2019 event continue to be under consideration as part of the ongoing work to achieve a multilateral consensus-based solution to the tax challenges arising from digitalisation.

30. https://www.oecd.org/tax/administration/oecd-tax-certainty-day.htm
31. https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm
32. http://oe.cd/tax-morale

Annexes

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

Complete list of Members of the OECD/G20 Inclusive Framework on BEPS as of May 2020*

Albania
Andorra
Angola
Anguilla
Antigua and Barbuda
Argentina
Armenia
Aruba
Australia
Austria
The Bahamas
Bahrain
Barbados
Belgium
Belize
Benin
Bermuda
Bosnia and Herzegovina
Botswana
Brazil
British Virgin Islands
Brunei Darussalam
Bulgaria
Burkina Faso
Cabo Verde
Cameroon
Canada
Cayman Islands
Chile
China (People's Republic of)
Colombia
Congo
Cook Islands
Costa Rica
Côte d'Ivoire
Croatia
Curaçao
Czech Republic
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Egypt
Estonia
Eswatini
Faroe Islands
Finland
France
Gabon
Georgia
Germany
Gibraltar
Greece
Greenland
Grenada
Guernsey
Haiti
Honduras
Hong Kong, China
Hungary
Iceland
India
Indonesia
Ireland

* An up-to-date list of members can be found online at https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf

Isle of Man
Israel
Italy
Jamaica
Japan
Jersey
Jordan
Kazakhstan
Kenya
Korea
Latvia
Liberia
Liechtenstein
Lithuania
Luxembourg
Macau, China
Malaysia
Maldives
Malta
Mauritius
Mexico
Monaco
Mongolia
Montenegro
Montserrat
Morocco
Namibia
Netherlands
New Zealand
Nigeria
North Macedonia
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
San Marino
Saudi Arabia
Senegal
Serbia
Seychelles
Sierra Leone
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turks and Caicos Islands
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Viet Nam
Zambia

List of Observer organisations to the OECD/G20 Inclusive Framework on BEPS as of July 2020

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

Annex B – Statement by the OECD/G20 Inclusive Framework on BEPS on the two-pillar approach to address the tax challenges arising from the digitalisation of the economy[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.**

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.

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.

IF Members also recognise there are a number of other issues where significant divergences will have to be resolved. These include (i) the binding nature of dispute prevention and resolution mechanisms as well as the scope of the dispute resolution mechanisms under Amount C; (ii) the suggestion by some members to weight the quantum of Amount A to account for different degrees of digitalisation between in-scope business activities (so-called "digital 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).

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. 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.

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

1. As agreed by the Inclusive Framework in January 2020: https://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf.

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

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.2 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.

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).3 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.

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,4 and others on unresolved BEPS issues.5 The Inclusive Framework agreed a Policy Note in January 2019 that grouped the proposals into two pillars – one of nexus and profit allocation and another on ensuring a minimum level of taxation – and contained an agreement to examine them as a possible basis for consensus.6 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.

2. 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.
3. OECD (2018), Tax Challenges Arising from Digitalisation – Interim Report 2018, Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.
4. 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).
5. 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).
6. 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.

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.7 Based on those inputs, the Inclusive Framework delivered a detailed Programme of Work (May PoW)8 in May 2019. This was endorsed by the G20 Finance Ministers and Leaders in June 2019.

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.

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 2019.9

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

1.2 Taking the Unified Approach forward

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 1). This revised PoW replaces the earlier Pillar One PoW that the Inclusive Framework adopted in May 2019.

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.

7. 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.
8. 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.
9. Public consultation document, Secretariat Proposal for a "Unified Approach" under Pillar One, 9 October 2019 – 12 November 2019.

2. Overview

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).10 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. 11 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 0 below).

Whilst some overlaps are possible (see Section 0 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.

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)

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 2.

10. 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.

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

3.1 Scope and nexus

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

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.

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.12

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.

First, it is of relevance to businesses that provide automated and standardised digital services to a large and global customer or user base. These are businesses that, in general, are able to provide digital services remotely to customers in markets using little or no local infrastructure. In these situations, they generally benefit from exploiting powerful customer or user network effects and generate substantial value from interaction with users and customers. They often benefit from data and content contributions made by users and from the intensive monitoring of users' activities and the exploitation of corresponding data. In some models the customers may interact on an almost continuous basis with the supplier's facilities and services. These characteristics are exhibited more strongly within certain types of digital service provision. However, the ability to develop an active and sustained presence in remote markets through the channels identified above can be considered of general applicability to businesses that provide an automated service on a digital platform.

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.

12. See also paragraph 55 and 56 below.

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 jurisdictions13 through which they substantially improve the value of their products and increase their sales.

Businesses in scope

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

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.14 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.

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

Consumer-facing businesses

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.

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.

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.

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.

13. 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.

14. Including revenue associated with the monetisation of data.

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.

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

Specific considerations

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.

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.

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

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.

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

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.15 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

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).

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.

For automated digitalised businesses in scope, the revenue threshold will be the only test required to create nexus. This recognises the fact that in a digital age, with scale without mass and unparalleled reliance on intangibles, the supply of automated digital services generally involves the level of active and sustained engagement with customers described above, even when the service is provided remotely.

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.

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).

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

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

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

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.

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.16

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).

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

16. 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.

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

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

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

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.

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.17 This will also prevent any unintended impact and issues with custom duties applied to imported goods.

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 0 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.

17. 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.

The unified approach will therefore establish approaches to identifying these taxpayer entities in a way that is both administrable and fair.18 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

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.

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 0 above). These mechanisms to eliminate double taxation are the primary way in which potential interactions between Amounts A, B and C are addressed.

3.4.1. Interactions between Amounts A and B

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

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 0 above).

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 what 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.

18. 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).

4. The fixed return for defined baseline distribution and marketing activities (Amount B)

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.

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.

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 baselines activities.

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.

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.

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.

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

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

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

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.

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.

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.

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.

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.

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

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.

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.

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.19

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

There is agreement that a new effective and binding dispute prevention and resolution mechanisms is required for amount A as described above in Section 0. The core of the work on tax certainty and dispute prevention and resolution for Amounts B will be to limit disputes by using fixed rates of return on baseline distribution and marketing activities.

As noted in section 0 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.

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.

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.

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

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.

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.

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

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

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.

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.

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.20 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.

20. 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.

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.

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.

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

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

- Whether there are appropriate potential scope modifications to amount A to reflect the nature of this alternative global safe harbour system;
- The need for operating and administration rules for an alternative safe harbour approach;
- Appropriate mechanisms to avoid double taxation in light of a safe harbour approach;
- Implications for unilateral measures in the context of the specific safe harbour proposal described in this section; and
- Behavioural implications for taxpayers and jurisdictions.

Annex A – **Programme of work to develop a consensus-based solution to Pillar One issues**

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.[21]

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

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

I. **Scope of Amount A** – The need to address definitional issues for the scope for Amount A (e.g., consumer-facing businesses, automated digital services), develop appropriate revenue and profit thresholds, consider and define carve-outs, examine interactions with other elements of Amount A design and thresholds, and consider whether there are implications for the scope of Amount A of implementing Pillar One on a 'safe harbour' basis[22] (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.

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

21. 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.

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

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

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.

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

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.

Table 1. Assignment of technical work to subsidiary bodies3 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[23]
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

23. 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

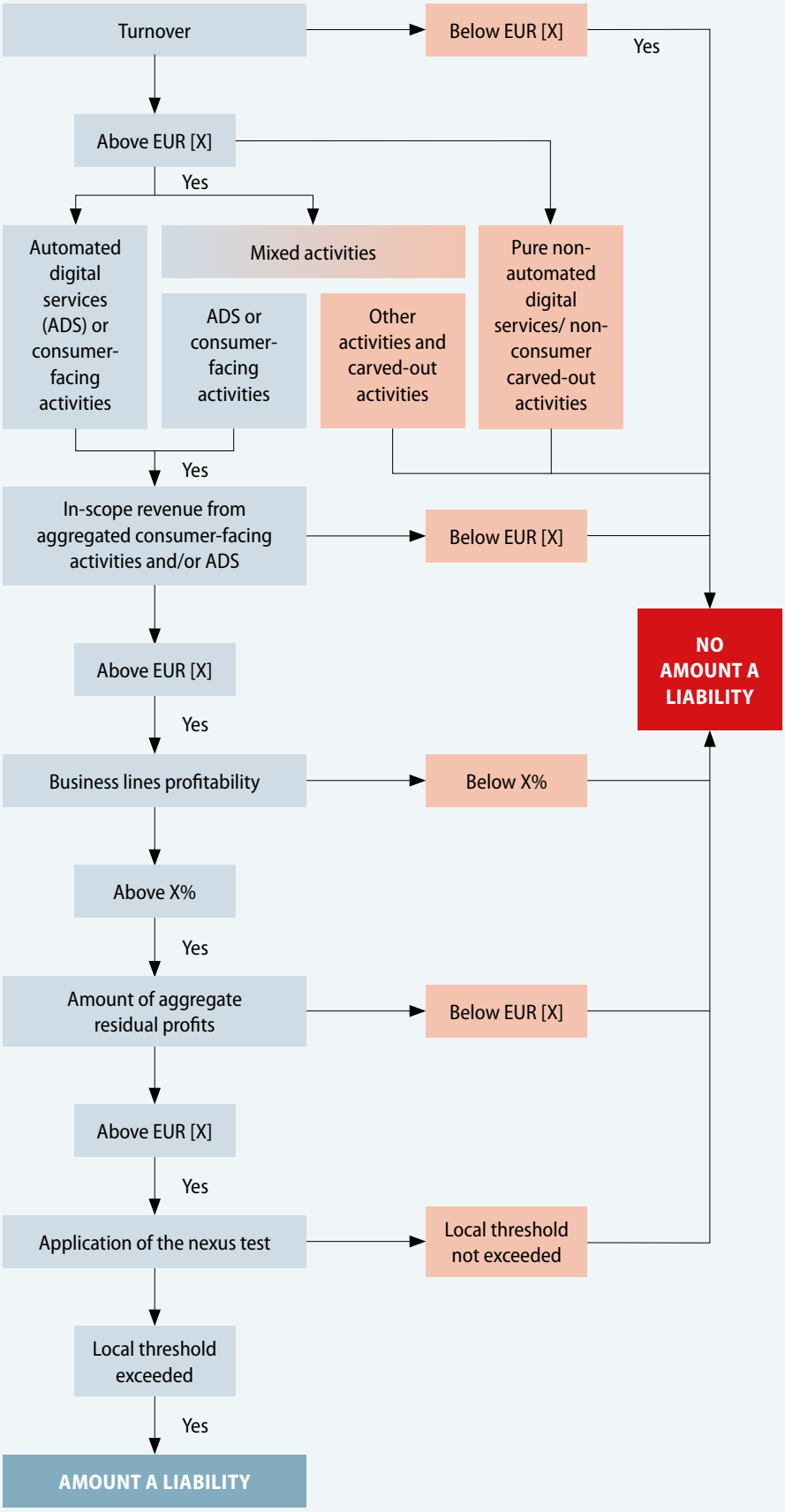
Only the in-scope revenues falling within business lines, the profitability of which exceed [X]%, are taken into account for Amount A liability.

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**

1. Introduction

In January 2019, the Inclusive Framework issued a Policy Note on Addressing the Tax Challenges of the Digitalisation of the Economy.[24] 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.

- 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.[25] The response was robust, with more than 200 written submissions running to over 2 000 pages.[26] 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.

Following this consultation, and in light of the public comments received, the Inclusive Framework agreed on a Programme of Work[27] (PoW) at their meeting in Paris on 28-29 May 2019 based around the two Pillars identified in the Policy Note. This was endorsed by the G20 Finance Ministers and Leaders in June 2019. A public consultation on Pillar Two was held on 9 December 2019, which attracted over 200 participants and resulted in the submission of more than 180 written comments running to over 1,300 pages.

2. Status of the work and next steps

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.

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.

24. 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.
25. Public Consultation Document, Addressing the Tax Challenges of the Digitalisation of the Economy, 13 February – 6 March 2019.
26. All written submissions made to the Public Consultation Document are available at this link.
27. Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, 28 May 2019, (PoW).

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.

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.

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

2.1 Income inclusion rule

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.

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.

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.

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.

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.

Some of the design features under discussion will also be relevant for other elements of the GloBE proposal. For example, the discussions on carve-outs[28] and the use of financial accounts to determine the tax base are also relevant for the undertaxed payments rule.

2.2 Switch-over rule

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.

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

2.3 Undertaxed payments rule

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.

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

2.4 Subject to tax rule

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.

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.

28. Cf. PoW, page 33.

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

There is ongoing work on all aspects of co-ordination, simplification and the compatibility with international obligations such as non-discrimination[29]. 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.

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

FURTHER READING

Overview of the OECD's work on BEPS: www.oecd.org/tax/beps

OECD (2020), *Tax Co-operation for Development: Progress Report*, OECD, Paris. http://www.oecd.org/tax/tax-global/tax-co-operation-for-development-progress-report.htm

OECD (2020), *Corporate Tax Statistics: Second Edition*, OECD, Paris. http://www.oecd.org/tax/tax-policy/corporate-tax-statistics-database.htm

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. https://oe.cd/beps-programme-of-work-tax-challenges-digitalised-economy

OECD (2015), Base Erosion and Profit Shifting, 2015 Final Reports, OECD Publishing, Paris. http://dx.doi.org/10.1787/23132612

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This is the fourth annual progress report of the OECD/G20 Inclusive Framework on BEPS. The report describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from July 2019 to July 2020, while also taking stock of the progress made since BEPS implementation began. The report contains an overview and four sections of substantive content. Part I focuses on inclusivity and support for developing countries. Part II describes the progress made on strengthening coherence. Part III describes the progress made on substance. Part IV describes the progress made with respect to evaluation, transparency and tax certainty. These are followed by two annexes providing information on the membership of the OECD/G20 Inclusive Framework on BEPS (Annex A) and the text of the "Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy" as agreed in January 2020 (Annex B).

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