

OECD presents report to G-20 Finance Ministers and releases key documents under Pillar One and Pillar Two

17 July 2023

In brief

On 17 July 2023, the OECD/G20 Inclusive Framework on BEPS (IF) released four important documents related to Pillar One and Pillar Two and a Progress Report to the G20 Finance Ministers and Central Bank Governors for their meeting on 17-18 July. These publications follow last week's IF plenary meeting and resulting "[Outcome Statement](#)," which provided an update on the status and timeline for implementing Amount A and B of Pillar One and the Pillar Two Subject-to-Tax Rule (STTR) (See PwC's [Tax Policy Alert](#) for further information).

The documents include:

- [OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors](#);
- [Public Consultation Document on Amount B of Pillar One](#);
- [Pillar Two STTR](#);
- [Pillar Two GloBE Information Return](#); and
- [Pillar Two Administrative Guidance](#) (including a permanent safe harbour for jurisdictions that introduce a Qualified Domestic Minimum Top-up Tax (QDMTT) and a new transitional safe harbour, which provides relief from the application of the UTPR for fiscal years commencing on or before the end of 2025).

This Alert provides a short summary of these documents. It will be followed by additional Alerts containing more in-depth analysis and observations later this week.

The takeaway

It will take time to analyse the full implications of today's releases in light of specific fact patterns and business models. Based on an initial review, we can see that some of the issues identified in the responses to the various consultations as administratively burdensome, or incompatible with existing systems, have been addressed. However, many unknowns remain for both Pillar One and Pillar Two and only through taxpayers' continued

engagement with the OECD can these issues be resolved. Taxpayers should start to work through these new rules and model the outcomes of the releases as soon as possible given the pace at which many of these rules are being, or soon will be, implemented.

In detail

We cover, first, Pillar One Amount B developments, then notable Pillar Two developments, and finally the OECD Secretary-General's report.

Pillar One Amount B

The OECD released an updated [public consultation document](#) on Amount B of Pillar One, which attempts to simplify the transfer pricing of certain baseline wholesale marketing and distribution activities. The OECD also published a short overview, titled "[Amount B in a Nutshell](#)," to assist stakeholders in understanding Amount B. Comments on the consultation document are due 1 September 2023.

The consultation document outlines the design elements of Amount B and identifies aspects which require further work, including:

- Ensuring an appropriate balance between a quantitative and qualitative approach in identifying baseline distribution activities;
- Determining the appropriateness of the pricing framework and its application; and
- Identifying the criteria to apply Amount B utilising local databases in certain jurisdictions.

The document highlights two alternative scoping criteria (A and B) based on qualitative and quantitative thresholds. Alternative A does not require a separate qualitative scoping criterion to identify and exclude non-baseline contributions while "Alternative B" does. Countries do seem to be divided on the alternatives.

As noted in the July 2023 Outcome Statement, the IF plans to approve a final report on Amount B and incorporate key content into the OECD Transfer Pricing Guidelines (TPG) by January 2024. It is also important to note that the proposals outlined in the consultation document represent the work of the OECD Secretariat, since the IF has not yet reached consensus on them. Their basic design may, therefore, be subject to change, unrelated to the consultation process.

Pillar Two administrative guidance

The IF released a second set of agreed Administrative Guidance on the [Pillar Two GloBE Model Rules](#) following the [first set of Administrative Guidance](#) items that were published in February 2023.

This second set of Administrative Guidance includes guidance on currency conversion rules when performing GloBE calculations, on tax credits and on the application of the Substance-based Income Exclusion (SBIE). In relation to tax credits, it is especially noteworthy that the OECD has sought to resolve the issue around the credibility of transferable credits (which it acknowledges have been accentuated by credits in the Inflation Reduction Act). While the rules are complicated (including on marketability), as with the earlier solution for tax equity partnerships, at least the amount paid for the credit (as opposed to any discount on the sale) will be fully credible. The Administrative Guidance also includes further guidance on the design of QDMTT as well as two new safe harbours:

- A permanent safe harbour for jurisdictions that introduce a QDMTT, which the OECD claims will make compliance and administration easier for MNEs and tax administrations, although there are some complexities also revealed in the operation of the safe harbour by some jurisdictions.
- A transitional safe harbour, which provides the UPE jurisdiction with relief from the application of the UTPR for fiscal years commencing on or before the end of 2025. This is clearly aimed at the citation where the US is the UPE jurisdiction.

This Administrative Guidance, including more detailed examples, will be incorporated into a revised version of the Commentary that will be released later this year (and will replace the [original version](#) of the Commentary issued in March 2022).

GloBE information return

An [updated version](#) of the GloBE Information Return (GIR) was also released. The GIR is the means by which an MNE Group will submit details to a tax administration to allow for an appropriate risk assessment of the MNE Group and its constituent entities, and to evaluate the correctness of the Group's Top-up Tax liabilities, if any.

The GIR reflects several changes to the [original GIR public consultation document](#), most notably to include a transitional framework that allows for simplified jurisdictional reporting for all fiscal years beginning on or before 31 December 2028 but not including a fiscal year that ends after 30 June 2030. During this transitional period, more reporting can be done on a jurisdictional basis, rather than a constituent entity-by-constituent entity basis, although again some considerable level of detail remains.

Subject to Tax Rule (STTR)

Finally, on Pillar Two, the IF released a [report](#) with model treaty text to give effect to the STTR, together with an accompanying commentary explaining the purpose and operation of the STTR. The OECD Secretariat also published a summary of the STTR, titled "[The Subject to Tax Rule in a Nutshell](#)," to assist in understanding the STTR model provisions.

The STTR is a treaty-based rule that allows source countries to impose an additional tax liability on certain intra-group payments in case the recipient is subject to a nominal corporate tax rate of less than 9% (adjusted for tax base reductions such as tax exemptions and tax credits). A wide range of payments between connected persons are targeted by the rule, including interest, royalties and service fees, with the notable exclusion of dividends. Other exceptions involve a materiality threshold, a mark-up threshold and certain characteristics of the recipient. With respect to the STTR's impact on elimination of double taxation, the approach adopted is to amend the applicable treaty to preserve the position that would have applied before application of the STTR, which means that the recipient jurisdiction is neither required to exempt the Covered Income because of tax payable under the STTR, nor to provide a tax credit for tax payable under the STTR. Additionally, the STTR takes priority over the GloBE Rules and is creditable as a covered tax. Its implementation by countries is planned to start in October 2023 via a multilateral treaty. IF members have committed to adopt the STTR when requested by other IF members that are developing countries.

OECD Secretary-General's report to G-20

The OECD Secretary-General's report to G20 Finance Ministers and Central Bank Governors notes "strong progress" on international tax reforms. The [report](#) provides a very positive update on multiple work streams, including Pillars One and Two, indirect tax, tax transparency, tax policy and climate action and other areas. Some notable observations relating to Pillars One and Two include:

- **Pillar One Amount A:** As reported in the July 2023 [Outcome Statement](#), efforts to resolve remaining issues are underway with a view to prepare the multilateral convention (MLC) for signature expeditiously, with the objective of enabling the MLC to enter into force in 2025. The report notes that the MLC's ratification date will be decided by contracting jurisdictions after at least 30 IF members accounting for at least 60% of the ultimate parent entities (UPEs) of in-scope MNEs have ratified it which, therefore, needs to include the US). This presumably represents the "critical mass" threshold agreed to in the [IF's October 2021 Statement](#).
- **Pillar Two GloBE rules:** The OECD estimates that by 2025 almost 90% of in-scope MNEs will be subject to an effective minimum tax of 15% in every jurisdiction where they operate.
- **Economic Impact Assessment:** Estimated revenue gains derived from Pillar Two have been adjusted downwards from USD 220 billion (as [reported](#) by the OECD in January 2023) to USD 200 billion per annum based on the latest available data from 2020. Pillar One revenue gains are expected to be greater for developing countries than for more advanced countries.

PwC's Tax Readiness Webcast: The current state of the OECD's two-pillar solution

While there is uncertainty around Pillar One (both on the timeline and on whether a critical mass is achievable), many countries have begun implementing Pillar Two and the OECD IF has now released more substantive guidance in key areas. Join our CPE-eligible webcast ("Tax Readiness: The current state of the OECD's two-pillar solution") for the latest updates on the OECD's two-pillar solution.

July 27, 2023 from 11:00 AM—12:00 PM ET

[Register today](#)

Consult PwC's [Pillar Two country tracker](#) to learn more about individual jurisdictional implementation of Pillar Two.

Let's talk

For a deeper discussion of how Pillars One and Two might affect your business, please contact:

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