EUROPEAN
COMMISSION

Brussels, 30.6.2023
COM(2023) 377 final

REPORT FROM THE COMMISSION TO THE COUNCIL

Progress Report on Pillar One

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1. Introduction

The Global Anti-Base Erosion (GloBE) Model Rules concerning Pillar Two of the October 2021 statement of the Inclusive Framework on Base Erosion and Profit Shifting (IF on BEPS)[1] were approved on 14 December 2021 and released by the Organisation for Economic Co-operation and Development (OECD) on 20 December 2021[2]. The OECD is currently finalising the technical work on certain aspects of the Administrative Guidance (including the Qualified Domestic Minimum Top-up Tax Safe Harbour, the Transitional Under Taxed Profit Rule Safe Harbour and the GloBE Information return) and plans to wrap up this work by July 2023.

The GloBE Model Rules concerning Pillar Two were implemented in EU law through the Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union of 15 December 2022 (Pillar Two Directive).[3] Article 57 of the Pillar Two Directive requires the Commission, by 30 June 2023, to submit a report to the Council on the implementation of Pillar One of the October 2021 statement. This report provides a brief assessment of the state of play of the negotiations at the OECD on Pillar One. As currently the work on Pillar One is still ongoing at the OECD level, this report provides an assessment of the implementation of Pillar One at the time of writing this report.

2. Assessment on implementation of Pillar One

Pillar One is made up of two main components[4]. Amount A provides a new taxing right over a portion of the residual profits[5] of the largest and most profitable multinational enterprises in the world to market jurisdictions. Amount B aims to simplify and streamline the application of the arm's-length-principle to in-country baseline marketing and distribution activities[6].

The IF on BEPS has shaped the agreement on the key elements of Amount A as reflected in the October 2021 statement. The IF on BEPS mandated the Task Force on the Digital Economy (TFDE) to advance with the technical work. The July 2022 Progress Report on Amount A of Pillar One[7] identified the following core elements of Amount A:

- the scope rules containing thresholds designed to ensure that Amount A only applies to large and highly profitable groups. These rules exclude revenues and profits from extractives activities and regulated financial services from the scope of Amount A;
- a special purpose nexus identifying the jurisdictions that are eligible to Amount A, and a detailed revenue sourcing rules providing a methodology to determine where the revenues of a group are generated;

[1] https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm

[2] https://www.oecd-ilibrary.org/docserver/782bac33-en.pdf?expires=1686754557&id=id&accname=oid031827&checksum=CA2158A15A6D3578CA5F47F381F39C5D

[3] Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22 December 2022, p. 1.

[4] For further details see the Blueprint on Pillar One: https://www.oecd-ilibrary.org/docserver/beba0634-en.pdf?expires=1686754864&id=id&accname=oid031827&checksum=514DF17DC29D8C2C6CFFDE643BFC3A6D

[5] For the purpose of Amount A, the residual profit of the group is identified as the profit in excess of the a profitability threshold of 10% of the Group Return on Sale.

[6] The arm's length principle is the international standard that OECD member countries have agreed should be used for determining transfer prices for tax purposes.

[7] https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf

- the tax base rules providing the steps to calculate the profit (or loss) of a group that will be used for Amount A calculation purposes;
- the profit allocation rules based on a formula that allocates 25 % of a group's profit in excess of the 10 % profitability on the group's revenues to eligible market jurisdictions, and takes into account the marketing and distribution safe harbour for market jurisdictions that have existing taxing rights over the group's residual profits;
- rules to eliminate any double taxation that arises from applying Amount A as an overlay to the existing profit allocation system;
- and a tax certainty process for the new Amount A rules and any related issues.

The rules on Amount A that already appear as agreeable to the members of the TFDE are being translated into provisions for inclusion in a Multilateral Convention (MLC) and an Explanatory Statement by the OECD Secretariat. The MLC will establish the legal obligations of the parties to implement Amount A in a coordinated and consistent manner. The Explanatory Statement will contain commentaries and interpretations of the MLC rules.

The technical work of the TFDE is not finished yet. Several meetings have been scheduled in the upcoming weeks. The elements of the MLC that are still under discussion include: the elimination of double taxation, the marketing and distribution safe harbour and the treatment of withholding taxes, the standstill and rollback of digital services taxes and other relevant similar unilateral measures, the implementation of an autonomous domestic business exemption and the carve-out for defensive revenues, as well as the condition of entry into force.

The OECD Secretariat aims to finalise the technical work by 10-12 July 2023 and present the package of the MLC and the Explanatory Statement. As jurisdictions need further time, due to domestic reasons, before signing the MLC, the signing ceremony of the MLC is expected to take place at the end of 2023.

The OECD Secretariat also plans to have a preliminary agreement in July on the main components of Amount B subjected to a validation phase to be undertaken by the end of 2023. In particular, the OECD aims to reach an agreement on the following elements of Amount B:

- the scope, with further work to be undertaken by the end of the year to better define the list of excluded activities and the appropriateness of the pricing methodology for digital goods;
- the opening of a validation phase on the pricing framework that will run till the end of the year and that will entail the launch of a new public consultation;
- an implementation framework that recognizes that Amount B will be included into the OECD Transfer Pricing Guidelines in January 2024, with a review of Amount B after 3 years of implementation.

3. Conclusion

The Commission welcomes the great efforts and the progress made so far and urges all participants to make a final effort to reach an agreement on the MLC to implement Pillar One. The Commission strongly supports the OECD Secretariat's intention to finalise the MLC and the Explanatory Statement and present the package in July 2023 to ensure that the MLC could be signed as soon as possible. It provides a window of opportunity to reach a historical agreement in the area of international taxation and complete the work on the Two-Pillar-Solution of the October 2021 statement. The Commission will do its utmost to ensure a timely and consistent implementation of Pillar One at EU level.