FAR

OECD
Tax Treat, Transfer Pricing and Financial Transactions Division OECD/CTPA

tfde@oecd.org

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Comments on the public consultation document "Progress Report on the Administration and Tax Certainty Aspects of Pillar One"

FAR, the institute for the accountancy profession in Sweden, takes the opportunity to respond to the public consultation document *Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One*.

Introduction

OECD has developed recommendations for actions to address tax challenges from the digitalization of the economy as part of the BEPS project. These actions are broadly divided into Pillar One and Pillar Two, where Pillar One consists of a new, fair allocation of taxing rights to market jurisdictions and Pillar Two sets out to enforce a certain minimum tax rate. The objective is that the two pillars together should resolve the remaining BEPS challenges with the digitalization of the economy.

Pillar One consists of two parts: Amount A and Amount B. Amount A, which is the focus of the public consultation document in scope, entails the creation of a new nexus for market jurisdictions to levy tax. Amount B consists of changes to the OECD Transfer Pricing Guidelines to ensure a certain level of profitability for certain distributing entities.

The public consultation document consists of considerations related to administration and tax certainty related to Amount A of Pillar One. One of the greatest challenges facing corporate taxpayers in the current international tax environment is double taxation that stems from tax authorities making different interpretations of international guidelines. The difference in interpretations entails a high administrative burden and the lack efficient measures to alleviate double taxation results in an unfair tax burden. In addition, Amount A of Pillar One is an exception to the long standing and widely accepted arm's length principle which corporate taxpayers have invested significant resources in complying with. In fact, the framework bears some resemblance of a formulary apportionment approach that has been rejected by the OECD due to the "enormous political and administrative complexity".[1] A new framework agreed between countries should therefore not entail an increased administrative burden for corporate taxpayers.

[1] See for example the 2022 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, para 1.24.

In light of that, FAR has not opted to comment on the technical details of the various rules included in the public consultation document but does have the following overall comments to the work currently undertaken.

Timeline

It is understood that the OECD is working for an implementation in 2024 and a signing ceremony already in the first half of 2023. However, there is still no agreement within the OECD and Inclusive Framework of the model rules of Amount A of Pillar One. FAR has also noted that several aspects of the administrative ruleset depend on how the final model rules are designed. With this in mind it appears as if the envisioned timeline may be somewhat short to allow for drafting of high-standard model rules and their duly implementation in tax treaties and national legislation. The priority must be, in FAR's view, the quality of the rules to ensure a stringent interpretation and application rather than the swiftness of their implementation.

Need for simplifications

Given that the rules, although under development, appear as they would be very complex, it is welcome that the OECD is already considering simplification to the extent possible in both the actual reporting, but also in achieving tax certainty. As FAR noted in its response of 3 March 2022 to the public consultation on the report "Pillar One – Amount A: Draft Model Rules for Tax Base Determinations", simplifications are essential for the system to function as intended. FAR would like to reiterate its view that any simplifications to ease the compliance burden of the multinational groups, and to make the compliance with the framework easier, should be of priority – whether this being administrative, tax certainty or model rules of Amount A of Pillar One.

Efficient tax certainty processes

FAR agrees with OECD's assessment of the significant complexity from having a multilateral mutual agreement procedure to resolve disputes and achieving tax certainty. The proposed tax certainty review system could help in creating an efficient process for multinationals to achieve various levels of certainty in the application of the framework. However, it is vital that the whole Inclusive Framework agrees on the process and timelines upon agreement of the whole Pillar One framework, and that the efficiency of the system is continuously monitored.

Review alternative administration and tax certainty processes – A true single taxpayer system

There may be several administrative and tax certainty issues with Amount A of Pillar One, with additional complexity driven by the fact that several individual companies of a multinational group need to interact with several countries' (market jurisdictions) tax authorities. To further facilitate the compliance with Amount A of Pillar One, it could be further reviewed whether it is necessary for multinationals to engage with several tax authorities to achieve the objectives of Pillar One.

One potential alternative that could be reviewed further is to have the Lead Tax Administration collect any tax from the application of Amount A of Pillar One from a designated entity. The Lead Tax Administration would collect all necessary data to make the assessment of which market jurisdictions should be entitled to additional profits, how much, and from which group entities. Based on this information, the Lead Tax Administration could collect the taxes from the multinational group and share the taxes from reallocated profits with other tax authorities. This approach could be combined with the proposed certainty review system as outlined in the public consultation document. Disputes would be solved mainly between tax authorities or between the entity liable for tax and the Lead Tax Administration.

This approach would require increased cooperation between tax authorities and increase their compliance burden, but it would on the other hand create tax certainty and ease administration for the multinational groups. The above distribution in of additional compliance and administration is in FAR’s view not unreasonable given the nature and background of the proposed changes to the international tax principles. The taxpayers would still need to collect and process all required data but would not bear the risks associated with differences in interpretations between countries that have agreed on and implemented the framework.

Concluding remarks

It is positive that further work is undertaken not only regarding the model rules as such, but also with administration and tax certainty aspects of the new Pillar One framework. FAR’s view is that it is important that any adopted rules are simple and easy to comply with. It is therefore essential that sufficient time is allocated for the design of the rules to achieve this objective and that the framework is not adopted until those objectives are met.

Yours sincerely

Michael Johansson
Chairman of the Comment Letter group Tax, FAR