

To: Taxation WG
 From: Michele Tadi
 Date: 23-12-2021
 Reference: ECO-TAX-21-102

Subject: Update on OECD Model Rules and EC Directive proposal for Pillar 2 and next steps

Input requested

- Members are invited to send their **views and comments** on the **OECD Pillar Two Model Rules** and the **EC proposal for Directive** on the implementation of Pillar Two and
- Members are also invited to indicate whether they want the secretariat to take part to BIAC's **rapid response drafting groups for Pillar One** consultations, via email to tadi@insuranceeurope.eu by **Friday 7 January 2022 cob**.

Background

OECD Pillar Two Model Rules

As per [FLASH-21-222](#), on **20 December** the OECD published its [Pillar Two Model Rules](#). They provide a template to be implemented in domestic legislation in a coordinated manner and within the agreed timeframe.

Therefore, the secretariat has updated the OECD expected implementation timeline (see [ECO-TAX-21-088](#)) as follows:

Pillar One	Pillar Two
Early 2022 – Text of a Multilateral Convention (MLC) and Explanatory Statement to implement Amount A of Pillar One	20 December 2021 – Model rules to define scope and mechanics for the GloBE rules
Early 2022 – Model rules for domestic legislation necessary for the implementation of Pillar One	Early 2022 – Model treaty provision to give effect to the subject to tax rule (STTR)
Mid 2022 – High-level signing ceremony for the Multilateral Convention	Mid 2022 – Multilateral Instrument (MLI) for implementation of the STTR in relevant bilateral treaties
End 2022 – Finalisation of work on Amount B for Pillar One	End 2022 – Implementation framework to facilitate co-ordinated implementation of the GloBE rules
2023 – Implementation of the Two-Pillar Solution	

In a [nutshell, according to the document published by the OECD](#), there are 10 chapters for the Pillar Two Model Rules.

- Chapter 1 addresses questions of scope.
- Chapters 2-5 contain the key operative rules.
- Chapter 6 deals with mergers and acquisitions.
- Chapter 7 provides special rules that apply to certain tax neutrality and existing distribution tax regimes.
- Chapter 8 deals with administration.
- Chapter 9 provides for rules on transition and
- Chapter 10 contains definitions.

Generally speaking, the Pillar Two Model Rules are taking into account the different tax systems and also include particular rules for specific business structures (eg. joint ventures). This means that some of the rules may not apply to all jurisdictions or to each individual multinational entity (MNE) in scope.

Under OECD rules, taxpayers must have a foreign presence or more than EUR 750 million in consolidated revenues to be in scope of the Model Rules.

Other subjects excluded are government entities, international organisations and non-profit organisations (reflecting the domestic tax exemptions for sovereign, non-profit and charitable entities), as well as the entities that are defined as pension, investment or real estate funds. These entities are excluded even if the MNE group they control remains subject to the rules.

The entities in scope must calculate their effective tax rate for each jurisdiction in which they operate, and pay the top-up tax, making up for the difference between their effective tax rate per jurisdiction and the 15% minimum rate. Any resulting top-up tax is generally charged in the jurisdiction of the ultimate parent of the MNE. There is a provision for a de minimis exclusion in cases where the amount of revenue end income in a jurisdiction is relatively small.

The rules also allow for the introduction of a domestic minimum top-up tax based on the GloBE mechanics, which would be completely creditable against any liability under GloBE, safeguarding a jurisdiction's principal power of taxing over its own income.

To ensure a level playing field with the US, there will be also considerations to the conditions under which the US Global Intangible Low-Taxed Income (GILTI) regime will co-exist with the GloBE rules.

The OECD also published a [fact sheet](#) which includes the key operating provisions of the model rules and [FAQs](#) to provide further clarifications.

Given the complexity of the rules and the compliance challenges that are envisioned to comply with them, the commentary of the rules will be crucial to provide more clarity to taxpayers.

Q16 of the FAQ states that the **commentary to the model rules will be published in early 2022 (probably around end of February/beginning of March)**, while the work for the development of the Implementation Framework will continue throughout the year. Two consultations, on the Implementation Framework and on the Subject to Tax Rule (STTR) are also expected, respectively in February and in March 2022.

EC proposal for a Directive on the implementation of Pillar Two

On **22 December**, the European Commission published its proposal for Directive ensuring a minimum effective tax rate for the global activities of large multinational groups ([the text of the proposal can be found here](#)), to implement the OECD Pillar Two in the EU legislative framework.

The EC has decided to implement Pillar Two in the EU by way of a Directive, to ensure consistency across member states, in compatibility with EU law. The proposal only deals with the OECD Model Rules, while the Commission considers the STTR to be naturally suited to be addressed in bilateral tax treaties.

The proposal is structured as follows:

- Chapter I includes the general Provisions
- Chapter II deals with the application of the Income Inclusion Rule and the Under Taxed Payments Rule
- Chapter III comprises the calculation of the Qualifying Income or Loss
- Chapter IV covers the computation of Adjusted Covered Taxes
- Chapter V is about the calculation of the Effective Tax Rate and the Top-Up Tax
- Chapter VI provides special rules for Mergers and Acquisitions
- Chapter VII covers Tax Neutrality and Distribution Regimes
- Chapter VIII deals with Administrative Provisions
- Chapter IX contains Transitional Rules
- Chapter X is added in respect of EU treaty rules, to deal with the specific application of the IIR to large-scale domestic groups
- Chapter XI includes the final provisions

As you can see, the proposal follows closely the OECD model rules released on 20 December, with the inclusion of a **specific Chapter 10** to extend the application of the Income Inclusion Rule (IIR) to purely domestic groups located in a Member State if they meet the EUR 750 million threshold.

The addition is meant to **ensure conformity with EU law**, avoiding any risk of discrimination in a Member State between an entity that belongs to a group with cross-border activities and a group with purely domestic activities.

The EU rules also provide for a 5-year transitional period, during which the low-taxed domestic activities of large scale domestic groups will be excluded from the application of the rules, to ensure equal treatment with MNEs that are beginning international activities.

The application of the rules is set for **1 January 2023**, with the exception of the Undertaxed Payment Rule for which the application will be **deferred to 1 January 2024**.

The commission has also published [Questions & Answers](#) to clarify some aspects of the rules, together with a [factsheet](#) on Pillar Two.

A legislative proposal by the EC for the **implementation of Pillar One** is expected to be published in **mid-2022**.

In view of discussions at GFIA level in January, and to prepare for a possible engagement by Insurance Europe (in coordination with GFIA) on the Pillar Two Model Rules and the EC proposal of a Directive for the implementation of Pillar Two, members are invited to share their comments with the secretariat via email to tadi@insuranceeurope.eu by **Friday 7 January 2022 cob**.

OECD Pillar One rapid response drafting group

Please note that the following information are **not yet public** and **must be treated as confidential**. The secretariat is kindly asking members **not to share** them any further.

The Business at OECD committee (BIAC) is organising rapid response drafting groups to take part in the upcoming consultation process on Pillar One, which will take place in 2022.

The secretariat understands that the OECD will organise a short-timed consultation process on Pillar One, by releasing drafts in "waves", grouped in topics.

Such drafts are scheduled to be released from mid-January to April or May, with short consultation windows for businesses of approximately two weeks.

The tentative groups of topics are as follows:

- First wave
 - Revenue sourcing, nexus
 - Tax base and treatment of losses
- Second wave: scoping, including
 - Averaging (e.g., for companies on cusp of threshold)
 - Carve outs for extractives and regulated financial institutions
- Third wave: tax certainty process for both taxing jurisdictions and MNEs.
- Fourth wave:
 - Elimination (the surrender state – who pays Amount A)
 - Marketing and Distribution Safe Harbor
 - Withholding taxes (double counting issues)

It is possible that there will also be a consultation on Amount B in mid-2022.

The letter describing the key areas of engagement for BIAC on Pillar One and Two can be found at [ECO-TAX-21-092](#).

The secretariat believes that the most prominent topic for insurers would be the carve outs for extractives and regulated financial institutions included in the second wave, but it is also asking members to indicate whether



they would like Insurance Europe to take part to the rapid response drafting groups and, if so, on which topic the secretariat could contribute, via email to tadi@insuranceeurope.eu by **Friday 7 January 2022 cob**.

Other updates

On 22 December, the EC also presented an [initiative to end the misuse of shell entities for tax purposes within the EU](#). The text of the proposed directive [can be found here](#).

Next steps

- **4 January 2022:** second BIAC call on "fatal flaws" letter.
- **7 January 2022: deadline for members** to send their comments and views on the OECD Pillar Two Model Rules, the EC proposal for Directive on the implementation of Pillar Two and the OECD rapid response drafting groups for the consultation on Pillar One.
- **2022:** finalisation of details, publication of model rules for implementation of Pillar One and multilateral instruments/conventions to implement rules at national level; EC proposal for a directive for implementation of Pillar One.
- **Mid-January to April/May 2022:** OECD consultation with businesses on Pillar One.
- **1 January 2023:** application of rules of EU Directive on the implementation of Pillar Two.
- **2023:** implementation of the Two-Pillar Solution at global level; expected repealing of national DSTs.
- The secretariat to continue monitoring the issue and keeping members updated on developments.