

OECD/ G20 Inclusive Framework Report on Pillar I and Pillar II Blueprints

Response from the American Chamber of Commerce Ireland
to the OECD Public Consultation Document

December 2020

American Chamber of Commerce Ireland

We are pleased to set out the comments of the American Chamber of Commerce Ireland (henceforth 'the American Chamber') with respect to the Public Consultation on the OECD/ G20 Inclusive Framework Report on Pillar I and Pillar II Blueprints (henceforth 'the Blueprints')

The American Chamber represents the Irish-based enterprises that form an important link in the two-way transatlantic economy between the United States and Europe. The American Chamber is the leading international business organisation in Ireland. Membership includes the top US companies in Ireland, the Irish companies that support them, and the growing number of Irish companies with business in the US. The American Chamber continues to be supportive of the evolution of the international tax framework, provided it ensures consistency and certainty for global businesses, and supports global trade and investment flows.

The American Chamber welcomes the substantial work undertaken by the OECD in producing the Blueprints and recognises the publication of the Blueprints as an important step towards a workable set of international tax rules that serve both governments and taxpayers. Below we have set our key observations in response to the Blueprints.

Key Principles

- **Non-discrimination:**

The Blueprints have been published at a time of unprecedented global social and economic challenges. In light of the positive news regarding a COVID-19 vaccine, governments around the world are focusing on reopening and rejuvenating their economies. We believe that in responding to the tax challenges of an increasing digitalised economy the OECD should focus on pro-growth policies ensuring industry-specific neutrality and avoiding special tax benefits or penalties targeted to one industry versus another. It is a fundamental tenet of pro-growth tax policy that the marketplace, not the tax system, should allocate capital and resources.

The global economy continues to digitise at speed in order to sustain the competitiveness of their product and service offerings. The COVID-19 pandemic has highlighted the need for diversified global supply chains that deliver regulated and cost-efficient products and services to the global consumer. In light of this global inter-reliance, we believe the international tax system should not favour certain sectors or technologies over others and should treat domestic and foreign companies equivalently.

The American Chamber supports a tax regime built on an agreed understanding of value creation in a reformed set of transfer pricing rules reflecting the need to consider fair-value attribution to the activities of businesses. Any agreed formula or thresholds set under the Unified Approach should be principled and evidence-based so as to remain durable over time. We believe that such formulas should

be determined primarily by the application of the arm's length principle. The application of the Unified Approach should not result in market access being over rewarded.

- **Multilateralism**

The American Chamber remains strongly supportive of a multilateral and united approach to addressing BEPS related matters. The OECD allows for consultation among a broad base of stakeholders from the private and public sectors, and is, in our view, the appropriate forum to achieve a consensus outcome which is proportionate and balanced.

Unilateral actions threaten global economic interests including trade, erode trust, and undermine prospects for international agreement. Country-specific mechanisms will cause fragmentation, translating into increased burdens for taxpayers and tax administrators alike. The American Chamber believes that countries should be obliged to withdraw such unilateral measures upon agreement, rather than, upon implementation of any new rules. We also ask that the OECD review and report on countries' withdrawal efforts.

- **Administrability and certainty**

The American Chamber appreciates the OECD's efforts in developing a Blueprint for a unified approach for consideration by 137 participants. The broad nature of the negotiations is reflected in the complexity of the suggested reforms. In trying to marry interests from vastly different economic perspectives, the approaches to both pillars in places could be considered subjective and the Blueprints are not always clear on the principles behind the proposed rules. Subjectivity leads to uncertainty between the taxpayers and auditors.

As drafted, the Blueprints require further reporting by businesses within the scope of the rules. We are concerned that there will be significant costs for MNEs associated with compliance and administration. The OECD should not underestimate the administrative burden that taxpayers will bear in complying with the new rules and, equally, that tax authorities will face in policing and implementing the framework. It is critically important that the rules are designed and implemented in a way that minimises such complexity.

In order to ensure that the burden of compliance yields a proportionate benefit we would ask that the final rules be clear, with reasonable scope and thresholds, and are designed with an emphasis on ease of administration for tax authorities and taxpayers.

- **Avoiding double taxation**

Key to the provision of certainty, is the elimination of double taxation. To avoid the risk of double-taxation and tax disputes the American Chamber asks that the OECD provide greater guidance to taxpayers on how to comply with the rules, as well as to tax authorities on how to implement and audit

the rules. It is promising that there is a possible mechanism to avoid double counting where businesses are already compensating the market jurisdiction.

In order to eliminate double counting and clarify the point at which the marketing and distribution profits safe harbour applies the American Chamber asks that there would be a clear set of rules outlining the scope of Amount A and Amount B.

Furthermore, the American Chamber is concerned that the Subject to Tax rule, which applies in priority to the GLOBE rules, would levy a gross basis withholding tax on a wide range of payments. We believe that mechanisms to collect the tax should be designed so as to achieve simplicity, and do not support withholding taxes as a means of collection. It would represent a departure from long-established principles for profit-based taxes advanced by the OECD and could possibly lead to double taxation.

- **Durability**

The American Chamber is very conscious of the scope of recent changes in the international tax landscape. It is our hope that this project will establish a predictable tax regime for the foreseeable future that allows companies to make long-term investments. In light of these significant changes and in order to ensure that the changes in policy are having the desired effect, we are calling for the phased implementation of the agreed framework in a manner that ensures full implementation by all jurisdictions, and that does not discriminate against particular industries or result in a concentration of businesses from certain jurisdictions.

In order to ensure the long-lasting success of the framework, the American Chamber believes that no part of the proposed solution should be implemented unless accompanied by a timely mandatory binding dispute resolution process. Further clarity on the dispute resolution proposals would be welcomed, including details on the administration of the process. We are calling for a simplified expedited adjudication process to be introduced. In particular, we believe that robust processes should be put in place to avoid any significant waiting periods for tax refunds.

- **Efficiency**

The American Chamber believes that the solution should seek to align the interests of governments and companies in generating economic prosperity, by reducing economic distortions and avoiding perverse incentives.

Current MNE information collection practices should be followed. The American Chamber supports the use of IFRS or US GAAP as accounting standards for the relevant calculations on the basis these are widely recognised and used. Taxpayers should not be subject to new or modified standards that require adjustments for the sole purpose of complying with the Unified Approach. Government privacy rules (such as GDPR) should also be taken into considered as they may restrict MNE's ability to ask for information.

In order to allow companies to sufficiently plan for, and implement, the necessary internal systems, the American Chamber would welcome an indication of the expected implementation timelines. Significant changes to internal reporting systems can take a minimum of 2-4 years to implement.

Pillar I

- **Scope**

In analysing the Blueprints, we recognise that political decisions regarding scope are necessary before deciding on the appropriate technical guidance to determine what activities are in-scope. However, we would like to highlight that many business models are overwhelmingly based on landed models, where revenues are reported and taxed where customers are located. These business models are currently taxed under existing Permanent Establishment, attribution and nexus rules, and there should be a clear carve-out for companies reporting revenues where their customers are located.

- **Safe Harbour**

The American Chamber believes that Amount A should not be allocated through the new nexus to a country that already recognizes sufficient non-routine profits under existing transfer pricing rules. To do so would be contrary to the policy rationale of Amount A, overly burdensome to administer, and ineffective in eliminating double taxation. The policy rationale for Amount A is premised on giving market jurisdictions taxing rights over a portion of residual profits. Where market jurisdictions already have such taxing rights, the policy objective would already be met without the need to overlay complex new rules. Applying a mechanism to eliminate double taxation to decentralized businesses that realize residual profits in many entities and jurisdictions would be overly complex to administer.

An adequately designed marketing and distribution profits safe harbour is, we believe, an appropriate mechanism to address these issues by reducing or eliminating the Amount A allocation to jurisdictions that recognize non-routine profits under existing transfer pricing rules. We believe that a strong emphasis should be placed on simplicity in defining the scope.

- **Segmentation**

The American Chamber suggests that segmentation should only be required in very limited and clearly articulated cases that would otherwise result in distortive impacts. We are concerned that segmentation may lead to similarly situated MNEs (e.g., with similar sales revenue and profits) that segment their financial statements in different ways for entirely non-tax-related purposes, realising very different Amount A allocations.

Considering the principle purpose of Amount A is to achieve a global reallocation of the tax base, Amount A should be calculated based on consolidated accounts rather than on a geographically segmented basis, even if an MNE has chosen to disclose geographically segmented accounts.

We note that segmentation will bring additional costs for MNEs, significantly increasing the cost of tax compliance. The American Chamber believes that financial statement disclosure, including segmentation, if any, should be driven by the intention to inform investors without the influence of potential tax outcomes.

Pillar II

- **Interaction with the US's Global intangible low-taxed income (GILTI)**

The American Chamber believes there should be an increased focus on the further simplification of the Pillar II rules. We acknowledge that the Blueprint suggests that GILTI may be considered a compliant income inclusion rule for the purposes of the GloBE rules. However, based on the OECD's repeated assertions that GILTI is a more onerous provision and raises more revenue than GloBE, we believe that GILTI should be formally recognised by the Inclusive Framework as a minimum tax for the purposes of Pillar 2 as a whole. If GILTI is a compliant regime, there should be no intermediate minimum tax down the chain, thus reducing complexity and simplifying the administrative burden for the many MNEs already subject to a minimum tax on global intangible income.

Assuming it is determined that GILTI is a compliant income inclusion rule, we recognise that would need to be increased guidance on how GILTI coexists with Pillar 2. In particular we would ask for guidance on how the undertaxed payment and subject to tax rules apply to a group subject to GILTI.

Post COVID

We recognise that the Blueprints were drafted as the world endured a financial crisis as a result of the COVID-19 pandemic. Unfortunately, we believe that this has impacted on many of the findings within the Economic Impact Assessment.

Furthermore, we understand the assessment largely utilises data from 2016 and 2017 which pre-dates implementation of many of the previous BEPs measures and excludes the impact of significant US tax reform. Accordingly, we ask that an updated Economic Impact Assessment be undertaken using more current data so that the effect of BEPs and US tax reform can be fully evaluated before agreeing to adopt the Blueprints.

In light of the current challenges facing the global economy and the scope of recent changes in the international tax landscape, we ask that the OECD supports extensive pre-implementation consultation of the Pillars, in collaboration with members of the global business community, to work through interpretative issues and establish best practices in advance of implementation.

Conclusion

We are pleased to set out the American Chamber's observations with respect to the Public Consultation Document on the Inclusive Framework Report on Pillar I and Pillar II Blueprints. Our members understand that current initiatives seek to further modernise tax codes to reflect the transformation that digitalisation is bringing to the global economy. The American Chamber remains strongly supportive of multilateral consultation and agreement to address BEPS related matters.

American Chamber of Commerce Ireland

6 Wilton Place,

D02 YD51

Dublin 2

<http://www.amcham.ie>