JVI Webinar – Digitalisation and Taxation
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Starting point…

Digital Business Models vs. Traditional Business Models

Effective Average Tax Rate (%) EU 28

- Digital international B2B model: 8.9%
- Digital international B2C model: 10.1%
- Digital domestic business model: 8.5%
- Traditional international business model: 23.2%
- Traditional domestic business model: 20.9%
Starting point …

“Vintage style” international tax rules in a digitalized world: are “market states” getting a fair share of the tax pie?

• **Digital Economy:**
  ◦ Cross-jurisdictional scale without mass
  ◦ Heavy reliance on intangible assets, especially IP
  ◦ Importance of data, user participation and their synergies with IP

• **Current** nexus and profit allocation rules
  ◦ „brick-and-mortar business“
  ◦ misalignment between place where the profits are taxed and place where value is created

• **BEPS discussion**

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From BEPS to Pillar I and II

2012-2013
- OECD/G20 BEPS Project
- Action 1 – Adressing the Tax Challenges of the Digital Economy (TFDE)

2015
- BEPS Action 1 – Final report
- Continued work on broader tax challenges necessary

2016-2017
- Inclusive Framework - inclusion of non-OECD-states
- New program of work– TFDE/IF

2018
- Interim Report

1/2019
- Policy Note – 2 Pillar approach
  - Pillar 1: Nexus and profit allocation
  - Pillar 2: global minimum tax and remaining BEPS issues

- New nexus in the form of a significant economic presence
- Withholding tax on certain types of digital transactions
- Equalization levies (DST)
From BEPS to Pillar I and II

3/2019
- Public consultation on Pillar I

10/2019
- OECD secretariat proposal for a "Unified Approach on Pillar I"

11/2019
- Public consultation on Pillar II

1/2020
- Statement by the IF on Two Pillar Approach ⇒ Outline of the Architecture of a Unified Approach to Pillar I and progress note on Pillar II

10/2020
- Report on Pillar I and II blueprint + public consultation

Mid 2021
- Conclusion ⇒ otherwise EU solo effort?
Pillar I in a nutshell

Expansion of taxing rights of market/user jurisdictions where there is an „active and sustained participation“

New Nexus (without physical presence)

Amount A
Portion (%) of residual profits

Amount B
Fixed return for „baseline“ marketing and distribution

Remainder: profit allocation following standard transfer pricing rules

Tax Certainty (dispute prevention and resolution)
Pillar I in a nutshell – Amount A

<table>
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<tr>
<th>Scope</th>
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<tbody>
<tr>
<td><strong>Automated Digital Services</strong></td>
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<tr>
<td>Services made available to users through</td>
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<tr>
<td>digital means, which access is obtained in</td>
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<tr>
<td>an automated fashion by virtue of equipment</td>
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<tr>
<td>and systems (positive list + negative list)</td>
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<tr>
<td><strong>Consumer Facing Businesses</strong></td>
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<td>Supply of goods or services commonly sold</td>
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<td>to consumers</td>
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<table>
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<th>Nexus</th>
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<tr>
<td>„<strong>significant and sustained engagement</strong>“ in market/user juristidiction</td>
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<tr>
<td><strong>Foreign in scope revenue &gt; de minimis threshold</strong> +</td>
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<tr>
<td>Market revenue &gt; threshold + <strong>plus factors</strong> for CFB</td>
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<td>⇒ Revenue sourcing</td>
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## Pillar I in a nutshell

| Amount A („quantum“) |  
|----------------------|--------------------------------------------------|
| 1. Tax base determination („profit before tax“) of MNE | consolidated financial accounts + book-to-tax adjustments + loss carry forward rules (earn out mechanism) business line segmentation if |
| 2. Elimination of routine profits to receive residual profits | Definition of profitability threshold [x]% profit margin |
| 3. Determination of share of residual profits that is reallocated to market states | [x]% of residual profit (reallocation threshold) |
| 4. Allocation of market related residual profits to the eligible market jurisdiction | Allocation key |

### Additional Notes

- **Rules on the elimination of double counting and double taxation**
Pillar II in a nutshell

GloBE rules

Income Inclusion Rule (+ switch over)

Undertaxed payment rule

Subject to tax rule

Certain BEPS-susceptible payments

Coordination

Dispute prevention (+resolution)

Minimum tax rate

(jurisdictional) ETR

NTR
Pillar II in a nutshell

- **MNE Group (CbCR)**
- **Constituent entities (CE) (CbCR +/-)**
- **Consolidated revenue > € 750 Mio**
- **Ultimate Parent Entity**
- **Top-up tax for each (low taxed) CE**
- **Compute jurisdictional ETR**
- **No IIR in jurisdiction of UPE**
- **Intermediate parent entity(s)**
- **Top-up tax is paid via UTPR**

- **Covered taxes paid**
- **GloBE income (Financial accounts of CE +/- adjustments)**
- **Carryforward of losses or excess taxes**
- **Substance based carveout**
Thank you for your attention