JVI Webinar – BEPS and the way forward

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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
  ◦ PE concept → „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

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

2015
- BEPS Action 1 – Final report (contd. work necessary)

2016-2018
- Inclusive Framework – inclusion of non-OECD-states
- Interim Report

2019
- 2 Pillar approach
  - Pillar 1: Nexus and profit allocation (Unified approach)
  - Pillar 2: global minimum tax and remaining BEPS issues (GloBE)

10/2020
- Public consultation

1/2020: Statement of support by the IF on 2 Pillar Approach
From BEPS to Pillar I and II

- **4/2021**: US compromise proposal on a “Pillar One”
- **6/2021**: G7 agreement on global tax reform (Pillar I+II)
  Cornerstones of Pillar I + global minimum (corporate) tax rate of “at least” 15%
- **7/2021**: Inclusive Framework statement of support
  (132 states joined; including all G20 states)
- **10/2021**: Finalization of the agreement and resolution of technical details
- **2022**: Development of a model legislation, a MLI and guidance
- **2023**: Implementation
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  
20-30% of residual profits

Amount B  
Simplified application of ALP on in-country „baseline“ marketing and distribution

Remainder: profit allocation following standard transfer pricing rules

Tax Certainty (dispute prevention and resolution)

Revised profit allocation

Removal of unilateral Digital Services Taxes!
# Pillar I in a nutshell – Amount A

## Scope

Comprehensive

NEW: not limited to ADS and CFB
Carveout for Extractives and Regulated Financial Services

### MNE with global turnover > 20 billion €* + Profitability* > 10%

*After 7 years reduction to 10 billion €

*PBT/revenue

## Nexus

„new special purpose nexus“

Market revenue > 1 Mio €*

*250 000 € if GDP < 40 billion €
**Pillar I in a nutshell**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Tax base determination („profit before tax“) of MNE</td>
<td>Consolidated financial accounts + book-to-tax adjustments + loss carry forward. Segmentation if on the segments disclosed in the financial account, a segment meets the scope rules.</td>
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<td>2.</td>
<td>Determination of residual profit</td>
<td>Profit in excess of 10% of revenue</td>
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<tr>
<td>3.</td>
<td>Determination of share of residual profits to be reallocated</td>
<td>20-30%</td>
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<td>4.</td>
<td>Allocation to the market jurisdiction</td>
<td>Revenue-based allocation key (revenue sourcing rules)</td>
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<tr>
<td>5.</td>
<td>Marketing and distribution profits safe harbor rule</td>
<td>Where residual profits are already taxed in a market jurisdiction, safe harbor caps residual profits allocated through Amount A.</td>
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Rules on the elimination of double taxation (MLI)
Pillar II in a nutshell

**GloBE rules**
- Income Inclusion Rule (top-down)
- Undertaxed payment rule (bottom-up)

**Subject to tax rule**
- Certain BEPS-susceptible payments

**Coordination**
- Dispute prevention (+resolution)

**Minimum tax rate**
- 15%
- 7.5%-9%

(DTC based)

Domestic law

(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 entitie(s)

UTPR as backstop

Covered taxes paid

GloBE income
(Financial accounts of CE +/- adjustments)

Substance based care-out
5% (7,5%) of book value of tangible assets + payroll reduce GloBE income

Exception for split ownership for shareholdings < 80%
Thank you for your attention