WORKING PAPER

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MEETING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Tax Questions (Digital Taxation)
Subject: OECD presentation

Delegations will find attached a powerpoint presentation given by the OECD at the Working Party on Tax Questions (Direct Taxation - Digital) on 11 October 2019. The attached presentation contains now a disclaimer in slide 2.
PILLAR TWO – GLOBE PROPOSAL
Disclaimer

This work is released under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD Member countries.
Rationale

- Ensuring that all internationally operating businesses pay a minimum level of tax
- Multilateral solution to avoid uncoordinated rules, increased complexity and risk of over-taxation
- Reduce pressure on developing countries to grant tax incentives
- Address remaining BEPS issues
- Address profit shifting risk from intangibles but not ring-fenced to digital economy
- Recent tax policy developments (e.g. GILTI)
Overview Pillar 2 – GloBE proposal

- Domestic law changes
- Income inclusion rule
- Income not subject to tax at a minimum rate
- Undertaxed payments rule
- Switch-over rule
- Subject to tax rule
- Rules that apply in the parent jurisdiction
- Rules that apply in the payer/source jurisdiction
- Treaty changes
Income inclusion rule

- Subject to tax rule
- Income not subject to tax at a minimum rate
- Switch-over rule
- Undertaxed payments rule

Income inclusion rule

- Top-up to a minimum rate and use of a fixed percentage
- Effective tax rate test (including simplifications)
- Common tax base
- Blending and carve-outs
- Other technical and design issues
Top-up to an agreed minimum rate

Calculate the tax base in accordance with agreed principles

- Tax paid by subsidiary in jurisdiction of residence
- Traditional CFC rule
- Agreed Minimum Rate
- Full domestic CIT rate
- ETR in jurisdiction of residence
Design of effective tax rate test

Effective Tax Rate test has two components

Minimum Rate
Agreed that this will be a fixed percentage

Tax Base
Explore use of financial accounts
Carve-outs and blending

Carve-outs and limitations
- Exclusions from the application of the income inclusion rule or adjustments that limit the amount of income included under the rule.

Blending
- Ability of taxpayers to mix high-tax and low-tax income from different sources to arrive at a blended rate of tax on income thereby limiting the amount of income included under the rule.

Overlapping issues and related effects
5. Other technical issues

Ownership thresholds
- Economic and control tests
- Aggregation of related parties and persons acting together
- Lower ownership threshold increases complexity and risk of double taxation

Attribution of income and tax
- Consider the rules countries use for CFC purposes
- Basis and timing of attribution of income
- Attribution in the period of transfer

Calculating investor tax liability
- Schedular or global approaches to including income
- Use of domestic tax reliefs
- Adjustments for previously taxed income.
Undertaxed payments rule

- Adjustment for payments made to related parties if the payment was not subject to tax at a minimum rate
  - Scope of payments covered
  - Mechanism to address conduit structures
  - Effective tax rate test
  - Measures to address over taxation
Design principles

- Effective in achieving its objectives
- Range of low tax outcomes
- Scope of payments covered
- Anti-conduit measures

- Design compatibility
- Mitigate risk of over taxation
- Minimise compliance and administration costs
Switch-over rule

- Allow the state of residence to apply the credit method instead of the exemption method for profits of a PE or derived from immovable property (not part of a PE)
- Where such profits are not subject to an effective rate of tax above a minimum rate
Subject to tax rule

Treaty benefits or relief from source taxation may have been only granted at the time of the negotiation of a tax treaty on the assumption that the payment would be taxable in the other jurisdiction.

Subject to tax rule would allow for imposition of source country taxation in the tax treaty, when the income is not subject to a tax at a minimum rate.

- Consider broader policy questions
- Scope, effective tax rate test and nature of the adjustment to be discussed
Other elements

- Simplifications including possible use of carve-outs, limitations
- Compatibility with international obligations including EU fundamental freedoms
- Co-ordination

Other Elements

- Subject to tax rule
- Income not subject to tax at a minimum rate
- Switch-over rule
- Undertaxed payments rule

Income not subject to tax at a minimum rate

Income inclusion rule

Other Elements
Co-ordination, rule order and design

Programme of Work requires co-ordination between various elements of GloBE proposal to
- minimise the risk of double taxation
- simplify operation of rules
- reduce compliance costs.

Rule-order has an impact on the design of rules.

Interaction of Pillar 1 and Pillar 2 will be explored.
Next steps

• Consultation document on particular design issues:
  – Use of financial accounts
  – Blending
  – Carve-outs

• Public Consultation expected to be held in December