MACFARLANES

Unpacking Pillar One and Pillar Two Blueprints

February 2021

Key observations for corporate groups

macfarlanes.com

1. Overview of the proposals

2. Pillar One

a Scope of Pillar One

b Calculating Amount A under new nexus rule

c Double taxation

d Dispute prevention and resolution

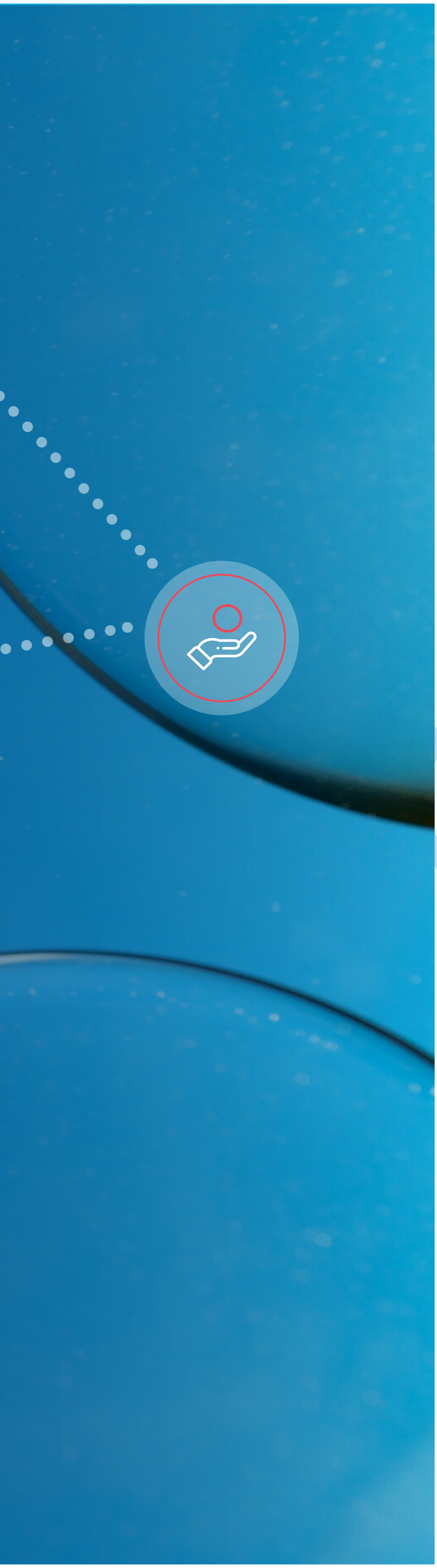
3. Pillar Two

a Scope of the new GloBE rules

b Calculating the GloBE top-up tax

c Subject to Tax Rule

d Dispute prevention and resolution



Overview of the proposals

Why are we here?

Curiously, both Pillars One and Two have been published under the banner of "Tax Challenges Arising from Digitalisation", yet it is really only Pillar One which can sensibly be thought of as tackling the "digitalisation problem". The broad aim of the Pillar One proposals is to update an analogue tax system to deal with the realities of the digital world but it casts its net wider than the tech giants by including consumer facing businesses. It is largely accepted that the existing international tax framework – around a century old and based on notions of physical presence of things and people – can no longer accommodate the fact that value can be created (or harnessed) in jurisdictions where both those things are absent. Pillar Two, by contrast, has less to do with digitalisation and more to do with multinational enterprises (MNEs) obtaining unintended advantages in respect of their overall tax rate through the structuring of their intragroup transactions.

> "
>
> It is largely accepted that the existing international tax framework - around a century old and based on notions of physical presence of things and people - can no longer accommodate the fact that value can be created (or harnessed) in jurisdictions where both those things are absent.

Pillar One

A business' "market jurisdictions" are broadly the jurisdictions in which it sells its products or services, or, in the case of highly digitalised business, provides services to users or solicits and collects data or content contributions from them. Many modern businesses can operate in their market jurisdictions without any physical presence therein (of people or things), resulting in value-creation without a corresponding taxable nexus. Pillar One seeks to adapt the international framework of nexus rules and allocation of business profits to address this. It is bold in its ambition, introducing (broadly) three new mechanisms to achieve this: a new set of nexus rules (**Amount A**), a fixed return for certain baseline marketing and distribution activities taking place physically in a market jurisdiction (**Amount B**) and processes to improve tax certainty through effective dispute prevention and resolution mechanisms.

Amount A – new nexus rules

Described by the OECD as a "revolutionary but incremental change", Amount A gives a new taxation right to "market jurisdictions" in which an MNE engages in an active and sustained way, irrespective of physical presence.

This new nexus can (indeed is intended to) depart from the arm's length principle, since the result is that a portion of an MNE's deemed "residual profit" (as calculated by a formula at an MNE group level) is allocable to, and taxable in, the market jurisdictions that are the "source" of an MNE's "in-scope" revenue. MNEs must meet two revenue-based criteria for the rules to apply: a "global revenue" threshold based on the annual consolidated group revenue and then a "de minimis foreign in-scope revenue" threshold.

Highly digitalised businesses are firmly in the OECD's sights, but the US has also suggested that consumer facing businesses should be within scope, and so they are currently included in the proposal. It's for this reason that the "scope" questions remain firmly at the top of the political agenda, acting as the "gating item" for the entire Pillar One proposal.

Fairly tricky "revenue sourcing rules" – most of which require a tracing exercise and a solid understanding of an MNE group's user base, including their location (whether that be established by an IP address or other geolocation data) – would identify market jurisdictions and determine the amount of revenue to be treated as deriving there. These would operate using indicators of a significant and sustained engagement in a jurisdiction, absent which no group profits would be reallocated to that jurisdiction under Amount A.

Amount B - arm's length remuneration for "baseline" marketing and distribution activities

Amount B would standardise the remuneration of related party distributors that perform "baseline marketing and distributing activities" in the market jurisdiction. The aim would be to provide a more transparent system of remuneration for such activities as compared to the current transfer pricing rules. This would simplify the administration of, and compliance with, such rules as well as enhancing tax certainty and reducing controversy between taxpayers and tax administrators. Amount B is welcomed by many, since it is one aspect of the proposal which will bring some tax certainty to businesses. Amount B is not discussed in any further detail in this note.

> "The "market jurisdictions" of a business are broadly the jurisdictions in which it sells its products or services, or, in the case of highly digitalised business, provides services to users or solicits and collects data or content contributions from them.

Processes to improve tax certainty though effective dispute prevention and resolution mechanisms

The Pillar One Blueprint also includes proposed dispute prevention and resolution procedures (think here MAP and mandatory binding arbitration) both in relation to Amount A (and beyond Amount A). The "innovative" dispute prevention in the Amount A context is (understandably) emphasised in the proposal. Recognising that the calculation and allocation of Amount A is complex, involving multiple competing stakeholders, the proposal envisages that a new "tax certainty" procedure be implemented which (although not expressed in these terms) would effectively enable MNE groups to obtain advanced clearance as to its Amount A calculation and allocation amongst market jurisdictions.

Pillar Two

Pillar Two aims to insert a floor on international tax competition and forestall a race to the bottom. The intended outcome is that internationally operating businesses within its scope pay a minimum effective tax rate (ETR).

The ETR functions as both the trigger that identifies "low tax jurisdictions" (a jurisdiction is "low tax" if the MNE's jurisdictional ETR is below the agreed minimum rate) and the computational tool to determine how much income must be brought back into the tax net to raise the aggregate tax on income in that jurisdiction to the ETR.

The proposed mechanisms to implement the ETR are as follows:

1. The GloBE rules, comprised of the Income Inclusion Rule (the IIR) and the Undertaxed Payments Rule (the UTPR); and
2. The Subject to Tax Rule (STTR), which runs in tandem to the GloBE rules and is expected to operate in priority.

GloBE rules

The Global Anti-Base Erosion (GloBE) rules seek to provide a right for jurisdictions to "tax back" where low tax jurisdictions have not exercised their primary taxing rights, or the payment is otherwise subject to a low tax rate. The top-up tax required for a MNE to meet the minimum ETR is collected through either the application of the IIR in a parent jurisdiction, or through a corresponding adjustment under the UTPR.

The IIR requires a parent entity to bring into account its beneficially owned share of income of each group entity located in the relevant low tax jurisdiction. The IIR therefore works to include, and tax, income at the shareholder level if it was taxed below a threshold rate lower down the structure – operating similar to many established CFC regimes.

The IIR may be accompanied by a "switch-over rule" (SOR). This is currently under consideration by the Inclusive Framework. The SOR would enable treaty exemptions for income derived from PEs in a low tax jurisdiction to be switched off, thereby enabling such income to be included in the low tax jurisdiction's income for the purposes of working out how far short of the ETR such jurisdiction falls.

The policy rationale of the UTPR is similar to the IIR but serves as a backstop for circumstances where the parent entity (and therefore the low tax constituent entity) is not within the scope of an applicable IIR. It is designed to protect jurisdictions against base erosion through intra-group payments to low tax jurisdictions that have not signed up to the Pillar Two regime. In practice the application of the UTPR is likely to be narrow so we have not focussed on it in this note.

The STTR

With only 21 pages devoted to the STTR, it is not a particularly well-developed idea, however its application is potentially very wide-ranging. It is a standalone treaty-based rule that targets the risks associated with intragroup payments which take advantage of treaty benefits and low tax rates. This rule is designed to operate on a payment-by-payment basis which for many global businesses would apply to hundreds of thousands of individual payments and despite its lack of prominence in the Blueprint it is anticipated that it would apply in priority to the GloBE rules.

The STTR is designed to restore taxing rights to source states to help protect their tax base. Where the nominal tax rate in the payee jurisdiction falls below an agreed rate (yet to be decided upon), the payer jurisdiction would impose a withholding tax on such payments to levy the top-up tax required. The rationale is that the ceding by a source jurisdiction of its taxing rights under a tax treaty should not result in an overall lowering to the MNE's effective tax rate; the top-up tax levied by the payee jurisdiction should raise this to the agreed minimum rate.

> Pillar Two aims to insert a floor to international tax competition and forestall a race to the bottom.

Pillar One

The status quo is over

Speaking in November 2020 at the Said Business School's conference, "*Pillars One and Two: What is the Future for International Taxation*", the message from Pascal Saint-Amans, Director of the OECD's Centre for Tax Policy and Administration, was crystal clear: the "status quo of the good old days of the arm's length principle in a perfect world where everyone is happy and nobody pays attention" is "clearly over".

For those quietly hoping that Pillar One (in particular its Amount A) may fall at the first hurdle for lack of political agreement, this message will be far from welcome. Although much of Pillar One is still subject to political agreement (not least the core "building blocks" for Amount A: scope, nexus and revenue sourcing, the amount of residual profit to be reallocated and tax certainty), the consensus amongst members of the Inclusive Framework, including the UK, is that work on this proposal must continue, as it's the best (and most developed) plan they've got.

When the alternative is a sea of unilateral measures likely resulting in double taxation, at first blush the Pillar One proposal may not seem too bad. But there remain key questions about how, in the immediate and longer-term, Amount A can sit comfortably alongside an existing international tax framework that is based on the jurisdictional presence of value-driving functions and assets, and associated risks.

Building blocks of Pillar One

Amount A
- Scope
- Nexus
- Revenue sourcing
- Tax base determination
- Profit allocation
- Elimination of double taxation

Amount B
- Scope
- Quantum

Tax certainty
- Dispute prevention and resolution for Amount A
- Dispute prevention and resolution beyond Amount A

Implementation and administration

a. Scope of Pillar One

“Smaller” MNEs are excluded, but we don’t know what “small” means

Recognising the significant compliance costs and the need to keep the administration of the new rules manageable for tax authorities, the proposal’s threshold tests – the “global revenue test” and the “de minimis foreign in-scope revenue test” – which act as a “gateway” to the rules are intended to reduce the number of MNEs potentially in scope. The only problem is that the Inclusive Framework has not agreed on the design or amount of these revenue thresholds, and so we’re left “watching this space” until political agreement can be reached.

Global revenue test

For the “global revenue” test, the OECD proposes that the CbCR threshold (€750m) be used. A lower threshold is not expected to increase the amount of residual profit available to be reallocated beyond a very small amount and would substantially increase the number of privately-held groups in scope that currently are not required to prepare financial statements (or, if they do, prepare these using local GAAP) but would have to do so solely for Amount A purposes (which is not only costly but would be difficult for tax authorities to verify). The OECD is also concerned it would be the death knell for their proposal that taxpayers could seek advanced “clearance” from tax authorities as to their Amount A reallocation. To assist with implementation, a phased approach is suggested whereby the thresholds are initially set at a higher amount and then reduced over time.

De minimis foreign in-scope revenue test

MNEs that exceed the global threshold may nevertheless be able to rely on the “escape route” offered by the foreign in-scope revenue de minimis. No threshold figure has been proposed, but the OECD indicates that it will be an absolute number – i.e. not linked to the relative size of the MNE’s domestic business. To apply this test, however, the MNE will need to have identified its “in-scope” activities and, if the revenue from these activities exceeds the threshold, the jurisdictional source of those activities to determine if such revenue derives from their “home” or a “foreign” market. Might the de minimis be a wolf wrapped in sheep’s clothing? To calculate its “home” and “foreign” market in-scope revenue the MNE must apply the proposal’s revenue sourcing rules, which themselves are complex and vary depending on the type of activity carried out. It will be preferable, therefore, for an MNE to rely on the “gross revenue test” if it can.

Nexus and revenue sourcing tests

For completeness, even if an MNE exceeds these thresholds and is within scope (on which, see below) this does not mean that they will definitely have a portion of their residual reallocated as Amount A. This is because the “primary” nexus test, which establishes whether an MNE group has a sustained and/or active business in a particular market jurisdiction, is based on a further (different) revenue threshold. For businesses within scope because they provide “automated digital services”, it is proposed that this test be based solely on a threshold based on €[X]m of revenue deriving from the market jurisdiction (such jurisdiction having been identified through the application of “sourcing rules”). For those that are treated as consumer facing businesses, the proposal is that a similar threshold based on €[X]m of revenue deriving from the market jurisdiction is used, combined with “plus factors” to account for the fact that sales may not be a “sufficient factor” to establish nexus in a market jurisdiction (options on the table include the existence of a physical presence). None of these thresholds are agreed.

“Traditional” businesses could be in-scope, not just those that are “highly digitalised”

The million dollar question is should Pillar One apply only to highly digitalised businesses, or should it cast its net more widely? Change is clearly on its way for the former, but the Inclusive Framework is struggling to agree where to draw the line.

The proposal has its sights on MNEs that provide “automated digital services” (ADS) and “consumer facing businesses” (CFBs), which are not “excluded” (on which, see below). Initially, only ADS were in scope, but fearing the backlash of the tech giants the US pushed for a widened scope, CFBs were included. Here lies the problem: for many Inclusive Framework members the scope is now too broad, putting this question at the top of the political agenda.

Automated digital service providers (ADS)

The proposal regards ADS as services provided on an automated and standardised basis to a large and global user base, which can be provided remotely to customers in market jurisdictions wherein the MNE needs little or no infrastructure. MNEs providing ADS are characterised by their ability to “exploit powerful customer or user networks effects and generate substantial value from interaction with users and customers”. This does not, however, play out in the specific definition of ADS, meaning that many MNEs that do not consider themselves to be “automated digital services” providers could find themselves within scope of Amount A if this definition is not narrowed.

ADS is defined by reference to a "positive list", a "negative list" and a "general definition". If an MNE's activities are on the "positive list", the MNE is automatically an ADS business. If they are not, the MNE must assess whether its activities fall within the "general definition" of ADS (broadly, are they automated and digital), unless they are on a "negative list" of ADS – in which case the MNE is not an ADS business. Activities on the "positive list" include online advertising services, online search engines, social media platforms, the sale or other alienation of user data and digital content services (think Google, Facebook, Amazon and Netflix – all highly digitalised businesses having sustained engagement in the economic life of a market jurisdiction without the need for (much, if any) physical presence therein to support that engagement). But "positive" ADS goes beyond this. It captures, for example, manufacturers of internet-connected cars that collect driver data (such as location data or data about the user's habits) and then sell this to third parties for marketing purposes, as well as MNEs that manufacture and sell products which are intended to be used alongside a subscription-based app (e.g. a fitness watch plus health tracking app). In these examples, while the revenue from the sale of the physical goods is excluded from ADS, the "linked" ADS activity – the monetisation of user data and the provision of digital content services – is not.

Is it right that these (otherwise) "traditional" businesses are caught? Has digitalisation changed the way these products are consumed? Are these businesses exploiting "powerful customer or user networks" which generate "substantial value"? Is the existing tax framework (based on physical presence and the use of the arm's length principle) failing to allocate taxing rights to the "correct" jurisdiction? The answer to these questions is (for the large part) "no", and it would seem that members of the Inclusive Framework, including the UK, would agree. Speaking at the same conference as Pascal Saint-Amans, HM Treasury noted that any extension of scope beyond those businesses which have a strong user participation without which there isn't really a product, should be "limited". It called out specifically the car manufacturing example, noting that although MNEs may be able to monetise a purchaser's data, at the core of the transaction is the purchase of a car for value, which must be "factored into the scope question". This is welcome news, particularly since it indicates that there is political will amongst key Inclusive Framework members that scope ought to be narrowed.

Consumer facing businesses (CFBs)

CFBs are broadly businesses which generate revenue from the sale of goods or services of a type commonly sold to individual consumers for their personal use, including those selling through intermediaries and by way of franchising or licensing. A relationship with the customer is key, be it by being the MNE whose "face" is apparent to the consumer, or the MNE that is the "retailer" of the product or service. Manufacturers, wholesalers and distributors are therefore excluded (since they have no direct relationship with the consumer).

Unlike ADS, the proposal expressly recognises that CFBs may include "traditional businesses that have been disrupted to a lesser degree by digitalisation". Notwithstanding this, it considers that CFBs are rightly within scope if, in a market jurisdiction in which they have (or very little) physical presence, they engage with customers in a "meaningful way" which results in them "substantially improving" the value of their products and increasing sales.

Franchisors and licensors in respect of consumer goods and services are also within scope, notwithstanding that their revenue does not derive directly from the consumer – the legal arrangements pursuant to which those goods or services are made available to consumers are ignored for these purposes.

Amount A thus puts on a firm footing the taxation of a CFB's so-called "marketing intangibles" (but not by reference to the arm's length principle, as discussed below). This will no doubt be a sticking point for many CFBs since, in one fell swoop, it represents a departure from the arm's length principle allocating a profit split return to the market jurisdiction based on revenue. Questions such as, whether a larger user base is really indicative of value creation, and, is the user base's contribution to value creation really on a par with that of the entity which designed and created the product, or which funded (or funds) the R&D through which the product is further developed and enhanced, simply fall away.

> "
> CFBs may include "traditional businesses that have been disrupted to a lesser degree by digitalisation".

Banking and insurance businesses are excluded, but the jury's out on asset management businesses

Banking and asset management businesses (FS) are not treated as providing ADS, because, although very widely used, their digital functionality is generally used to automate what people used to do (and often still do) and still (often) requires human intervention or judgment.

Since large parts of these businesses are also consumer facing, particular thought has been given as to whether they should also be excluded from the definition of CFBs.

Banking, fintech, private banking/wealth management and insurance

The consensus amongst Inclusive Framework members is that banking and insurance businesses are excluded. This is for the most part because they are highly regulated in the local jurisdictions within which they operate (meaning they already have a taxable presence in their market jurisdictions), but also (in the case of banks) because of the sheer complexity in applying the profit to sales ratio (which is used to calculate Amount A for non-FS sectors). For the same reasons, private banking and wealth management is also excluded, as are the regulated activities of Fintech companies. Further work is to be undertaken on Fintech, however, as the regulation of these entities is still developing in many jurisdictions. Unregulated Fintech activities are not excluded, and so Fintechs that are able to provide unregulated services to individual consumers will be within scope.

Asset management

Unlike the banking and insurance sector, there is no consensus among Inclusive Framework members on the treatment of asset management businesses as CFBs. The proposal splits these businesses into three "main participants": fund vehicles, financial intermediaries and investment managers. Members against excluding the asset management sector in CFB point to the fact that the asset management sector is "very lightly regulated" and so it is not the case that a major part of their residual profit is already captured by their market jurisdictions. Factors cited in favour of exclusion are, however, weighty – if not just from a practical implementation perspective. These are that: funds are tax neutral and passive and so are not active businesses; financial intermediaries are subject to local regulation in the same way as banks and insurers and so they will already have a taxable presence in their "market jurisdiction" (to the extent they do engage directly with consumers); and investment managers' services are "on balance" considered a component of the financial intermediaries' services to the consumer and so are out of scope – and even if that is not right, policy reasons dictate they should be excluded (data privacy and regulatory restrictions mean it would be impossible for investment managers to obtain the underlying customer lists it would need to identify its market jurisdictions).

> It is not clear what conclusions can be taken for family offices. On the one hand, they are subject to much lighter regulation than asset managers, but it feels a giant leap that individual family members could be considered "consumers". Although the OECD say further work is needed here, it seems that a significant shift in opinion would be needed for consensus to be reached that this sector ought to be included.

b. Calculating Amount A under new nexus rule

A group approach to calculating the tax base

Group PBT

Amount A's tax base would be determined by reference to the MNE's group profits before tax. The starting point would be the bottom line profit (or loss) figure in the MNE's consolidated P&L, adjusted for a very limited number of book-to-tax adjustments in order that Amount A's tax base is "aligned" with the corporate tax base of Inclusive Framework members. Three adjustments have been identified: income tax expense would be added-back to the profit (or loss) figure (as this is not generally deductible), as would expenses which are non-(tax) deductible on policy grounds, such as fines and penalties (a de minimis is being considered). Similar to the GloBE tax base, dividend income and gains or losses in connection with shares would be deducted from the bottom line figure on the basis that such income is generally tax-exempt or relievable. Profits and losses deriving from the equity method of accounting would also be excluded, but Inclusive Framework members are still discussing whether this should apply to income from JVs, particularly where that income does not represent retained earnings of the JV that have been (or will be) subject to Amount A at the level of the JV (e.g. because the JV's revenue falls below the revenue thresholds). Generally, the message on PBT is that there is "more to do".

Losses

A loss carry-forward regime is proposed (but not a loss carry-back, which is considered too complex), whereby losses arising in respect of a taxable period will be preserved and available to be carried-forward to offset against PBT in subsequent years. Losses would derive from the MNE's group consolidated accounts after making the above book-to-tax adjustments discussed above. Broadly speaking, they would be "pooled" in a single account at the group level, rather than allocated to market jurisdictions (which is considered too complex). Only those losses which are incurred *after* the introduction of Amount A will be available to carry-forward, though a "transitional regime" allowing certain net pre-Amount A regime losses to be preserved and deducted from the PBT is being considered. This will be important for groups that are now entering growth/maturity stages of a product and would not otherwise have the benefit of losses accrued during the investment phase. The ability to carry-forward is determined by an "earn-out" mechanism, which operates so that a positive tax base for Amount A (in excess of a "profitability threshold" calculated using a pre-determined formula) would arise only after historic losses accumulated in the group's loss account have been absorbed.

Thought is being given to whether loss restriction rules are needed (e.g. on a change of control). Specific rules would be developed to deal with the treatment of unrelieved losses in the context of business reorganisations (which would be aimed at ensuring such losses are transferred to (and carried forward in) the relevant group in which the business is continued). Once the detail is known, the impact of these rules will need to be carefully worked through in the context of any private M&A and the agreed risk allocation in any tax covenants given or obtained.

Finally, the proposal notes that Amount A carry-forward losses would be separate to any existing domestic loss carry-forward regimes, meaning that domestic losses generated at an entity level under the arm's length-based profit allocation rules could not be used to offset Amount A's PBT and vice versa.

Rejection of the arm's length principle

A formulaic approach to calculating Amount A

The arm's length principle is thrown out the window when it comes to calculating and allocating Amount A to an MNE's market jurisdictions. Gone are the (fact-based) assessments of an entity's functions, assets and risks, and in is a three-step formulaic approach which will determine the quantum of Amount A to be allocated to an MNE's marketing jurisdictions, as follows:

1. a "profitability threshold" is calculated, which is intended to "isolate" an MNE's residual profit that is potentially re-allocable as Amount A. To avoid complexity this will be a straightforward PBT to revenue ratio (€[X%]) – all facts and circumstances relevant to the MNE (including its TP arrangements) would, therefore, be ignored;
2. a "reallocation percentage" is calculated, which is intended to identify an "appropriate share" of an MNE's residual profit that can be re-allocated to the MNE's marketing jurisdictions (known as the "allocable tax base"). This "could be" a fixed percentage (€[X%]), but what is clear is that neither the MNE group's particular circumstances nor the arm's length principle will be considered; and
3. an "allocation key", based on locally sourced in-scope revenue will be used. This is determined using the proposal's rules on scope, nexus and revenue sourcing.

The economic circumstances of any MNE's group are thus ignored entirely. The proposal notes that this three-step formula could be implemented on the basis of a profit-based or a profit-margin approach, but that no decisions have been made on this yet and further technical work is needed.

c. Double taxation

Double taxation is a real risk

The "double counting" issue

The proposal acknowledges that the formulaic approach to calculating Amount A means that a market jurisdiction may end-up with dual taxing rights over an MNE's residual profit (under both the existing tax rules and the new Amount A nexus rules – the "double counting" issue). The OECD notes that this is "partially" dealt with through the proposals to eliminate double taxation (on which, see below). It also suggests two specific solutions to deal with this at the calculation stage, though their application is limited and will not (in and of themselves) eliminate double taxation.

Safe harbour for marketing and distribution profits

The premise of the "safe harbour" for marketing and distribution profits is that Amount A should not be allocated to a market jurisdiction to which residual profit attributable to in-scope (Amount A) activities is already allocated under existing rules. It would not apply where profits for any other activities – e.g. manufacturing or marketing and distribution activities which relate to activities that are out-of-scope of Amount A.

The "safe harbour" would operate as a "cap" (known as the "safe harbour return") on the allocation of Amount A to a market jurisdiction that already has taxing rights, and would be the sum of (i) Amount A (as computed using the formula) and (ii) fixed-return for in-country routine marketing and distribution activities (still to be determined but which would "not necessarily" seek to replicate the arm's length principle"). This cap would then be compared with the MNE's existing marketing and distribution profit in the marketing jurisdiction (i.e. the locally sourced activities which are in the scope of Amount A as ADS or CBFs carried on by the MNE group therein). If the existing marketing and distribution profit (i) is lower than the fixed return, the MNE group would not be eligible for the "safe harbour", (ii) exceeds the fixed rate of return, but falls below the safe harbour return, the quantum of Amount A allocated to the jurisdiction would be reduced by the difference between the safe harbour return and the profit already allocated, and (iii) exceeds the safe harbour return, no Amount A would be allocated to that jurisdiction.

The "safe harbour" is intended to assist in particular those with decentralised business models and full-risk distributors, many of which, the proposal notes, are likely already allocating profits to their market jurisdictions which exceed the safe harbour return. The proposal notes that an MNE group which allocates a "relatively limited return" (e.g. on a cost-plus basis) would not benefit. Those MNE groups which have settled transfer pricing or diverted profits tax enquiries by reverse engineering a profit split through a cost-plus settlement shouldn't need to worry, since the cost-plus return should be picked-up as part of the calculation of the market jurisdiction's existing profit allocation (so long as that cost-plus return concerns in-scope marketing and distribution activities).

Domestic business exemption

A domestic business exemption is also being considered, which would exclude from the scope of Amount A profits derived by an ADS or CFB business in a market jurisdiction which is properly regarded as autonomous from the rest of the MNE group – for example, where a business in a market jurisdiction sells goods or services into it which are developed, manufactured and sold in that same (and single) jurisdiction, since in this case the existing rules will have typically already allocated the residual profit to the market.

More clarity needed on eliminating double taxation

The proposal recognises that a mechanism will be needed to eliminate double taxation of Amount A profits which may arise from the application of the new taxing right (which is calculated at group level) and the existing profit allocation rules (which apply on an entity basis).

Identifying the correct "paying entity"

Critical to this mechanism is the identification of the "paying entity" (or entities) within an MNE group that are liable for the Amount A tax liability, since it is the jurisdiction in which the paying entity is based that effectively determines which jurisdiction (or jurisdictions) must relieve the double taxation arising from Amount A (which would be by way of exemption or credit).

Three tests will apply to determine a "pool" of potential paying entities: the "activities test", the "profitability test" and the "market connection priority test". In simple terms, these can be thought of as a "matching exercise" – the perfect match being the entity which is (under existing tax principles) entitled to a share of the MNE group's residual profit, has the capacity to bear the cost of the Amount A tax liability and has a connection (direct or indirect) with the marketing jurisdiction, as this entity is most likely be the one with the capacity to engage on a sustained and extensive basis in that marketing jurisdiction deriving value therefrom.

Of the three, the activities test will feel the most familiar. The test is intended to act as a qualitative assessment of the MNE group entities which make a material and sustained contribution to the group's residual profits, and so which (at least conceptually) should earn the residual profits corresponding to the Amount A profit. The TP Guidelines handily show us the way here, and the proposal recognises this. Accordingly, the proposal envisages that the test may look at the functions, assets and risks of an entity, as well as its characterisation for TP purposes in order to identify if (on existing tax principles) it is entitled to residual profit – e.g. to what extent it performs core strategic and operational activities, carries on the development, enhancement, maintenance, protection and exploitation functions relating to intangible assets exploited in a market jurisdiction, or assumes economically significant risks (which does not include solely the provision of intragroup financing). Entities which do not own key intangibles or manage economically significant risks, or those characterised as limited risk entities or contract services providers receiving fixed or benchmark returns (such as cost-plus) will not, however, be eligible for the pool of paying entities. Conceptually this makes sense, since these entities are unlikely to have the "rockstars" sitting in them.

Transfer pricing adjustments

The preferred mechanism for eliminating double taxation clearly places a huge amount of pressure on selecting the right paying entity to bear the Amount A tax liability. The problem with this is that leaves MNE groups particularly exposed to changes in the tax profile of the paying entity caused by the application of the existing tax rules. For example, what happens if a long-running TP enquiry or MAP process is concluded, and this involves a material TP adjustment to the profits of an entity identified as the Amount A paying entity (e.g. adjusting its residual profits downwards)? Might that entity cease to qualify as a paying entity for the purposes of Amount A? Inclusive Framework members recognise the difficulties here and have said they will continue technical work as to how the mechanism for eliminating double taxation can take into account material TP and corresponding adjustments. The solution is unlikely to be retrospective adjustments (described as "very challenging" with the potential to undermine any process previously undertaken to give taxpayers certainty on Amount A), but Inclusive Framework members are considering prospective adjustments (e.g. by adjusting the future Amount A tax liability of a paying entity based on a TP adjustment for a prior period) or, alternatively, by taking into account Amount A as part of MAP.

Other technical "to dos"

If there weren't enough technical items already on the double tax elimination mechanism "to do" list, the proposal highlights that further technical work is also needed on the mechanism's interaction with jurisdictions' domestic tax rules and the interaction of Amount A with withholding taxes collected by market jurisdictions (namely, how to avoid double counting where a market jurisdiction is already taxing residual profits through withholding taxes). There is some tension between source versus residence jurisdictions, with the latter wanting recognition that there can be significant source taxation already imposed in market jurisdictions through withholding taxes.

> Three tests will apply to determine a "pool" of potential paying entities: the "activities test", the "profitability test" and the "market connection priority test".

d. Dispute prevention and resolution

Innovative dispute prevention procedures are proposed, but how well these will operate in practice is questionable

> Given the double taxation risks inherent in Amount A, it will be very important to taxpayers that they are able to obtain certainty as to their Amount A tax liability. Recognising this, the proposal envisages that a brand new Amount A "tax certainty" procedure be implemented which would operate on a multilateral (not bilateral) basis.

Given the double taxation risks inherent in Amount A, it will be very important to taxpayers that they are able to obtain certainty as to their Amount A tax liability. Recognising this, the proposal envisages that a brand new Amount A "tax certainty" procedure be implemented which would operate on a multilateral (not bilateral) basis.

The procedure – an advanced MAP but with lots more stakeholders

In a way, this "tax certainty" procedure operates as a sort of advanced clearance or MAP process, but with many more stakeholders. A taxpayer would prepare an Amount A self-assessment and then (within [six] months of the relevant financial year-end) request "early certainty" from its lead tax administration (which will usually be the administration of the jurisdiction in which the group parent is resident). Two types of certainty may be sought: whether an MNE group is within scope of Amount A and whether its determination and allocation of Amount A is agreed.

Very broadly, the MNE group's lead administration would then set-up a review panel made-up of some (but not necessarily all) of the tax administrations of the market jurisdictions in which the MNE group operates. This panel would then carry out a substantive review of the group's self-assessment, confirming all aspects of Amount A – including, the delineation of activities, the quantum of Amount A, the allocation of Amount A to marketing jurisdictions and the determination of relieving jurisdictions. Once they had come to a decision, all potentially affected tax administrations (even if not on the review panel) would be given an opportunity to review the panel's decision and to accept this or provide objections. If the review panel cannot come to a decision (or cannot accommodate objections received), then questions would be referred to mandatory binding arbitration before a (different) "determination panel". It is then up to the MNE group to decide whether to accept the "binding" determination or choose to rely on its domestic remedies.

Wishful thinking?

The proposal here is generally light on timescales. If these procedures are going to work as intended, tax authorities will need to be allocated significant resources to enable them to participate in a timely and effective manner. In 2018/19 (the most recent data available), it took an average of 27 months for transfer pricing and profit attribution MAP cases to be resolved by HMRC, only slightly down from 27.5 months the year before. While we may find that the formulaic nature of Amount A may assist in compressing timelines (a two+ year timeline isn't going to do much to persuade taxpayers they'll get early certainty), there are still some knotty questions within Amount A around scoping activities, revenue sourcing and the identification of the paying entity which require an assessment of the facts (not just number crunching). Add into the mix potentially developing marketing jurisdictions and the "tax certainty" process could become a lot less clear.

Pillar Two

A new dawn: resetting the international tax system with a global minimum tax

A global minimum tax was unimaginable only a few years ago. The OECD's Base Erosion and Profiting Shifting (BEPS) agenda was focussed on the contrived and the egregious aspects of the international tax system. It seems that programme did not go far enough, or at least there is no time to waste in finding out whether it was effective. Because now, the Pillar Two Blueprint sets out in some detail how a new global minimum tax would be introduced, designed to catch any remaining BEPS risks within the international tax system. Momentum certainly feels like it is gathering behind Pillar Two, especially as the US has continued to engage on these proposals (engage here means trying to ensure their GILTI rules are grandfathered into this framework). As Pascal Saint-Amans recently said at the Congress of the International Fiscal Association "if we fail, good luck to everybody".

GloBE rules	Special rules	Subject to Tax Rule	Rule coordination
Scope	Simplified IIR for JVs and associated entities	Scope	Rule order
Calculation of jurisdictional ETR			Treaty compatibility
Carry forwards		Trigger	Coordination
Carve-out	Orphan entities		
Simplifications		Adjustment	Dispute prevention

Income inclusion rule	Undertaxed payment rule
Top-down approach	1st allocation key
	2nd allocation key

GloBE rules	Subject to Tax Rule
Scope	Scope
Calculation of jurisdictional ETR	
Carry forwards	Trigger
Carve-out	
Simplifications	Adjustment

Income inclusion rule	Undertaxed payment rule
Top-down approach	1st allocation key
	2nd allocation key

a. Scope of the new GloBE rules

Much wider than digital services

It is clear that the Pillar Two proposals will substantially change the international tax system. While the focus has been on digitalised businesses (there had once been talk of ringfenced rules just for the digital economy) the Blueprint for Pillar Two makes it clear that it has very little to do with digital businesses and it is to unlikely to leave any group that falls within the threshold unaffected. Furthermore, it has the potential to increase the effective tax rates of groups (this is in contrast to Pillar One that is seeking to reallocate (not raise) taxing rights to market jurisdictions).

The Pillar Two proposals are concerned with profit shifting activities to low tax jurisdictions and seek to introduce a series of top-up taxes to reach a globally agreed minimum rate of tax, irrespective of sector. That said, there are a number of "excluded entities". The two notable exceptions are investment funds and pension funds. The list of exclusions is purposefully tight, much tighter than Pillar One, and this is because the OECD is designing the GloBE rules to apply to all operating businesses and excluding certain sectors is likely to create other BEPS risks and ultimately prove unfair to particular sectors or jurisdictions. The international shipping industry may also be excluded but it appears this is due to the very different nature of taxation experienced by this industry and making the Pillar Two rules operate effectively may be too hard at this stage. Otherwise it is safe to assume this will affect global large businesses.

Sting in the tail: application to family offices

The asset management industry will have breathed a sigh of relief that investment and pension funds have been listed as excluded entities. The OECD wants to preserve the principle of tax neutrality to allow collective investments to be made through a fund without imposing additional tax liabilities on the investment return that would not exist had the investment been made directly. However, the exemption will not apply to unregulated investment vehicles such as family held companies making investments as one of the criteria to qualify as an excluded investment fund is that the investment fund must pool assets from more than one unrelated investor. Partnerships and trusts will be treated as constituent entities in the application of the GloBE rules. The effect of this could make some investments less viable as it will potentially add another layer of tax to entities that would ordinarily be expected to be tax exempt under the established principles of tax neutrality.

> "It is safe to assume this will affect global large businesses.

Familiar "large business" definition expected to be used

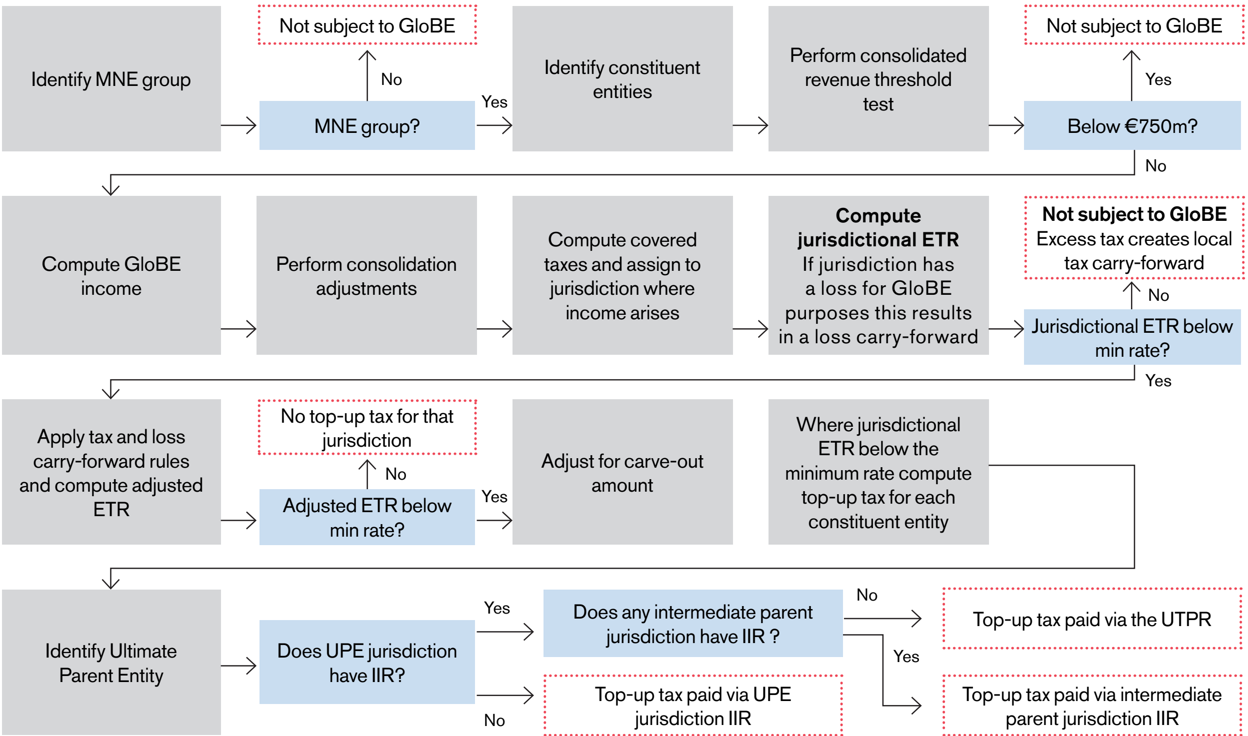
The OECD suggests that the GloBE rules will only apply to MNE Groups that have a consolidated revenue threshold of €750m or more in the immediately preceding fiscal year (in line with the current CbCR threshold). MNE Groups with a total consolidated group revenue below this amount will be excluded from the application of the rules. The term MNE Group for this regime means "any group that includes two or more enterprises" where "the tax residence for which is in different jurisdictions" and is required to prepare consolidated financial statements (or would be required if it were traded on a public exchange).

It is anticipated that the GloBE rules will be implemented into domestic legislation but in accordance with the agreed terms, model legislation and guidance issued by the OECD. While it is acknowledged that rules should be implemented in line with the agreed terms, the OECD also raises a difficult point that consideration should be given to jurisdictions that may wish to implement the rules with a lower consolidated revenue threshold. This continues to be a live topic of conversation at the Inclusive Framework meetings and may mean some territories seek to introduce a lower threshold to ensure a wider range of businesses are caught within the rules. The threshold for the STTR is also under discussion (see more below) but there is at least a desire that a consistent threshold is agreed across the Pillar Two rules (and Pillar One for that matter).

At the other end of the spectrum are jurisdictions that decide not to implement the GloBE rules. The underlying objectives of the proposals assume the majority of jurisdictions will implement them, but there is clearly an advantage for territories that do not who may spy an opportunity to attract companies to move their parent company to that jurisdiction. Jurisdictions that implement the rules will in effect be raising taxes if they have a bias to parent entities, therefore there will need to be a policy decision to proceed (or it may be a convenient cover if domestic tax reform has proved difficult).

b. Calculating the GloBE top-up tax

We have set out below a flow chart that will take readers through a high level application of the GloBE rules and the order of operations that must be applied. Additional detail on the computational steps is set out below at "Creating a new tax base – GloBE adjustments". Suffice to say, this flow chart highlights the potential complexity with creating a new tax base on a global basis.



What is too low a tax rate?

The GloBE rules work to create a new tax base, and from that the GloBE ETR. This is then compared to an agreed minimum tax rate, with a top-up tax payable if its below that amount. The big political question is, what is an appropriate effective level of tax?

The Blueprint suggests somewhere between **10%-12%** however there have been reports up to 20%. At the lower end, these rates are lower than many headline rates of corporation tax, however as the rule works on an effective basis, government sanctioned incentive regimes such as the Patent Box will lower the tax rate and will mean many groups will find themselves within the rules. To put this into context, in a paper published by the Said Business School, higher revenues would be sourced from British Virgin Islands, Puerto Rico, Ireland, Bermuda, Cayman Islands, Luxembourg, Netherlands and Singapore – however as this would be collected by the ultimate parent company, the largest beneficiaries would be China and the United States.

Over time, jurisdictions with tax rates below the threshold might be expected to raise their tax rates up to the level of the minimum tax rate as the GloBE rule reduces the incentive for any jurisdiction adopting the rules to have an effective tax rate below the minimum threshold. This may breed tax competition in other areas.

The STTR will operate on a nominal basis and it is suggested in the Blueprint that a rate of 7.5% is under discussion. The rate is clearly a political decision and one that is not likely to be confirmed until the very end of the policy development.

Broad definition of covered taxes

The OECD does not wish to be too prescriptive over what covered taxes are included within the GloBE rules and uses a definition that encompasses any tax on an entity's income or profits, and includes any taxes imposed in lieu of a generally applicable income tax. Covered taxes also include taxes on retained earnings and corporate equity. While no precise definition of what a covered tax is, the OECD states that what is important, is the need to consider the form and intention of the tax, irrespective of the name and mechanics of how a tax is applied. Digital Services Taxes (DSTs) are specifically excluded as they are designed to apply in addition to, and not as a substitute for corporate income tax. If agreement on Pillar One is not forthcoming and the proliferation of DSTs continue, there will be significant threat of double taxation. Diverted Profit Taxes (DPT) are not mentioned in the Blueprint. The design of the UK's DPT does raise a question about its inclusion as a covered tax. On the face of it, it is a tax which imposes a rate of 25% on profits, but they are "notional profits" (that are equal to the amount of profit on which it would have had to pay corporation tax on if it had a UK PE). Taking on board the OECD's desire to have a broad definition it can only be assumed at this point that it would qualify as a covered tax.

Creating a new tax base – GloBE adjustments

The starting point for calculating the relevant ETR and top-up tax under the GloBE tax rules is the consolidated income in the financial statements calculated on a jurisdictional basis. A series of adjustments are made to this figure to arrive at the GloBE tax base. One of the key points under consideration is whether the numbers in the financial statements represent something closer to "profit" than profits subject to tax. The primary concern from the OECD's perspective is that some governments may seek to distort taxable profit through reliefs or allowances but the flipside is that there is a risk that pressure is exerted on the accounting standard setters to change certain standards, for example, recognising unrealised profit at a slower pace might be attractive.

Not all jurisdictions use the same accounting standards so there will be inherent differences in calculating the GloBE tax base from one jurisdiction to another. While the GloBE rules may be designed to reduce tax competition, they may spark a new accounting standard shopping with MNEs being influenced by what accounting standards are on offer.

The first step is to determine the income of each entity in the group and make a series of GloBE adjustments, at an entity level as well as identify the covered taxes. The second step is to assign the income and taxes paid by each entity to a jurisdiction – these are then aggregated to perform the jurisdictional ETR calculation.

Some of the adjustments will be made for permanent differences. The difference between domestic rules and the GloBE rules could give rise to a GloBE tax liability therefore it has been agreed that a series of adjustments are needed. For example, dividends received from other constituent entities would be included in the starting point of the GloBE tax base but in many jurisdictions, dividends are wholly or partially excluded. The difficulty will be deciding the extent of the exemption for low portfolio holdings.

Adjustments for temporary differences will also need to be taken into account and a couple of options are put forward for capital allowances. Either deferred tax accounting or local tax depreciation rules could be used to minimise the issues caused by temporary differences. The OECD seem to struggle with using deferred tax accounting with reservations on its subjectivity. In the recent consultation this has been pushed back on by the business community.

Some relief for carry forwards and carveout, but little comfort for pre-regime losses

While the rules are inherently very complex (creating a new tax base via the consensus of 139+ jurisdictions is not an easy task), it is welcome that the rules acknowledge the potential timing differences between local tax arising and the recognition of income, and the risk of a GloBE liability arising in those circumstances.

A series of adjustments may be made to the top-up tax calculation to take into account local losses or excess local taxes. The local losses can play a part in adjusting the ETR calculation on a carry back and forward basis but only in the same jurisdiction and under the same rules of that jurisdiction.

Specifically for the IIR part of the GloBE rules, relief is also provided for excess taxes (that exceed the minimum tax) which create either an IIR tax credit that can reduce a current year or subsequent tax charge under the IIR in any jurisdiction or a local tax carry forward that can be used in future ETR calculations to increase the covered taxes but only in that jurisdiction and furthermore potentially with a lifespan of only seven years. For some industries, timing differences are unlikely to reverse within seven years meaning the GloBE rules will create double taxation.

> While the GLoBE and GILTI rules share a similar purpose, it is clear the designs will be different.

Grandfathering GILTI

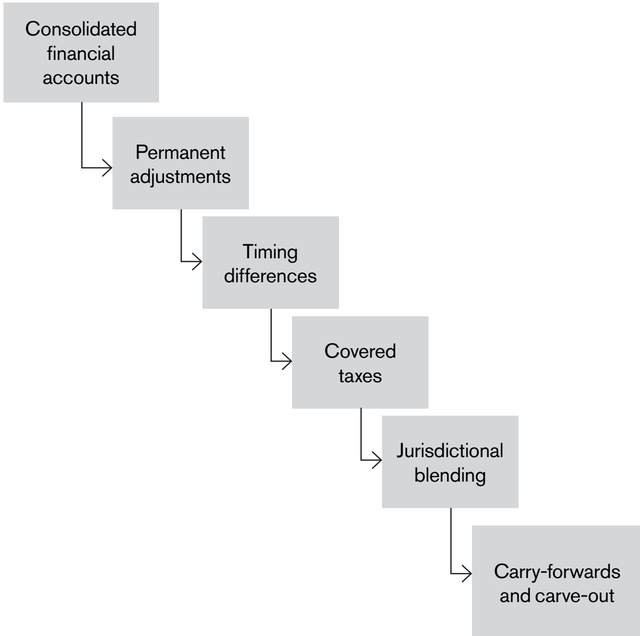
For US headquartered businesses or those with US intermediate parent companies, the interaction with GILTI (the US regime which provides for a minimum level of tax on foreign income of an MNE group) will be important. While the GloBE and GILTI rules share a similar purpose, it is clear the designs will be different. The US is advocating for GILTI to be grandfathered such that it would be considered a qualifying IIR under the GloBE rules. It appears the OECD and Inclusive Framework members are willing to give some ground on this point so long as the GILTI rules are not subsequently diluted. President Biden has talked of strengthening the rules therefore this might be sufficient. This should mean that the GloBE rules do not affect US headquartered groups, however it is not clear how the rules will interact further down the chain where there is a US intermediate parent of a subgroup.

The Blueprint does not offer any clarity for groups that have significant pre-regime losses and how these should be factored in to ensure that the GloBE charge is only on the true economic profit. It has been suggested that there could be a three year look back, however it would appear that this is an area where consensus has not been reached and requires further work. For groups that have made significant investments before the regime or suffered losses in the current economic environment, it will be difficult to stomach the IIR charge due to timing differences.

In addition, the Blueprint also proposes a formulaic substance-based adjustment to the GloBE tax base calculated as a percentage of payroll costs and a percentage of tangible asset depreciation. The design of the carve-out is intended to protect against returns generated from labour and capital intensive industries, however the generosity of the carve-out is yet to be decided.

The ETR calculation under the GloBE rules can be simplified into the following steps, but as the points above highlight it is far from simple.

Steps of ETR computation



What value do government incentives like R&D and patent boxes have?

The treatment of government grants and tax credits will follow the accounting rules and be treated either as income or as reducing a covered tax liability. To safeguard against some territories using this as a mechanism to distort the GloBE ETR calculation it will be stipulated that if the credit is refundable within four years it will not qualify. A review process will be installed to report jurisdictions introducing competitive distortions. Therefore, it appears that the OECD acknowledges the value that certain tax reliefs, like R&D, provide and there remains some scope for jurisdictions to retain control over these, albeit with higher powers to oversee whether some jurisdictions push the boundaries.

Conversely, patent boxes are not mentioned within the Blueprint. Whilst they are not restricted, if there is no carve-out under the OECD's Pillar Two, any income taxed at less than the minimum rate by the patent box would fall victim to a GloBE tax liability. This potentially renders them meaningless. It is also at odds with the conclusions reached in Action 5 of the BEPS project where an agreement was reached that a preferential tax regime, like the patent boxes had a role to play in the tax system subject to strengthened nexus rules.

Similarities to CFC regimes and compatibility with EU's freedom of establishment principle

The IIR closely resembles a CFC regime as they both seek to trigger income inclusion at the parent company level if that income arises in a low tax jurisdiction. The OECD expects the IIR to operate in tandem with existing CFC rules and should not be in conflict. In effect, the IIR goes further than many CFC regimes as it ignores the substance of activity and only looks at the tax rate. Any tax arising under the UK CFC rules will count in determining the ETR of the lower tax jurisdiction, so the CFC rules continue to take priority.

While the UK may be a mere bystander in the EU's implementation of these proposals it remains worth considering whether the rules are compatible with the EU's principle of freedom of establishment. As the IIR operates in a similar way to CFC rules there is a link to the *Cadbury Schweppes* case. In that case, the Court pointed out that "a national measure restricting freedom of establishment may be justified where it specifically relates to wholly artificial arrangements aimed solely at escaping national tax normally due and where it does not go beyond what is necessary to achieve that purpose." The key points to focus on are whether a multilateral measure of this kind would be considered a "national measure" and whether the rules "specifically relate to wholly artificial arrangements". The latter is harder to satisfy as setting up a subsidiary in a low tax jurisdiction has not been proven to be a "wholly artificial arrangement". It would be difficult to argue that the GloBE rule was a national measure, especially if implementing the rules through an EU Directive, where 27 EU Member States have provided their support. It is likely to provide stronger argument for the Courts to accept the measure as being compatible with the freedom of establishment principle.

Would simplification offer any simplification?

Taking a step back, it is clear that the rules are incredibly complex. Not only are they attempting to mesh over 100 jurisdictions' tax bases into something that is palatable to those jurisdictions but in re-writing the international tax code, there will be huge computational and compliance challenges to overcome.

The OECD are sympathetic to this and are clear they are seeking ideas to simplify the proposals in order to ensure the rules target high risk areas. A number of proposals are put forward, which include:

1. a safe-harbour permitting use of CbCR data to calculate ETR;
2. a de minimis profit exclusion;
3. allowing a single jurisdictional ETR calculation to cover several years; and
4. tax administrative guidance identifying "low risk" jurisdictions.

The final proposal, which would create some sort of white list, in our view offers the most potential to simplify compliance and improve certainty for taxpayers; however the indicator used to identify the low risk jurisdictions would need to be pitched at a level that was meaningful (i.e. only featuring territories with a headline rate above 25% would not be as helpful as say 17%).

c. Subject to Tax Rule

The STTR will apply to a defined set of payments that give rise to base erosion concerns. It is designed as a standalone tax treaty rule that will be applied to payments between connected persons provided a materiality threshold is exceeded connected to the agreed nominal tax rate.

Wide ranging application

The OECD has put forward a number of materiality thresholds for further consideration but there does not seem to be consensus. The front runner would surely be the €750m GloBE threshold as this would create an element of consistency and familiarity between other aspects of the Pillar Two rules, but also Pillar One and previous OECD proposals like CbCR. While it would be easier to administer with one uniform threshold there are some source territories that believe a threshold at this level would be too generous and would potentially exclude high risk payments in smaller companies.

Instead, a materiality threshold could be set by reference to the value of the payments, so if the amount of payments made to connected persons exceeds a certain amount, the STTR would apply. A rule of this type would bring many more groups into the STTR and raises administrative and compliance difficulties for taxpayers and tax authorities alike to be able to monitor and make payment on that volume. Another option being investigated is a ratio of total payments made to connected persons in another jurisdiction as a proportion of total expenditure. International groups below the €750m threshold should therefore monitor these developments closely.

And wide range of payments within scope

The STTR will apply to a defined set of payments which includes interest and royalty payments, but also extends to payments such as franchise fees, insurance premiums; financing fees; rent for movable property; and any amount paid for the supply of marketing, procurement, agency or other intermediary services. Recognising that the STTR should be targeted and minimise administrative burdens, the OECD proposes an exclusion for certain low return payments where the margin is no higher than an agreed percentage. This test will be applied independently of whether the transfer pricing method is cost-plus or otherwise, and highlights the willingness of the OECD to layer new rules on established practices.

Risk around capital gains and interaction with participation exemptions

One ominous area to keep an eye on is whether the STTR will extend its grip to capital gains. An issue will clearly arise where a treaty cedes taxing rights in the source territory but allocates them to a residence jurisdiction which chooses to not exercise its taxing rights over the receipt of certain payments with a participation exemption like the UK's Substantial Shareholding Exemption.

Too idealistic?

Just one page is devoted to dispute prevention and resolution in the Pillar Two Blueprint suggesting either an inflated sense of optimism that existing rules will suffice or that this is an area lacking in focus. By and large it is expected that existing mechanisms will step in, which may be the case for the STTR and SOR which would be implemented via existing tax treaties. Therefore, in circumstances where double taxation arises, existing dispute resolution mechanisms would kick-in.

Comparatively, the IIR and UTPR under the GloBE rules, are anticipated to be incorporated into domestic law (rather than via treaty) however this may not offer a similar level of comfort with regard to dispute resolution. The OECD believes by providing model legislation and guidance as well as other tools, such as standardised returns, it would prevent disputes from arising. This may be overly optimistic.

February 2021

Ashley Greenbank
Partner
DD +44 (0)20 7849 2512
ashley.greenbank@macfarlanes.com

Rhiannon Kinghall Were
Head of tax policy
DD +44 (0)20 7791 4131
rhiannon.kinghallwere@macfarlanes.com

Lucy Urwin
Solicitor
DD +44 (0)20 7849 2749
lucy.urwin@macfarlanes.com

Macfarlanes LLP
20 Cursitor Street London EC4A 1LT
T +44 (0)20 7831 9222 | F +44 (0)20 7831 9607 | DX 138 Chancery Lane | macfarlanes.com