Technology Industries of Finland

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To the OECD Centre for Tax Policy and Administration
(delivered by e-mail to cfa@oecd.org)

Comments on the OECD's Public Discussion Drafts: Tax Challenges Arising from Digitalisation - Reports on the Pillar One and Pillar Two Blueprints

Technology Industries of Finland ("TIF") is thankful for the possibility to comment the proposal.

TIF represents Finnish technology industries and has over 1,600 member companies, sizes varying from small SMEs and start-ups to world leading MNEs. The technology industry is comprised of five sub-sectors: electronics and the electrotechnical industry, mechanical engineering, metals industry, consulting engineering and information technology. Technology industry is the most important export industry in Finland, with operations constituting over 50 % of all Finnish exports and responsible for 70 % of all private investments in R&D carried out in Finland. Over 300,000 Finns work in technology companies, while a total of around 700,000 people work in the technology sector directly or indirectly (of a total population of 5,500,000).[1]

General comments

- TIF supports the hard work of the OECD to find a global solution to address the tax challenges arising from the digitalization of the economy. Even though the schedule is immensely tight, the progress made gives trust that a global full or partial solution can be found and agreed upon in July 2021.

- There should be explicit agreement that all existing and proposed unilateral tax measures are removed when the global solution is agreed upon.

- TIF supports the taken approach that any tax on the activities of corporations should be linked to profit, not revenues.

- TIF calls for effective tax dispute prevention and resolution mechanisms for both pillars.

- The global taxation system must be considered in its entirety and VAT or other sales taxes should also be discussed. Creating a complex new consuming-based tax (Amount A) creates an additional layer of taxation, while a functioning VAT-system is in use widely and could be used as a basis for taxation fit for digital age.

- In many situations current transfer pricing methods and arm's length principle work sufficiently. Thus, it should be carefully considered and reviewed whether the proposed changes to the tax system will result in greater simplification and reduction of administrative burden, which are the reasonings behind Amount B. Consideration should also be done concerning Amount A, which goes beyond the arm's length principle.

- The Blueprint is pondering the diverse effects on different kind of jurisdictions (large vs. small, developing countries). Our members are located in Finland, a small but developed country, export intensive with high level of R&D-activities. The final proposal must be fair and sustainable to all countries (also small, whether developed or developing). We already

[1] For further information of TIF's member companies, please see https://teknologiateollisuus.fi/en

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have estimates that local companies will indirectly bear a material part of the Amount A triggered additional tax. Local in-scope MNEs will be liable to pay Amount A to large market jurisdictions but a small jurisdiction will not gain much in return. These declined tax revenues will be indirectly be born by local companies and citizens due to increase in other taxes.

- Decreasing tax revenues could also have a negative impact on the incentive for the small country to support innovation and entrepreneurship, if the losses from start-up and growth phase will be carried locally, but possible future profits taxed in large market jurisdictions.

- European Center for International Political Economy (ECIPE) has evaluated[2] the potential impact the OECD proposals would have on small open economies. The report concludes that transferring effective taxing powers away from small open economies to the world's largest countries would weaken small countries' relative attractiveness to international businesses, causing domestic businesses to relocate to larger market countries.

Pillar One

I. The activity test to define the scope of Amount A

1) General

- TIF supports clear definitions on which business models are out of scope. Defining and identifying the scope specifically and sustainably is a difficult task. The scope must be clear enough to enhance certainty and prevent disputes. There should not be ring-fencing of only certain types of businesses. As the market jurisdiction is where the consumer/user is, TIF supports building on the consumer facing business scope limitation. For the same rationale, TIF supports carving out industrial, purely B2B business and the already proposed carve-outs. The carve-outs should be applied also on a business line basis, when requested.

- The rationale behind the scope definition seems to go back and forth. First the proposal was targeting the "digital" companies. After that it was admitted that there is no digital economy and all economy is digitalising. Thus, using "digital businesses" as a definition is not sustainable. Next phase was to focus on large "consumer (incl. user) facing businesses", widening the scope, but concentrating on consumers and B2C. This made interpreting the scope more logical. Now the October proposal seems to take a step towards ring-fencing again, with widening the scope to B2B sales concerning the automated digital services -bracket but (almost entirely) excluding it from the consumer facing business -bracket.

- Detailed scope limitations based on business models do not make a simple model. The scope must be clear enough to result in unified interpretation, to enhance certainty and prevent disputes. There should not be ring-fencing of only certain types of businesses. Further work is definitely required on dual category ADS and bundled packages as well as dual use finished CFB goods/services. Individual jurisdictions must not be allowed to make unilateral changes to the activity test positive and negative lists. This would immensely increase uncertainty and tax disputes.

[2] Unintended and Undesired Consequences: The Impact of OECD Pillar I and II Proposals on Small Open Economies by Matthias Bauer, ECIPE, Occasional Paper 04/2020.

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- As a simplification proposal, an optional "full scope -option" could be thought of. A company could opt-in and choose to apply Amount A to all of its business. This would allow the company to skip the activity test, segmentation and jurisdictional blending.

2) Automated digital services ADS

- Service is considered to be ADS, if it is on the positive list, or is automated and digital. Automated means that once the system is set up, minimal human involvement is required to provide service, whereas digital means the service is provided over internet or an electronic network. Even though the service meets the previous requirements, it is not ADS if it is on the negative list.

- This general definition will be weighty especially in the future, when the business models evolve. The proposal suggests that the scope list will be updated from time to time, allowing "rapid changes". But the updating process is undefined and agreeing on widening the scope is likely to be difficult.

- Application of the general definition in scoping is planned to be supported by an early certainty process. This is supportable but depends highly on how the process is working in general. Swift agreement among tens of Member States on whether the service or good is in or out of scope seems unlikely.

3) Positive list

- Sale or other alienation of user data is described as "selling, licensing or otherwise alienating an unrelated 3rd party customer user data generated by users of a digital interface".
- What is "other alienation"? Later also the word "transmitting" is used (e.g. commentary of online search engines). Based on the commentary monetising is involved. Could this be interpreted that the term should not include transferring data without a payment (eg. allowing free use of database, exchanging data for services)? If by using the term "alienation" also transferring or giving access to data is considered to be in-scope, would the company be forced to define an imaginary price for the transfer of data? Would this cover also company collecting data from a client (e.g. IoT-goods) and selling service based on this collected data back to the same customer? The term "alienation" should be clarified.

- The sentence "User data refers to information about natural persons" has been removed. Assumedly this means that also a business can be considered a user. However, in the commentary user data is described e.g. as "habits, personal interests, hobbies". Even though such terms as "spending and location" could be also B2B user data, further clarification of definition "user" is required, especially if business is considered to be a user.

- The commentary continues: "Further consideration is being given to the extent to which user data would also include the provision of data such as industrial, scientific, statistical, or other data not linked to natural persons (such as businesses that acquire and disseminate information about investments and financial markets, or scientific research)." This confuses the concepts of "user" (natural vs. business) and "user data" even more. Industrial, scientific and statistical data should be out of scope. Adding costs to ecosystems of scientific research is not acceptable.

- GDPR-definition of personal data is very wide. Even though data is not personal data as such it might be considered personal data under the GDPR rules. This should be also taken into account when defining "user data".

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Digital content services

- Referring to the general term "automated" the Blueprint explains that highly customized software (significant human involvement needed) is out of scope, even if the final product is available online. On the other hand, software including minimal human involvement and available online is in-scope. There is no clear line between these two. A delivery of a software is more often done automatically, providing the software online, no matter what the level of customization. The MNE would be required to somehow create a system tracking the sale of software through similar delivery channels while at the same time automatically evaluating the level of human involvement needed.

- Especially in B2B-market, same software can require different level of human involvement, depending on customer. For example, one customer may require testing, while other not. Some may be able to download the software and take it into use independently, while other may require remote support in download or configuration phase. Some may require remote support immediately after download has been completed, and some later. Some may choose the options or features themselves; others may need support. The sales effort can be limited with others, and closer to consultancy service with others. However, fence between in-scope and out-scope activity stands on the concept "minimal human involvement". This would mean that even the revenue from sale of the same software product would need to be differentiated based on new and artificial concept of "human involvement". It can be demanding task, as the actual level of activity of customer interaction would need to be somehow linked to sale of a particular software product. Obviously, customer can buy several software products in one go and support activity would need to be broken down between these software products, in order to define the in-scope and out-scope revenue. We encourage Inclusive Framework to reconsider, whether B2B software could be out-scoped from the digital content services.

- It should be clarified in the commentary if free-of-charge digital content services are out of scope. Definitions like "acquisition" and "purchaser" (in the sourcing rules) indicate that payment if required and free-of-charge services are out of scope. These companies might still be in scope for their online advertising or sale of user data business.

Standardised online teaching services

- Online teaching services should be out-of scope fully. Scoping includes artificial definitions, e.g. whether there is live presence of an instructor or limited interaction, coursework marked by the instructor vs. automatically or by other users. Lifelong learning is crucial in the rapidly changing world and to R&D innovations. The education resources will not be adequate to respond to this need. Adding compliance costs and limiting new ways of education is not sustainable.

Cloud computing services

- Also cloud computing services should be out-of scope. TIF made a low-carbon roadmap[3], where one of the most critical factors identified is digitalisation. Without digitalisation of all business, fight against climate change cannot be won. E.g. cloud services are 93% more energy efficient with 98% lower carbon emissions than on-premise computing.

[3] https://teknologiateollisuus.fi/en/focus/environment-and-sustainability/technology-industries-finlands-low-carbon-roadmap-solutions

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- Additional compliance burdens and tax costs to the cloud computing services, which are a productivity tool and crucial for digitalisation to the whole economy, should not be created.

- The scope of Amount A should not discourage investments in digital innovation, productivity tools, or energy and carbon efficient technologies.

4) Negative list

Services providing access to the Internet or another electronic network

- The definition of the services does not elaborate on the type of the services. However, it should be clarified that exclusion covers both services relating to network infrastructure and communication service provision (CSPs), as both are required for end-user to gain access to the internet. Furthermore, if the service is closely linked to internet access (e.g. invoicing system or network analytics), the connected services should be out-scoped to provide for clarity and simplicity.

5) Dual category ADS / Bundled packages

- Blueprint recognized the difficulty of identifying in-scope ADS when it is connected to non-ADS. The objective is to have simple, administrable and implementable rules that create certainty and consistency. It is difficult to understand, how the objective could be reached.

- As discussed under Digital Content Services above, ADS and non-ADS elements can be difficult to isolate. Furthermore, business can consist of ADS, non-ADS and products, all combined or separated depending on customer case. There can be different sales models (project delivery combining software, equipment and service, or these can be sold separately), different pricing models (something-as-a-service on term basis, sale of equipment together with perpetual license and separate support service), some software runs on cloud with different level of human involvement, some softwares run on customers equipment.

- In some cases, it would be unprecedented endeavor to identify "overall service" from customer sales, cases where ADS and non-ADS are highly integrated and then decide if ADS represent substantial part of the "overall service"**.** The terms used are inevitably subjective and ring-fencing the "digital" part from "non-digital" will not be in practice possible without significant uncertainty, administrative hassle and controversy. We would encourage Inclusive Framework to reconsider dropping B2B software from the definition of ADS, as that would remove at least some of the pain points.

6) Consumer-facing business

Licencing

- Currently the Blueprint proposes that licensing of IP to connected consumer product or service would be in-scope activity for Amount A purposes. However, there are instances where the licensor does not have "face" apparent to the consumer, and the licensed IP is not of a type that would be typically licensed to consumer (e.g. right to music), as mentioned in the general definition. For example, licensing a patent covering technology used in a consumer product does not mean, that consumer would know or perceive that the product they use includes inventions of third parties. In comparison, in case of brand licensing, the consumer does recognize the brand and is perhaps facing the owner of the brand. From this

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perspective, patent licensing and other arrangements where the licensor is not clearly identifiable to consumer should be treated out-scope for Amount A purposes.

- Footnote 24 seems to suggest that not all IP's would not be included (namely "trade intangibles" and manufacturing know-how). The out-scoping of above arrangements could be highlighted in the footnote or in the main text.

Dual use products

- Dual use intermediate products and components that are predominantly sold B2B for integration into end products should be entirely excluded from Amount A. The Blueprint's articulation of the policy underpinning Amount A recognizes that components incorporated into a finished product should be out of scope of Amount A. To the extent that the product itself is a component, the business is unlikely to have engaged with the market jurisdiction end-users. We also note that sales of dual use intermediate products and components to consumers are typically effectuated through multiple intermediaries. In such a scenario, the MNE will face serious compliance challenges arising from its inability to separate consumer sales from business sales.

II. The design of a specific Amount A revenue threshold (in addition to a global revenue threshold) to exclude large MNEs that have a *de minimis* amount of foreign source in-scope revenue.

- As the Amount A model is new and goes beyond the current arm's length principle -model, a higher threshold (e.g. 10 billion euros) on the global group revenue figure could be in order at first. Evaluation on the functioning of the model could be made after a couple of years and consider whether the revenue threshold needs to be adjusted. If lowering the threshold is considered necessary, model A threshold test could include a phase-out period of five years to 750 million euros.

- Starting with a higher threshold would allow the new tax model to be limited to a manageable number of multi-national groups.

- A higher threshold could also be fairer to MNEs providing physical products. Often if these companies sell products in a relatively high number of countries, the volume is scattered as the size of any particular market is typically very small compared to the total global volume. In a way this is the opposite to one of the OECD's identified elements of digitalised economy "scale without mass".

- The ownership threshold is an important factor for SMEs. A company should not be considered a part of the MNE group unless the ownership share is >50 %.

- Also, the de minimis threshold for Amount A should be kept reasonably high, with possibly a phase-out period of five years. Should only a (relatively low) group level revenue matter, the compliance cost per sales euro as well as total tax burden will become unreasonably high for smaller markets, resulting in an inability for the company to provide products for sale in that market.

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III. The development of a nexus rule.

1) General

- It is very important that the Blueprint includes a clear limitation that new nexus is for Amount A use only. New nexus rules must not be used for other tax purposes (such as VAT or WHT), customs duties, obligations or for any other non-tax or regulatory purposes.

- The sales revenue thresholds are left open for discussion in the Blueprint. However, the thresholds for both ADS and CFB are expected to be below 5 million euros. This is a low limit and will likely trigger a nexus in all market countries of companies liable to pay tax under Amount A. For this reason also it is important that the scope limitation rules are clear and the thresholds high, so that smaller or less productive companies that cannot carry the compliance costs and additional tax are not targeted.

- A higher market revenue threshold is suggested for CFB. TIF supports creating a market revenue threshold, but it should be the same for both ADS and CFB.

2) Limiting compliance costs

- A threshold representing an average compliance cost could be a limit under which no tax will be due.

- There could be reasonable thresholds based on percentages e.g. no allocation if sales are under X% of MNE's global sales. Example: An MNE typically has 100+ market jurisdictions. Out of MNE's 100+ market jurisdictions top 10 market jurisdictions may make e.g. 80% of global sales (respectively top 20 may make over 90% of global sales). Rest of the jurisdictions may each have clearly less than 1% of global sales and there is likely to be some annual variation within the smallest jurisdictions (whether there are any sales to these jurisdictions during each FY). In addition, these <1 % global sales countries have annual variance and some of them do not have sales every year.

- Another way to limit burdensome compliance costs would be to rise the global revenue threshold from the 750 million euros, so that smaller groups would be left outside the scope.

3) Calibration to ensure that jurisdictions with smaller economies can also benefit

- In principle, having different thresholds depending on the size of jurisdictions could be considered fairer for the smaller and developing countries. For e.g. Germany (88 million citizens) a sales threshold triggering a new nexus should be higher than in e.g. Malta (250.000 citizens).

- The nexus rules design is explained to be protecting the interests of "smaller jurisdictions, and in particular developing economies." However, after this overview, the comparison is made between "large markets" vs. "small, developing economies". Consideration on how to make sure the developing countries are included is important. Coming from a small but developed country, it if of interest whether the size of the market will have an effect also otherwise? Having said that, multiple thresholds includes the risk of making the model even more difficult.

- For an MNE country specific thresholds would result in more compliance costs due to more nexuses emerging based on country specific, possibly unpredictably altering limits.

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- Reporting in all relevant countries, applying local rules and e.g. in local language increases significantly the administrative costs.

- If many country specific thresholds are introduced, a way to make the compliance costs less burdensome, is that the tax authority of the parent company's residence jurisdiction (such as EU VAT MOSS, one-stop-shop) would collect and distribute the taxes to each country.

- A centralized reporting would also prevent possible tax disputes.

4) Temporal requirement

- Even though a temporal requirement would require additional work, TIF is inclined to support such an approach to avoid isolated or one-off transactions to trigger a nexus, even though the company's engagement with a market is not significant. A duration test of e.g. 3 years could be a reasonable compromise.

IV. The development of revenue sourcing rules.

1) General

- Basis of the whole Amount A is to try track consumers and users (even "eyeballs" are mentioned, when trying to find the targets of online marketing) in order to grant more taxing right to the market jurisdiction. Revenue sourcing rules are the bedrock of the Amount A: they are used for the purposes of scope, nexus and allocation formula.

- If only revenue would be tracked, VAT rules would be a logical way forward. But Amount A tries to determine a market jurisdiction where also non-paying users are located. TIF proposes that location determination made for the purposes of VAT or sales tax should also be acceptable for the purposes of Amount A, every time it is possible.

2) Sourcing rules and hierarchy of the indicators

- Basic rule in the sourcing rule hierarchy should be that the company can use the data it collects for business purposes. Guidance should be taken from the VAT legislation and interpretation.

- TIF supports elevating the customer billing address indicator high in the list.

- (Real-time) geolocation data should be pushed lower in the hierarchy. Many companies do not collect this data and do not have any business reason to collect detailed or real-time customer location data. Also, the customer/user can refuse to allow location data to be collected, and thus, it is not reliable.

Revenue from the sale or other alienation of user data

- Work is ongoing whether sale or other alienation of scientific, industrial and statistical data should be in-scope of Amount A. Consideration should be given whether it is necessary, acceptable or even possible to include information of ordinary residence of the user to e.g. scientific data, which can be used multiple times, for different purposes, possibly anonymised. Scientific, industrial and statistical data should be out scoped from Amount A.

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Revenue from cloud computing services

- Cloud computing services have different sourcing rules for individual purchaser vs. business customer. Sourcing rule for a service intended for internal use by a business customer is "jurisdiction of the location where the business uses the service".

- Companies providing cloud computing services would have to divide their sales to individual and business customers and use very different sourcing mechanisms to these.

- More work is clearly needed on defining the rules concerning a business customer. For example, terms:
    - Business customer. Are all businesses eligible? One-man companies and MNEs?
    - "Where the business uses the service": does this mean one or multiple jurisdictions, jurisdiction of an individual company or all group companies?
    - What is considered "internal use" and how does the "intended for" -concept effect the interpretation?

- Indicator first in hierarchy is "jurisdiction of the business' employees benefiting from the service as reported by the customer."
    - What is considered as "employees" and how are they "benefiting"?
    - How will the reporting by the customer be done?

- The second indicator is also open to interpretation: "jurisdiction in which the business has operations, determined by the offices and address details contained in the business agreement and/or in records collected for tax purposes (such as value added tax purposes).
    - What operations?
    - Using business agreements as a basis for sourcing could jeopardise business secrets.

- Third indicator is "other available information that can be used to determine the jurisdiction of the location of the business' employees that use the service."
    - What is meant by location of an employee?
    - Tracking would be done to only employees using the service, location of the employees is not adequate.

- Technology Industries of Finland made a low-carbon roadmap in June 2020, where one of the most critical factors identified is digitalisation. Without digitalisation of all businesses, fight against climate change cannot be won. Additional compliance burdens and tax costs to the cloud computing services, which are crucial for digitalisation, should not be created. Therefore, B2B sales of cloud computing services should be excluded from the scope. Above mentioned various difficulties in determining the sourcing rules for business customers reinforces this request.

3) Data privacy

- Data privacy is a crucial element of data sourcing rules.

- Tracking the individuals' location is justified when trying to prevent crimes, such as credit card fraud, money laundering, trafficking. The instances using the data are usually authorities (police) or strictly regulated banks and the use of data is limited. The tax administrations can also access this type of data, but the use should be limited to similar use, to prevent crime, such as tax frauds. Amount A is, however, a new tax system based on gathering personal data solely for corporate taxation purposes.

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- TIF has throughout the whole drafting process of Amount A demanded for clear rules on how the consumer data is collected and used, without jeopardizing the principle of data security, for example GDPR-rules in the EU. At a time when society is questioning the amount of personal data that is retained by companies, it seems to be a surprising course to take – to base the calculation of a new tax on personal location data, requiring companies to collect and store vast amounts of personal data for tax compliance purposes for an indefinite time and to distribute this data to other group companies, located in other jurisdictions than the consumer/user jurisdiction.

- The definition of personal data is very broad, eg. name, email address or IP address are regarded to constitute personal data. Any tax model should be coherent with data privacy legislation (such as European GDPR and like in other countries) and its principles such as data minimisation and data protection by design. If personal data needs to be processed to allocate taxes, it should be carefully considered what would be the minimum dataset subject to processing and how to minimise risks incurred by the processing. All the data processed needs to be strictly necessary to facilitate taxation.

- As the market jurisdiction's taxation rights would be allocated based on the users and consumers located in the jurisdiction, also the countries would have an incentive to gather location data of individuals.

- Taxation is likely an acceptable reason for the UPE (or other MNE group company in a tax paying position) to collect personal geolocation or other relevant personal data. However, what is the legal situation concerning 3rd party companies or group companies not in a tax paying position? Would Amount A sourcing rules require changes to GDPR regulation and changes to all companies bound to GDPR rules?

- Even the smallest 3rd party companies would have to be competent to evaluate whether the customer data request is such that it can be fulfilled without breaching the GDPR legislation. Data can only be requested to specified use and only to the limit absolutely necessary to that specified use.

- Due to GDPR regulation, user data cannot be collected for tax purposes before the tax liability is triggered, i.e. once the legislation is in force and the company is in scope. The MNE might be liable to collect data in jurisdictions not applying data privacy rules and banned to collect the same data in the EU.

- If the Amount A would require companies to store big amounts of data solely for taxation purposes, this will subject companies to new risk-positions based on that data. Mitigation of these risks would incur additional cost - not related to companies' day-to-day business.

- Data privacy and business secret issues are at risk when collecting and delivering data from 3rd party companies and through multiple distributors or group companies.

- Do the MNE group companies have to send detailed data to the ultimate parent (UPE)? Or is aggregated data adequate (blueprint: "internal control system can be audited also in the jurisdiction of other members of the MNE which has the relevant data and has responsibility for the compliance process".)

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4) Reasonable steps

- The MNE must retain documentation evidencing how its internal control framework related to revenue sourcing is functioning. Information is regarded unavailable if it is not in the MNE's possession and reasonable steps have been taken to obtain it, without success. If an indicator lower in the hierarchy was used the MNE must explain what the circumstances were and why the indicator higher in the hierarchy was not available and what were the reasonable (but non-successful) steps taken to obtain the data.

- The preferred sourcing indicator in many ADS is geolocation data of the user/viewer/consumer.

- There are problems with collecting geolocation data, for example.
    - The individual user should not be tracked otherwise than when she gives her approval (enabling the feature on the device). This makes the coverage of the real-time geolocation data unreliable.
    - The taxable MNE company itself might not have access to this data but must rely on other group company or 3rd party data.

- When considering what are reasonable steps when obtaining data, the above-mentioned problems must be considered. If the user does not want to give access to geolocation data, must a company demand the user to allow geolocation tracking, i.e. obligatory for the user? Is this possible without changing data privacy legislation?

- For CFB, the sourcing rules are equally challenging. Collecting the data from all sales locations and channels might prove to be next to impossible. For example, an MNE can sell its products through its own online store, local "brick and mortar" -stores (locally and delivery to other countries), through a platform provider or local 3rd party sellers. In addition, all of these channels are used by different legal entities all using different ERP-systems. Collecting all sales data and forging it to a single dataset is costly and time consuming. This should also be somehow auditable for the tax administration.

- Usually giving access to data is limited to certain use. Data privacy rules and nondisclosure rules limit the use of data. Thus, the 3rd party contracts would have to be renegotiated to allow using data for taxation purposes. It seems unreasonable to demand an MNE to renegotiate its 3rd party contracts when other indicators can be used. The list of indicators was intended to be flexible and allow the company to use data which it is gathering already for business purposes. This should be kept in mind when thinking what the reasonable steps would be. The model should be based on data that the companies process as part of their day-to-day business actions.

- The MNE liable to collect the user data and in a taxpaying position might not be in such a "negotiating position" that it can force the 3rd party contractors to collect and deliver the required data in given time and without extra costs.

- Even a small company might be obliged to collect and report the user data to a in-scope MNE. A tiny SME does not have personnel nor tools to do this. Thus, the revenue sourcing rules might result in extensive costs to 3rd parties and notable risk of data privacy sanctions.

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5) VPN

- A user can change their virtual IP location to another country by using VPN. Reason for using VPN is usually data security reasons or accessing services provided in another country.

- Linking taxation to user location data would in principle mean banning privacy enhancing technologies. If, on the other hand, data security is considered important, the users must be allowed to use VPN-applications blocking tracking.

- Only fighting severe crimes is a reason strong enough to refuse the user from using data privacy services, such as VPN.

- Using VPN must be acceptable also in the future. If the user uses a VPN, other indicators lower in hierarchy should be allowed to be used (such as billing address) or using highly anonymized data.

V. The framework for segmenting the Amount A tax base, and how it could be further developed to deliver its objectives.

- If segmentation by business line/regions is utilized, there should be a presumption in favour of the taxpayer's segmentation and a prohibition against governments asserting their own segmentation to enhance returns to their jurisdiction.

- Obligatory segmentation should be allowed only in limited situations, if objectives of Amount A cannot be accomplished without segmentation.

- However, segmentation should be allowed for the taxpayer. Group profit might not reflect the profitability of different business lines i.e. some business lines might be profitable and some loss making.

- MNEs operating in consumer business practically always have both B2B and B2C business, in all business lines, and in all countries they operate. The group reporting and financial statement segmenting does not follow this granularity. Typically, MNE reporting is based on the need for group consolidation of legal entity result, which is basis for both the group's annual statements as well as legal entity level statutory financials and tax calculations (financial reporting). The other type of need is management reporting, for which the entity for business control reasons defines the reporting dimensions and granularity.

- Typically, for management reporting purposes, businesses may choose to follow business line/market/product category or other reporting dimension at net sales level, gross margin level, or EBIT level. Apart from segment reporting for external financial reporting purposes, it is quite uncommon to divide cost down to EBT level, which is practically never done for any other than legal entity level reporting purpose. It would therefore be a huge additional administrative burden to allocate profit and all cost per business line (however those may be defined), between B2B and B2C, and further per country. At best, the resulting EBT would be an estimated allocation not based on audit trail sufficient for being a basis for taxation (contrary to legal entity level accounting and reporting).

- To avoid tax disputes in multiple countries, only the headquarter jurisdiction should be entitled to audit/certify any agreed formula. If authorities in one market country conclude that group or segmented profit is incorrect, then profit allocated to other market country

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and profit in IP-owning entity would need to be adjusted too. This would sacrifice simplicity, administrability and certainty from use of accounting profit.

VI. The development of a loss carry-forward regime that would ensure that Amount A is based on an appropriate measure of net profit.

1) General

- Amount A must be limited to taxing only economic profits, and thus the question of treatment of pre-regime losses is vital. Otherwise unreasonable outcomes for taxpayers and countries could be triggered. Start-ups and companies heavily investing in growth typically generate losses when building up their business. In practice, the losses are generated in the country where the groundwork for success has been done, but the profits are taxed in accordance with Amount A in the market jurisdiction when business blooms. As a result, companies can be cumulatively loss making, while it still has to pay taxes. The situation may occur when:
    - The Amount A is implemented by the jurisdictions for the first time
    - scope of the Amount A captures taxpayer later on, or
    - the non-routine profit is first below Amount A threshold and later exceeds it.

- The outcome does not encourage risk-taking or entrepreneurship, as governments in market jurisdictions are getting compensation before owners and creditors, who have financed building of the company. Neither it is fair for the country, where the business has been ramped-up. That country is stuck with pre-regime tax losses, while other countries receive the revenues. Pre-regime losses must be allowed to be carried over, during a pre-defined period (e.g. 5-10 years).

2) "Tax cap" method

- Amount A should include clear guidance on treatment of losses. The following model could also be explored: Overall group profitability could be used as a basis for taxation. Group profit would allow use of a "tax cap" as method of exempting loss-making groups from profit taxes.

    - Previous years non-routine profit or loss is calculated at the time when Amount A would allocate non-routine profit to market countries.
    - The previous year deficit of non-routine profit (difference between Amount A threshold and actual non-routine profit) is split between market countries and principals using the same percentage as non-routine profit.
    - Previous year non-routine deficit is allocated to market countries and further between countries based on same method as profit (e.g. sales or users).
    - Country specific non-routine profit deficit would be deducted from country's non-routine profit.
    - The model requires that countries agree on recapture period (e.g. 5-10 years) and time period during which the past year deficit can be utilized.

Further use of group profit to increase fairness and boost investment

- Current tax rules are based on separate legal entities, while the overall group profitability has not been used as basis. This results in a situation where the group is in a tax-paying position, even though the group is loss-making (either as a result of withholding taxation or

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profit taxes made by profitable legal entities. Business can face effective tax rate of over 100%, which has the same negative implications as corporate income taxes payable by loss making businesses. Levying corporate taxes to loss making business hinders ability to recover from crisis, to grow and invest especially in start-ups, scale-ups and fast-growing and loss-making disruptive businesses and it is fundamentally unfair, as loss making business may not have capability to pay the tax.

- Amount A targets to assess and confirm the group profit. The use of group wide profitability could be expanded to prevent taxation of loss-making group companies. Group profit could be used as a cap to profit tax liability, so that the tax liability would never exceed the amount of group profit. Technically, the "Tax cap" can be achieved by calculating the tax per country as proportion of taxes (corporate income tax and WHT) per country.

- Example: Assume group of companies, with principal, two limited risk distributors and sales subject to WHT in fourth country. Group profit (tax cap) is 5 and total taxes 10. The tax per country after capping is presented below.

Group profit	**5**	**5**
Country	**Tax assessed (CIT/WHT)**	**Tax after capping**
A (Principal)	0	0,00
B (LRD CIT)	5	2,50
C (LRD CIT)	3	1,50
D (Sales WHT)	2	1,00
Total	**10**	**5**

- The use of tax cap requires information on taxes assessed per country, which should be achievable as part of centralized process discussed under dispute prevention. Application of tax cap could be optional to taxpayers.

VII. The scope and relevance of possible double counting issues arising from interactions between Amount A and existing taxing rights on business profits in market jurisdictions.

1) General

- As discussed in the Blueprint, the double counting issues should not exist. The whole rationale of Amount A is to allocate taxing rights to jurisdictions where taxing rights over residual profits generated in that jurisdiction are currently not allocated under the existing profit allocation rules. Withholding tax ("WHT") is in many ways different tax than Amount A will be. It seems inevitable that the market jurisdiction will be able to tax the residual profit of the MNE twice, at least partially.

- WHT on services and royalties is in many ways a flawed tax and application of Amount A may increase these challenges:
  - E.g. WHT on royalties and dividends is a return in the market jurisdiction.
  - WHT should be taken into account when calculating the taxes levied by the market jurisdiction. Should the market jurisdiction wish to participate in the Amount A

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allocation it should dis-apply its WHT, or otherwise be rejected the Amount A allocation.
  - If not fully dis-applied, the WHT should be credited against Amount A.
  - WHT is not based on profitability of the taxpayer but on certain transactions. As a result, loss making businesses may suffer from it, and tax burden on business can exceed profit before tax (tax rate exceeds 100%).
  - WHT compliance is heavier than profit-based taxation. Correct application of WHT requires compliance in larger number of countries (source countries) compared to home country taxation where compliance takes place in one country; confirmation on the residence country of recipient requires certificates and application of beneficial ownership rules, principal purpose test and/or limitation on benefits rules; crediting of WHT requires documentation of taxes paid and the reconciliation to accounts payable and accounts receivable can be extensive exercise, especially if the payer and recipient are independent parties.

- WHT is prone to controversy between source and residence country, especially in the area of software.

- It is possible that income is subject to WHT, but residence country rejects WHT credit, e.g. by claiming that WHT is not in accordance with residence country royalty definition.

- Furthermore, it is possible that the same income becomes also subject to the Amount A, and volumes and profitability also exceed Amount A thresholds. It is possible, that there is no country, which would allow the income to be exempted or tax credited under Amount A. This would be the outcome e.g. if countries disagree on correct legal entity, which should eliminate double taxation under Amount A, or if they disagree on any other parameter of Amount A, resulting to disagreement of correct amount of Amount A or country otherwise eliminating double taxation does not accept the documentation prepared by tax payer.

- TIF supports the inclusion of a sales and marketing safe harbor -rule.

2) Alternative for Amount A: Formulary Apportionment (FA)

- As an alternative for Amount A, we are pondering whether an optional, global, safe harbor-type formulary apportionment (FA) -model could be thought of. It could use the building blocks identified during the current OECD work on Pillar 1 and 2.

- The model would have to be optional.
  - Open to also SME's (no size limit).
  - Open to all businesses (not limited to companies with ADS or CFB, no scoping or segmentation required, no paying entity consideration).
- If MNE chose to use FA-model, it would be exempted from:
  - Transfer pricing and arm's length principle rules
  - Permanent establishment rules
  - Withholding taxation
  - Anti-avoidance rules, such as CFC and deduction limitations
  - Amount A
- Tax base to be allocated would be group's consolidated profit before tax (same as proposed for Amount A and GloBE). Tax base allocation rules discussed below.
- Compliance administered in "co-ordinating entity" home country (as defined in Amount A) or in "Ultimate Parent Entity" home country (as defined in GloBE).
  - Single tax return filed (like "single Amount A self-assessment return").

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    - Amount A "early certainty process" applied as tax audit and dispute prevention method.
- Losses and other tax attributes from regime to be carried to the new FA-regime. If company opts to leave the FA, then FA losses should be carried to old ALP/WHT/PE/Amount A -regime.
- FA-model could limit the negative impact on investment cost highlighted in OECD's impact assessment, as it is simpler and lacks many elements causing uncertainty. It could encourage investment more than Pillar 1 and 2 (and those arising from alternative of not implementing Pillar 1 and 2. It would allow businesses suffering from uncertainty to opt in for simpler regime and does not mandate other businesses.
- Functioning FA-model would require agreement between all or at least most Inclusive Framework members. A regional (e.g. covering only some countries, or the EU) model would not work, as it would only create an additional layer to the tax system, increase administrative work for companies and tax administrations as well as cause tax disputes. In case an MNE chose to apply the FA-model, it would have to be applicable as widely as possible. Otherwise MNEs are not likely to opt in.

<u>Biggest challenge in the FA-model is tax base allocation</u>

- Should the allocation be based on?
    - Sales in market jurisdictions (Revenue sourcing rules of Amount A),
    - Tangible assets and payroll (Formulaic substance-based carve-out of GloBE),
    - and/or other (e.g. intangible assets, R&D payroll).

- In case sales would be chosen as an allocation key, also this model would have to tackle the problems of revenue sourcing.

- The OECD's work on Pillar 1 and 2 provides suggestions how sales, tangible assets and payroll could possibly be used as basis for the allocation. However, allocating tax base based on these factors would lead to problems identified in the EU's CCCTB-model. In case these factors would be given an equal weight (same percentage), the sales factor would unequally benefit bigger markets. This is especially true concerning digitalised economy companies, where tangible assets can be nonexciting, and the businesses derive much of their value from intangible assets. Such an allocation formula does not courage member states to invest into companies boosting digitalisation and new technologies, R&D etc. How can the world have a more digital economy as per its ongoing plans regarding digital transformation if the value of digitalisation is not understood or recognised?

- Digitalised economy relies heavily on intangible assets, data and knowledge, which are becoming more and more the value drivers within multinational groups and which are admittedly difficult to identify and value. Still, the solution to this difficulty cannot be that intangible assets will not be given a value at all when allocating tax base.

- The CCCTB apportionment formula of sales, tangible assets and payroll does not value environmental issues, efficiency, productivity, value add. It does not give weight to benefits of circular economy, digitalisation, automatisation, robotics etc. It could hinder the companies' incentives to find environmentally friendly, effective solutions. Such a formula could also lead to inefficient group structures: equity and assets trapped to companies (and not to investments), personnel and fixed assets (or leasing/renovation costs) located in countries with lowest tax rate.

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- The Amount A profit allocation rules must be better.

VIII. The development of a process to identify the entities in an MNE group that bear the Amount A tax liability (the paying entities) for the purpose of eliminating double taxation.

- Not all entities operate in a centralized model where one of the group entities is a risk-taking entity and others limited risk entities, distribution of profits determined accordingly. Should some country in the proposed approach be determined to be entitled to additional tax, the deducting/crediting end is not necessarily a single principal entity hosting the group's residual profit. Instead, the entity having remotely sold to the taxing market may not have sufficient level of taxable income itself to credit the additional foreign taxes. This may of course happen in IP owning principal companies themselves should there have been investments required to create or maintain the products, services or brands the sales of which is subject to new foreign tax.

- Simplification proposal: if an entity has been identified as an Amount B -entity, this entity cannot be characterized as an Amount A liable entity.

- In paragraph 611 "a paying entity will be deemed to have no profits to bear a further Amount A tax liability, once the taxing rights of the residence jurisdiction have been reduced to a routine return." i.e. entity which is, based on TP analysis characterized as paying entity which makes valuable contributions will be remunerated with routine profits only. This contradicts with the current value creation concept and does not take into account the contributions made in such a jurisdiction and does not create an incentive to invest. In comparison with the current arm's length principle, e.g. a principal bears the risk i.e. may face losses but is also entitled to excess profits. With Amount A, there will be allocation only if certain profitability threshold is met i.e. principal may only suffer loss/weak result or earn routine profit.

- The Blueprint recommends that both the exemption and credit method may be used which will create confusion. TIF favours an exemption approach as under the exemption method, the residence jurisdiction would not retain secondary taxing rights over the profits of a paying entity because those profits are exempted or removed. Thus, the exemption method is more predictable and simple, preventing also double taxation.

- The Blueprint also discusses a "reallocation method". The reasoning behind the described method does not seem logical: "therefore, the MNE would likely want to make a secondary adjustment to actually transfer the Amount A profits to the local entity for legal and accounting purposes so that they align with the tax accounts" This does not seem like something a MNE would do. In case the payment is made, profits would need to be repatriated from various locations and some jurisdictions would be likely to apply WHT. In addition, there is no real possibility to transfer the Amount A to a market jurisdiction where the MNE has no presence. The reallocation method should be removed.

IX. The issue of scope of Amount B and definition of baseline marketing and distribution activities.

- Fixed remunerations used with existing transfer pricing mechanisms could prevent uncertainty regarding acceptable profit levels of group entities' distribution functions. However, even a simple distribution model is rarely the same in all businesses and

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companies, so it would require a significant level of faith from jurisdictions to agree to certain fixed remuneration levels, and simplification / change requirements to current substance-based profit allocation principles.

- Whether the scope is narrow or wide in Amount B, it must be clearly established which functions are remunerated to avoid multiple allocation on sales and marketing functions potentially contradicting with their value creation.

- A narrow scope would cover limited, defined activities. Thus, it would be likely that such a model would be easier to specify and would have bigger possibility to improve certainty and decrease disputes. The more different types of activities the Amount B attempts to cover, to more likely it is that disputes on varying identification of functions will occur. Wide scope would require substantial variation in the quantum of Amount B to not to deviate from the arm's length principle.

- Amount B fixed remunerations only standardize the last part of the transfer pricing -process, the benchmarking. TIF member companies' experience is that usually tax disputes resulting a MAP-process contain more matters than the return level and that an acceptable percentage has been agreed in all cases. Thus, the real issue is identifying and characterizing the functions. Amount B might help to eliminate one quarrel in a MAP-process, but it is not likely to prevent or reduce disputes.

- Agreeing a fixed percentage will be complex. One fixed percentage will not be applicable in all situations and all business models. Thus, fixed level ranges ("safe harbors") could be used instead.

- This is especially true for low-margin businesses. Allowing for an example 5 % return to baseline marketing and distribution activities would mean that the principal would become loss-making.

- Amount A should be the guaranteed minimum that a country can expect for sales into the country. If a business is already in a country and compensating the country via Amount B, at or in excess of the OECD Amount A guaranteed minimum, no additional return will be allocated to the market.

X. The appropriate profit level indicator for calculating Amount B, and how it should be calculated assuming Amount B is based on a narrow scope.

- TIF supports a "safe-harbor"-model, i.e. agreeing on an acceptable profit level range, not one flat rate (even if a variation of returns would be used).

- Different countries have in the past applied local market or cost level -based factors to required profit levels. Changing the method will result in a completely different compensation, although the percentage used is the same. The final report should also include a clear definition on what method will be used when remunerating the distributor and marketing jurisdictions, not just the percentage.

- TIF supports a variation of returns by industry. TIF member companies find that the level of returns does not vary that much based on the region. Especially if the fixed return is not a flat rate, but a "safe harbor"-model, (acceptable range) it would be enough to have different variation by industry. Further clarification would be needed what is considered the industry of the MNE. Is it the main industry marked to the trade register?

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- Existing transfer pricing principles should always be an acceptable alternative, if company's functions do not meet any amount B fixed return definition.

- Standard remuneration of Amount B should be agreed beforehand and to cover a chosen period (e.g. 3 years). If safe-harbors are used, this figure can be used for multiple years. However, some business models are rapidly changing, and a fixed rate for several years might be unacceptable. This is another reason to prefer safe-harbors.

- If Amount B scope includes sales agents and/or manufacturing service providers, profit level indicator should be e.g. cost plus and a lower level return. No permanent establishment can be deemed to exist in addition to an Amount B remunerated sales agent.

XI. The development of an early tax certainty process to prevent and resolve disputes on Amount A.

- TIF supports a phased approach, beginning with the largest MNEs (higher threshold than 750 million euros, e.g. 10 billion euros), to better enable access for companies to early tax certainty process. Also, the tax administrations have a shortage of resources and a phased period would help to adapt.

- Amount A review and determination panels must be conducted under confidentiality rules. Trade secrets must be kept in secrecy. The information discussed should not be used for any other purposes.

Panel processes

- The panel processes need to have binding deadlines. The aim is to have early certainty, and the timelines cannot be prolonged excessively. The time limit for the review panel could be 6 months and the determination panel 9 months (altogether not more than 15 months).

- The tax payment could be ceased and postponed until the panel process(es) are finished. This would put pressure to the panels to meet the time limits and avoid the need to make corrections to the payments afterwards.

- There should be a mechanism for dispute resolution for Amount A (outside domestic remedies) if the taxpayer does not choose to use early tax certainty mechanism. It seems unclear what happens if taxpayer does not request for early certainty and disagrees with opinion of the lead tax administration and possibly multiple other jurisdictions which may even have different opinions.

- The lead tax administration may conclude that a review panel is not needed after initial review. Taxpayer lacks possibility to request review panel if it disagrees with initial review and to request determination panel if it disagrees with review panel. Taxpayer should have the possibility to request review panel or a determination panel (whole review or a specific question).

- Composition of the determination panel should include persons form various backgrounds (e.g. tax administrations, academia, advisory and MNEs etc.) to enable a comprehensive view in such a process where taxpayer cannot appeal.

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- The determination panel (review panel) should include persons also outside tax administrations / competent authorities, especially persons understanding the digitalised economy business models and the technical side of the business.

- Request for early certainty should be submitted by an agreed deadline annually. For comparison e.g. APA are often concluded for 5 years. TIF proposes that an annual submission is not required but 3-5 years could be agreed with one submission.

- The taxpayer is given only a very limited role in the panel process (mainly as a source of information). Currently a tax administration conducts the primary adjustment and the taxpayer can proceed both with domestic appeal and MAP. In the new Amount A determination process tax administrations themselves agree and taxpayer can only complain via domestic remedies in each jurisdiction.

- According to the current transfer pricing rules, the role of the taxpayer is much more active. E.g. according to FTA MAP Forum strategy statement

  "21. Interaction with taxpayers and advisors – The FTA MAP Forum will discuss ways to enhance and streamline the taxpayer's involvement in case resolution. Efforts will focus on (1) the potential use of bilateral or multilateral meetings in which taxpayers can present factual information to governments at the same time and (2) sharing best practices with respect to liaising with taxpayers and their advisors and informing them of case developments, as may be consistent with the provisions of the applicable convention."

  TIF proposes that the spirit of this strategy statement should be present in the new innovative dispute resolution mechanism:

  Rules on taxpayer participation beyond mere providing information must be included. E.g. in EU Arbitration Convention Art. 10.2. "Each of the associated enterprises may, at its request, appear or be represented before the advisory commission. If the advisory commission so requests, each of the associated enterprises shall appear or be represented before it".

- There should be transparency in the processes to prevent and resolve disputes regarding Amount A. There will be a great number of cases on e.g. scope of Amount A and calculation of Amount A. These cases (at least main issues) should be made public case law on anonymous basis. This would enhance tax certainty faster.

- Throughout the process it is described that tax authorities may request additional information. It should be added that any additional information requested should be relevant and in proportion to the question at hand.

- Binding tax certainty may be declined if e.g. information provided by the MNE group is inaccurate, incomplete or misleading. Both inaccurate and incomplete are subject to judgement. TIF proposes that this is changed to essentially inaccurate or incomplete and elaborated or clearly defined when this can happen.

- A separate process to determine whether an MNE group is within scope of Amount A would be useful, if it would be a less burdensome and time-consuming process (e.g. max. time limit of 4 months).

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XII. The introduction of new approaches to provide greater certainty beyond Amount A.

- An accessible and multilateral multi-lateral mandatory binding arbitration is needed to cover all disputes. To be more effective, clear deadlines for the processes should be introduced, binding also to the authorities. Countries should also allocate adequate resources for dispute resolution purposes.

- In the Blueprint it is mentioned that "it would seem disproportionate to require developing countries to commit to and implement a potentially complex mandatory binding dispute resolution process" but with the new process it is expected that "most likely rapidly gain experience in the Amount A tax certainty/dispute resolution process." Mandatory binding dispute resolution process is vital. We urge that the developing countries would be provided with as much and many types of support as possible so that they will gain rapid experience in mandatory binding resolution as well.

- Currently Blueprint does not address withholding taxes as part of neither dispute prevention under Tax Certainty nor innovative mandatory binding dispute resolution (only transfer pricing and permanent establishments are named). It would be critical to include other tax treaty disputes such as WHTs to scope of any new tax certainty / dispute resolution processes, as also withholding taxes split taxing right between countries like transfer pricing and permanent establishments.

- TIF supports that the single self-assessment package is to be filed by the co-ordinating entity with its lead tax administration. However, according to the Blueprint further information may be requested by tax administrations if needed. This will include a detailed description of the methodology and controls applied by the MNE group to ensure the integrity of its data and processes. This statement goes way beyond normal tax return and even information provided in tax audit or APA. This is work in progress. TIF emphasizes that additional information requirements must be clearly defined, cannot be overly burdensome and any additional information requests should be limited to relevant information.

- Taxation procedures must be effective. Reporting, collecting and crediting of tax should be as efficient and simple as possible. Tax authorities should have the responsibility to distribute the reported and paid taxes to other countries. A similar process is used for VAT in the EU: MOSS (mini-one-stop-shop). This would eliminate double taxation and tax disputes.
    - There is already a wide information exchange of information responsibility between the competent tax authorities and the co-operation of the authorities is being supported and increased.
    - Tax reporting requirements and deadlines vary in each country. Compliance costs and a risk of non-compliance could be lesser if MNEs wouldn't have to report in all jurisdictions.

- **TIF proposes the following means to make taxation procedures more efficient as well as limiting double taxation and disputes** (for additional information, reference is made to our submission 12 November 2019):

    - Centralized reporting method, for example similar type as the EU VAT MOSS or the CbC-reporting.

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- Typically, market country is also the source country under traditional WHT rules. Therefore, the countries could agree to abolish WHT.
- Digitalisation and automation of taxation procedures could lead to notable savings both to companies and tax administrations, as well as reduce tax gaps and tax evasion.
- A database of the MNEs calculations kept by the OECD.
- Dispute resolution mechanism which includes an organization at the OECD level to accomplish binding and effective multilateral dispute resolution.
- In case segment/regional profitability is considered, is should be done respecting the MNEs financial calculations. To avoid tax disputes in multiple countries, only the headquarter jurisdiction should be entitled to audit/certify any agreed formula.
- Use of dispute preventive tools, such as Pre-emptive Discussion and Cross-Border Dialogue also on a multilateral basis to enhance certainty and prevent tax disputes.
- Use of ICAP and joint audits also on a multilateral basis.

VAT

- Even though the OECD has stated that VAT is not to be discussed, the global taxation system must be considered in its entirety. Indirect taxes (value added or goods and services taxes) generate significant taxes in the residence country of the customer. Larger markets with more consumers naturally receive a larger share of such indirect taxes. This should be borne in mind when considering proposals which will result in shifting tax revenues away from smaller research and development intensive exporting countries. Also, similar type of problems, as value added taxation has faced over the years, could be triggered, for example related to tracking the location of the customer.

- Compliance costs and double taxation could be decreased by using similar reporting and payment tools as EU VAT MOSS, which should be spread to cover countries outside EU, without any value limits. This would also be a sustainable solution as businesses increasingly sell products globally. Also, tax collection via platform providers should be preferred as is done in most countries. VAT collected by platforms treats businesses neutrally regardless of size of business or location of headquarters and should be de facto standard to minimize tax collection expenses.

Pillar Two

General comments

- TIF supports the OECD efforts to continue the work concerning possible remaining BEPS challenges. Minimum tax proposals would in principle target the whole economy, being more sustainable and less discriminating. Also fighting against harmful tax practices is a valuable aim. Pillar 2 should however stay focused on arrangements which are artificial and hurt the level-playing field.

- There is a significant risk that the final Pillar 2 model is difficult and burdensome. The Impact Assessment estimates that new tax revenues of approx. 50-80 billion USD would be generated. However, we understand that the estimates are based on financial data from 2016-2017. The OECD, EU, countries and companies have invested great effort in combating harmful tax practices. We have yet to see how successful these new measures will be in reaching the desired outcomes, but it can be reasonably expected that they remove main material planning alternatives and decrease the expected increase in tax revenue.

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- Before agreeing on any proposals, the impact analysis should be updated once relevant data is available on the necessity of further changes. Also, an analysis what the costs for implementing the proposals would be or what might be the impacts on trade, jobs, growth, compliance costs etc. to different types of companies and countries.

- TIF highly supports the "tax administrative guidance" simplification option, a low-risk jurisdiction carve-out (so called "white-list").

- TIF supports the proposal to explore an approach using a fixed percentage. The calculation of the effective tax rate and tax base is complicated as is. Adding a separate calculation of each country's CIT range would make the minimum rate calculation very burdensome. Also, this would be unpredictable and not promote tax certainty, as jurisdictions have the sovereignty to change their tax rate whenever.

I. Chapter 1: Introduction and Executive Summary

- The Blueprint suggests that GILTI may be considered a compliant Income Inclusion rule for the purposes of the GloBE rules. For simplicity, it would be more appropriate to treat GILTI as a compliant rule for the purposes of the GloBE (i.e., for the Income Inclusion Rule, the Undertaxed payment rule, and Subject to Tax rules). Based on the Secretariat's repeated assertions that GILTI is a more onerous provision and raises more revenue than GloBE, a comprehensive exception for GILTI taxpayers should be consistent with the Pillar 2 objectives. However, as the GILTI (and BEAT) can be seen to erode the arm's length principle, a mandatory binding arbitration -rule must be enforced.

- Similarly, other existing rules which have a similar practical effect as the Income Inclusion Rule should also be grandfathered, such as the current CFC rules in the Europe.

II. Chapter 2: Scope of the GloBE rules

The treatment of investment funds (as defined in Section 2.3.) under the GloBE rules

- n/a

III. Chapter 3: Calculating the ETR under the GloBE Rules

- Rules on calculating the ETR is the backbone of Pillar 2. The objective is to ensure a minimum tax is applied to all in-scope MNE profits. As important as targeting no or below minimum rate taxation, the Pillar 2 rules should ensure no double taxation is triggered.

- The calculation of the ETR -rules lack clear rules on how to treat timing differences, and deferred tax assets. Temporary timing differences are resulted both in making adjustments from IFRS to local GAAP and from local GAAP to tax base.

- Comparing accounting profit to paid tax to determine the ETR creates significant problems. Covered taxes are basically actual tax paid based on local tax legislation. The GloBE tax base, however, is accounting profit before tax calculated based on IFRS (or acceptable GAAP). For many industries, especially if capital-intensive, taxable profits materially differ from accounting profits due to differences in the timing of recognition of income and

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expenses (including depreciation) between local tax laws and international accounting standards.

- The deferred tax accounting should be taken as the default methodology to address timing differences.

- If deferred tax accounting is not used, there must be clear rules on what adjustments are needed of the ETR for tax depreciation to address timing differences related to accelerated depreciation.

- Due to enormous complexity of the rules, it is clear that the application will lead to arbitrary outcomes: the ETR can be below the agreed minimum threshold simply because the rules have failed to considered all possible situations where adjusted profit before tax increases or covered tax decreases due to valid reason.

- In the minimum, the pre-regime temporary differences (deferred tax assets) would need to be carried forward to IIR-regime and be available to be utilized for IIR purposes, in order to limit the cases where ETR is below agreed minimum simply because amount of covered tax decreases based on temporary difference.

- The fundamental problem is that taxation in UPE country depends on accounting and tax rules in other countries as well as group consolidation entries. In practice, the rules applied on other countries like depreciation, stock-based compensation, government grants, losses, emergency assistance, consolidation push-downs, OCI, equity method, gains and losses form dispositions and mergers etc. would start driving tax liability in UPE country. This means significant burden to tax administrations and businesses.

- The effort from applying the rules is almost fully wasted, as the calculations are done almost entirely in ordinary high tax countries.

IV. Chapter 4: Carry-forwards and carve-out

- In addition to solving the treatment of timing differences, a robust carry-forward regime needs to be maintained to treat the remaining issues caused by timing differences.

- Regarding the pre-GloBE losses, the carry-forward period has to be long enough, to fairly treat also the cyclical industries where losses might be made for several years. The current COVID-19 situation will unfortunately also result in losses for many companies, which have to be deductible in years to come. If not unlimited, the carry-forward must be allowed for at least 10 years.

V. Chapter 5: Simplification options

1. Simplification measures introduced in the Blueprint

- The current Pillar 2 proposal is very complex. Meaningful and effective simplification methods must be created and confirmed.

- The Blueprint introduces the following simplification measures:
  - Country-by-country reporting ETR safe-harbour;
  - De minimis profit exclusion;
  - Single jurisdictional ETR calculation to cover several years; and

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- Tax administrative guidance.

- TIF members have varying opinions on whether the CBCR reporting data could be used as a simplifying tool. On the one hand the companies' systems already provide that data and it is available to the relevant tax administrations. If it could be used for Pillar 2 purposes as well, it might save time and efforts. On the other hand, the companies are worried whether there will be errors if this CBCR report data, collected solely for high-level risk assessment purposes and prepared on this basis, would be used for taxation purposes. A number of adjustments (such as deferred taxes) would have to be done before the CBCR data would be useful, minimizing the benefit of simpification.

- If jurisdictional ETR calculation is required, we support the proposed prolonged application period of 3-5 years.

- TIF highly supports the "tax administrative guidance" simplification option, a low-risk jurisdiction carve-out (so called "white-list"). This has a potential of significantly simplifying the Pillar 2 application. It would encourage the jurisdiction's tax system to be simple and to have neutral taxation for all companies, with reasonably high jurisdictional ETR. Avoiding the requirement to year after year provide costly ETR calculations where the ETR exceeds the agreed minimum tax rate every year would encourages MNEs to locate and do business in such jurisdictions.

- Calculation of the effective tax rate should be done at a national level, not by companies. For example, as proposed in the Blueprint tax administration would work together with stakeholders (e.g. a business advisory group) and publish guidance that set out a list of low-risk jurisdictions. MNEs located in the listed jurisdictions would not be required to perform the ETR calculation.

- This carve-out should cover the whole Pillar 2, also Subject to Tax Rule.

- To avoid a situation where a full jurisdiction would be rejected a low-risk status, we support that a sector approach would be considered. For example, some sector could be ruled out, but all other sectors accepted the status. However, we admit that this might risk the potential of significant simplification. Thus, sectoral approach should be analyzed with caution.

2. Other simplification options

- The basic principle of Pillar 2 "minimum tax" is that all MNEs must to pay enough (above an agreed minimum level) of taxes somewhere in the world. Thus, if the ETR of an MNE on a consolidated basis is above the agreed minimum threshold, the Pillar 2 provisions should not apply.

- Approach of global blending should be used instead of jurisdictional blending, as it is significantly less complex and expensive.

VI. Chapter 6: Income Inclusion and Switch-over rules

- Income of a foreign branch or other controlled entity would be taxed, if that income has not been subject to tax at a minimum rate in the resident jurisdiction of that branch or entity. This rule is described to supplement the current CFC rules.

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- CFC rules under EU's Anti-Tax Avoidance Directive already cover the same policy objective as GloBE IIR. TIF questions the need to have supplementing rules and instead supports the discussions to take the current CFC rules as a starting point to draft common CFC rules globally. Having different definitions and conditions would result in double taxation and tax disputes, when companies would possibly have a CFC and/or IIR and/or GILTI rules triggered.

- If designed as global CFC rules, the income inclusion rule seems to have advantages over other Pillar 2 rules. The model may not require fundamental changes to current transfer pricing rules and companies in jurisdictions with CFC rules might be not affected with further administrative burden. The model should leave the sufficiently taxed companies unimpacted.

- Another option is that similarly to the proposal of GILTI co-existing, also the current (ATAD) CFC rules would be considered a compliant Income Inclusion rule for the purposes of the GloBE rules. If ATAD CFC rules are already applied to the group (if the ultimate parent resides in EU), GloBE would not be a proportionate measure.

VII. Chapter 7: Undertaxed payments rule

- UTPRs should not be applied to payments to the ultimate parent entity of an MNE. The objective of Pillar 2 is to ensure a minimum level of tax on foreign income earned by MNEs and address remaining BEPS issues. The jurisdiction where the ultimate parent of an MNE is resident is typically more appropriately considered to be the natural location of the residual profits arising (risks, financing, decisions) from the operation of the business, rather than a place to which profits are shifted to minimize tax.

VIII. Chapter 8: Special rules for Associates, joint ventures and orphan entities

- n/a

IX. Chapter 9: Subject to tax rule

- The Subject to Tax Rule (STTR), which has a priority over the other GloBE rules, would levy a gross basis withholding tax on a wide range of payments. As such it sets a bad precedent and represents a departure from long-established principles for profit-based taxes advanced by the OECD. It will lead to double taxation and tax disputes.

- There is consideration being given to expanding the scope of the payments covered by the STTR. The scope is already too wide, and its application should be narrowed (e.g. limited to interest and royalties).

- The STTR is not a minimum tax provision. In the Blueprint it is described as a "standalone treaty rule and, consistent with the way bilateral tax treaties operate, will apply to payment between residents of two contracting states." Thus, the STTR should be removed from Pillar 2 and presented as an optional provision that bilateral treaty partners can decide whether to adopt. If not removed, the STTR should at least not be given priority over other GloBE rules.

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X. Chapter 10: Implementation and rule co-ordination

- The Pillar II Blueprint refers to Tax treaty MAP (BEPS Action 14 is under review) and possible design of dispute prevention. Therefore, it is possible to comment generally that there should be a dispute prevention mechanism, the proposed joint audits are not necessarily the preferred option to taxpayer.

- We refer to what has been said earlier on dispute prevention and resolution (Pillar One, Chapter XII).

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