Connect. Engage. Impact.

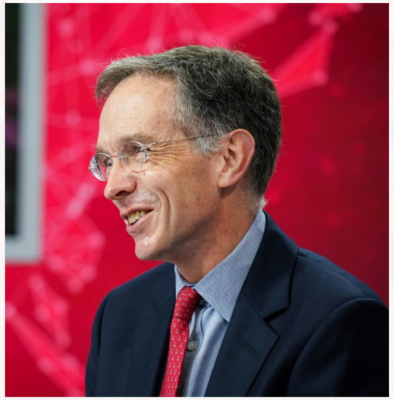
77th Annual Conference
Scottsdale, AZ

OECD/G20 BEPS Pillars One & Two – Where Are We and Will We Cross the Finish Line?

October 25, 2022
8:20 am - 9:30 am

Moderator

Josephine (Josie) Scalia
Head of Tax
Nestle Health Science



William Morris
Deputy Global
Tax Policy Leader
PwC

Quyen Huynh
Principal Washington
National Tax Practice
KPMG

Alison Lobb
Partner
Deloitte

Overview of the Rules

In General: Pillar One

- **Amount A** – For businesses with >€20B global revenue, new formulaic (non arm's length) allocation of 25% of deemed global residual profit (profit before tax above 10%) among countries where customers are located, regardless of where the business' physical activities are located.
  - Decreasing to €10bn after 7+1 years from implementation if a year-long review establishes that the new system was successfully implemented in the first seven years and achieved tax certainty.
- **Amount B** – Guaranteed minimum percentage return to a country where "routine" marketing and distribution functions occur. Meant to "approximate" to arm's length standard pricing out of routine profit. Fixed return for certain "baseline" activities.
- **Tax Certainty** – Introduce new dispute prevention and resolution mechanisms (e.g., review and determination panels); will cover Amount A and issues related to Amount A

Overview of the Rules

Building blocks of Pillar One - Amount A

Proposed Rule	Not yet released

Proposed Rule:
- Revenue Sourcing and Nexus
- Tax Base
- Scope test
- Exclusions - Extractives
- Tax Certainty for Amount A
- Tax Certainty for Issues related to Amount A
- Elimination of double taxation
- Marketing & Distribution Profits Safe harbour
- Exclusions Regulated Financial Services
- Segmentation
- Administration

Not yet released:
- Unilateral DSTs
- Withholding taxes

Overview of the Rules

Pillar Two model rules – key concepts

Scope of Pillar Two is large companies with cross-border income

- Pillar Two applies to multinational enterprises (MNEs) with **annual global revenues above €750m**
- Certain organizations (e.g., government bodies, non-profits, investment funds) are excluded, without regard to size.

Two Main Components of minimum tax – IIR and UTPR

IIR (Income Inclusion Rule) is a minimum tax imposed by the Parent of the MNE on its foreign subs

- **Ultimate parent entity** (UPE) under original proposal UPE had primary responsibility for applying IIR
- To the extent foreign subs do not pay tax of at least 15% in their country, the UPE would impose a **"top up" tax** to ensure a taxation rate of 15% applies to the subs – however, **Qualified Minimum Domestic Top-up Tax** has scrambled this by allowing source country the right to tax this before UPE country.
- IIR is computed on a **per country** basis – tax paid in a high-taxed foreign sub cannot be used to "shelter" low-taxed income earned in another country.

UTPR (Undertaxed Payments/Profits Rule) is a "backstop" that only applies if income is not taxed by IIR

- UTPR permits a country to increase the tax imposed on entities operating within that country if those entities have affiliates in other countries that are taxed at a rate below 15%.
- Amount of UTPR "top up" tax is the amount of tax that would have been imposed if the affiliates in the other jurisdictions had been subject to the Pillar Two IIR minimum tax of 15%.
- If more than one country asserts the right to impose additional tax under the UTPR, increased tax is allocated among those countries under a formula based on assets and employees in each UTPR country.
- **NB.** The UTPR can also apply in respect of the UPE country (which by definition cannot be covered by an IIR on foreign income) if the Pillar Two ETR in the UPE country is below 15% (e.g., because of credits or incentives).

Where Are We Now – Pillar One

Pillar One - Implementation Timeline

October Statement of Inclusive Framework and G20

Administration and tax certainty progress report – public consultation

Detailed Amount B guidance

Amount A into effect

Abolition of DSTs

October 2021

July 2022

October 2022

December 2022

Early 2023

2024

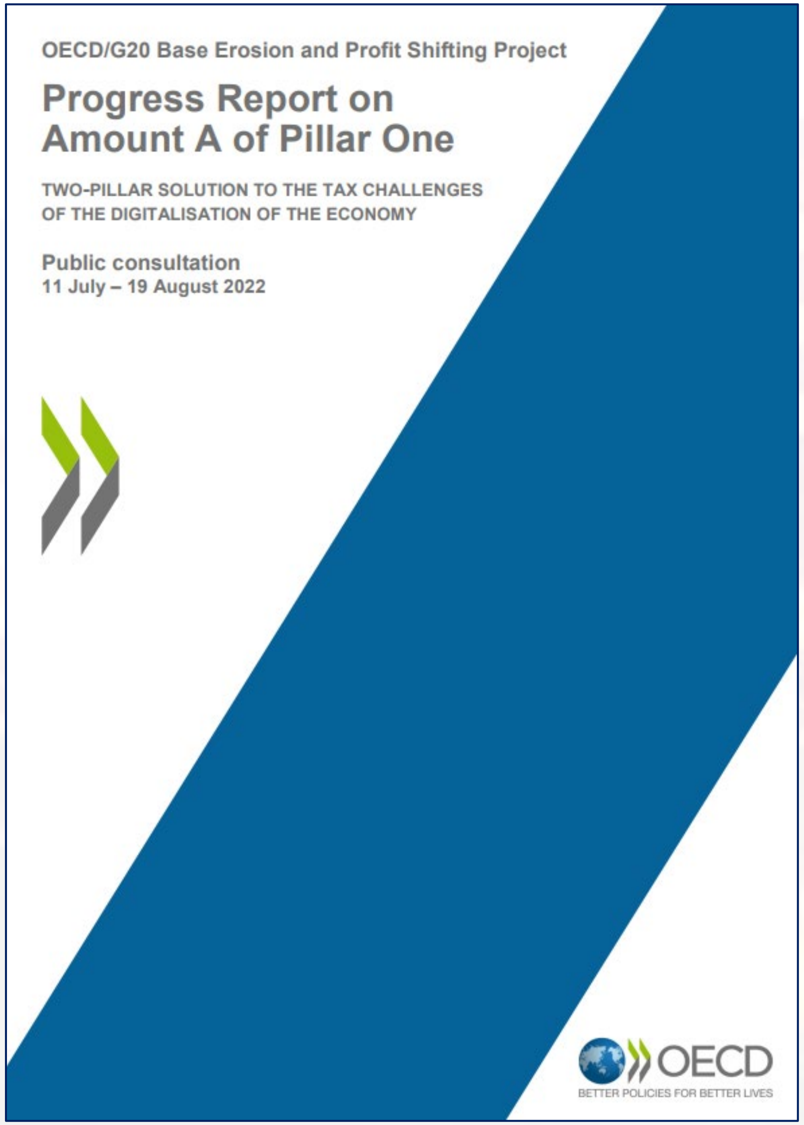
Amount A Progress Report

Multilateral Convention signing ceremony

- The MLC will enter into force only upon ratification by a critical mass of countries, likely to include the US

Pillar One: Nexus and profit allocation rules

Progress Report on Amount A



Chapter	Topic
Title 1	Scope
Title 2	Charge to tax
Title 3	Nexus and revenue sourcing rules
Title 4	Determination and allocation of taxable profit
Title 5	Elimination of double taxation with respect to Amount A
Title 6	Administration
Title 7	Definitions
Schedule A	Supplementary provisions for scope
Schedule B	Exclusion of revenues and profits of a Qualifying Extractives Group
Schedule C	Exclusion of revenues and profits from Regulated Financial Services
Schedule D	Covered Segment
Schedule E	Detailed revenue sourcing rules
Schedule F	Asset Fair Value or Impairment Adjustments
Schedule G	Acquired Equity Basis Adjustments
Schedule H	Transferred losses
Schedule I	Elimination tax base
Schedule J	Elimination of double taxation – return on depreciation and payroll

Pillar One: Nexus and profit allocation rules

Progress Report on Amount A


OECD/G20 Base Erosion and Profit Shifting Project

Progress Report on the Administration and Tax Certainty Aspects of Pillar One

TWO-PILLAR SOLUTION TO THE TAX CHALLENGES OF THE DIGITALISATION OF THE ECONOMY

Public consultation
6 October – 11 November 2022

OECD
BETTER POLICIES FOR BETTER LIVES

Part	Topic
I	Administration of Amount A
II	Tax Certainty Framework for Amount A
III	Tax Certainty for Issues Related to Amount A;

Further consultations by end of 2022:

- Withdrawal and standstill of Digital Services Taxes
- Amount B

Areas of further work include:

- Marketing and Profits Distribution Safe Harbour
- Withholding taxes

Public consultation: 8 October – 11 November 2022

Where Are We Now – Pillar One

- The progress reports cover a lot of ground, does this mean there is widespread agreement to the proposals?
- How does the revenue sourcing piece work?
- How do the proposals fit with existing tax concepts, such as tax residence, transfer pricing and withholding taxes?
- What is the economic basis for the approaches taken for the Marketing and Distribution Safe Harbor and the Elimination Profits for double tax relief purposes?
- The rules are complex – is the expectation that groups will self-assess their Pillar One position to calculate the top up tax?

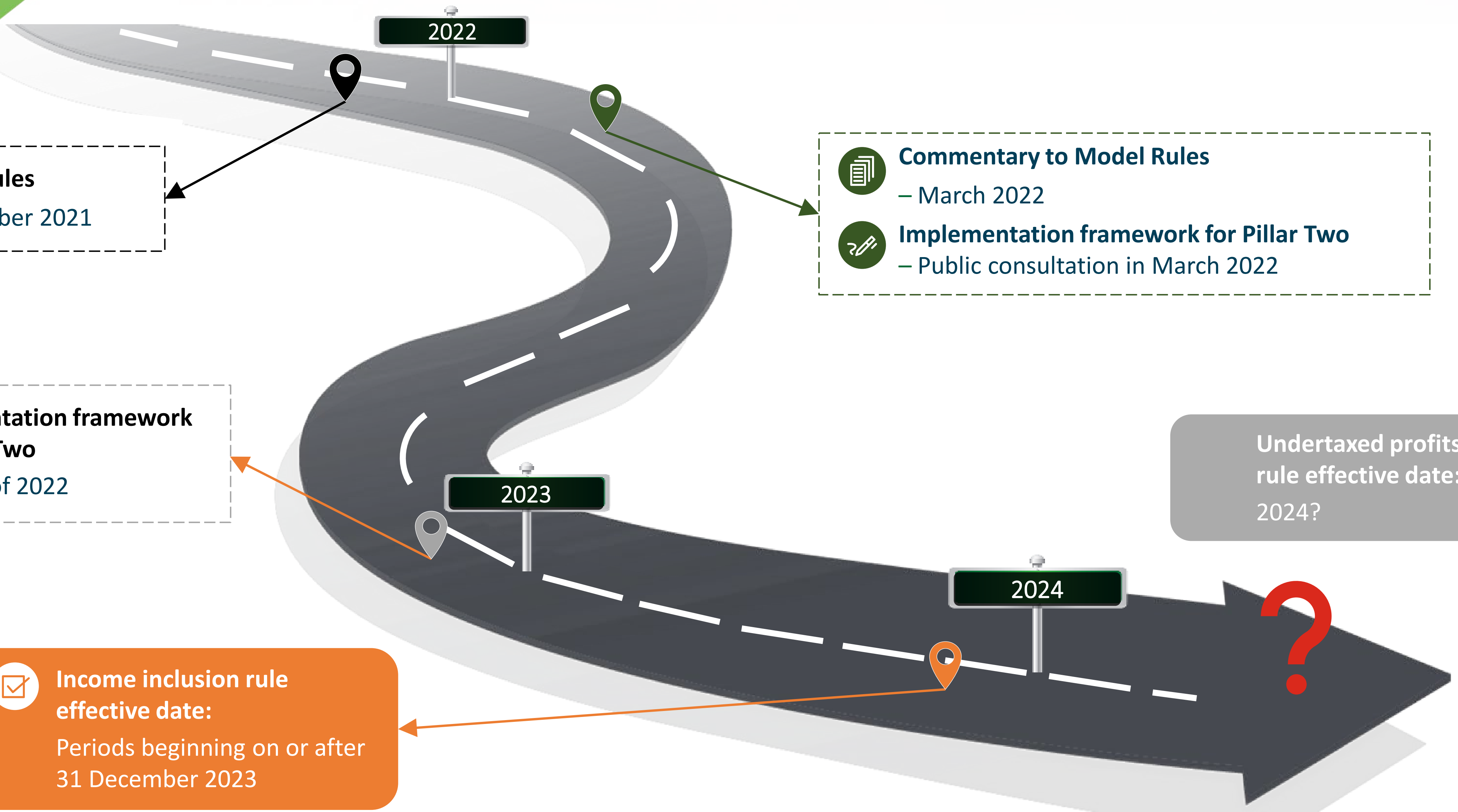
Where Are We Going – Pillar One

Where Are We Going – Pillar One

- **Significant technical proposals and details remain unagreed.** What is the expected timeframe for continued Inclusive Framework (IF) discussions on the Pillar One proposals for the remainder of 2022 and into 2023?
- Will any changes be made to address concerns raised by business?
- Simplifications for tax administrations (in particular developing jurisdictions) and taxpayers subject to Amount A?
- **Ambitious timelines.** Converting political consensus into domestic legislation and a legally binding international agreement.
- Are we on track for a new Multilateral Convention to be opened for signature by mid-2023?
- **Is failure an option and what could the alternatives be.**
- Too soon to call it?
- Status quo is not a likely outcome
- More DSTs in the future

Where Are We Now – Pillar Two

Roadmap to Implementation



Model rules
– December 2021

Commentary to Model Rules
– March 2022

Implementation framework for Pillar Two
– Public consultation in March 2022

Implementation framework for Pillar Two
– by end of 2022

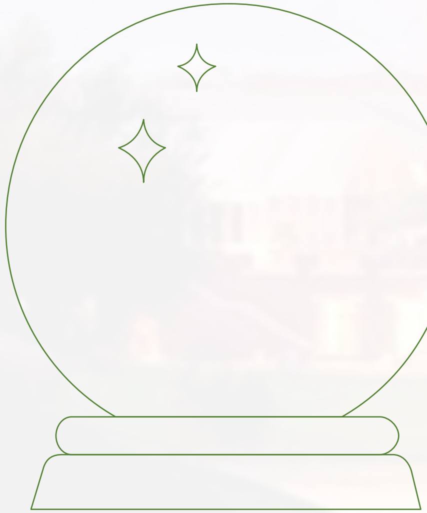
Undertaxed profits rule effective date:
2024?

Income inclusion rule effective date:
Periods beginning on or after 31 December 2023

Where Are We Now – Pillar Two

- The European Union hasn’t been able to agree a Directive to implement Pillar Two – what does this mean in terms of next steps for EU Member States?
- Are other countries making progress with the implementation of the IIR in their domestic law?
- What about the UTPR and its timetable? Is it still likely to be twelve months behind the IIR, as originally proposed?
- Have we seen a template for a Qualifying Domestic Minimum Top-Up Tax proposed by any countries yet?
- The rules are complex – how are the ‘safe harbors’ shaping up to help?

Where Are We Going – Pillar Two



There remains strong political support for Pillar Two amongst major economies (G7 and G20) and it seems likely that these nations will press ahead to bring Pillar Two into law

Several additional points support this view:

Willing EU Member States can likely move ahead without Hungary through Enhanced Cooperation or unilateral implementation (although there are lingering questions about compatibility w/ EU law). Joint statement by France, Germany, Spain, Italy, Netherlands to implement GloBE in 2023

Outside of the EU, several jurisdictions have already taken tangible initial steps towards implementation – including Canada, the UK, Japan, and Korea – and there is no formal public indication that these jurisdictions intend to pull back

Non-participation by the U.S. only increases the "incentive" for other nations to implement Pillar Two as any "low tax profit" that is not collected by the U.S. will simply be allocated to other countries via the IIR and UTPR

Covid aid (and the energy crisis in Europe) has strained public finances requiring additional tax revenue

Where Are We Going – Pillar Two

Several European countries have announced plans to introduce a domestic minimum top-up tax in response to Pillar Two.

EU	• Proposed to be effective one year later than the OECD timeframe: - The IIR is generally to be applied for fiscal years beginning on or after December 31, 2023 - The UTPR will be applied for fiscal years beginning on or after December 31, 2024 • Option for some EU Member States to defer • The governments of France, Germany, Italy, Spain and the Netherlands issued a joint statement in September to express their full commitment to implementing the GloBE rules.
Cyprus	• Increase in tax rate from 12.5% to 15%
Ireland	• 15% minimum effective tax rate commitment for in-scope businesses • 12.5% tax rate retained for other businesses
Germany	• In addition to the joint statement referenced above, the Federal Minister of Finance Christian Lindner declared that, if necessary, Germany is willing to introduce a global minimum tax unilaterally, even in the absence of an EU-wide agreement
Switzerland	• Intention to introduce 15% domestic minimum tax regime (in addition to IIR and UTPR) from 2024, subject to public vote
U.K.	• Intention to introduce IIR for accounting periods beginning on or after December 31, 2023 (draft legislation now published) • Timing on the introduction of the UTPR to be determined depending on Pillar Two progress elsewhere. • Introducing a Domestic Minimum Tax?

Predictions / Conclusions

Thank you / Questions

TEI
Connect. Engage. Impact.