



December 14, 2020

International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development

By email: cfa@oecd.org

Re: Business Roundtable comments on OECD/G20 Inclusive Framework on BEPS public consultation document, "Reports on the Pillar One and Pillar Two Blueprints"

Dear Sir/Madam,

Business Roundtable welcomes the OECD's commitment to working multilaterally and with business to promote sound tax policies and straightforward tax administration, which are essential to supporting cross-border investment and accelerating economic recovery from COVID-19-related disruptions. We recognize the significant efforts of the OECD and many governments around the world to advance policies that address the direct effects of this global pandemic.

On behalf of more than 200 chief executive officers of America's leading companies, Business Roundtable is pleased to submit comments to the OECD/G20 public consultation document, "Report on the Pillar One and Pillar Two Blueprints," dated October 12, 2020.

Business Roundtable recognizes that significant work remains to refine proposals and reach agreement among Inclusive Framework members. The comments below address issues arising under Pillar One and Pillar Two, particularly where deviation from internationally accepted tax principles would undermine investment, growth and opportunity. We look forward to providing additional comments as work continues in 2021.

Overview

Business Roundtable again affirms certain principles of international income taxation as vital to a strong and growing global economy:

- Principles of the 1998 Ottawa Taxation Framework: neutrality, efficiency, certainty, simplicity, effectiveness, fairness, and flexibility (see Appendix).
- Avoidance of double taxation.
- Taxation of net business profits, not gross revenue.
- Allocation of profits among a controlled group based on the arm's length standard.
- Consistency of fundamental income tax rules among nations globally.
- Effective dispute resolution mechanisms.
- Proportionality of compliance burden to revenue collection.

Business Roundtable is concerned that the Pillar One and Pillar Two Blueprints deviate from some of these principles and would create barriers to cross-border investment and the ability of multinational businesses to expand operations, increase employment and contribute to global economic recovery.

Comments

1. Tax law changes under Pillar One should be based on established principles of tax law and policy. If there is a policy rationale for not adhering to the arm's length standard, it should be clearly articulated.

The OECD has consistently promoted use of the arm's length standard to allocate profits among entities in a multinational enterprise (MNE). We note specific statements supporting the arm's length standard in the OECD's October 2019 public consultation document: "current [transfer pricing] rules work reasonably well for most routine transactions," and "it is also important that the new [profit allocation] rules are reconciled with existing rules." In contrast, the Pillar One Blueprint proposes formulary reallocation of some amount of global MNE profit, stating, "The calculation and allocation of Amount A will be delivered through a formula that is not based on the [arm's length principle]." No reason is given for this departure from the arm's length standard.

Business Roundtable maintains that the arm's length standard is an important, universally accepted principle of international taxation that facilitates cross-border investment. The OECD should articulate the tax policy rationale, if any, behind the proposed formulary reallocation under Amount A. If the reallocation proposal is not anchored to accepted tax policy principles, any political agreement likely will be unstable and short-lived, leading to future uncertainty and possible need for renegotiation. In all cases, we believe the amount of profit reallocated under Amount A should be modest.

Business Roundtable does not support full replacement of existing transfer pricing rules with a fixed return formula under Amount B. Calculation of Amount B should be consistent with the arm's length standard, and businesses should have an opportunity to demonstrate that their actual return on the relevant activities differs from any fixed return formula. Further, the Amount B calculation should consider an MNE's aggregate activities within a jurisdiction and should exclude activities of third-party distributors. As suggested in the consultation document, Business Roundtable recommends the OECD consider implementing Amount B as a pilot program.

2. The policy rationale for the Pillar Two GloBE proposal needs to be clarified.

Business Roundtable believes the GloBE proposal should be built on a clear policy rationale, such as taking up unaddressed risks of base erosion or profit shifting. Already agreed BEPS measures require tax law changes, treaty amendments, and regulatory implementation, and in the view of the Business Roundtable, more work is required to assess the effectiveness of such measures. We note that the BEPS project was aimed at aligning income taxation with value creation and was explicitly not intended to establish any particular level of taxation. We are concerned about the GloBE proposal's potential adverse effect on investment, growth and opportunity.

We remain concerned about the macroeconomic effect of raising corporate income taxes globally. Several OECD reports¹ conclude corporate income taxes are particularly harmful for economic growth, and we thus recommend the GloBE minimum tax rate be kept as low as possible.

3. The design of Pillar One and Pillar Two must be refined to avoid multiple layers of taxation, facilitate effective dispute resolution, and provide clear and administrable rules.

The Pillar One and Pillar Two Blueprints properly acknowledge the risks of double taxation and the importance of preventing and resolving disputes between countries. Yet we are concerned that these complicated proposals, when added to existing international tax rules, would create a novel and enormously complex global tax system. That system would present great challenges to tax authorities in many countries—leading to inconsistent application of rules and more multilateral tax disputes—as well as significant new compliance burdens on MNEs.

Clear rules, implemented consistently across countries, can limit cases where multiple jurisdictions claim the right to tax the same profit. When disputes arise between two or more countries, mandatory dispute resolution procedures should be employed, with the result applied reliably in subsequent years. Business Roundtable welcomes progress on dispute prevention and resolution in the Blueprints and urges additional work to achieve speedy dispute resolution and a lower administrative burden on taxpayers. We believe the dispute resolution procedures should protect taxpayer confidentiality and provide deference to the residence-country tax authority.

The Blueprints introduce several concepts for which there is no precedent in international taxation and which may be very difficult to administer. For example, the use of consolidated financial statements for a specific international income tax purpose is unprecedented. If financial accounts are used as a baseline, there must be clear and appropriate rules on adjustments for special tax items like accelerated depreciation. Similarly, the rules related to business-line segmentation must be clear. Segmentation in financial statements reflects how an MNE manages its business operations and collects financial information. Businesses should not be required to provide segment reporting under Pillar One different from their financial statements. Regarding the scope of Pillar One, we agree with the need for appropriate exceptions and urge formulation of rules that are as unambiguous as possible.

With each of these concepts, it is important that any new rules (a) not impose unduly burdensome reporting and compliance regimes and (b) not create additional ambiguity leading to more disputes, either among countries or between tax authorities and taxpayers.

4. An agreement on Pillar One must include repeal of existing unilateral measures and a commitment to refrain from imposing any new unilateral measures aimed at profit reallocation or the digital economy.

Business Roundtable recognizes that unilateral tax measures will likely create barriers to global investment and growth and therefore supports the effort to reach multilateral agreement and avoid that adverse result. Existing unilateral measures of all types should be proscribed from the time of reaching multilateral agreement on Pillar One. We recommend the OECD consider compiling a list of digital services taxes and other unilateral measures to be repealed at the time of agreement.

¹ OECD, *Tax Policy Reform and Economic Growth*, 2010; Åsa Johansson, Christopher Heady, Jens Arnold, Bert Brys and Laura Vartia, *Tax and Economic Growth*, OECD Economics Department Working Paper No. 620, July 11, 2008.

5. The new nexus rule must have no legal effect beyond profit allocation under Amount A.

The Pillar One Blueprint proposes a new nexus rule—not dependent on physical presence or permanent establishment—as the basis for taxation under Amount A. Business Roundtable welcomes the Pillar One Blueprint’s statement to limit the effect of this nexus rule so that no other tax or non-tax legal regimes are affected. Nexus for income taxation purposes often carries significant consequences for business beyond income taxation: registration and payment of indirect taxes and customs duties, as well as obligations under non-tax legal or regulatory regimes in the local country. The limited effect of the proposed new nexus rule must form part of any multilateral agreement on Pillar One.

6. Withholding tax is not an appropriate mechanism for collecting tax under Pillar One or Pillar Two.

Business Roundtable views a withholding tax applied to gross payments as an inappropriate mechanism for collecting income taxes related to cross-border business activities. The subject-to-tax rule proposed in the Pillar Two Blueprint would allow withholding tax on the gross amount of certain payments to related non-resident entities, which could create significant administrative burdens for taxpayers and result in effective tax rates far higher than the global minimum rate provided for under Pillar Two. We encourage elimination of the proposed subject-to-tax rule from Pillar Two to prevent unwarranted barriers to cross-border investment.

7. GILTI must be treated as fully compliant with the Pillar Two GloBE proposal.

The U.S. GILTI regime operates as a rigorous global minimum tax. Business Roundtable affirms that GILTI must be treated as fully consistent with the GloBE proposal. In particular, an MNE that is subject to the U.S. GILTI rules on its worldwide income must not be subject to top-up taxation due to the undertaxed payments rule. This must be made clear as a condition to multilateral agreement on Pillar Two.

The U.S. GILTI regime includes worldwide blending of foreign income, while a jurisdictional blending method is contemplated in the Pillar Two Blueprint. Business Roundtable recommends worldwide blending as the standard for the GloBE income inclusion rule, but the GILTI regime must be treated as a fully compliant income inclusion rule regardless of the general rule adopted under Pillar Two.

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Business Roundtable urges policymakers to set as priorities sound tax policy and long-term economic stability, rather than the making of an agreement by an arbitrary deadline. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Yours sincerely,



Joshua Bolten
President & Chief Executive Officer