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The law firms submitting this document, CHIOMENTI, CUATRECASAS and MACFARLANES, welcome the opportunity to contribute to the public consultation on the OECD's Reports on the Pillar One and Pillar Two Blueprints.

CHIOMENTI
Chiomenti has over 300 attorneys and tax advisers and has offices in Rome, Milan, Turin, London, Brussels, New York, Beijing, Shanghai and Hong Kong. The Firm provides legal advice in civil, corporate, commercial, banking, finance, capital markets, litigation, tax, administrative, real estate, employment, EU, competition, public utilities, copyright, financial markets regulation, trusts, intellectual property, data protection and criminal law. Chiomenti was one of the first Italian law firms to offer a full range of assistance in connection with domestic and international tax law and practice. The high-quality legal assistance provided by Chiomenti has been rewarded by recognition in the specialized press. Chiomenti and several of its professionals are ranked among the foremost leaders in the tax, corporate, M&A, banking practice areas by the most recently published Chambers Global, The European Legal 500 and IFLR 1000 rankings.

CUATRECASAS
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leading companies, advising them on their day-to-day activity and on major transactions. In 2020 we have been honored with the “Law Firm of the Year: Iberia” Award by The Lawyer, and we have been awarded the “Spain M&A Legal Adviser of the Year” Award by Mergermarket. In 2019, as in 2018, we have been considered the “Most innovative law firm (outside UK)” in the FT Innovative Lawyers Awards. In addition, in 2019 we have been named “Spanish law firm of the year” by Premio Forbes Abogados.

MACFARLANES

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PILLAR ONE BLUEPRINT

Chapter 7. 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

The Blueprint issued by the OECD establishes, in its chapter 6, two main mechanisms for correcting the issue of double counting: (i) "the *safe harbour*" (*paragraphs 533-546*), and (ii) "The *Domestic Business Exemption"* (*paragraphs 547-553*).

Firstly, and in connection with the mechanisms mentioned above, we consider that it is essential to reach an agreement on how to establish a double taxation relief mechanism unquestionably accepted by all market jurisdictions involved in each case. Only if that agreement is achieved, the Pilar One Blueprint will have the necessary legal certainty for all the taxpayers, regardless of their jurisdiction.

It is also considered a basic aspect to guarantee that the potential Committees of tax Administrations reach agreements regarding the tax base and allocation rules. In other words, the committees of tax administrations must reach joint agreements that should be applicable to all jurisdictions where the taxpayer has presence. Otherwise, the uncertainty would prevail in the procedures developed, since the double counting issue would not be properly addressed without common consent.

Having stated the above ideas, and as far as the domestic business exemption is concerned, this mechanism and its implementation should not be on a voluntary basis. A global agreement would enable the implementation of the domestic business exemption in all jurisdictions under same conditions.

Regarding the safe harbour, the third outcome included in paragraph 536 of the Report states that *"Where the existing marketing and distribution profit exceeds the safe harbour return, no Amount A would be allocated to that jurisdiction"*. However, this paragraph does not specify what would be the consequence when such amount exceeds the safe harbor.

The logical conclusion for the companies whose existing marketing and distribution profit exceeds the safe harbour return must be to return this excess amount to the company, in order to relieve the double taxation, taking into account that the excess of the marketing and distribution profit is going to be taxed in the other jurisdiction, by means of allocating Amount A (other than the jurisdiction of the company that generated it).

In accordance with paragraph 543 of the report, related to the fixed return, we agree that the amount must be low. Otherwise, the safe harbour will be of limited application. Once again, this provision would help to decrease the administrative pressure over the taxpayers and, likewise, would contribute to reduce the subsequent adjustments on the taxable bases of taxpayers for this reason.

Chapter 8. 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.

a. What are your views on the proposed approach to eliminate double taxation from Amount A? Do you have any suggestions to improve this approach, including any alternative approach to eliminate double taxation?

The Blueprint proposes a mechanism to eliminate double taxation based on two components: (i) the identification of the paying entity and (ii) two methods to eliminate double taxation.

Regarding the identification of the paying entity, although further clarifications may be needed specifically with respect to the definition of "market connection", the Blueprints try to cover the most important aspects and takes into account the real activities of different entities.

It will be critical to get the identification of the "paying entity" (or entities) within an MNE group right to determine who is liable for the Amount A tax liability, since it is the jurisdiction in which the paying entity is based that effectively determines which jurisdiction (or jurisdictions) must relieve the double taxation arising from Amount A (which would be by way of exemption or credit). Three tests will apply to determine a "pool" of potential paying entities: the 'activities test', the 'profitability test' and the 'market connection priority test'. In simple terms, these can be thought of as a "matching exercise" – the perfect match being the entity which is (under existing tax principles) entitled to a share of the MNE group's residual profit, has the capacity to bear the cost of the Amount A tax liability and has a connection (direct or indirect) with the marketing jurisdiction – however it is an added layer of complexity and information that the MNE group will need to manage on an ongoing basis.

We note that the method to eliminate double taxation is not developed. Mentioning there are two different mechanisms that can be applied and already implemented in different countries, does not solve the problem. The document should not be approved without a detailed analysis of, not only the paying entities, but also the "eliminating" entities and the amount that should be considered in each case.

Leaving this decision, the elimination of double taxation to domestic legislations may guarantee a double or triple taxation in many cases. For example, the proposal highlights that further technical work is also needed on the mechanism's interaction with jurisdictions' domestic tax rules and the interaction of Amount A with withholding taxes collected by market jurisdictions (namely, how to avoid double counting where a market jurisdiction is already taxing residual profits through withholding taxes). There is some tension between source versus residence jurisdictions, with the latter wanted recognition that there can be significant source taxation already imposed in market jurisdictions through withholding taxes. A comprehensive solution is required.

b. Do you consider that the activities test can be developed based on existing transfer pricing concepts and documentation? If not, what additional concepts or documentation requirements would you suggest, recognising the need to retain a test that is as simple as possible? [Refers to paragraphs 579-591 of the Blueprint]
c. Do you consider that the profitability test should be calculated as a return on payroll and assets or should alternative approaches be considered? Could the profitability test apply instead of, rather than in addition to, the activities test? [Refers to paragraphs 592-598 of the Blueprint]

In general terms, we consider the proposed scope and approach of the activity and profitability test adequate, although these tests should not impose additional administrative burden on MNE groups.

The functional analysis and value chain, already included in the transfer pricing documentation in many countries, should allow the consideration of these two tests. The documentation does reflect the main activities of the entities, the profits obtained and the treatment of transactions between related parties.

Accordingly, the rules imposed for these two tests should be able to be implemented with the information included in the transfer pricing documentation. If some additional information might be needed this should be kept at its minimum level.

Regarding the potential application of only one of the tests, we consider that both are necessary as they take into account different aspects of a business. If an activity is not considered as a routine one but does not reach a minimum level of profit, the entity should not be considered as a paying one; and vice versa, if it is a "routine" entity with a standard level of profit, it does not make sense either to include it in the list of paying entities.

d. Do you consider that a market connection priority test should form part of the process to identify a paying entity? Why or why not? [Refers to paragraphs 599-607 of the Blueprint]

A "sufficient market connection" test seems to be appropriate, although the document does not include a clear description of its meaning.

Taking into account that it is one of the key elements to determine which are the paying entities and to make sure that there is no double taxation, the definition of this concept should be very clear. In relation to the market connection test, we consider that the definition of "sufficient connection" from a payment institution to a jurisdiction is too broad and may give rise to different interpretations.

As this is not an easy task, although we recognize the merits of its inclusion, we would rather not to consider it in the Blueprints if the concept is not clearly explained in the final version.

PILLAR TWO BLUEPRINT

Chapter 2: Scope of the GloBE rules

a. The treatment of investment funds (as defined in Section 2.3.) under the GloBE rules. [Refers to paragraphs 76-83 of the Blueprint]
1. Considering that the GloBE rules only protect the tax neutrality of investment funds that are at the top of an MNE Group's ownership chain, are there specific situations in which the GloBE rules do not adequately protect the tax neutrality of investment funds?
2. In the case of an investment fund under the control of an MNE Group, what additional rules would be needed to ensure the tax neutrality of the fund and ensure that: i. the MNE Group's share of the fund's income is not excluded from the GloBE tax base? and ii. related party payments to and from the fund cannot be used to circumvent the UTPR?

We welcome the acknowledgement in the Blueprint (section 2.3.1) about the importance to preserve the principle of tax neutrality in respect of investment funds. This is a fundamental aspect of collective investments and without which the GloBE rules would impose a significant layer of tax that would reduce returns to investors in those funds and, consequently, reduce the taxes that those investors were liable to pay in their home jurisdiction. The policy aims of tax neutrality, respected by the vast majority of jurisdictions, is to ensure that investors seeking to pool capital collectively and mitigate risk can do so and only suffer a similar level of taxation as if they had made the investment directly.

We also support the fact that the GloBE proposals use accounting consolidation as the starting point for determining whether an entity is considered part of the MNE group or not. This approach is important as not only are the concepts familiar to large groups and investment funds but as the proposals are currently set out, we believe that most investment funds should fall outside the scope of the GloBE rules, either by virtue of not being subject to consolidation or the specific investment fund exemption.

It is also helpful that asset holding companies (e.g. master holdcos) will be treated as part of the fund. The relevant infrastructure around the fund can also vary and frequently investment in a collective investment arrangement is made by investors through different vehicles (e.g. parallel and/or feeder vehicles used to allow investment in different currencies or investments with different fee structures) therefore it will be important that the exemption is appropriately crafted to apply to such situations.

However, there may be some circumstances in which the investment fund definition does not go far enough, especially in more complex scenarios. We would welcome the OECD to further consider the following points:

1. It should be made clear that where the accounting rules for investment funds instruct funds not to consolidate portfolio companies those portfolio companies should not form part of a group for GloBE rules. This is to ensure that portfolio companies of separate investments in a fund are not inadvertently treated as being part of the same MNE group and combined when ascertaining whether the revenue threshold is met.

2. Early stage funding, also known as seed stage, may contravene the definition set out in the pooling requirement that assumes assets will be pooled or that there are "a number" of investors. In these scenarios there might only be one investor for a short period of time until the fund is fully fledged and running. While the fund will be "designed to pool assets" at a certain point in time there might be legitimate reasons why assets are not pooled.

3. While it is welcome that the Blueprint acknowledges that investment fund vehicles and related infrastructure can take many form, it will be important to ensure that the extension of the definition to special purpose vehicles and other fund-owned entities will be workable in practice. There is a risk that entities below the fund would not qualify as an Excluded Entity unless it is itself an Ultimate Parent Entity (UPE) which it would not be since it is a Constituent Entity.

4. Further work needs to be undertaken to mitigate the risk that funds with minority third party ownership, which are not themselves an Excluded Entity, will be caught by the GloBE rules and therefore, the rules should apply on a proportionate basis, i.e. in line with the minority holding value.

Operating the exemption at the level of the investment fund (and / or its associated infrastructure) will not undermine the effects of GlOBE on the controlling MNE Group. As the rules starting point is the accounting consolidation, the share of the funds income will be recognised in the MNE Group as investment income. There is nothing in the Blueprint to suggest this would not be the case.

The OECD might consider specific targeted anti-abuse rules if it has sufficient concern that related party payments to and from the fund are being used to circumvent the UTPR. However, the underlying objectives of the UTPR should not be forgotten, it is designed as a backstop rule that only applies in a narrow set of circumstances where the income of a Constituent Entity is not subject to an IIR rather than fulfilling other objectives.

Chapter 4: Carry-forwards and carve-out

a. Treatment of pre-GloBE losses and excess taxes under the carry-forward approach. [Refers to paragraphs 315-318 of the Blueprint]
1. What technical issues should be taken into account in developing a rule that would recognise the impact of pre-regime losses and benefit of taxes paid by the Constituent Entities of an MNE Group prior to becoming subject to the GloBE rules?
2. How can these technical issues be addressed in the design of the rule?
3. Do you have any views on the appropriate period for such losses and taxes being recognised and how to determine that period?
4. Are there special considerations that apply to certain industries?

As the Blueprint states, there is a significant risk that in the first year of applying the GloBE rules, the rules ignore losses arising in previous years and subject the MNE Group to over taxation. This would result in a disproportionate level of tax that disregards the principle of taxing economic profit.

Given the complexity of the rules, it will be important to ensure rules alleviating this issue are simple and effective, as computing prior year GloBE rules is in no one's interest. The simplest way would be to aggregate jurisdictional losses to create an opening balance. The difficulty is that each jurisdiction has different rules around the use of losses. This can be in many different forms such as a restriction on their use against certain profits and / or a certain lifespan for those losses. For simplicity we suggest that these restrictions are ignored – they are often complex; arbitrary in their application; and they undermine the principle of taxation on economic profit. By taking this simpler approach (and ignoring the various jurisdictional level restrictions) there will invariably be some divergence between the GloBE tax base and the local tax base, however it is more important to ensure that the design of the rules stick to the intended objectives (the targeting of undertaxed profits) rather than subjecting groups to over taxation.

As it currently stands, the IIR credit is of little use, as it cannot be carried-back under current proposals. This means the IIR credit is only of use if a MNE group is subject to lower rates of tax in future years. It would be better if the rules would allow a carry back to earlier periods where it was subject to higher rates of tax, otherwise there will be a perverse incentive for MNE groups to seek out low tax rates (quite contrary to the underlying objectives of the regime).

Many of the technical issues that need to be addressed are as a result of the complex (and at times unnecessary) creation of a new tax base and new rules surrounding the calculation of that. Instead of creating a new set of rules, it would be more straightforward to use deferred tax accounting information which is audited and similarly overseen by accounting standards setters (although there are some questions as to whether it is appropriate that accounting standard setters should have such influence over the GloBE tax base). It is not clear why the OECD has not pursued using the deferred tax calculation idea further, as risks around manipulation are unfounded given the acceptance that accounts can be used as an accurate starting point for the GloBE tax base.

Furthermore, throughout the Blueprint there is a strong desire by the OECD to seek simpler solutions, yet it appears that deferred tax accounting (which would provide an accurate and easy solution) has been dismissed. We would encourage the OECD to re-look at using deferred tax accounting if it is committed to simplification.

If deferred tax accounting rules are not adopted then the following should be considered:

1. Losses should be allowed in full without restrictions or time limits – this applies to local and pre-regime losses.

2. Excess taxes paid should be allowed to carry forward without restrictions or time limits.

3. Taxes paid under the GloBE rules should be allowed to be carried back with a facility for back paid taxes to be repaid.

There seems little justification for imposing a time period on the use of losses and excess taxes. It feels entirely arbitrary to only allow a few years for pre-losses (3 years has been suggested in earlier drafts but is not mentioned in the Blueprint). This will clearly have a detrimental effect on capital intensive businesses, some of which make investments over decades. If deferred tax accounting was adopted then it would be possible to refer to what is in the accounts of the MNE Group – this would be a more efficient approach. It appears that there is some concern that deferred tax accounting is subjective, however it is a mechanical calculation and judgement is only required around the amount that is recognised not the actual underlying amount. In any event, the judgement on recognition of deferred tax assets/liabilities are subject to robust independent audit, no different to the process used in identifying the amount of income recognised which is considered an acceptable starting point in this calculation.

It is clear that capital intensive industries will be disproportionately affected by the rules as they currently stand. It is not clear why the OECD and IF members are justifying this approach.

b. Formulaic substance-based carve-out. [Refers to paragraph 332-370 of the Blueprint]

1. Do you have any comments on the overall design of the carve-out?

The substance-based carve-out is welcome although it will add an additional layer of complexity. It could therefore be introduced on an optional basis so that it is available for those groups where it will make a significant difference to their calculation due to the substance they have in particular jurisdictions.

c. Computation of the ETR and top-up tax. [Refers to paragraph 371-375 of the Blueprint]

1. Do you have any comments on the proposed calculation of ETR and top-up tax?

The Blueprint presents an incredibly complex set of rules underlying the calculations for the jurisdictional ETR. It is not clear that MNE groups will have all of the information expected easily to hand in the jurisdictional segmentation.

As set out above, we are concerned that the approach around the use of losses will mean that the GloBE ETR is out of kilter with the actual economic ETR.

There are also a number of other computational issues. For example, the effect that the GloBE rules will have on incentives like R&D and Patent Boxes. Under Action 5 of the BEPS project there has been considerable discussion around incentive regimes that has resulted in cautious acceptance and the introduction of nexus safeguards. It is concerning to many MNE groups (who have based their investment plans around the availability of these incentives offered by certain governments) that the GloBE rules are at odds with these conclusions. The effect of disregarding these incentives will create material differences in the GloBE ETR compared to the local position and will result in unwarranted over taxation.

Chapter 5: Simplification options.

a. General. The Blueprint describes four potential simplification measures, including (i) CbC Report ETR safe harbour, (ii) de minimis profit exclusion, (iii) single jurisdictional ETR calculation to cover several years, and (iv) tax administrative guidance.
1. Are there any options that you consider would offer the most potential for simplification? Are there any options that you consider would offer little potential for simplification?
2. Do you have any comments regarding how any of these options could be improved in order to provide greater simplification?
3. Can you identify any other overall simplification measures that could be explored by the Inclusive Framework or potential simplifications to the design or application of specific elements of the IIR or the UTPR that would not undermine their objective or effectiveness?

Although the concept underlying Pillar 2 is simple, in practice, as already stated in the Blueprint, establishing a minimum taxation can be difficult and entail a big burden on MNE groups.

Simplification rules should be addressed at two main objectives: (1) allowing an ETR calculation that simplifies the effect of temporary differences; and (2) reducing the number of jurisdictions in which the ETR analysis needs to be made, based on a relevance criterion.

None of the options proposed, on their own, address both objectives. Option (iii) targets to solve the difficulty in ETR calculation regarding temporary differences, providing for homogenization rules considering a certain timeframe, which certainly reduces the burden on MNE groups; while the second objective is best addressed by option (ii).

Tax administration guidance, as proposed under option (iv), is needed, but requires common criteria to be followed by the different jurisdictions; these common criteria should be developed under the leadership of the OECD to avoid mismatches leading to double taxation situations. Furthermore, the rate (or other qualifying indicators used) will need to be set at a point that offers simplification. For example a minimum rate safe harbour of 25% would not offer significant simplification when the average OECD corporation tax rate is nearer 20%.

b. CbC Report ETR Safe Harbour. [Refers to paragraphs 381-390 of the Blueprint]

1. Does the requirement for using the parent's consolidated financial accounts significantly reduce the number of MNEs able to use this simplification measure?

2. Do any of the required adjustments, as described in the Blueprint, create significant additional complexity? Do you have any suggestions on how to streamline these required adjustments?

3. Do you support the idea of using deferred tax accounting to provide a more accurate picture of the MNE's expected tax liability in each jurisdiction without the burden of computing and tracking carry-forwards? Would doing so add material complexity?

4. Do you have ideas on how this simplification measure should be coordinated with the carry-forward mechanisms described in Blueprint? For example, in instances where the MNE has an ETR that is above the safe-harbour ETR for one or more prior years, but one that is below the safe-harbour ETR in the current year, should the MNE be allowed to go back and compute its carry-forward attributes for the prior years?

While it is true that many MNE groups complete their country-by-country reports based on individual accounting rather than on consolidated accounting, it is fairly common that all MNE groups have in place reporting systems that would ease the shift to consolidated accounting. Therefore, this should not be regarded an obstacle.

Adjustments would require a more accurate and coordinated guidance than the one currently available on the country-by-country report, and the country-by-country report should be modified to cover them in further columns so ETR could be easily extracted.

Indeed, temporary differences should be considered and adjusted with deferred tax accounting, allowing for a consistent picture to apply the safe harbor. However, final calculation of ETR should include all temporary differences, whether they have been effectively accounted for or not.

Introducing carry-forward mechanisms would probably complicate calculations, increasing the compliance burden on MNE groups. Therefore, it could end up not being aligned with the simplification purpose targeted; additionally, deferred tax accounting would already cover this issue, as it should result in more stable ETRs.

c. De minimis profit exclusion. [Refers to paragraphs 391-398 of the Blueprint]

1. Does the requirement to compute the profit before tax for every jurisdiction pursuant to the GloBE rules materially reduce the simplification benefits of this option?

2. Do you have suggestions as to how this determination could be streamlined, for example by using 'Profit (Loss) before Income Tax' as reported in the CbC report?

3. Do you consider the requirements provided in BEPS Actions 8-10, including DEMPE functions, sufficient to address the risk of fragmentation, or would targeted measures be required to neutralise such risk?

4. Do you have ideas on how to coordinate this simplification measure with the carry-forward mechanisms described in Blueprint?

5. In order to be effective, how should the de minimis threshold be set? Should it be a percentage of group profit, a fixed monetary amount threshold, or a combination of the two?

A de minimis rule based on relative importance the relative importance of each jurisdiction only may lead to discriminatory situations, in which big MNE groups obtaining profits in a low tax jurisdiction are excluded while smaller MNE groups with a similar profit in the same jurisdiction are not.

A possible way of solving this distortion is to establish a relative percentage threshold, of general application, combined with fixed amount threshold, under which MNE groups are excluded irrespective of the relative percentage threshold.

d. Single jurisdictional ETR calculation to cover several years. [Refers to paragraphs 399-403 of the Blueprint]

1. Do you agree with the text in the Blueprint that this simplification option may not offer material simplification given that it requires computing an ETR in every jurisdiction in the base year?

2. Do you agree with the text in the Blueprint that this simplification measure would likely require targeted rules to address potential abusive

arrangements, which would further undermine its intended simplification?

Despite of the base year calculations, this option would still offer simplification and tax certainty during the period of grace. Abusive arrangements would probably distort other parameters in the MNE groups, and could be detected through other mechanisms.

e. Tax administrative guidance. [Refers to paragraphs 404-409 of the Blueprint]
1. Which specific factors would you consider relevant to the determination of a "low-risk" jurisdiction?
2. Does the possibility that a tax authority could, within a certain period of time, require an MNE in a "low-risk" jurisdiction to perform the ETR calculation for that jurisdiction, reduce tax certainty and therefore limit the practical benefit of this simplification?
3. What can be done to minimise uncertainty to taxpayers?
4. In view of the necessary re-determination of a jurisdiction's "low-risk" status in the case of tax law revisions or reform that materially change the jurisdiction's tax base or rate, what can be done, in terms of processes and notification, to minimise uncertainty to taxpayers?
5. Do you have any additional comments regarding this simplification, including how it could be improved to offer greater simplification and certainty?

Relevant factors to determine whether a jurisdiction is low risk to a certain MNE should be: (i) the standard rate and (ii) the availability of special regimes or deductions in connection to the activity performed that may cause the MNE to deviate from the standard rate (not including temporary differences effects, which should be addressed through deferred tax accounting).

This measure would only entail a true simplification if operating as a safe harbor, as ex-post verifications would, indeed, reduce tax certainty.

To balance tax certainty with the need of some sort of verification, the ex-ante guidance should be clear enough and paired with a grace period (as proposed for the single jurisdictional ETR calculation) unless a tax reform or a change in activity takes place.

Chapter 6: Income Inclusion and Switch-over rules

a. Top-down approach [Refers to paragraphs 419-430 of the Blueprint]
1. Do you have any comments on the detailed approach outlined in the report for designing and implementing a top-down income inclusion rule?

In order to reduce the compliance costs in applying the top-down income inclusion rule ("IIR"), where two or more Parent Companies within the same MNE group are subject to the IIR, exemptions should be provided with regard to Parent Companies holding a percentage of equity interests in the low-tax Constituent Entity below a certain minority threshold.

Indeed, in such cases (i) the application of the IIR would not give rise to significant taxation in the hands of the Parent Companies holding a certain minority threshold with the consequences that compliance costs would exceed the benefits and (ii) it could be difficult to get the information for a correct application of the IIR.

c. Split-ownership. [Refers to paragraphs 434-452 of the Blueprint]
1. Do you have comments on the design of the proposed split-ownership rules?
2. What would be an appropriate minority ownership percentage to use when applying such a rule and what impact would the rule then have on common multinational group structures?

Pursuing the scope of the GLoBE rules, we would like to point out the necessity of clear and predictable rules when applying the IIR. Indeed, only by means of accurate measures and guidelines, MNEs would be able to apply consistently the GLoBE rules and the collection of top-up taxes according to the IIR would be ensured.

For such reason, with regard to split-ownership structures, we suggest adopting a streamlined approach when allocating taxing rights to the jurisdictions involved. In particular, we would encourage mechanisms to split in a fair way the collected taxes under the IIR between the jurisdiction of the Ultimate Parent Company and the jurisdictions of the Partially Owned Intermediate Parent Companies in order to properly allocate the collected taxes amongst the jurisdictions involved.

In our view, in split-ownership structures the income inclusion rule should not be applied to minority shareholders which do not hold more than 10% of the profit rights.

Chapter 7: Undertaxed payments rule

a. General design. [Refers to Chapter 7 of the Blueprint]
1. Are additional rules necessary to ensure that there is no overlapping application of the UTPR and the IIR?
2. Do you have comments on the approach for allocating the top-up tax between constituent entities?

The UTPR seems to serve well as a backstop of the IIR. However, it would be very complex for MNE groups to coordinate and monitor all the adjustments to be made in each jurisdiction according to the allocation rules and the caps applicable in each case. Thus, while IIR will generally require only one adjustment to be made by a single taxpayer, the UTPR may require several adjustments in different UTPR Taxpayers in a two steps allocation analysis, which can be difficult to track and coordinate among all the affected entities. More simplification rules are needed to ease the implementation of the UTPR to MNE Groups.

In addition, it should be further analyzed if the caps applicable in both UTPR allocation keys could imply that the full amount of the top-up tax may not be fully allocated among all UTPR Taxpayers.

b. Compliance and administration. [Refers to paragraphs 526-537 of the Blueprint]
1. Do you have comments on the efficacy of the certification requirements, standardized self-assessment returns, and local filing requirements provided under the UTPR either in the application of the rule or the deactivation of the rule in situations where the IIR applies?
2. Are there ways in which these can be improved to further streamline the compliance burden on MNEs?

It is clear that when there is tax and administrative simplicity, MNE groups comply with the rules in line with the approaches established. However, the UTPR may require substantial effort from MNE companies to prove that IIR is applied, or to show that the tax profile is above the minimum rate. This approach implies an excessive workload that does not seem justified by the purpose of Pillar II. Once again, many MNE groups will have to implement significant changes to the entities' IT systems to comply with this new rule.

Considering that the requirements to apply UTPR are often not in the taxpayer's control, but are controlled by each jurisdiction, it should be possible to consider the inclusion of new information in the country-by-country reporting to be analyzed by the tax administration in order to indicate when MNE groups have to comply with this new rule. This approach should benefit MNE, because it would imply not only more certainty to taxpayers but also it would require less administration work avoiding significant implementations in financial and tax systems.

Chapter 9: Subject to tax rule

a. Covered payments and low-return exclusion. [Refers to paragraphs 588-616 of the Blueprint]
1. Do you consider that the categories of covered payments and the exclusion for low-return payments ensures that the STTR focuses on the transactions that present significant BEPS risks?
2. Do you have any views on the design and practical application of this rule component as well as potential simplifications?

In our view the exclusion of low-return payments from the applicability of STTR ("Subject To Tax Rule"), as stated in the report, is consistent with the aim of focusing only on those transactions which present significant BEPS risks.

In this respect, in order to extend the scope of applicability of STTR on payments which present significant BEPS risks, we suggest adding, to the list of covered payments relevant for STTR purposes, the proceeds arising from the transfer of hard-to-value intangibles. Indeed, in such cases, the intra-group transfer price could be subject to possible tax arbitrage risks.

Moreover, the STTR does not deal with cases in which two related parties have applied year-end adjustments by applying a transactional profit method (e.g., TNMM). In this respect, specific guidance should be provided on how to deal with profit adjustments for the purposes of the STTR.

We believe that an appropriate approach to get potential simplifications when applying SSTR, is to create an IT platform at OECD level that could gather all the nominal rates applied by each jurisdiction.

Moreover, in pursuing a simplification of the compliance burden, we propose to consider the introduction of a certification system, provided by the payee of the covered payment relevant for STTR purposes, to prove that such payment will not be subject to taxation under a minimum rate. It is important to recall that a similar mechanism has already been implemented in certain jurisdictions with regard to the payment of certain cross-border flows (e.g., interest and royalties) that could be subject to lower withholding tax rate under the applicable tax treaties compared to withholding tax rates governed by domestic law provisions.

b. Materiality threshold. [Refers to paragraphs 623-636 of the Blueprint]
1. What are your views on including a materiality threshold?
2. Would such a threshold simplify the administration of the rule and limit compliance costs in a material way?
3. Do you have any views on the different approaches suggested for the materiality threshold as well as on their application in isolation or combination?

In our view, the inclusion of a materiality threshold, with regard to covered payments between connected persons subject to STTR, is consistent with the primary scope of such rule. This could help to focus and target only those structures which give rise to more BEPS concerns/risks.

Indeed, the inclusion of a materiality threshold provides for both administrative simplifications and limit compliance costs, though it is necessary that such threshold will be provided by clear rules in order to avoid misinterpretations and, thus, additional compliance costs.

In our view the materiality threshold should rely on the value of covered payments above a certain threshold (e.g., EUR 500,000) made during a given fiscal year towards each connected person, independently from the MNE gross revenue size and irrespective of the GDP of a Country. This threshold may be supplemented by an overall yearly threshold of covered payments made by a certain enterprise (e.g., EUR 2,500,000).

c. Administrative considerations. [Refers to paragraphs 661-667 of the Blueprint]
1. Further technical work will be undertaken in the Inclusive Framework on administrative approaches that could deliver these aims. This will include work on (i) applying the top-up tax as an ex-post annualised charge, (ii) a certification system providing for reduced rates of withholding tax, and (iii) the application of contingent withholding taxes set at a level that would generally result in an annual ex-post balancing

payment by the taxpayer (rather than a repayment). Which administrative approach do you consider to be the most suitable?
2. Do you have other suggestions to minimize the administrative burden and to facilitate the collection of the top-up tax?

In order to facilitate as far as possible the application of STTR, we would propose to focus on the implementation of a certification system that could reduce the risks of excessive withholding taxes and avoid the need to file a specific refund/repayment claim, due to the application of STTR set forth by the treaty (sub (ii) above).

Alternatively, we suggest focusing on the application of contingent withholding taxes set a level that would result in an ex-post annualised charge by the taxpayer in order to avoid administrative compliance work during the ongoing fiscal year (sub (i) above).

In order to minimize administrative burden and as well as to facilitate the collection of top-up tax, we believe that the payer should be liable together with the payee considering that they belong to the same multinational group.

Chapter 10: Implementation and rule co-ordination

a. Effective co-ordination of the GloBE rules. [Refers to paragraphs 697-708 of the Blueprint]
1. Are there any co-ordination mechanisms or other features of the GloBE that you would suggest exploring in order to provide for more tax certainty in applying the Pillar Two rules?
b. Dispute prevention and resolution. [Refers to paragraphs 709-715 of the Blueprint]
1. In addition to the design features and proposed approach to implementation of the IIR and UTPR, what additional options do you think should be considered to minimise the scope for double taxation and dispute?

The two questions above refer to issues that are closely connected, since a more effective co-ordination of the GloBE rules would lead to a lesser need for dispute prevention and resolution. Therefore, the responses to them have been jointly drafted below.

Firstly, any co-ordination mechanism of the GloBE rules must be evenly implemented in all jurisdictions, in order to reduce unilateral initiatives by countries. Unilateral actions in the form of legislation implementing GloBE would only create higher levels of legal uncertainty and a more complex tax framework for both taxpayers and tax Administrations.

Hence, the highest level of consensus is necessary at the level of the OECD. We welcome the OECD's initiatives of drafting model legislation and guidance, performing a multilateral "peer review" and drafting a multilateral Convention ("**MLI 2.0**"), however, any initiative will only be feasible if it is based on a serious and binding compromise by all countries involved.

Further, although we think that the three initiatives above are complementary and work well together, we believe that, in the interest of the highest level of internatinoal coordination, the initiative that offers the biggest potential is the adoption of the MLI 2.0. In our view, the experience of the original MLI has been a positive one, with taxpayers and tax Administrations becoming increasingly knowledgeable of its content and how to implement it in the different cases. The MLI 2.0 could work in a similar manner, although the possibilities of countries to include reservations should be reduced in order to enhance a homogeneous and consistent implementation of GloBE rules.

In any case, issues would arise in cases where not all the jurisdictions where the MNE is present, and are involved in the chain of transactions, have implemented the GloBE rules. In that sense, the guidance issued by the OECD should also include advice on how to deal with those situations.

With regards to dispute resolution, we believe MAPs in existing Tax Treaties is a good solution for solving issues regarding STTR and SOR. However:

1. MAPs dealing with existing issues (not the proposed GloBE rules) generally tend to be slow and strech over time. Additional efforts should be made to expedite the processes, ensuring that countries facilitate the access of taxpayers to arbitration and enforce its outcome.

2. MAPs are designed to address issues arising in bilateral situations, and not multilateral. Situations involving more than two jurisdictions are not solved by way of current MAPs, although in some cases solutions have been found for triangular cases, but on a voluntary basis. Therefore, a truly multilateral MAP should be developed but ensuring all jurisdictions involved participate

equally in the dispute resolution and arbitration process. In that sense, the rules of a multilateral MAP could be inserted within the proposed MLI 2.0.

With regards to dispute resolution involving IIR and UTPR, as these measures are based on changes to domestic legislation, the MAP mechanism may not be appropiate. A different solution might be necessary and could be included in the MLI 2.0. Further, we understand that the international tax framework contains certain tools that may help minimize controversy involving the UTPR, such as simultaneous tax examinations. The main issue in this case is that it is not always mandatory for the participating jurisdictions to reach an agreement. The participating jurisdictions may negotiate but no outcome may be reached in the end, leaving the taxpayer in a situation of uncertainty at best, or of double or triple taxation at worst. Therefore, in order to be truly effective, it should be mandatory for simultaneous tax examinations to conclude in a binding agreement for the jurisdictions and taxpayer involved.

In general terms, any form of cooperation between multiple Tax Administrations that guarantee a final agreement would add the legal certainty that is needed in a multilateral taxation such as the one proposed in Pillar II.

We would welcome a constructive dialogue with you on this subject and remain available to discuss this further at your convenience.

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