Pillar One: Profit allocation and nexus

Pillar One aligns taxing rights more closely with local market engagement. A portion of profits of the largest and most profitable groups is allocated to market jurisdictions.

Inclusive Framework statement

On July 1, 2021, the Inclusive Framework (IF) released a statement setting forth the key components for an agreement on a two-pillar solution to address the tax challenges arising from the digitalization of the economy.

Pillar One:

- Revisits profit allocation and nexus rules for in-scope groups
- Effectuates the view that a portion of an in-scope group’s residual profit (likely to be generated by capital, risk management functions, and/or intellectual property) should be taxed in the end-market jurisdictions where goods or services are used or consumed
- Will apply to groups with greater than €20 billion in worldwide revenues and a profitability before tax margin of at least 10 percent (the intention is to reduce the revenue threshold to €10 billion after seven years, contingent on successful implementation)
- Will allocate profits to market jurisdictions irrespective of any physical presence in those jurisdictions.

Market allocations

- Amount A: New taxing right allocates between 20 percent and 30 percent of profits in excess of 10 percent of revenue to market jurisdictions based on a formula, not the arm’s-length principle.
- Amount A allocated based on a revenue-based allocation key (determined via to-be-developed sourcing rules). Jurisdictions from which at least €1 million in revenues are earned will receive an allocation (reduced to €250,000 for jurisdictions with GDP less than €40 billion).
- Where the residual profits of an in-scope group are already taxed in a market jurisdiction, a marketing and distribution profits safe harbor will cap the residual profits allocated to the market jurisdiction through Amount A.
- Elimination of double taxation and tax certainty measures will apply.
- Amount B: Standard remuneration for in-country “baseline” marketing and distribution activities has been deferred pending further technical work. This work is expected to be completed by the end of 2022.

What businesses need to know

- These changes are multinational in scope and, despite simplification compared to previous proposals, remain technically complex.
- Digital services taxes and other similar measures are to be repealed under the agreement, but identification and timetable are not yet clear.
- Scope of covered businesses has moved far from the originally targeted highly digitalized business models. Extractives and regulated financial services are exempt, but other industries are generally in scope.
- The IF statement provided much certainty with respect to Pillar One, but many details remain outstanding. More detailed plans are expected in October 2021. The expectation is that the rules will be finalized in 2022 and take effect beginning in 2023.
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