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# The Pillar One Deal: Implications for Countries and Taxpayers

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After years of trying to find multilateral solutions to the challenges brought about by the digitalisation of the economy, the OECD Inclusive Framework tabled the OECD Pillar One proposal in 2019. The Pillar One proposal reallocates taxing rights to market jurisdictions based on a standard formula. The proposal is a deal borne out of negotiation by countries, with input from international organisations and multinational enterprises. Like any deal, there are gains and losses – but only in this case, the impact spills over to parties that are not part of the deal such as taxpayers. In this article, the author discusses the Pillar One deal, looking at the potential benefits and losses for countries and taxpayers.

**Keywords:** OECD Pillar One, participation in Pillar One negotiation, Pillar One gains and losses, complexity

**JEL Classification:** K2, H2

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*'As easy as ABC', said the person who has not met Pillar One.*

## Introduction

The OECD seems to be at the tail end of the process that has dominated conversations on international tax for a greater part of the post BEPS age. The BEPS 1.0 project gave birth to BEPS 2.0 after Action 1 – *Tax challenges arising from digitalisation of the economy* was left pending. The OECD continued the quest for solutions to the issues brought about by the fast growing digital economy and the answer put before the world is the groundbreaking two-pillar solution. The solution has gone beyond the digital sector to include all businesses that fit the scope, subject to exclusion of specific industries. Pillar One is essentially a reallocation of taxing rights to market jurisdictions, while Pillar Two imposes a global minimum corporate tax rate. This article concerns only Pillar One.

The Pillar One proposal is a revolutionary idea that is not based on any known principles. For instance, why is the profitability threshold 10% and not 8% or 25%, why is the redistribution threshold 25% and not 50% or 20%, what principles are behind the de-minis rules? There are no apparent answers to these questions. Pillar One is simply a negotiated political settlement amongst the members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework). In other words, it is a deal.

As a noun, Merriam Webster's dictionary defines a deal, among others, as "an arrangement for mutual advantage" (Merriam Webster, 2023). With relation to Pillar One, a deal would be an agreement that benefits all the countries party to it. However, the OECD's work goes beyond the members of the Inclusive Framework to include the taxpayers upon whom the ultimate tax burden falls. For this reason, the analysis in this article goes beyond the members of the Inclusive Framework. This article looks at the negotiation process and content of the Pillar One deal from the perspective of countries and taxpayers.

The article is organised as follows. Part 2 gives an overview of the Pillar One proposal. Part 3 looks at the process underlying the Pillar One proposal with the focus on participation by various actors. Part 4 considers the potential gains and losses of countries as well as taxpayers, followed by the conclusion in part 5.

## Pillar One as it stands

So far, Pillar One stands on two limbs: Amount A and Amount B. The administration and certainty rules render support to the two limbs. At the time of writing, the status of Pillar One is contained in the July 2022 Progress Report on Amount A, October 2022 Progress Report on administration and certainty, the December 2022 public consultation document on draft articles for removal of digital taxes and the December 2022 public consultation document on Amount B (OECD, 2022a).

The scope of the application of Pillar One is based on two tests: the revenue and profitability tests. The group should have annual revenue greater than EUR 20 billion accompanied with profitability of at least 10% (OECD, 2022a). The scope excludes entities in the extractives and regulated financial services. A market jurisdiction is entitled to tax under Pillar One where the revenue sourced in that jurisdiction is at least EUR 1 million or EUR 250,000 for a jurisdiction with GDP less than EUR 40 billion. The progress report gives detailed revenue sourcing rules. Essentially, the revenue sourcing rules are based on the location of the consumer of the goods or services. The exception to this are online intermediation services where the revenue is shared between the location of the seller and that of the purchaser.

The calculation of Amount A begins with the computation of profitability of a multinational group (covered group) at 10%. 25% of the profits above 10% are then reallocated to market jurisdictions. Where appropriate, the marketing and distribution safe harbour (MDSH) applies to reduce the Amount A portion of a particular jurisdiction. The article will delve into the MDSH as espoused in public consultation document about it. Countries with entities of a covered group that pay taxes under the ordinary tax system could be entitled to Amount A reallocation if they satisfy the nexus test. This creates a risk of double taxation. In order to resolve this, there is an intricate process for the elimination of double taxation.

While calculation of Amount A is at the group level, determination of the elimination profit is at the entity level. The starting point is the calculation of the elimination profit of an entity in the group (OECD, 2022a). Thus, the elimination profit is the financial accounting profit of an entity in a jurisdiction, subject to specific adjustments that include exclusion of non-portfolio equity gain or loss and policy disallowed expenses, among others. The obligation to relieve double taxation lies on jurisdictions that qualify as specified jurisdictions. The amount relieved by each specified jurisdiction is determined through a tiered system based on the Return on Depreciation and Payroll. Details of what the return on depreciation and payroll entail were still under discussion at the time of writing this article.

Countries that sign up for Pillar One have an obligation to remove existing digital service taxes (DSTs) and commit not to enact any new digital service taxes in the future (OECD, 2022a). In the draft MLC provisions on removal of DSTs, a country that enforces DSTs forfeits its share of Amount A for a period (OECD, 2022b). A digital tax is one that solely applies to non-resident persons or foreign owned businesses, charged on a gross income basis and is not an income tax under the domestic tax laws or double tax agreements of a jurisdiction (OECD, 2022a). This may be by direct application or indirect application where implementation of the tax effectively excludes domestic taxpayers.

The second limb of Pillar One is Amount B. Options for the design of Amount B include a safe harbour or a prescription of the arm's length principle, effectively making it a risk assessment tool (OECD, 2022c). The goal is to simplify the application of the arm's length principle to such transactions and reduce disputes that are commonplace with relation to marketing and distribution functions (OECD, 2022c). This is applicable to entities that perform baseline marketing and distribution activities. Currently, the OECD is considering buy-sell arrangements as well as sales agency and commissionaire arrangements (OECD, 2022c). The delineation of a transaction under Amount B is limited to whether an entity is baseline or not. The consultation document gives guidance on the determination of economically significant characteristics for a transaction under Amount B, that is, the functions, assets and risks, business strategies, and economic circumstances. Amount B features a pricing methodology based on the Transactional Net Margin Method (TNMM).

## Participation in the Pillar One process

The OECD has been a membership of the world's richest countries since its inception in 1960 and it largely remains so. However, the impact of the OECD is alive in OECD and non-OECD members alike (Brauner, 2003). Magalhaes argues that this accounts for a small number of wealthy countries imposing their ideas globally through non-binding mechanisms (Magalhaes, 2018, p. 499). For instance, many bilateral tax treaties are modelled after the OECD Model Tax Convention. Some countries like Uganda expressly state that the OECD Transfer Pricing Guidelines are applicable to transactions between associated entities (The Income Tax (Transfer Pricing) Regulations, 2011). This makes them part of the legal framework of tax laws in these countries even though such countries were never party to the discussions that led to the development of the relevant OECD Instruments.

The BEPs 1.0 project represented a move towards some form of global participation. 60 countries were involved in the project, among their number non-OECD states (OECD, 2015). However, some of the countries were mere invitees that had no effective voice to affect decision-making (Brosens & Bossyut, p. 348). Some authors like Reuven and Xu considered this a shortcoming of the project, as the participation was nowhere close to the membership of the United Nations (Reuven & XU, 2016, p. 210). In 2016, after the publication of the BEPS 1.0 reports, the OECD formed the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), which officially invited participation from non-OECD members. One of the goals of the Inclusive Framework is to review and monitor the implementation of the BEPS project. Non-OECD countries had to agree to the BEPS package in order to become part of the Inclusive Framework. In effect, countries were tasked with implementing and monitoring policies whose negotiation they were not part of. Therefore, the foundation for participation in BEPS 2.0 is problematic.

The position of the OECD as a leading player in the international tax system has raised questions of its legitimacy. There is no single definition of legitimacy. For this article, the author prefers the definition by Brosens and Bossuyt, where legitimacy is defined as the authority to make and interpret decisions (Brosens & Bossuyt, 2020, p. 313). In other words, the question to be answered is 'what gives you the right to make the decisions in question?' [Staden, 2003, p. 20). Legitimacy is a multi-faceted idea (Peters, 2014). Scholars have broken this down to three types of legitimacy: input legitimacy, throughput legitimacy, and output legitimacy (Brosens & Bossuyt, p. 340). According to Scharpf, input legitimacy means that all persons and entities affected by a decision should be given an opportunity to be heard and the outcome a win-win for all involved (Scharpf, 1999, p. 7). Throughput legitimacy is concerned with the decision-making process. Schmidt established four criteria for determining throughput legitimacy: efficacy, accountability, transparency, and inclusiveness (Schmidt, 2013, p. 2). Outcome legitimacy focuses on an outcome that is relevant to the affected people (Brosens & Bossuyt, p. 351). For international tax matters, the entities affected by decisions of the OECD are the countries that have an inherent duty to levy taxes as they deem fit and taxpayers upon whom the tax is levied. Here below is an analysis of the legitimacy of the BEPS 2.0 in light of the three-faceted approach to legitimacy.

OECD instruments like the BEPS reports and accompanying MLI limit the ability of states to design tax systems that they consider favourable. Ultimately, whatever tax policies and instruments are developed affect the taxpayer, for example through increased complexity and compliance burden. The importance of participation of states and taxpayers in the decision-making processes at the OECD level cannot be overstated. For the international tax system to work smoothly, it must be accepted, understood, and internalised by the parties involved (Magalhaes, 2018, p. 526). Definitely, this is easier said than done because there are 195 states in the world and countless taxpayers. The author wonders whether legitimacy can only be achieved through participation of all the world's countries and all the taxpayers in such a form. This would be an impossible task for practical reasons but also because some states and taxpayers can choose not to participate. In the author's view, it is critical that all the actors are given a real opportunity to participate. A real opportunity to participate could mean giving assistance to states that do not have the capacity for meaningful participation on a very complex topic.

The BEPS 2.0 project has made fundamental progress in terms of state participation. As of December 2022, 138 countries had joined the statement that gave a go-ahead to the two-pillar solution (OECD, 2022d). Two Inclusive Framework members, Kenya and Nigeria, both developing countries, declined to join the agreement. Regional tax bodies like the African Tax Administration Forum (ATAF) have also participated in the consultation. One could argue that the regional tax bodies indirectly represent their members that are not part of the Inclusive Framework. However, the mandate of regional bodies may not extend to individual countries and it is, therefore, important to make provisions for participation by states in their own capacity. Other non-state actors like non-profit organisations and think tanks have added valuable contributions to the consultation. For example, South Centre presented views from a developing country perspective (South Centre, 2022). This helps to bridge the participation gap for developing countries that may not have sufficient resources to fully internalise the impact of Pillar One and advocate for their interests.

With regard to participation by taxpayers, the public consultations conducted by the OECD allowed taxpayers to give their views on Pillar One. There is no assurance that the OECD considered the taxpayer views. However, the modifications present in the July 2022 progress report on Pillar One are indicative of such consideration (EY, 2022). The groundbreaking mass participation of states and several non-state actors is commendable. It is a nod to the legitimacy of the OECD and the BEPS 2.0 in terms of input legitimacy. However, given that the UN has 193 members, a critical mass of developing countries is still missing. For example, out of 54 African countries, only 27 are part of the Inclusive Framework (OECD, 2022).

In terms of the criteria for the assessment of throughput legitimacy, that is efficacy, accountability, transparency, and inclusiveness, the author takes the view that the OECD has made great strides towards this. The OECD had an uphill task to deliver BEPS 1.0 in two years. For efficiency reasons, it seemed reasonable to limit participation, as a large number of participating countries would prolong consensus building. Inclusiveness was sacrificed for efficiency. In comparison to BEPS 1.0 that took 2 years, stakeholders have had much more interaction with the work on Pillar One since the OECD released the first public consultation document on the unified approach in 2019. This has allowed for meaningful engagement from many stakeholders. The comments received on public consultation documents, as was the case with BEPS 1.0, are published on the OECD website. The webinars on Pillar One also brought on board further public engagement, an important aspect of transparency and inclusion in the decision-making process.

However, some developing countries like Nigeria felt that their views were disregarded (MarketForces Africa, 2021). In their comments on the July Pillar One progress report, Nigeria reported that the content of the progress report went beyond what was agreed upon by members of the Inclusive Framework in the October 2021 statement (Nigeria, 2022). There is no assurance that the OECD considers the alternative proposals given by members of the Inclusive Framework and the public. The transparency appears to be limited disclosing the information received from the public. The public responses may be so varied that responding to each comment is virtually impossible. A solution could be identifying common threads through the comments, grouping them up and offering reasons for one policy choice over another. The same applies to the concerns from members of the Inclusive Framework and other partners like regional tax bodies. In this way, the process could go beyond checking the participation box for purposes of meeting OECD organisational compliance requirements. This would make the process more transparent and lead to attainment of throughput legitimacy.

With regard to output legitimacy, the question to be answered is whether Pillar One as it stands is an outcome for that benefits the stakeholders. As stated in the introduction, the stakeholders are not limited to the states but also taxpayers. For states, the outcome of Pillar One may depend on the particular circumstances of the state, especially economic ones, that is whether a state is a developing or a developed nation or whether it is a large or small market. Large markets are the biggest winners of the Amount A reallocated income. Developed countries that receive the bulk of the residual profits under the current tax system will lose some profits to market jurisdictions. This is obviously a loss but may be an advantageous option for countries like the US that are opposed to digital service taxes being imposed on its residents by market jurisdictions. Developing countries may not gain much from the reallocated profits yet, like developed countries; they stand to lose their right to impose digital service taxes. The outcome of Pillar One may only be beneficial to developing countries to a small extent. The outcome for developing countries is analysed in detail in a further part of the article.

Due to the legitimacy questions, some scholars like Reuven Avi Yonah suggested that the UN takes over the stewardship of international tax policy, as it is more representative than the OECD (Reuven & Xu, 2016). In November 2022, the UN General Assembly voted to have the UN take charge of global tax policy and decisions. Developing countries that believe the UN is in a better position than the OECD to steer international tax policy championed the move. Whether the OECD's role in shaping international tax policy moves to the UN or not, BEPS 2.0 has shown that the former is capable of rallying many countries, including the non-OECD member states. In this regard, the Pillar One process is a deal for the members of the Inclusive Framework as well as taxpayers.

## Gains or Losses

### Countries

International bodies like the OECD, IMF and World Bank classify world economies into developing and developed countries. Even though some authors do not agree with this classification, it is widely used and is adopted in this article (Nielson, 2011). Just like the classification, the parameters for grouping a country into a category are not uniform across the divide. However, it is safe to conclude that developed countries are richer and much more advanced in comparison to the developing countries. A few developing nations are further classified as emerging economies. While there is no clear definition, emerging economies are those that possess greater economic relevance, sustained market access and have made progress in achieving the middle income status (IMF, 2021). Emerging economies like China, Brazil, and India, characterised by large markets that are likely to enjoy a considerable share of the redistributed income, are not in the same boat as the other developing countries for purposes of Pillar One. The reference to developing countries in this section means low-income jurisdictions that do not have the level of advancement and markets enjoyed by emerging economies.

As discussed in the section above, Pillar One has not only been groundbreaking in terms of its content but also the unprecedented participation of countries, both developing and developed. The Pillar One broad aim to address taxation issues brought on by digitalised business models resonates with the aspirations of all countries irrespective of their level of development. It is no wonder that many countries accepted to join the Inclusive Framework even though participation was premised on accepting the BEPS proposals, whose negotiation was limited to a handful of countries. For many developing countries, protection and diversification of the tax base is critical as less taxes translate into less resources for much needed social services and infrastructure (ATAF, 2019, p. 2).

Any prospects of the success for the Pillar One proposal are dependent upon the outcome being beneficial to all the participating members of the Inclusive Framework. In other words, it must be the deal that it seeks to be. The design of Pillar One presents an opportunity to tackle contemporary challenges such as taxation, where there is no physical presence. Features such as the lower nexus test and de minimis rules broaden the reach of Amount A to include low-income countries. Amount B presents an opportunity to simplify the transfer pricing analysis of baseline marketing and distribution services. However, these benefits could be lost to the complex design. Here below is a further discussion of these issues, divided into Amount A and B.

### Amount A

The tiered nexus rules that lower the threshold to 250,000 euros for countries whose GDP is less than 40 billion euros allow many developing and low-income countries to benefit from the profit reallocation (OECD, 2022). With the revenue source rules mainly based on the location of the consumers; Amount A effectively allocates profits to countries where a covered group has no physical presence, a solution to the current conundrum on taxation of digitalised business models (OECD, 2022). However, for countries with subsidiary entities of a covered group, the Amount A reallocation may be lost in the obligation to relieve double taxation. While the potential loss of reallocated profits may be mitigated by the de minimis rule which ensures that countries with very low amounts of Amount A do not contribute to eliminating double taxation, it may be completely extinguished for all countries. In such a case, the state only gets the taxes under the ordinary income tax system. The author wonders whether it is beneficial to even implement Pillar One in such a situation beyond getting registered as a cooperative country in the fight towards international tax coordination.

The developing countries with revenues below 250,000 euros will not partake of the Amount A cake. The lower nexus threshold does not make a difference for these countries. Even in countries with relatively big population sizes, the purchasing power of citizens may be limited. Such countries may have no incentive to adopt Pillar One. Moreover, the challenge of taxation where there is no physical presence will remain outstanding in these countries. They may innovate ways of raising revenue from the digital economy, which could include digital service taxes. Countries may also come up with more taxes on consumption of digital services, which may be regressive towards their residents, especially for countries where personal income is generally low.

In terms of revenue gains, the OECD puts the estimated profit re-allocation at USD 200 billion for the year 2021 (OECD, 2023). The estimate has doubled from the 2020 economic assessment of 100 billion (OECD, 2020). The OECD Economic Impact Assessment suggests that low- and middle-income countries stand to gain more revenue than high-income countries, while investment hubs are expected to lose revenue (OECD, 2023). The data used for the assessment pre-dates the COVID-19 pandemic and as expected, was missing in some cases (OECD, 2023). The inadequacy of the data creates room for a wide variation from the estimates in case Pillar One is implemented.

Assessments similar to the OECD have been conducted with data insufficiency being a common denominator (Devereux & Simmler, 2021; Starkov & Jin, 2022). Starkov and Jin estimated the Amount A redistribution to South Centre member states who are largely developing countries, to be USD 4.9 billion in 2020. This figure includes emerging economies like China with large markets (Starkov & Jin, 2022). For this reason, the revenue attributable to members of the South Centre, after excluding large markets may be significantly less than USD 4.9 billion. Tandon and Rao provide an assessment of the Amount A revenue gains for South Centre members using available data on digital sales and applicable digital service taxes in countries. With this data, at 1.7%, Argentina has the highest revenue gain from Amount A as a percentage of tax revenue from income and gains on the basis of net profit (Tandon & Rao, 2022). Many countries have less than a percentage point increase.

The OECD data is aggregated at jurisdiction groups such as 'low income countries' and the global level. This does not reflect the gain that could be received by individual countries. The deal that is Pillar One is more likely to succeed where the countries have a full view of the numbers in their state coffers, which are difficult to obtain by researchers. From the data available, jurisdictions may end up with miniscule pieces of a pie. It remains to be seen whether such gains would be sufficient to hold the deal together.

Moreover, Pillar One revenue gains could be eroded by the complexity of the system. Transfer pricing is generally considered complex in many jurisdictions (Colliard et al., 2021). Such complexity makes developing countries susceptible to aggressive tax planning and avoidance (Poccioto, 2018). The complexity is exacerbated for developing countries that often have fewer resources to devote to skilling and maintaining staff as well as employing technology to make transfer pricing easier (Bird & Zolt, 2008). There is a loss of efficiency risk embedded in the design of the system. If developing countries only get a minimal amount in taxes from the reallocated profits, this may be disproportionate to the effort devoted to the implementation of Pillar One in its mighty complexity. This will not alleviate the pressure to expand the tax base with regard to MNEs, especially those in the digital sector.

The challenges in taxation of the digital economy have resulted in the introduction of digital service taxes (DSTs) (Kofler & Sinnig, 2019). The trend started with more developed countries like the UK and has been picked up by developing nations, too (Cui, 2019). In the aftermath of the 2010 financial crisis and the media sensationalism of the taxes paid by businesses in the digital economy, countries heightened their interest in taxation of the digital economy (Reuven & Xu, 2016). Many people, including politicians, felt that multinationals were not paying a fair share of the tax in relation to their earnings (UK Parliament, YouTube). If there is not much revenue flowing to countries on account of Amount A, the perception that MNEs do not pay a fair share of taxes could persist (Greil et al., 2023). This would create a disincentive to abolish digital services, one of the conditions for the implementation of Pillar One (OECD, 2022). Additionally, digital service taxes may bring in more revenue where their design is not limited to a few multinational groups as is the case with Pillar One (Tandon & Rao, 2022).

### Amount B

The simplification measures proposed under Amount B are intended to make transfer pricing less cumbersome for developing countries (OECD, 2022c). However, some design aspects require improvement in order to attain this goal. The proposed scope of amount B is limited to entities situated in countries that also serve as their main markets (OECD, 2022c). This leaves out regional distributors that serve larger markets. For many developing countries, the markets are not large enough for MNEs to incorporate local entities. The marketing and distribution activities are done by regional entities whose functional profile may be similar to the entities that only serve their local markets. For example, a multinational group entity in Kenya could serve the entire East Africa region. This entity's functions may be limited to buying goods from an associated entity and selling them to wholesalers all over the region. The only difference between such an entity and another that serves mainly one country is essentially the number of customers. The countries in a region may have similar economic circumstances and, therefore, may be comparable. In the author's view, the application of Amount B should be widened to include entities that serve regions whose economic circumstances are similar, provided they perform only base line marketing and distribution functions.

The OECD sought the public's opinion on the inclusion of sales agency and commissionaire arrangements (OECD 2022c). Low-capacity jurisdictions, which are usually developing countries, argue for their inclusion, as this is a common business arrangement in their countries (OECD, 2022c). Other countries are of the view that there are material differences between buy and sell arrangements on the one hand and sales and commissionaire arrangements on the other. The author believes that the view of developing countries should take the day. The sales and commissionaire agents in this case are likely to be controlled significantly by the covered group for whom they act. Their functions may be similar to a baseline marketing and distribution group entity. Since this arrangement is common in many developing countries, simplification of the transfer pricing rules could be of great use to low-capacity jurisdictions that often struggle to find comparable for such transactions.

The proposal appears to give with the right hand and take away with the left. What is obtained on the one hand, could be lost through elimination of double taxation and high costs of administration. It is likely that developing countries will have a smaller share of the profits than the developed countries and may be tasked with elimination of double taxation. In a nutshell, Pillar One is not a developing country deal as the overall benefit is unsatisfactory.

## Taxpayers in a Pillar One world

An analysis of Pillar One is incomplete without taxpayers, who are the ultimate subjects of the changes in the tax system. The starting point for this analysis is the canons of taxation as developed by Adam Smith, especially, convenience and economy (Smith, 1999). The canon of convenience demands that the time and manner of payment of a tax should be convenient for a taxpayer to pay (Smith, 1999). For the canon of economy, a tax should be efficient so that it does not take much from the state coffers relative to what it brings in. Understanding the convenience of payment requires policymakers to have knowledge about the circumstances and business operations of taxpayers. Similarly, efficiency requires cooperation of taxpayers; otherwise the state may waste enormous resources to enforce compliance. Inevitably, engagement of the taxpayer throughout policy formulation, drafting of laws and implantation of the same is critical to the smooth operation of a tax system. The need for taxpayer engagement is even more enhanced for Pillar One, which relies heavily of information provided to tax authorities by taxpayers, yet the former often have fewer resources than the latter.

Some countries like the United States have come up with a bill of rights of taxpayers (Christians, 2016). Even though not codified, the Internal Revenue Service formulated a taxpayer charter, which includes the right to be informed, the right to quality service, the right to pay no more than the correct amount of tax, the right to challenge, appeal and finality, privacy and confidentiality as well a fair and just system, among others. Taxpayer rights often come into play when there is a controversy. However, the author's view is that rights should accrue to the taxpayer at the beginning of the design of a tax system. For the international tax system, it is imperative that the organisations like the OECD and the UN take the perspectives of MNEs into account while considering designing new rules.

With respect to Pillar One, taxpayers have participated in the engagement process. For example, in response to the consultation on the July 2022 Progress Report, Nestle, AstraZeneca, and P&G shared their views on the report (OECD Comments, August 2022). The literature does not say much about the obligations of states and supranational bodies towards taxpayers at the point of policy formulation. Since international tax policy and design eventually translates into taxation at the domestic level, the necessity of taxpayer participation cannot be overstated. It is important that taxpayers are heard right from the early stage of formulating tax policies in fulfillment of the canons of taxation but also for practical reasons as it is important to understand how businesses subject to the tax system operate.

A taxpayer in a Pillar One world will have an enormous compliance burden. The crackdown on base erosion and profit shifting in the post BEPS era has led to an increase in taxpayer obligations in comparison to the pre-BEPS era.. For instance, the BEPS Action 13 Report spells out a three-tier documentation process that MNEs should comply with (OECD, 2015). MNEs seem to have a handle on these obligations and have come up with ways to prepare these documents with ease through the use of technology. Pillar One is going to require taxpayers to prepare much more documentation. The determination of Amount A involves complex calculations that may require a lot of effort to prepare, including hiring more personnel that are dedicated to Pillar One compliance.

Amount A is set to operate as an overlay to the existing tax system. Also the complexity is an overlay to the existing complexity, as transfer pricing is generally complicated (Moura et al., 2022). The taxpayer has to meet obligations under the ordinary system before complying with Amount A (OECD, 2022). Even though the OECD states that tax administrations should enforce Amount A without significant changes, this is virtually impossible (OECD, 2022a). A number of things in the administration will be left to states to decide in their domestic laws. For instance, one country may allow for streamlined compliance, which will reduce the double compliance under the Amount A regime and the ordinary regime on the other hand. Countries that do not accept this will unduly increase the compliance burden. The author's view is that administration of Pillar One should be simplified in as much as it is possible. For example, the certainty framework could limit the possibility of opting out of measures so that attempts at standardisation of compliance are easier.

Tax compliance under Pillar One may require differentiation of approaches across jurisdictions or even in the same jurisdiction. This could increase the compliance burden for taxpayers. One of such cases is the use of reliable indicators for the source of revenue where residents of a country use Virtual Private Networks (VPNs) (OECD, 2022a). VPNs are used by internet users to access banned sites or artificially change their geographical location to use products that they have no access to in their real locations. Some of the countries where VPNs are widely used are large markets, for example China and Russia, which are expected to gain a significant Amount A reallocation In these countries, some users may use VPNs, while others may not. For example, in the case of online advertising services, revenue is sourced from the jurisdiction where the viewer is located. The reliable indicators are the user profile, device geolocation, IP address, or any other reliable indicator (OECD, 2022). For a device that has a VPN and disabled location services, the IP address and geolocation may not be effective as indicators. Consequently, taxpayers may have different reliable indicators for various countries and periods. A standard compliance system could alleviate the complexity that is embedded in Pillar One.

At a conceptual level, Pillar One does not create new taxes and, therefore, no extra tax burden on taxpayers. The tax paid on the reallocated profits is offset by the tax reduction in the residence jurisdictions. However, the situation could change where the corporate income tax rate in the market jurisdiction is higher than that in the residence country (Eden, 2021, p. 139). This would mean that the portion of the reallocated profits attracts higher taxes than the same amount in the residence country. This is likely to be the case for MNEs that are resident in low-tax jurisdictions like Ireland and Luxembourg, whose corporate tax rate is below 20%. Unless such residence jurisdictions raise the corporate income tax rate to match the market jurisdictions, Amount A will result in extra taxes to be borne by taxpayers in comparison to what they are paying under the current regime.

Pillar One may benefit the taxpayers if countries withdraw DSTs. Unilateral measures like DSTs, if widely adopted by countries or large markets could result in a higher tax burden in comparison to reallocation of residual profits. Moreover, such taxes are outside the income tax system, unlike Amount A that is intended to move a share of taxes from one jurisdiction to another. In this case, adoption of Pillar One would be in the interest of these taxpayers in the digital services sector.

Making a conclusion as to whether taxpayers benefit from the Pillar One deal is not a simple task. The Pillar One mechanism comes with enormous complexity that will likely burden the taxpayer. Taxpayers may also pay more in taxes where income is reallocated from low- to high-tax jurisdictions. However, those in the digital sector may rejoice at the prospect of not having to pay digital service taxes in many jurisdictions, which would significantly increase the group tax burden. Perhaps digital businesses are in the deal, while non-digital businesses that are not affected by DSTs are out of the deal. That said, even digital businesses could be frustrated by the implementation of the complex system to the point of eroding any benefits that could accrue.

## Conclusion

Pillar One will fundamentally change the international tax system. The participation of many countries in the Pillar One discussions has offered the OECD a nod of legitimacy, which was previously questioned on account of limited state participation. The Pillar One deal offers a solution to the challenge of taxation in the absence of physical presence. However, this comes at a great complexity cost that may not be matched by the revenue gains. The Pillar One deal offers a possibility of a mutual benefit for countries that fit squarely within the nexus rules. Countries at the margins of poverty may not meet the nexus rules and may, therefore, be out of the deal, even if they sign up for Pillar One. For taxpayers, there is a risk of paying more taxes where income is redistributed from low-tax to high-tax jurisdictions. However, this outcome may be better than paying DSTs in many countries. The complexity behind Pillar One is likely to create an uphill task in compliance that may erode potential benefits for both taxpayers and developing countries.

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