ASIA INTERNET COALITION

Beyond BEPS

New Taxing Rights and Minimum Corporate Taxes

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Executive Summary

The International Monetary Fund (IMF) has reduced its global economic growth projections for the year 2019. It attributes the broad-based slowdown in the world economy to policy uncertainty stemming from factors such as trade tensions, higher oil prices and the increased incidence of natural disasters. Small open economies such as Singapore are particularly susceptible to global uncertainties. The IMF calls for multilateral cooperation to arrest the downward trend.

The Organisation for Economic Co-operation and Development (OECD) has been hard at work since 2013 to build a multilateral consensus around some very complex international tax issues. Much of the work on Base Erosion and Profit Shifting (BEPS) was completed in 2015 and is presently in the implementation phase. However, there are a number of remaining issues under the OECD/G20 Inclusive Framework.

BEPS sought to address the interaction of domestic tax systems which allowed multinational enterprises (MNEs) to rearrange the geographic distribution of their income, assets and functions to significantly reduce their tax obligations. BEPS identified fifteen actions along three pillars: introducing coherence in the domestic rules that affect cross-border activities; reinforcing substance requirements in the existing international standards and improving transparency as well as certainty. Minimum standards were proposed in four areas:

1. Countering harmful tax practices.
2. Safeguards against treaty abuse and treaty shopping.
3. Country by country reporting by MNE's with group revenues over €750 million.
4. Measures to ensure that dispute resolution would be more effective and timely.

A multilateral instrument (MLI) was developed (Action 15 of BEPS) and came into force on July 1, 2018. It enables simultaneous modification of covered treaties as ratifications take effect over time. In October 2019, the MLI had ninety signatories with six more countries declaring intent to. Thirty-seven countries (including Singapore) have deposited instruments of ratification which will come into force during 2019. Singapore's MLI came into force on April 1, 2019. Malaysia and Indonesia have signed the MLI but not yet submitted documents for ratification. Thailand has indicated its intent to sign. Brunei, Indonesia, Malaysia, the Philippines and Vietnam are going through the Action 5 (countering harmful tax practices) peer review process.

The OECD indicates that the results from the implementation of BEPS have been positive. Many MNEs have moved from remote selling to a local reseller model. They have taken proactive steps to align substance with structure through onshoring assets and reconsidering their transfer pricing positions. As a result, many countries have seen an expansion in their corporate tax base. Over fifty jurisdictions implemented the VAT/GST on business to consumer (B2C) cross-border sales of services and intangibles by online sellers (electronically supplied services). These have also resulted in higher revenues.

There is no empirical work on the impact of multilateral efforts such as BEPS on the real economy. Instead, the focus has been on measuring the size of BEPS and on the redistribution of tax revenues among groups of countries. These estimates vary quite substantially due to differences in methodology and data sources. They range from 4% to more than 10% of annual global corporate income tax revenues or lie somewhere between USD 100 billion and USD 280 billion. Since profits are shifted from high tax to low-tax countries, low-tax countries including Singapore are expected to lose revenue if profit shifting is reduced due to the implementation of BEPS, but zero tax countries are expected to lose the most. The estimates do not take into account any post-BEPS adjustment by taxpayers or countries, so it is too early to draw any definitive conclusions about the impact of BEPS on individual countries.

Nonetheless, there are a number of reasons to be optimistic about Singapore's prospects.

1. Singapore's peer review (countering harmful tax practices) found that an overwhelming majority of its incentive programs meet international standards and do not have either harmful features or harmful economic effects. Singapore can continue to offer these incentives.
2. There are important qualitative differences between zero tax countries and a low tax country such as Singapore.

    a. Singapore is the most competitive economy in the world and it competes primarily on the basis of its business environment.
    b. Location decisions of MNEs depend on the productivity potential of locations and not just on costs and taxes.
    c. Corporate tax policy (or tax competition) is at best an indirect tool for countries seeking innovation led growth and high wage jobs.
    d. Even if effective corporate tax rates are equalized across the world and countries only compete (as they should) on economic fundamentals - Singapore's odds are likely to be very favourable.
    e. Singapore has a very diverse economy. Research on economic complexity shows that this is a validated predictor of future economic growth. Singapore ranked fourth in the world economic complexity rankings.

3. Unlike most countries in the world, Singapore has always had more fiscal space since it runs persistent budget surpluses.
4. From January 1, 2020, GST will apply to cross-border digital services, bringing in additional revenue.
5. There is some anecdotal evidence to suggest that as MNEs seek to match structure with substance, they are moving from zero tax to low tax jurisdictions such as Singapore. This will expand Singapore's corporate tax base.

As of October 2019, the OECD/G20 Inclusive Framework had 135 members, including six ASEAN countries: Brunei, Indonesia, Malaysia, Singapore, Thailand and Vietnam. The OECD has committed to deliver a consensus solution to G20 leaders by the end of 2020. The issues are organised around two pillars. Pillar One deals with the broader tax challenges of digitisation (Action 1 of BEPS) and seeks to give taxing rights to market jurisdictions. Pillar Two deals with remaining BEPS issues and proposes that MNEs pay a minimum effective corporate tax. Together, both pillars would reduce the dispersion in effective corporate tax rates and the incentive for MNEs to shift profits. The OECD issued a number of public consultation documents in 2019 which seek to facilitate consensus around the broad architecture of the two pillars.

The ‘Unified Approach’ under Pillar One presently focuses on ‘consumer-facing business’ - a term which has yet to be defined. It proposes a new nexus, distinct and separate from the existing concept of permanent establishment. This would create a new taxing right, regardless of physical presence, if sales exceed a certain threshold. A share of deemed residual profit of MNEs will be reallocated to market jurisdictions. In absolute terms, the reallocation would benefit larger market jurisdictions. Low and middle income economies would gain by experiencing a higher rate of increase in tax revenues than high income economies. Low tax jurisdictions are expected to lose revenue. Pillar Two, also known as GloBE or the global anti-base erosion proposal, seeks to ensure that all MNEs pay a minimum level of corporate income tax. This would yield significant increase in corporate tax revenue globally.

The OECD emphasises simplicity over precision in order to minimise costs of compliance and administration. It also seeks to minimise the risk of double taxation and proposes mandatory and time bound dispute resolution. The technicalities of the proposals are yet to be determined and many important aspects depend on agreement between countries. Regardless of the particulars, large MNEs should expect to pay more taxes in more jurisdictions.

The 2017 Tax Cuts and Jobs Act in the United States incorporates many of the features presently under discussion at the OECD and American MNEs are already paying a minimum tax. The global intangible low taxed income (GILTI) provision discourages MNEs from shifting non-routine profits from intangibles to low tax jurisdictions. A US parent of a controlled foreign corporation (CFC) is obliged to include non-routine profits from intangibles in the parent’s income and this is taxed currently or on an accrual basis and not upon repatriation. Tax credits are given for 80% of foreign taxes. The base erosion and anti-abuse tax (BEAT) provisions limit deductions for payments typically associated with profit shifting such as interest, royalties and management fees. It is a minimum tax of 10% (12.5% after January 1, 2026).

While small innovation-led economies such as Singapore and Switzerland support the multilateral process, they have called for moderation. Under Pillar One, they call for a need to moderate allocations to market jurisdictions so that countries still have an incentive to fund innovation and R&D activities. Under Pillar Two the level of the minimum tax should respect tax sovereignty of countries and their right to determine an appropriate domestic policy mix which suits their particular circumstances.

Some countries are clearly too impatient to wait for the OECD to finish its work and have implemented 'digital service' taxes. Examples include France and India. These are 'new' taxes which are levied over and above corporate income taxes and VAT/GST. They tax gross revenues of MNEs and are both discriminatory and distortionary; and result in double taxation. Corporate profits should only be taxed once. The OECD itself has indicated that a proliferation of unilateral measures will be detrimental to the global economy. Since the scale of the OECD's work is similar to that of multilateral trade negotiations (MTN), the OECD should consider borrowing rules from the MTN process. In the area of digital service taxes, adopting a 'stand-still and roll-back' rule would support the OECD process. In other words, members of the Inclusive Framework should commit to refrain from implementing digital service taxes while the OECD proceeds with its work and those that have, should roll them back.

It is critical that a successful long-term solution to address the taxation of the evolving international economy should be consistent with the following key tenets:

1. It should be levied on profits/losses and not revenue. VAT/GST is a tax that applies to revenue.

2. It should apply in an economically principled way to both loss-making and profit-making companies/businesses.

3. It should be proportionate, neutral, equitable, and enforceable so that, on an overall basis, it is applicable to all types of businesses such that the new tax rules do not ring-fence the digital economy, do not result in different tax rates for foreign and domestic taxpayers, and do not create market distortions.

4. It should be a direct tax measure only and should have no impact for indirect tax purposes.

5. It should achieve consensus and maximize consistency in its application, with sufficient detail to foster consistent application and avoid multi-layer taxation.

6. The new framework must not undermine the existing tax treaty network and not lead to double taxation.

7. It must include mechanisms for effective dispute resolution, including mandatory binding arbitration.

8. The measures must be easy to comply with and provide collaboration on transition relief. Simplicity for taxpayers will be preferable to precision in measurement.

1. Introduction

The October 2019 global growth forecasts by the International Monetary Fund (IMF) indicate there is a broad-based slowdown in the world economy. The growth in real Gross Domestic Product (GDP) in 2019 is projected to be 3% (International Monetary Fund, 2019c). This represents a reduction from the April 2019 forecast of 3.3%. In Singapore, growth is expected to be much slower. Real GDP growth is projected to be 0.5% in 2019 (International Monetary Fund, 2019a). The IMF suggests that this is due to the uncertain policy environment. There are many uncertainties, including the China-US trade tensions, higher oil prices, increased incidence of natural disasters and the risks of a disorderly Brexit. In Asia, there are additional risks due to bilateral tensions between South Korea and Japan and the faster-than-expected slowdown in the Chinese economy. Singapore is a small open economy and is particularly vulnerable to any deceleration in trade and investment. According to the IMF, arresting this downward trend would require “reinvigorating multilateral cooperation” (International Monetary Fund, 2019c, p. xvi).

The Organisation for Economic Co-operation and Development (OECD) has also been hard at work since 2013 to build a multilateral consensus around some very complex international tax issues. Much of the work on Base Erosion and Profit Shifting (BEPS) was completed in 2015 and is presently in the implementation phase. However, there are a number of remaining issues under the OECD/G20 Inclusive Framework. The OECD has the unenviable task of delivering a consensus solution involving over one hundred and thirty countries by the end of 2020. In many ways this is no different in scale from multilateral trade negotiations. The OECD is doing its best to lend stability to the global economy. Regrettably, some countries have introduced unilateral tax measures and many others are planning to do so as well. Unilateralism will only contribute to increasing uncertainty and further dampen economic growth. The Global Economic Policy Uncertainty Index has never been this high.[1] In August 2000 the value of the Index was 50. During the financial crisis it hit 200. In August 2019 the Index hit an all-time high of 350 (*Economic Policy Uncertainty Index*, no date). The broad-based collaborative approach of the OECD deserves the support of all members of the Inclusive Framework. The Government of Singapore has already stated that it supports a global consensus at the OECD (Ministry of Finance Singapore, 2019).

Section 2 of this paper provides the OECD’s rationale for reforming the international corporate tax system. The 15 Actions under the BEPS project are described in section 3 and the empirical estimates of the size of BEPS are provided in section 4. Estimates range from 4% to 10% of global corporate income tax revenues due to differences in data and methodology. Section 5 discusses the impact of BEPS on the real economy. Academic research appears to be focused on measuring the size of BEPS, so few studies address the impacts on investment, innovation and economic growth. As multinational enterprises (MNEs) are still adjusting to BEPS, impacts on the geographic distribution of investment and

[1] The monthly index begins in January 1997.

location of innovation activities will only become apparent over time. This section also discusses the expected impact of BEPS and unilateral 'digital service taxes' on Singapore. While there is insufficient information to support definitive conclusions, it is probable that the impact on Singapore may be limited. While it is generally expected that corporate income tax revenues may decline in low tax countries, Singapore has more fiscal space relative to other countries, as well as strong competitiveness fundamentals which work in its favour.

Sections 6 and 7 discuss the present work of the OECD which includes the tax challenges of digitisation (Pillar 1) and remaining BEPS issues (Pillar 2). Work on these issues continues, as does the OECD public consultation process. The final scope and details of many proposals is not yet known as the OECD is attempting to build consensus around a broad architecture before working on the details. This paper analyses and comments on the present proposals, which are the 'Unified Approach' (Pillar 1) and 'GloBE tax' (Pillar 2). It is likely that large MNEs will pay more taxes in more jurisdictions. Measures to avoid double taxation and effective dispute resolution will benefit both taxpayers and tax administrations.

The 2017 Tax Cuts and Jobs Act in the US has also changed the taxation landscape for MNEs. This is discussed in section 8. Although this is characterised by some as a unilateral move, it is very much in the spirit of BEPS and could help in building a consensus. As a result of some of the provisions of this statute, American MNEs are already paying a minimum tax. Section 9 provides conclusions and recommends some broad principles which may help move the discussion forward in an equitable and principled manner.

2. The rationale for reform

The present evolving debate on the international tax challenges of digitisation seeks to address primarily two concerns. The first is profit shifting, which relates to differences in countries' tax laws existing in the present system. This system was designed after World War I and includes approximately 3000 bilateral treaties. According to the OECD, the interaction of domestic tax systems resulted in gaps which allowed MNEs to rearrange the geographic distribution of their income, assets, functions and subsidiaries to significantly reduce or eliminate their tax obligations (OECD, 2013, p. 5). Such 'profit shifting' is one source of base erosion. Base erosion refers to a shrinking tax base which puts pressure on remaining taxpayers, forming a narrower base, to compensate for any revenue shortfalls. The second concern is that the present system may require a more comprehensive overhaul to suit today's globalised and digitised economy (OECD, 2013).

The OECD acknowledges that digitisation pervades all sectors and ring-fencing the digital economy makes little sense from a tax perspective. Yet, many of its subsequent proposals do just that. In fact, they go a step beyond, by devoting particular attention to certain types of 'digital' firms (OECD, 2015a, 2019a). Regardless, digitisation is related to both concerns identified above. Some MNEs deal primarily in intangibles. Their products, as well as inputs, such as data, algorithms and intellectual property are intangible. They are highly mobile and exacerbate the first concern. Or, it may be easier for such MNEs to locate functions or intangible assets in low tax countries or more generally, countries which are neither the country of residence of the MNE nor where the bulk of consumers reside (market jurisdiction). The neutrality principle of taxation suggests that this is 'not fair' to domestic firms and 'bricks and mortar' businesses which may which may compete with MNEs in the market jurisdiction. Intangibles also present challenges in applying the arm's length principle (ALP) used in transfer pricing. ALP requires transactions between related entities to be valued for tax purposes at prices which would prevail in the same market transaction in similar circumstances. Many intangibles are firm specific so finding their value using a comparable market transaction is difficult.

Digitisation also allows firms to serve a market without a physical presence or without a taxable presence. In existing treaties, the concept of permanent establishment (PE) acts as a threshold or as a measure of the level of economic presence (or integration) of a foreign enterprise in the economy of a given country. Sufficient economic integration or crossing the threshold justifies taxation by that country. Under most treaties, a country can only tax those business profits (of a non-resident) which are attributable to a PE.[2] Digitisation puts pressure on the concept of PE and creates a misalignment between the origin or source of wealth and the right to tax. The latter relates to the allocation of taxing rights between countries, which are traditionally shared by source countries and country of residence. Market jurisdictions argue that it is 'not fair' for MNEs to participate in the economic life of a country without paying taxes. This notion of fairness derives from the benefit principle of taxation. MNEs use public goods in the market jurisdiction and should contribute to tax revenues which are used to provide public goods. These aspects of digitisation relate to the second concern or the view that the present system is outdated. Of course, this also means that the OECD, in addition to reducing profit shifting, seeks to find a 'virtual PE'; a new 'nexus' and a new way to allocate taxing rights between residence, source and market jurisdictions - and not just in OECD countries.

Similar concerns were first raised almost two decades ago. At the time, the issue was the tax implications of e-commerce which facilitated cross-border supply of intangibles from a "remote location". There were the usual tensions: Should e-commerce be allowed to flourish in a tax-free environment? Or should e-commerce be subject to a "specifically designed ... Bit tax"? The first approach would create tax distortions and revenue shortfalls, which may prevent governments from meeting the demand for public goods. The second may hinder the development of e-commerce (OECD, 2001, pp. 9–10). While neither of these polar views proved acceptable at the time, OECD countries agreed that there was no reason to exclude e-commerce from "normal taxation" and that the same principles of taxation (Ottawa Taxation Principles) should apply to both conventional and electronic commerce.[3] Further, that any future adaptation of "existing international taxation principles should be structured to maintain the fiscal sovereignty of countries, to achieve a fair sharing of the tax base from

[2] Reference to PE includes both the treaty concept and similar concepts under domestic law.
[3] Appendix 1 provides the Ottawa Taxation Principles.

electronic commerce between countries and to avoid double taxation and unintentional non taxation" (OECD, 2001, p. 218).

MNEs can potentially use many techniques in tax planning as they consider their overall business operations and seek to reduce operating costs. In their country of residence, MNEs may use tax deferral or delaying payment to the parent, if taxes are levied at the time of repatriation. Alternatively, business operations may be restructured or relocated to a jurisdiction operating on a territorial rather than a worldwide tax system. In source countries tax liabilities may be reduced through consideration of available bilateral treaty provisions applicable to interest and royalty payments and through consideration of where to locate various business operations on a global scale as MNEs consider how best to meet customer demands.[4]

3. Base Erosion and Profit Shifting

The OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative sought to address some of the methods used by MNEs to reduce their corporate tax burden. Work on BEPS started in 2013 and it took the OECD many years of effort to arrive at these changes to the international tax framework. The Action Plan was delivered to G20 Leaders in Antalya in November 2015 and identified 15 actions along three pillars: introducing coherence in the domestic rules that affect cross-border activities; reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.[5] Minimum standards were proposed in four areas with the expectation that these will be incorporated in domestic law and treaties between countries (International Monetary Fund, 2019b).

1) Countering harmful tax practices including 'patent boxes' where under a 'nexus approach' benefits would only be granted to a taxpayer conditional on underlying R&D activity (or expense) which gave rise to the intellectual property (IP) income. (Action 5)

2) Safeguards against treaty abuse and treaty shopping. These include a clear statement by countries that enter into tax treaties that they will avoid creating opportunities for non-taxation or low taxation through tax avoidance. A limitation of benefits rule to entities that meet certain conditions and a more general principal purposes test. (Action 6)

3) Country by country reporting by MNE's with group revenues over €750 million. Certain information on assets, employees and pre-tax profits is to be provided to all countries where the MNE is active. (Action 13)

[4] See (Beer, de Mooij and Liu, 2018) for empirical evidence on these and other potential methods.
[5] Appendix 2 provides a summary of all 15 Actions.

4) Measures to ensure that dispute resolution would be more effective and timely. (Action 14)

In addition to these minimum standards, core OECD documents have been amended to widen the definition of PE in bilateral treaties to include agency or commissionaire arrangements (a "dependent agency" PE). Amendments have also been made to prevent misuse of exceptions relating to preparatory and auxiliary activities (Action 7). The OECD has issued new transfer pricing guidelines (OECD, 2017b).[6] The guidelines clarify that legal ownership of intangibles does not necessarily lead to a right to returns. Instead, returns will be allocated to group companies that exercise control and have the financial capacity to bear the associated risks. Guidance has also been provided on hard-to-value intangibles, contractual allocation of risks and profit allocation for transactions which are not commercially rational for the enterprises concerned (Actions 8-10).

In other areas, outcomes suggest a common approach with the expectation of convergence. Action 2 neutralizes hybrid mismatch arrangements (entities and instruments) which seek to exploit differences in the tax treatment across countries to achieve double non-taxation, including long-term deferral. Action 12 requires mandatory disclosure of potentially aggressive tax planning arrangement. Revised controlled foreign corporation (CFC) rules prevent inappropriate deferral of taxes and ensure that credits are given for actual taxes paid (Action 3). Action 4 relates to interest deductions and seeks to limit the use of intra-company debt to shift profits. It suggests limiting interest deductions to between 10%-30% of earnings before interest, taxes, depreciation and amortization (EBITDA).

Action 11 seeks to improve the depth and quality of data related to profit shifting, to facilitate measurement and monitoring. As part of this effort, a database on corporate tax statistics was set up which now includes information on more than a hundred jurisdictions. Lastly, a multilateral instrument (MLI) was developed (Action 15). It came into force on July 1, 2018 and enables simultaneous modification of covered treaties as ratifications take effect over time. The MLI had ninety signatories with six more countries declaring intent to sign (October 30, 2019). Thirty seven countries (including Singapore) have deposited instruments of ratification which will come into force during 2019 if not earlier (OECD, 2019e). For Singapore's eighty-six tax treaties with other countries the MLI came into force on April 1, 2019.[7] Malaysia and Indonesia have signed the MLI but not yet submitted documents for ratification. Thailand has indicated its intent to sign. Brunei, Indonesia, Malaysia, the Philippines and Vietnam are going through the Action 5 (countering harmful tax practices) peer review process (OECD, 2019c).

An Inclusive Framework on BEPS was also established to facilitate implementation and to continue work on the tax challenges of digitisation (Action 1). As of October 2019 the

[6] New international VAT/GST guidelines have also been issued (OECD, 2017a).
[7] Singapore has not adopted MLI mechanisms relating to artificial avoidance of permanent establishment and hybrid mismatches (KPMG, 2019b).

inclusive framework had 135 members, including six ASEAN countries: Brunei, Indonesia, Malaysia, Singapore, Thailand and Vietnam (OECD, 2019d).

4. Quantifying BEPS

As early as 2013 the OECD indicated that the amount of tax revenue lost due to BEPS was not the central issue. The main issue was that profit shifting undermines the perceived integrity of the tax system (OECD, 2013, p. 15). More recently as part of the Action 11 work plan it has conducted an extensive literature survey and provided some estimates of profit shifting as well as the associated tax revenue losses (OECD, 2015b). These estimates vary quite substantially due to methodology and assumptions, but more so, due to data availability issues. Measurement can be done using (micro) company level data or (macro) balance of payments, trade in services and foreign direct investment data. More recent studies produce larger estimates.

Some studies (including meta-studies) attempt to estimate the semi-elasticity of the pre-tax reported income with respect to the tax rate differential across countries. Estimates range from 0.2 to 1.5 with a consensus estimate of around 0.8.[8] From the present perspective, the fraction of profit of the parent (or high-tax affiliate) that is shifted to low tax affiliates in response to tax rate differentials is more relevant. Here, estimates range from 0.2 to 0.4. An example which uses the higher estimate (0.4) of the semi-elasticity of profit shifting follows. Suppose there is a parent and an affiliate in two different jurisdictions with identical tax rates of 25%. Now suppose the tax rate in the affiliate's jurisdiction drops to 15% (by 10 percentage points), then the parent will shift 4% of their profits to the affiliate in the low tax jurisdiction. Eliminating this amount of profit shifting will make a small contribution to government finances. For the average OECD country, the share of corporate income tax in total tax revenues was 8.2% in 2016. Only part of this represents taxes on MNEs, but if all of it does then 4% of this figure represents about 0.33% of total tax revenue or about 0.11% of GDP of the average OECD country.

The OECD and some more recent studies indicate that the potential global revenue losses are larger, or of the order of USD 100-240 billion annually; somewhere between 4% and 10% of global corporate income tax revenue (OECD, 2015b). Developing countries may be affected more by profit shifting since they are more reliant on corporate taxes. (Clausing, 2016) estimates that revenue losses to the US were between USD 77 and 111 billion in 2012 and global losses (including the US) were USD 280 billion. In the same year, estimates of gross income shifted to the Netherlands was about USD 140 billion; to Ireland USD 100 billion; to Luxembourg USD 81 billion and to Singapore, USD 32 billion.

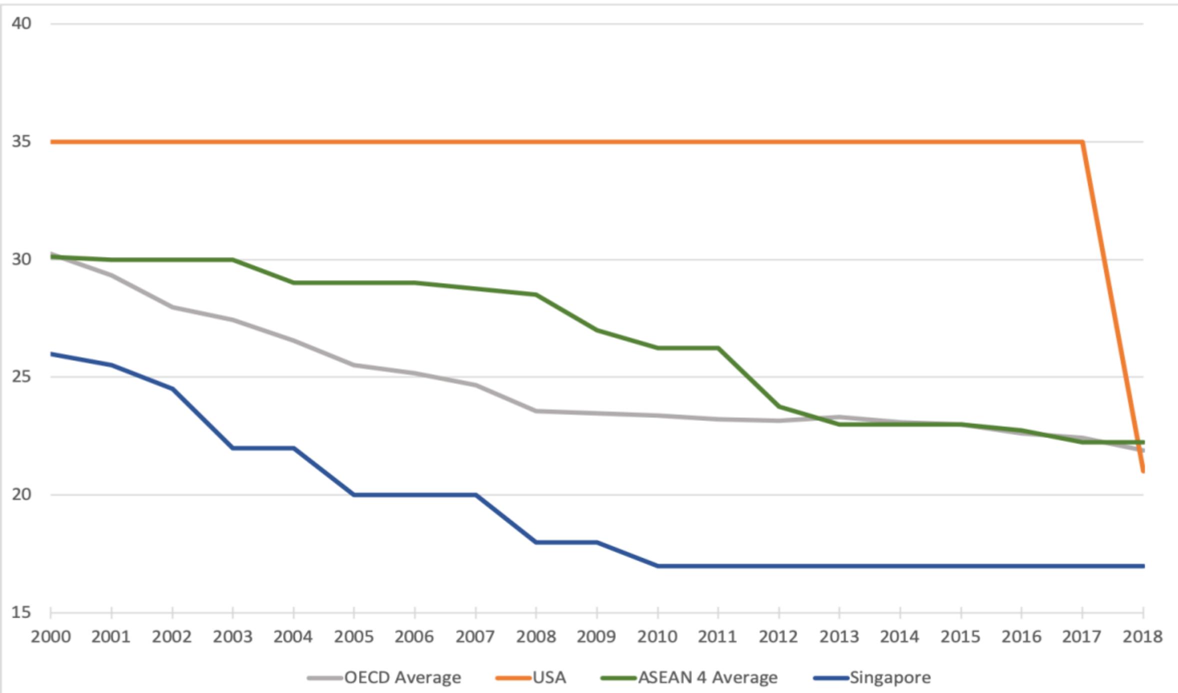
[8] See (Dharmapala, 2014; Hines, 2014; Beer, de Mooij and Liu, 2018) for surveys. The elasticity varies across sectors and is 2.4 for multinational banks (Merz and Overesch, 2016).

(Tørsløv, Wier and Zucman, 2018) estimate that close to 40% of global MNE profits or USD 600 billion were shifted to low tax jurisdictions in 2015. USD 116 billion to Ireland; USD 98 billion to the Caribbean; USD 90 billion to Singapore; USD 89 billion to the Netherlands; USD 51 billion to Luxembourg and USD 50 billion to Hong Kong. This study finds that 35% of the shifted profits come from the EU (high-tax) countries and 80% of these are shifted to EU low tax countries, mainly Ireland, Luxembourg and the Netherlands. 25% of the shifted profits come from the US and these are shifted primarily to non-EU low tax countries. About 30% of shifted profits come from developing countries.

5. Impact of BEPS

Regardless of the size of profit shifting, the implementation of BEPS has and will continue to reduce the amount of profits shifted to low tax jurisdictions, so countries such as Singapore are expected to lose tax revenue. Given the variance in the estimates however, it is difficult to say how much. Moreover, the estimates do not take into account any post-BEPS adjustments made by taxpayers as well as countries. The earlier tensions between investment attraction and corporate tax revenue will not disappear and neither will tax competition between countries. The BEPS project could increase tax competition since once the international tax system is more effective in keeping profit shifting in check, MNEs seeking to reduce their global tax obligations may have to do so by shifting real activities to low tax jurisdictions such as Singapore.

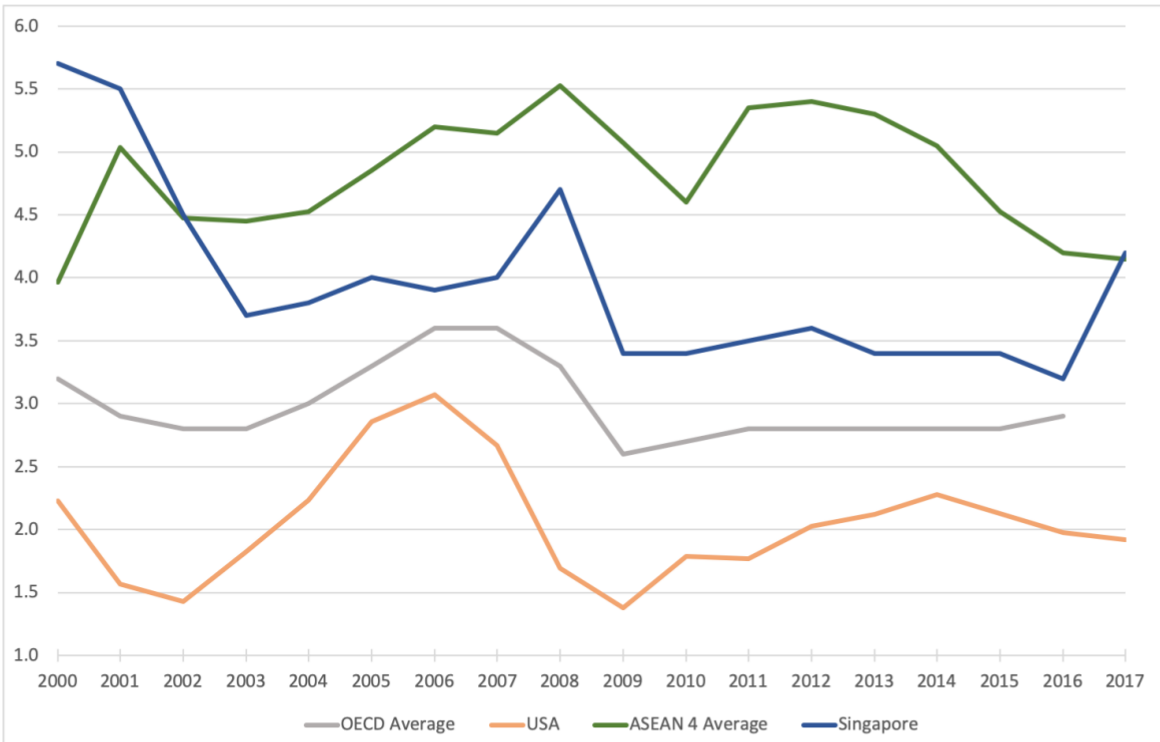
Exhibit 1: Statutory Corporate Income Tax Rates - Selected Countries



ASEAN 4 includes Indonesia, Malaysia, Thailand and Vietnam. Tax rate represents central/federal government flat or top marginal rate. (Source: OECD)

Average statutory corporate tax rates in OECD countries declined from 32.2% in 2000 to 21.9% in 2018 (Exhibit 1). The decline in other regions of the world were lower than those in OECD countries (OECD, 2019b). Corporate tax revenue as a proportion of total tax revenue and as a proportion of GDP have been relatively stable in OECD countries since 2009 at approximately 3% (Exhibit 2). However, tax competition continues, particularly among G7 countries. In 2018 eight OECD countries reduced their statutory rate by an average of 3.7 percentage points and five countries reduced their rates in 2019 by an average of 1.2 percentage points. In September 2019, India reduced the corporate tax rate from 30% to 22% (Kumar, 2019). Further cuts are expected in Belgium and UK in 2020 (OECD, 2019j, p. 59). Yet, a number of countries have "increased the generosity of their CIT [corporate income tax] incentives to stimulate investment and innovation" (OECD, 2019j, p. 64).

Exhibit 2: Corporate Tax Revenue as a percentage of GDP - Selected Countries



ASEAN 4 includes Indonesia, Malaysia, Philippines and Thailand. Revenue represents revenues of all levels of government from corporate taxes on income, profits and capital gains. (Source: OECD)

Reducing BEPS may increase tax burdens for some MNEs, but countries will continue to compete for business activity. Statutory corporate tax rates in Singapore are lower than those OECD countries. In 2010 the headline rate declined from 18% to 17% and has remained stable since. There are at least four reasons to expect that the impact on Singapore's tax revenues may not be of much concern. Firstly, unlike numerous countries in the world, Singapore has always had more fiscal space since it runs persistent budget surpluses.

Secondly, small countries have little to lose from reducing corporate tax rates, since their domestic tax base is small. Reducing rates will always expand the base by attracting foreign direct investment. Thirdly, from January 1, 2020, the GST will apply to cross-border digital services, bringing in additional revenue. Lastly, there is some anecdotal evidence to suggest that as MNEs seek to match structure with substance, they are moving from zero tax to low tax jurisdictions such as Singapore. This will expand Singapore's corporate tax base (Davison, 2018).

Most of the empirical research has focused on measuring the size of BEPS and the impact on tax revenues. There are fewer studies on the potential impact on the real economy. The limited research, however, suggests that unilateral anti-avoidance measures have a negative impact on MNE investment and distort location decisions, but the effects of cooperative or multilateral efforts have not been explored. Two examples are provided below relating to Actions 3 and 4 of BEPS respectively.

CFC rules intend to restrict tax arbitrage activities of MNEs (Action 3). Rule-enforcing countries implement CFC rules to prevent base erosion, but CFC rules also prevent income shifting among foreign subsidiaries. They may result in higher tax revenues for the country of residence and high-tax host countries, but the downside is lower investment and employment in host countries. Location decisions are also affected by the tax threshold in CFC rules.[9]

Suppose a German MNE has subsidiaries in the US and Bermuda. Illustrative corporate tax rates are 30% in Germany, 20% in the US and 0% in Bermuda. If Germany operates on a territorial tax system, the income of the US subsidiary will be subject to tax in the US and not in Germany. The MNE has an incentive to shift some of its US source income to Bermuda which has a zero tax rate. If Germany implements CFC rules which tax subsidiary income taxed below a threshold of 18%, the Bermuda income will be taxed at the German rate.[10] This will reduce the incentive to shift income from the US to Bermuda. The higher income reported in the US will be taxed at the US rate. Corporate tax revenue will increase in the rule enforcing country (Germany) as well as in other high tax countries (US).

After-tax returns of the US subsidiary will decrease, so operating in the US will be less profitable. Studies show that CFC rules increase the cost of capital which leads to a decline in foreign fixed assets of MNEs (Egger and Wamser, 2015). When a foreign MNE with a subsidiary in the US is subject to a CFC law, it reduces its US workforce by 16% and US investment by 12%.[11] Moreover, it is less likely to establish US operations altogether (Albertus, 2018). MNEs have a higher propensity to choose hosts just above the tax threshold and a lower propensity to choose hosts below the threshold (Clifford, 2019).

[9] The tax threshold is typically specified as an effective tax rate, but a statutory rate or 'headline rate' is used for illustrative purposes. Effective tax rates account for various deductions.
[10] CFC rules typically apply to passive income, which includes financial income from portfolio holdings, certain rental income and royalties from intellectual property.
[11] US reported income will increase by 7%. This is because income which was previously shifted to Bermuda will now be reported in the US.

Debt between related entities may be used to create interest payments which are deductible in high tax countries and subject to tax in low tax countries. This gives rise to thinly capitalised subsidiaries of MNEs in high tax countries. Thin capitalisation rules limit interest deductions for loans from related parties (Action 4). However, they lead to distortions between sectors as debt ratios in industries with a high share of tangible assets are more responsive to thin capitalisation rules (de Mooij and Hebous, 2017). The tax sensitivity of foreign direct investment also doubles with the implementation of thin capitalisation rules (Buettner, Overesch and Wamser, 2014).

These examples show that there are complex trade-offs between short-term revenue objectives and long-term economic growth. The present public narrative and empirical research appears to focus more on the former. The detrimental impact on real economic activity will become more apparent over time. Nonetheless, there are a number of reasons to be optimistic about Singapore's prospects.

Firstly, Singapore's peer review (countering harmful tax practices) found that an overwhelming majority of its incentive programs meet international standards and do not have either harmful features or harmful economic effects. These are: intellectual property development incentive, development and expansion incentive – services, pioneer service company, aircraft leasing, finance and treasury center, financial sector incentive, global trader program and maritime sector incentive. The insurance business development incentive has been amended and grandfathered. The legal services incentive and international growth scheme have been abolished and grandfathered. Grandfathered regimes will end on June 30, 2021 (Ministry of Finance Singapore, 2017; OECD, 2019c).

Secondly, there are important qualitative differences between zero tax countries and a low tax country such as Singapore. Singapore is the most competitive economy in the world; it competes primarily on the basis of its business environment and focuses on the 'supply side' of the economy, for example, on skills, education, labour market flexibility and productivity (World Economic Forum, 2019). Location decisions of MNEs depend on the productivity potential of locations and not just on costs and taxes (Porter, 2008, p. 276). Recent empirical research reaffirms that corporate tax policy (or tax competition) is at best an indirect tool for countries seeking innovation led growth and high wage jobs. Investments in infrastructure, education, basic science funding, R&D credits and open immigration policies are more direct policies (Clausing, 2018). Even if effective corporate tax rates are equalized across the world and countries only compete (as they should) on economic fundamentals - Singapore's odds are likely to be very favourable.

Lastly, Singapore has a very diverse economy. Research on economic complexity shows that this is a validated predictor of future economic growth (Hidalgo and Hausmann, 2009). It is a measure of relative knowledge intensity and is related to the diversity of the products a country produces. Inequality and social hardship were part of the narrative to motivate the BEPS project. More recent research, based on data for fifty years, shows that increasing complexity is accompanied by decreasing inequality (Hartmann *et al.*, 2017). In 2017, Singapore ranked fourth in the world economic complexity rankings after Japan, Switzerland and Germany (OEC, 2019).

Impacts on investment and long-term economic growth are not part of the BEPS narrative and neither is the economic burden of taxation or efficiency. Many countries are looking to the very sector they plan to 'ring-fence' for taxation, to also be an engine of growth and innovation. Some are clearly too impatient to wait for the OECD to finish its work and have legislated 'digital service' taxes.[12] France has imposed a 3% tax on gross revenues (above certain global and local thresholds) on the provision of intermediary services (e.g. marketplaces) and provision of services to advertisers based on user data.[13] India's equalization levy of 6% is applied to the gross payments by a business located in India to a non-resident enterprise for the provision of online advertisement services.

The Indian tax is effectively a tariff, or a customs duty, on the purchase of cross-border services. The French tax is like an excise tax. Excise taxes are usually levied if there are market failures due to externalities or if they otherwise contribute to public welfare. Examples include taxes on the use of fossil fuels, 'sin' taxes on alcohol and tobacco and in some instances, luxury taxes. Digital services clearly don't belong in any of these groups. These 'new' taxes are levied over and above corporate income taxes and VAT/GST so they will increase government revenues. However, tariffs raise prices for domestic buyers and the economic burden of excise taxes falls on both consumers and producers.[14] These efforts are clearly counterproductive and likely to create other distortions which may only become evident over time. They lend credence to arguments that the "digital economy simply provides a growing tax base, which is ripe for harvesting" and the revenue thresholds used by some EU member states create "de facto discrimination against US digital firms".[15]

A proliferation of unilateral digital service taxes and potential retaliations against them will further disrupt international trade and add to global policy uncertainty. Exhibit 3 shows the impact on Singapore of economic policy uncertainty in major trading partners.[16] Singapore is a small open economy and has benefited from a rules-based multilateral trading system. It has been trying to push the multilateral agenda forward to include digital trade. In keeping with its belief that digital trade is a key driver of prosperity, it co-convened the World Trade Organization Joint Statement Initiative on E-Commerce (World Trade Organization, 2019). In January 2019, seventy-six countries joined these negotiations to develop baseline digital trade rules. In May 2019, Singapore, Chile and New Zealand launched trilateral talks on a

12 While France and India have implemented their taxes, many others are considering them and some are waiting for the outcome of the OECD process.

13 Some media reports suggest that this will affect about 30 MNEs, 17 from the US and one from France. See (KPMG, 2019a).

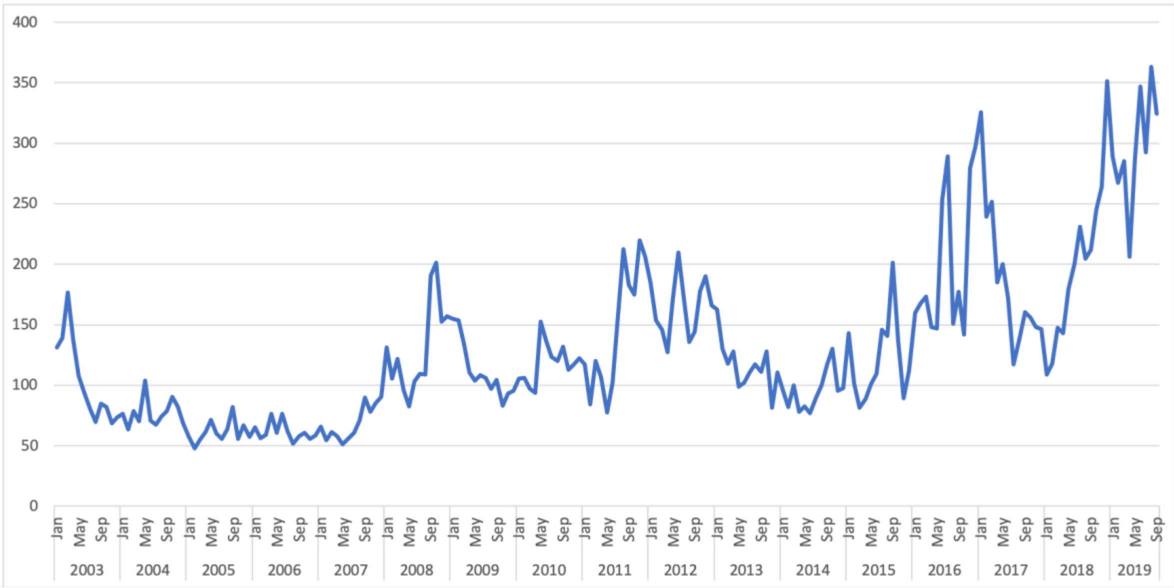
14 See (Schoen, 2017; Lowry, 2019).

15 See (Schoen, 2017; Hufbauer and Lu, 2018).

16 This ia a trade-weighted average of economic policy uncertainty in 19 trading partners.

Digital Economy Partnership Agreement (DEPA) (Ministry of Trade and Industry Singapore, 2019).[17]

Exhibit 3: Economic Policy Uncertainty Index: Singapore



Source: https://www.policyuncertainty.com/

The OECD indicates that the results from the implementation of BEPS have been positive. Many MNEs have moved from remote selling to a local reseller model. They have taken proactive steps to align substance with structure through onshoring assets and reconsidering their transfer pricing positions. As a result, many countries have seen an expansion in their corporate tax base. Over fifty jurisdictions implemented the VAT/GST on business to consumer (B2C) cross-border sales of services and intangibles by online sellers (electronically supplied services). These have also resulted in higher revenues (OECD, 2019f).

Due to the large number of countries, many are in the process of implementing the BEPS actions and MNEs continue to adjust to the new requirements. For example, Country by country (CbC) notifications are required in many countries and the number continues to grow as CbC becomes more widely adopted around the world. As local tax authorities adopt rules that may deviate from the OECD model legislation, there are many inconsistencies and sometimes lack of clarity under local country law as to what is required of constituent entities that are part of a multinational enterprise (MNE) group.[18] There is no standardisation of forms as each tax authority has implemented its own form in local language with different due dates and/or methods of filing. This imposes additional administrative burdens and costs on firms. Local country compliance, in particular, filing of local CbC reports is heavily

[17] In October 2019, Singapore and Australia also launched negotiations on a Digital Economy Agreement (Ministry of Trade and Industry, Singapore, 2019).
[18] OECD is a ‘soft law’ institution so countries may deviate from ‘model’ legislation.

dependent upon the status of US bilateral competent authority agreements. The US Internal Revenue Service continues to negotiate new agreements which MNEs must comply with. Sometimes this results in MNEs potentially filing multiple local CbC reports in addition to filing the ultimate parent entity's report in the US.

Since implementation of the BEPS actions is ongoing, a systematic assessment of the impacts will only be possible after tax-payer adjustment to full implementation of BEPS. This could take several years. The broader tax challenges of digitisation remain nonetheless, since BEPS was targeted towards stateless income.[19]

6. Broader Tax Challenges of Digitisation

The BEPS Action 1 report acknowledges that digitisation pervades the entire economy. So it is not possible to "ring-fence" the digital economy for tax purposes. Yet the business models of some firms rely significantly on intangibles and user data, or user created content. These features create broader tax challenges for corporate income tax purposes (OECD, 2015a). Market jurisdictions demand new taxing rights based on a virtual PE and a new 'nexus' or threshold to trigger taxation. The logic for including market jurisdictions is that users in these jurisdictions create value for digital firms, yet these firms may pay little or no taxes in the market jurisdiction. This new imperative was expressed as early as 2013 in the following way: "Profits should be taxed where economic activities deriving the profits are performed and where value is created" (OECD, 2015a, p. 17).

The term 'value creation' appears in all the subsequent OECD narrative on corporate tax (or a tax on the returns to capital) as well as that of the EU and countries seeking to impose unilateral digital service taxes. Yet this term has never been defined and neither has it been shown that value creation can form a conceptual basis for taxation. It has also led the OECD down a paradoxical path. After finding that digitization permeates all sectors of the economy, instead of looking for commonalities between 'traditional' and 'digital' business, the OECD has devoted much time and space to the value chain of particular types of digital business (OECD, 2018). There is neither a discussion of how digitisation may have changed the value chain of traditional business nor how uncompensated user participation has also played a role in traditional business. Raw data is of little value unless it is analysed by employees of a business to create insights. It is the process of analysis that creates value.[20]

19 The term stateless income is attributed to (Kleinbard, 2011) who defines it as: "... income derived by a multinational group from business activities in a country other than the domicile (however defined) of the group's ultimate parent company, but which is subject to tax only in a jurisdiction that is not the location of the customers or the factors of production through which the income was derived, and is not the domicile of the group's parent company."

20 An OECD working paper concludes that "There is a lack of ... data ... to better understand the economic and social value of personal data" (Reimsbach-Kounatze, Reynolds and Stryszowski, 2013, p. 33).

The key features of digital business models include mobility of intangibles and business functions; reliance on data, in particular ‘big data’; network effects; the proliferation of two or more-sided business models with each potentially being in a different jurisdiction; the potential for winner take all outcomes due to network effects; and volatility due to rapid technological change and low entry barriers. Examples of business models studied by the OECD include app stores, online advertising and payment services, cloud computing, e-commerce, participative networked platforms and high-speed trading.

The broader tax challenges of digitisation include nexus, data and characterization. Digital technologies allow firms to participate in a market jurisdiction without a physical presence with many business functions being spread out over multiple jurisdictions. The concerns regarding ‘scale without mass’ are exacerbated by the fact that users contribute content which is monetized by firms and increases the value of the platform via network effects.

Data raises a number of issues both related to valuation for tax purposes as well as for nexus. Data is an input in the value creation process. It may come from a variety of sources including users. Users may provide data in exchange for complementary services. How should this data be characterised and valued using the existing principles of transfer pricing and profit attribution? Present rules require a ‘FAR’ analysis: functions performed, assets used and risks assumed. For the purposes of a FAR analysis, it may be difficult to slice the data value chain or, to separate the value of raw data from the processes used to collect, analyse and use that data. Further, the value of data can impact tax results if it is attributed to a PE, but not if it is collected remotely by a firm without a PE. The related nexus issue is whether profits attributable to the data gathered in a market jurisdiction should be taxable in that jurisdiction.

To illustrate the issue of characterisation or classification of certain transactions, the OECD uses the example of cloud service providers. From a tax treaty perspective, the provision of infrastructure-as-a-service could be treated as a service or as a rental of space. The payment for a service is characterised as a business profit while the rental payment (for commercial, industrial or scientific equipment) is classified as a royalty. Business profits would be taxable in the market jurisdiction with a local PE. Royalties on the other hand may be subject to a withholding tax in the jurisdiction of the payer.

Value is created by the vertical chain of buyers, firms and suppliers as a whole. The value chain is merely a description of activities a firm must undertake if it participates in a particular industry. Firms make choices about how they want to organize these activities and which activities they want to do themselves and which they want to outsource. The value chain provides no information on value creation nor on the cost and revenue drivers of business. It provides no assistance in the valuation of data or user contributed content for the for the purposes of corporate taxation.

7. The Inclusive Framework

In addition to facilitating implementation, the inclusive framework continues work on Action 1 as well as on remaining BEPS issues. The first public consultation released on February 13, 2019 developed these issues further and grouped them into two pillars. Pillar One deals with the allocation of taxing rights and seeks to review profit allocation and nexus rules. Three proposals were articulated under this pillar: the user participation proposal, the marketing intangibles proposal and the significant economic presence proposal (OECD, 2019a, 2019g). They all allocate more taxing rights to the market jurisdiction where value is created through remote participation that is not recognized in the current framework for allocating profits. Pillar Two also known as the global anti-base erosion proposal seeks to address any remaining risk of profit shifting.

7.1. Pillar One

All three proposals contemplate: a nexus without physical presence; using the global profit of a business; and using simple rules which may diverge from ALP. The user participation proposal explicitly mentions social media platforms, search engines and online marketplaces as examples of digital businesses where the participation of users is the “most significant” source of value (OECD, 2019a, p. 9). User participation contributes to brand building, generates valuable data and helps create a critical mass of customers. That helps the business go beyond the tipping point and become a dominant firm. The new profit allocation and nexus rules would apply to similar businesses which benefit from a user base. Businesses which have a more “traditional” relationship with customers will not be affected. A portion of the non-routine profits, representing the value of user contribution, would be allocated to the market jurisdiction.

The marketing intangibles (OECD, 2017b, p. 27) proposal would have broader applicability, as it recognizes the wider impact of digitisation of the economy. Intangibles such as brand recognition are seen to be being created in the market jurisdiction (with or without a local presence) as are other marketing intangibles such as customer data and lists. It is based on the premise that there is a functional link between marketing intangibles and market jurisdiction. Digital technology allows firms to develop a user base and other marketing intangibles with or without a limited local presence. The current transfer pricing guidelines would be modified to allocate these intangibles and the associated risks to the market jurisdiction; which would then tax the non-routine returns associated with these intangibles. This would apply regardless of a physical or taxable presence and a new nexus rule would be devised accordingly. It would operate independently of existing nexus rules.[21]

[21] Trade intangibles (such as intellectual property) would be treated as they are under present profit allocation rules since it is more difficult for MNEs to shift associated profits as these “arise from substantial, observable activities arising in a specific location” (OECD, 2019a, p. 13). Similarly, existing rules would apply to routine marketing and distribution (OECD, 2019a, p. 14).

The significant economic presence proposal was also included in the BEPS Action 1 Final Report (OECD, 2015a, chap. 7). Here presence would be established on the basis of revenues generated from a market jurisdiction on a sustained basis, coupled with other factors including billing and payments in local currency, maintaining a local language website and the existence of an active user base. The mechanics could include imposing a withholding tax on gross basis or on the basis of some fractional apportionment. The latter would be a fundamental departure from existing norms and would produce different results depending on the local business structure of the MNE (OECD, 2015a, p. 112). More importantly, this proposal would entirely do away with the concept of routine versus residual profits.

All three proposals present their own set of issues. The user participation proposal is clearly discriminatory as well as impractical. It will add complexity and lead to audit disputes. User contribution is extremely difficult to define and value. There are significant practical complexities in determining user location and building systems to track user activities, for example, where an advertisement is ‘viewed’. Due to privacy and data protection laws, there are concerns about how user location will be audited and verified by authorities.

The marketing intangibles proposal appears to draw a line between B2B and B2C business. While this proposal is closest to existing transfer pricing guidelines, it will be difficult to determine the amount of non-routine profits attributable to marketing intangibles. There is a danger that this may lead to another form of tax competition where countries take advantage of the difficulties in valuation to capture a larger share of the tax base.

The significant economic presence proposal seeks to use a gross withholding tax will make it difficult for firms to obtain refunds in some jurisdictions. More importantly, it would be difficult to design a withholding tax rate which is applied to gross revenues in anticipation of different profit levels for different groups in different years. The treatment of losses was not addressed, and gross withholding taxes on firms making losses are likely to discourage innovation and economic growth. This proposal garnered the least amount of space in the consultation document but departs the most from existing norms and has the widest scope. It appears to change the way all returns (routine and non-routine on all tangibles and intangibles) are allocated among the jurisdictions in which MNEs have a significant economic presence. Allocating global profits on metrics such as revenue, assets and employees would not reward DEMPE functions and undermine the existing transfer pricing guidelines.[22]

7.2. Pillar One: Unified Approach

On October 9, 2019, the OECD released a second public consultation document which proposed a unified approach on pillar one issues (OECD, 2019i). This proposal by the Secretariat seeks to achieve consensus by building on the common elements of the previous

[22] DEMPE was introduced in Action 8-10 of BEPS and refers to the development, enhancement, maintenance, protection and exploitation of intangibles.

three proposals under pillar one. These are: allocating taxing rights to market jurisdictions, a new nexus based on a virtual PE, simplicity in administration and treating MNEs as a unitary global entity or departing from the separate entity principle used in transfer pricing. The proposal is layered on top of existing nexus and transfer pricing rules and departs from them in areas where there is tension and complexity.

The approach is intended to apply to large consumer facing business, including firms which supply consumer products and digital firms that interact with consumers who may or may not be their primary customers.[23] This is the first time that the OECD has used the term 'consumer facing business' and while its meaning and scope remain unclear, it raises the following issues:

1. The term 'consumer facing business' is ambiguous and is likely to create numerous boundary issues. Any such distinction risks being arbitrary and subject to differing interpretation by tax authorities leading to more disputes.
2. This would compel multi-product firms as well as conglomerates to prepare customised segmented financial statements which, in addition to increasing costs of compliance, would increase complexity, uncertainty and the likelihood of disputes.
3. It risks becoming outdated as business models continue to evolve rapidly.
4. The notion of digital businesses 'interacting with consumers who may or may not be their primary customers' creates the same set of issues identified earlier in the discussion on the user participation proposal. The ultimate location of the user is difficult to determine and there are privacy and data protection laws that firms must comply with.
5. Since digitisation and globalisation impact all businesses, a border solution which applies to all sectors, would provide more certainty to taxpayers as well as tax authorities.[24]

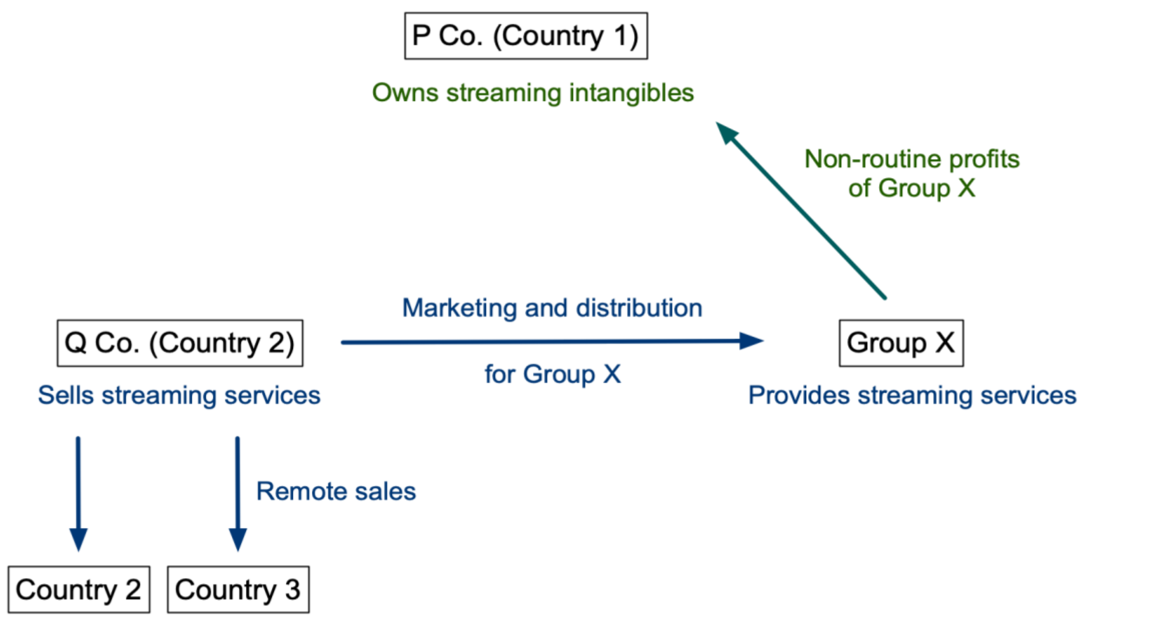
The unified approach identifies three profit amounts: A, B and C. Amount A relates to the 'new taxing rights' which allocate some share of profits to market jurisdictions. The share of profits is a portion of the residual profit, or non-routine profit of an MNE potentially on a business line basis.[25] Amounts B and C relate to situations which fall under existing PE rules (or activities performed in-country). Amount A calculates the portion of residual profits to be allocated amongst market jurisdictions. These would be apportionment based on sales in the market jurisdiction. Amount A would be determined using the following steps (numbers in parentheses are illustrative):

23 Extractive industries are excluded and other sectors such as financial services may be carved out as well. The size threshold has not been determined however the OECD mentions annual revenues exceeding €750 million which is the same threshold used for country by country reporting
24 There may be clearly defined exemptions for extractive industries.
25 In simple terms, net residual profit is operating profit *less* the required return on the routine capital base. Gross residual profit adds back the firm's non-routine intangible development costs. The OECD indicates that it only seeks to approximate residual profit using simplifying conventions.

1. Determine MNE group's consolidated profits with potential business line and/or regional adjustments. (25%).
2. Deemed routine profits: an "agreed" percentage which could vary across industries (10%).
3. Derive non-routine profits as a residual (25% - 10% = 15%).
4. Since non-routine profits may be attributable to marketing intangibles, trade/ production intangibles and risk etc, only a portion of these are attributable to the market jurisdiction. This split will also be determined by "an internationally-agreed fixed percentage" and may vary by industry (20% of 15% or 3% of global non-routine profits).
5. Split this among market jurisdictions based on a sales metric.

Amount B would be a fixed return attributable to baseline marketing and distribution activities in a market jurisdiction. Generally, activities in a market jurisdiction including distribution functions would be taxable under existing ALP and PE rules, but attributing a fixed return to baseline activities may potentially reduce tax disputes relating to the defined baseline activities. The activities which would qualify for Amount B are yet to be defined as is the amount of the fixed return. Amount C would be relevant if tax administrators argue that the marketing and distribution activities in a market jurisdiction go beyond the baseline activities contemplated under Amount B, or if additional activities, other than marketing and distribution exist in a market jurisdiction. The additional tax would have to be justified on the basis of existing transfer pricing rules. The interaction between Amount C and Amount A has yet to be worked out. This proposal would have to be backed up with strong dispute resolution mechanisms to effectively avoid double taxation.

Exhibit 4: Illustrative Business Activities of MNE



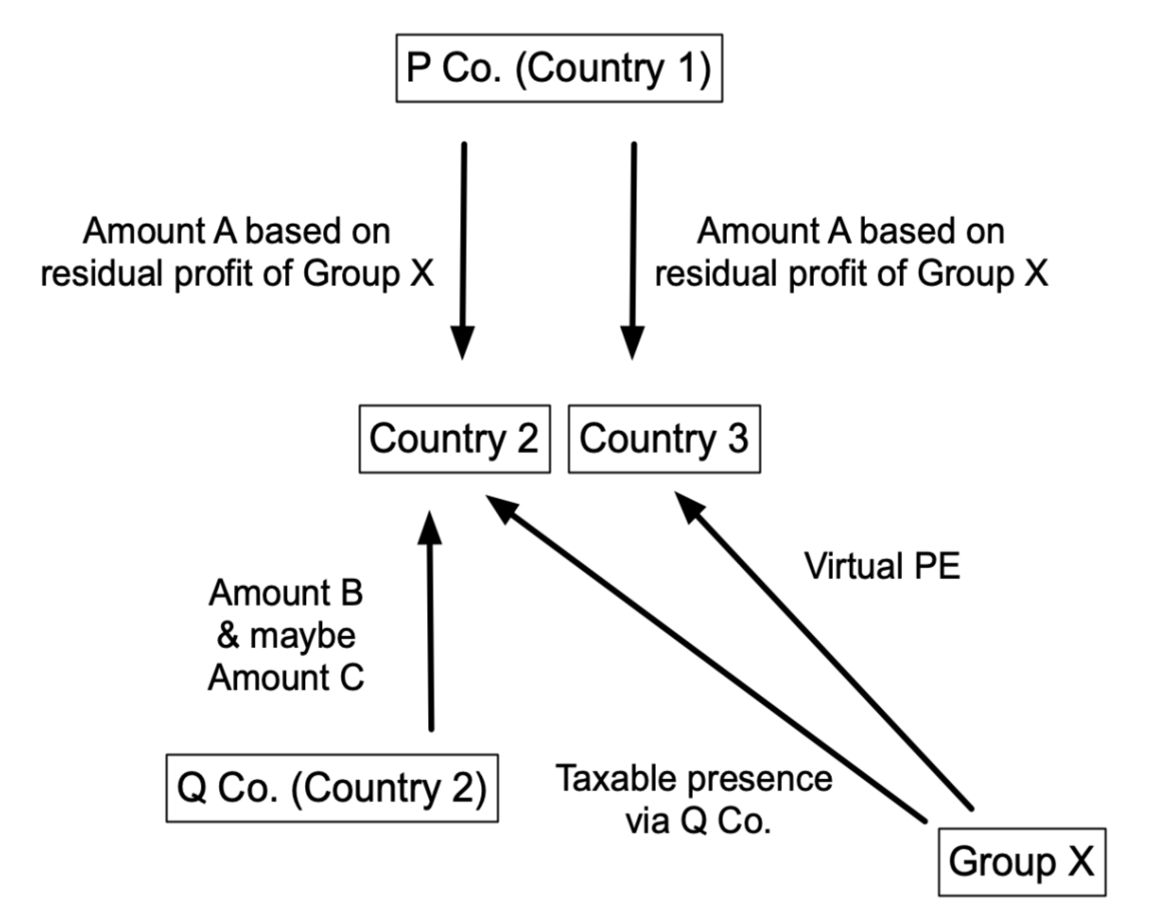
Source: Adapted from (OECD, 2019i).

The OECD provides the following illustrative example. P Co. (resident of country 1) is the parent company of Group X and Q Co. (resident of country 2). The business activities and functions of this MNE are shown in Exhibit 4 and tax obligations are shown in Exhibit 5.

Group X has a taxable presence in country 2 via Q Co. Q Co. will only be responsible for taxes based on Amount B in country 2, or the fixed return for baseline marketing and distribution activities. Transfer pricing adjustments will have to be made between P Co. and Q Co. to eliminate double taxation. Although country 2 could determine that the activities of Q Co. go beyond the defined baseline activities, so additional profits should be taxed under ALP. In this case amount C becomes relevant.

If Q Co. makes sufficient sales (meets the revenue threshold) in country 2, then country 2 can tax the portion of the non-routine profits of Group X (Amount A). These are ‘owned’ by P Co. so it would be liable for the tax and would have to claim a foreign tax credit or exemption from country 1 as a relief from double taxation. Group X has a ‘virtual PE’ in country 3, which may tax Amount A if revenue thresholds are met.

Exhibit 5: Illustrative Tax Obligations of MNE



Source: Adapted from (OECD, 2019i).

The residual or non-routine profit (steps 1-3) is like an economic rent which typically arises from non-reproducible factor such as entrepreneurship, land, natural resources, artificial entry barriers as well as any other advantages that a firm may have such as intellectual property (Mintz and Chen, 2012). Taxing economic rents is attractive from a conceptual viewpoint since it does not distort decisions (at the margin).[26] Attributing part of this to the market jurisdiction suggests that some of the rents are generated in the market jurisdiction or destination country either by users who are immobile, or market specific intangibles.[27] Perhaps an appropriate analogy for this approach would be 'data is the new oil'. Natural resources are immobile and so are users. The proportion or 'royalty' would depend on what more than a hundred countries can agree on.

The thresholds for establishing nexus are likely to be country specific in order to ensure that small countries get a share of the new tax pie. Strong and mandatory dispute resolution would be essential since this approach adds complexity for firms and there is considerable room for double taxation. The Secretariat's proposal attempts to keep existing rules in place, while making sufficient modifications, in order to garner broad-based support from a large and economically diverse group of countries. It attempts to balance precision with simplicity and the latter is more important to promote certainty.

The US will potentially lose tax revenue since the residence country has to provide foreign tax credits and exemptions. The GILTI tax, discussed in a later section, only allows American firms to claim for 80% of foreign taxes. While the impact on any one country remains unclear, recent research by the IMF attempts to calculate residual profits under various assumptions, using a sample of 7,641 MNEs for the year 2017 (International Monetary Fund, 2019b). Depending on assumptions, between 25% and 44% of firms make negative residual profit. Positive residual returns are highly concentrated. Roughly 100 firms or 1% of the sample account for one third of residual returns. The US (country of headquarters) accounts for between 34% and 53% of residual profit. While the IMF simulation does not explicitly mention Singapore. Generally, residual profit allocation based on destination sales would benefit countries with a large number of consumers and high corporate income tax rates (International Monetary Fund, 2019b, p. 74). Singapore meets neither condition. Few firms in a small number of countries are likely to be affected by the unified proposal. The exact number depends upon thresholds and various technical implementation rules that have yet to be decided.

The impact of the proposal depends on details which are yet to be determined. However, the following five important issues deserve mention. Firstly, the treatment of losses has garnered little space in both consultation documents. This needs to be articulated in more detail.

[26] Taxing rents does not lead to an excess burden, or there are no deadweight (welfare) losses due to taxation.

[27] For a discussion of economic rents in two sided markets, see (Cui, 2019) who argues that rents are created in both the jurisdiction of the consumer and the producer, depending on the type of platform.

Secondly, the proposal mentions the use of consolidated financial statements to identify Amount A (OECD, 2019i, p. 14). This is important and will reduce compliance burdens on taxpayers and make administration easier. Thirdly, the unified approach mentions withholding taxes for Amount A. In order to avoid double taxation, consideration should also be given to the interaction between existing withholding taxes and Amount A. Withholding taxes should not be applied if there is an allocation to a jurisdiction under Amount A. Fourthly, despite its finding that digitisation impacts all businesses, the OECD proposal does not rule out ring-fencing as it refers to weighting of Amount A or "potential digital differentiation" (OECD, 2019i, p. 9). Lastly, mandatory binding arbitration is essential and here the OECD could borrow from the multilateral trade arena which has time bound dispute resolution to ensure that disputes are resolved effectively and quickly.

7.3. Pillar Two

Pillar Two, also known as GloBE or the global anti-base erosion proposal seeks to address any remaining BEPS risk of shifting profits to entities subject to no taxes or very low taxes. In other words, BEPS was not comprehensive enough and there are remaining risks relating to intangibles and intra-group financing. The purpose is to ensure that all MNEs pay a minimum level of tax. The most recent consultation document issued by the OECD in November 2019 states that the GloBE proposal has the following four parts: (a) an income inclusion rule that would tax the income of a foreign branch or controlled entity if that income was subject to tax at an effective tax rate below a minimum level; (b) an undertaxed payments rule that would operate by way of a denial of deduction or imposition of source based taxation for a payment to a related party that was not subject to tax at or above the minimum rate; (c) a switch-over rule (to be introduced into tax treaties) that would permit a residence jurisdiction to switch over from an exemption to a credit method where the profits attributable to a permanent establishment or derived from immovable property (which is not part of a PE) are subject to an effective tax rate below the minimum rate; and (d) a subject to tax rule that would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source, and adjusting eligibility for treaty benefits on certain items of income, where the payment is not subject to tax at a minimum rate.[28]

The income inclusion rule will reduce the incentive for MNEs to allocate income to low tax entities. The undertaxed payments and subject to tax rules are intended to protect the source jurisdiction from base eroding payments. The rules would be implemented in a way which avoids the risk of double taxation. The public consultation invites comments on the technical design of the GloBE proposal. It invites input on the following broad questions: (a) the use of financial accounts as a starting point for determining the tax base; (b) the extent to which an MNE can combine income and taxes from different sources in determining the effective (blended) tax rate on such income; and (c) it invites comments on exemptions and thresholds as part of the GloBE proposal. Compliance costs would be minimised if consolidated financial accounts were used and the OECD recognises this (OECD, 2019h, p. 10).

28 Verbatim from (OECD, 2019h).

From a policy perspective, it is important to recognise that American MNEs are already paying a minimum tax under the global intangible low-taxed income (GILTI), depending on the level of the minimum tax, the OECD could consider the GILTI regime as being acceptable under its new rules. The level of the minimum tax is also of concern to small innovation led economies such as Singapore and Switzerland. The Ministry of Finance in Singapore and the State Secretariat For International Finance in Switzerland have both expressed support for the multilateral process, but in their own way, they have called for moderation (Ministry of Finance Singapore, 2019; State Secretariat for International Finance SIF Switzerland, 2019). Under Pillar One, they call for a need to moderate allocations to market jurisdictions so that countries still have an incentive to fund innovation and R&D activities. Under Pillar Two the level of the minimum tax should respect tax sovereignty of countries and their right to determine an appropriate domestic policy mix which suits their particular circumstances. Singapore's headline corporate tax rate has remained constant at 17% since 2010. This shows policy stability rather than policy competition and reflects sound economic thinking that low taxes stimulate investment, which leads to higher economic growth.

Ideally, issues relating to taxing rights should be kept separate from remaining BEPS issues. The multilateral instrument came into force on July 1, 2018. The accession and ratification process is ongoing and MNEs are adjusting to the changes. The OECD is in the process of collecting information and has yet to assess the outcomes of the process. Remaining BEPS issues will become more apparent after an assessment. Regardless, the income inclusion rule should only be applied by the residence jurisdiction if it is determined that income is taxed at a low rate. This should be based on consolidated CFC income rather than on a country by country basis. The second rule or denial of deductions should only be a second line of defence.

8. The Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act (TCJA) represents the most significant tax reform in the United States since 1986 (*Tax Cuts and Jobs Act*, 2017). A senior OECD official has also referred to this as a "pure" implementation of BEPS and rather than being viewed as a unilateral measure, it can form a basis for cooperation (Kerwin, 2018).

Effective January 1, 2018 the TCJA reduced the statutory federal corporate income tax from 35% to 21%. In addition, it has three important international provisions. These are global intangible low-taxed income (GILTI); foreign-derived intangible income (FDII) and the base erosion and anti-abuse tax (BEAT) respectively. The intent of the first (GILTI) is to discourage MNEs from shifting income from intangibles to low-tax jurisdictions. GILTI is intended to be minimum tax on excess (foreign) profits of US controlled-foreign corporations (CFCs) attributable to intangibles. The second (FDII), provides a tax incentive for intangible income earned from exports from the US. The third, BEAT, limits deductions for base eroding payments.

Prior to the implementation of the TCJA, foreign income was taxable in the US and credits were provided for foreign taxes paid to prevent double taxation. Taxes were not due until repatriation of foreign income and cross-credits were allowed. Credits from high tax countries could be used to offset (US tax) on income from low tax countries. A company which paid lower corporate taxes abroad had fewer excess credits to offset in the US, so companies kept their income abroad. According to some estimates, US MNEs accumulated almost US$ 2.6 trillion offshore, of which US$1 trillion was in cash (Clausing, 2019). Under GILTI provisions of TCJA, a US parent of a CFC is obliged to include GILTI in the parent's income (similar to Subpart F passive income) and this is taxed currently or on an accrual basis and not upon repatriation as under the previous regime. GILTI is the excess income (non-routine profits) from intangibles. The normal rate of return (or routine profits) is set at 10%. Returns in excess of 10% are taxed at half the corporate tax rate or 10.5%.[29] Tax credits are given for 80% of foreign taxes without carry back or carry forward provisions (Mintz, 2018)[30]. The GILTI base is calculated on tangible property (or qualified business asset investment) so the 10% (normal) return is the expected return on tangible investment; any excess returns are attributable to intangibles (Beller, 2019). GILTI provides an incentive for US MNEs to increase real investments abroad; in whichever location provides a greater profit (Mintz, 2018; Beller, 2019; Clausing, 2019).

FDII provides domestic corporations a lower tax rate on foreign-derived intangible income.[31] It provides a deduction for 37.5% of FDII before January 1, 2026 and 21.875% thereafter. This effectively reduces the corporate tax rate on income from the sale of goods and services produced in the US but sold to non-US entities. FDII provides and incentive to locate IP and intangibles in the United States.

BEAT limits deductions for payments typically associated with profit shifting such as interest, royalties and management fees thereby reducing the incentive to use licensing agreements with subsidiaries based in low-tax countries.[32] BEAT applies to MNEs with gross receipts exceeding US$500 million, making cross-border payments to foreign affiliates of more than 3 percent of their total deductions. BEAT is a minimum tax of 10% (12.5% after January 1, 2026). It is paid if 10% of 'modified income' (which includes 'base-eroding payments') net of 80% of business tax credits exceeds the regular tax liability under the

[29] The 10.5% tax rate increases to 13.125% after January 1, 2026. GILTI is taxed at a variable rate between 10.5% and 13.125%. In 2026 they increase to between 13.125% and 16.4% (Clausing, 2019).

[30] Tax credits on foreign taxes paid are only available to US domestic corporations.

[31] FDII does not include Subpart F income, GILTI, financial services income or dividends received from CFCs.

[32] BEAT does not apply to items categorized as cost of goods sold.

normal corporate income tax base.[33] BEAT can be avoided or 'beaten' by reducing 'base-eroding payments' or by increasing taxable income in the US. BEAT is contrary to the arm's length principle which allows MNEs to deduct expenses if they are similar to those between two unrelated firms (Mintz, 2018).

GILTI uses a broad definition of intangibles which recognizes the broad productivity impact of intangible capital across sectors. Intangible capital has increased in importance in all countries and in all sectors (Haskel and Westlake, 2018). It is being incorporated in national income accounts data and in productivity studies which use that data. In these studies, intangibles include computerized information (largely software), innovative property (scientific and non-scientific R&D) and economic competencies (brand equity and firm specific resources). The studies find that the US has invested more in intangible capital than the major EU countries. In the US, both manufacturing and services are more intangible intensive than in the major EU countries.[34] Any new tax rules should incorporate the broad and complex role that intangibles play in the economy. Countries should move away from the narrow focus on "digital business" and "digital taxation".

Tax competition occurs in complex ways. Countries want to ensure that domestic firms can compete abroad as well as ensure that the domestic market is attractive for investment. (Beller, 2019) refers to these as the domestic firm view and the domestic market view respectively. The dominant incentive for governments is to offer locational benefits to source income, which attracts mobile income and possibly economic activity to a particular jurisdiction. This is a classic prisoner's dilemma or a collective action problem of tax competition for mobile income. The OECD is presently trying to solve by problem by eliciting cooperation. The US move (GILTI) is unilateral but enables subsequent cooperation. GILTI reduces the marginal benefit of profit shifting by US MNEs and limits foreign source tax benefits to domestic firms. GILTI reaffirms that excess profits belong to the country of residence which enables innovation through investment in productive factors. Other countries can match this without threatening the competitiveness of their own firms. This will also promote competition on the basis of location based productive factors rather than on the tax base and the tax rate.

33 As (Mintz, 2018) shows using present tax rates, BEATS is paid if $B>1.1Y-X$ where B is base-eroding payments, Y is regular taxable income and X is business tax credits.

34 Intangible investment as a proportion of GDP in the US was 10.62% (average over 1995-2009) and 6.6% in EU15 countries (Corrado *et al.*, 2012). Over the period 2000-2013 the proportion 8.8% in the US and 7.2% in EU14 countries (excludes Luxembourg) (Corrado *et al.*, 2018). The average share of tangible investment in GDP over the period 2000-2013 was 7.7% for the US and 9.2% for EU14. Over the period 2000-2013, the share of intangibles in manufacturing and services value added was 14% and 12% respectively in the US and 12% and 10% respectively in EU14 countries. As well, the ratio of intangible to tangible investment exceeded 1, in both manufacturing (1.03) and services (1.25) in the US, whereas in EU14 countries it is was less than 1 in both sectors (0.79 and 0.85) (Corrado *et al.*, 2018).

9. Conclusions and Recommended Principles

The OECD has been working on BEPS since 2013 and delivered the Action plan to G20 leaders in 2015. Thirty-seven countries have deposited instruments of ratification (MLI) and they will come into force in 2019 or later. Over fifty jurisdictions have implemented the VAT/GST on business to consumer (B2C) cross-border sales of services and intangibles by online sellers. The OECD indicates that the results from the implementation of BEPS have been positive, however companies continue to adjust to the new requirements.

The impact of BEPS on individual countries and on real economic activity will only become apparent after some years. The empirical research thus far has focused on the size of profit shifting and estimates have a high variance due to differences in data and methodology. The complex trade-offs between short-term revenue objectives and long-term economic growth have yet to be explored.

The OECD continues its work under the OECD/G20 Inclusive Framework and has issued three public consultation documents in 2019. Pillar One addresses the tax challenges of digitisation (Action 1 of BEPS) and Pillar Two proposes a minimum corporate tax.

The 'Unified Approach' under Pillar One presently focuses on 'consumer-facing business' - a term which has yet to be defined. It proposes a new nexus, distinct and separate from the existing concept of permanent establishment. This would create a new taxing right, regardless of physical presence, if sales exceed a certain threshold. A share of deemed residual profit of MNEs will be reallocated to market jurisdictions. In absolute terms, the reallocation would benefit larger market jurisdictions. Low and middle income economies would gain by experiencing a higher rate of increase in tax revenues than high income economies. Low tax jurisdictions are expected to lose revenue. Pillar Two, also known as GloBE or the global anti-base erosion proposal, seeks to ensure that all MNEs pay a minimum level of corporate income tax. This would yield significant increase in corporate tax revenue globally.

Many of the details of these proposals depend on what countries can agree on. However, since the OECD indicates that digitisation impacts all sectors, any solution should apply to all MNEs. Terms like 'consumer-facing business' create boundary issues and may be subject to differing interpretation by tax authorities in different countries. Such notions also risk becoming outdated as business models evolve. Any solution should use consolidated accounts, so firms do not have prepare bespoke financial statements. Simplicity is preferable to precision. The treatment of losses has not garnered much space and needs to be articulated in more detail. The risk of double taxation should be minimised and disputes should be resolved in a timely manner through mandatory binding arbitration.

As a result of tax reform in the US, American MNEs are already paying a minimum corporate tax. Since the TCJA has been acknowledged by some as a "pure' implementation of BEPS, it should be used to facilitate cooperation. The OECD could consider the GILTI regime as being acceptable under its new rules.

Singapore has indicated that it supports a multilateral outcome as should other countries. However, the consensus solution should moderate allocations to market jurisdictions so as not to deter countries from funding innovation and R&D activities. More importantly, it should respect tax sovereignty of countries and their right to determine an appropriate domestic policy mix which suits their particular circumstances.

Other than taxing MNEs multiple times, the danger of unilateral moves such as those by France and India is that they will lead to more policy uncertainty which the world can ill afford. The IMF has called for multilateral cooperation to arrest the broad-based slowdown in the world economy. Small open economies such as Singapore are impacted more by global policy uncertainty. While proposals under both pillars are expected to reduce corporate tax revenues for low tax countries, the impact on Singapore is likely to be muted because it has always had more fiscal space than most countries and continues to have strong competitiveness fundamentals.

It is critical that a successful long-term solution to address the taxation of the evolving international economy should be consistent with the following key tenets:

1. It should be levied on profits/losses and not revenue. VAT/GST is a tax that applies to revenue.

2. It should apply in an economically principled way to both loss making and profit-making companies/businesses.

3. It should be proportionate, neutral, equitable, and enforceable so that, on an overall basis, it is applicable to all types of businesses such that the new tax rules do not ring-fence the digital economy, do not result in different tax rates for foreign and domestic taxpayers, and do not create market distortions.

4. It should be a direct tax measure only and should have no impact for indirect tax purposes.

5. It should achieve consensus and maximize consistency in its application, with sufficient detail to foster consistent application and avoid multi-layer taxation.

6. The new framework must not undermine the existing tax treaty network and not lead to double taxation.

7. It must include mechanisms for effective dispute resolution, including mandatory binding arbitration.

8. The measures must be easy to comply with and provide collaboration on transition relief. Simplicity for taxpayers will be preferable to precision in measurement.

Appendix 1: Ottawa Taxation Framework Principles

Neutrality: Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

Efficiency: Compliance costs for taxpayers and administrative costs for the tax authorities should be minimised as far as possible.

Certainty and Simplicity: The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.

Effectiveness and Fairness: Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimised while keeping counteracting measures proportionate to the risks involved.

Flexibility: The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

Source: Verbatim from (OECD, 2015a).

Appendix 2: Summary of BEPS Actions

Action 1: Addressing the Tax Challenges of the Digital Economy

The growth and digitisation of global economies in recent years have seen major changes to the way companies do business and, to a degree, how tax planning is managed. International tax policies are no longer deemed to be fit for purpose, particularly since the physical location of a company now matters less, while intangible value drivers are increasingly more relevant. This is the case for digital companies as much as it is for other sectors, since the digital economy has become the framework under which all companies operate. Through the rise of digitisation and cross border economic activity, MNEs across all sectors have been able to shift more of their profits to lower tax or no tax jurisdictions.

As a first step to solving this challenge, the 2015 BEPS Action 1 Report identified mechanisms to aid in the collection of VAT/GST in cross border business to consumer transactions. These mechanisms are based on the location of the customer/the country of consumption. It means that services delivered over the internet (films, music etc) will no longer escape VAT in any jurisdiction.

The remaining work under the Inclusive Framework focuses on two key pillars, on which the OECD seeks to deliver consensus by the end of 2020:

1. Allocating tax rights to the market jurisdiction and revised nexus rules (where tax should be paid and why); and
2. Global anti-base erosion mechanism - designing a system to ensure that multinational enterprises pay a minimum level of tax.

Action 2: Neutralising the Effects of Hybrid Mismatch Arrangements

Different countries treat complex tax instruments, asset transfers and entities differently. Multinational companies have been able to take advantage of mismatching arrangements across borders, leading in some cases to double non-taxation and/or long term tax deferral. For example, a payment made internationally may be counted as a tax deductible debt in one country but in the receiving company’s country, that same transaction may be seen as a dividend and therefore applicable for tax exemption. In this scenario, neither company pays the tax - a double non-taxation situation. This Action is based on the need to harmonise tax instruments across borders so that such mismatches are neutralized while still encouraging cross border trade and investment.

Action 3: Designing Effective Controlled Foreign Company Rules

Broadly speaking, a CFC is a company that is registered in a different country to its majority shareholder(s)’ place of residence. Companies have often used CFC rules to shift income to foreign subsidiaries based in low-tax jurisdictions. The rules around CFCs are complicated and this Action was put in place to provide some consensus on the fundamentals around CFCs, including:

- the definition of a CFC
- CFC exemption and threshold requirements
- the definition, computation and attribution of income

The Action has also suggested best practice in the design of CFC rules for countries that wish to adopt such measures. The aim being to minimise the incentive for taxpayers to use CFCs to inappropriately shift income and profits to foreign companies in low tax jurisdictions.

Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

Domestic treatment of debt and equity are typically such that the overall tax burden is similar. This is distorted in a cross-border scenario. Tax planning for multinational groups has traditionally been able to take advantage of the fluidity of money, notably through intra-group financing, by adjusting where debt and equity is held. The ability for companies to deduct interest payments against taxable profits and place higher levels of third-party debt in high tax countries; whilst simultaneously ensuring any interest on income is taxed at lower rates through financial instruments, is the focus for this Action.

The 2015 Action 4 report provided best practice guidelines to prevent base erosion through interest expense. The report sets out a common approach to ensure that a company's net interest deductions are linked to the income generated by the economic activities in any jurisdiction, based on its EBITDA.

Action 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance – MINIMUM STANDARD

Preferential tax regimes have been the focus of the 'The Forum on Harmful Tax Practice' (FHTP) since 1998. Reviews are undertaken to ensure taxpayers carry out the income generating activities for which certain preferential tax regimes are applicable. This is the nexus approach, that is determined by substantial activity. Key to this Action is also the role of transparency. As the Action is deemed a Minimum Standard, all signatories to the Inclusive Framework have agreed to exchange of information about tax rulings to aid transparency between tax administrations, thereby reducing BEPS risk.

Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances – MINIMUM STANDARD

Tax treaties entered into between jurisdictions have been necessary tools in aiding bilateral trade and building cross-border relationships. However, such treaties have not always been able to exclude undesirable participants, and many taxpayers have been able to benefit from these treaties even without being a resident of the jurisdiction in which the treaty applies. This Action seeks to reduce the inappropriate use of treaties and 'treaty shopping'.

Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status

The digitisation of the economy has seen the rise of the concept known as 'scale without mass'. Companies no longer rely on bricks and mortar to grow their business and therefore the fundamentals of taxation law and the idea of Permanent Establishment are considered in need of updating. This Action deals with a change to the definition of Permanent Establishment in the OECD Model Tax Convention to accommodate this shift in business operation.

Action 8, 9, 10: Aligning Transfer Pricing Outcomes with Value Creation

Transfer pricing is the pricing of goods, services and intangibles between related parties. It is a necessary part of global business today. Tax convention around Transfer Pricing has traditionally been centered around the Arm's Length Principle. This principle requires that "transactions between enterprises are priced as if the enterprises were independent, operating at arm's length and engaging in comparable transactions under similar conditions and economic circumstances." This Action seeks to align transfer pricing outcomes with the economic activity or value creation of the MNE group to prevent companies from being able to shift income to 'cash-boxes' or shell companies, that may be capital rich but without carrying any financial risk. The new guidelines seek to cover the following areas:

- Hard to value Intangibles, where misallocation of the profits generated has contributed to BEPS;
- Transfers of Risks and Capital, "where those returns do not correspond to the level of activity undertaken by the funding company"; and
- High Risk Transactions "including the scope for addressing profit allocations resulting from transactions which are not commercially rational for the individual enterprises concerned".

Action 11: Measuring and Monitoring BEPS

Although estimates exist for the quantitative impact BEPS has had on economies, the availability of quality data has been an ongoing limiting factor in fully understanding the issue. One of the measures introduced in the 2015 Action 11 report Measuring and Monitoring BEPS is the introduction of new datasets to improve the depth and quality of information pertaining to global tax issues and to monitor the impact of the implementation of BEPS actions. The Corporate Tax Statistics Database was set up in 2019 and now includes information on more than 100 jurisdictions.

Action 12: Mandatory Disclosure Rules

Under this Action, the OECD is seeking taxpayers to disclose aggressive tax planning arrangements. The report states that disclosure schemes that are intended to address domestic avoidance might not be sufficient to capture cross-border arrangements and provides recommendations for an alternative approach. It concludes that mandatory disclosure is most effective for accomplishing the objectives of obtaining information early, allowing the promoters and users of aggressive tax arrangements to be identified and deterring the use of such arrangements.

Action 13: Guidance on Transfer Pricing Documentation and Country by Country Reporting – MINIMUM STANDARD

This Action seeks to ensure the transparency of international tax, opening up information about MNEs to relevant tax administrations. The idea is that countries with a 'need to know' can better understand the activity of an MNE in their jurisdiction and MNEs can reduce burdensome tax administration process for transfer pricing purposes. The report includes a template for MNEs to use (a Country by Country, or CbC Report) and most of the MNEs with consolidated group revenues of at least EUR 750million are now using this template.

Action 14: Making Dispute Resolution Mechanisms More Effective – MINIMUM STANDARD

The BEPS packages of newly renovated tax guidelines and procedures are being implemented by the Inclusive Framework countries (in varying stages). Given the changing nature of tax administration and the likelihood of increased uncertainty around new tax policies, it is essential that there is a robust mechanism in place to deal with any disputes between jurisdictions. Improving the Mutual Agreement Procedure (MAP) is what this action is all about. Identified as one of the four Minimum Standards, this Action puts forward a model to prevent disputes between jurisdictions; address the availability and access to MAP; resolve cases when they do arise; and implement MAP agreements.

Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

There are thousands of bilateral tax treaties in existence. Making changes to each of these would be an incredibly burdensome and time consuming process. This Action seeks to find a better way to streamline and synchronise the implementation of BEPS related measures through the development of a multilateral instrument that would allow for the swift modification of bilateral treaties across scores of global jurisdictions.

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