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'I/A' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Two-pillar solution to address the tax challenges arising from the digitalisation of the economy - Council statement

1. Addressing the tax challenges arising from the digitalisation of the economy remains the key priority of the EU. The European Council in its conclusions of 19 October 2017¹ already underlined the need for an effective and fair taxation system fit for the digital era. The European Council also highlighted the importance of ensuring that all companies pay their fair share of taxes and to ensure a global level-playing field in line with the work underway at the OECD.
2. Work in this area has been frequently on the agenda of the Council and its preparatory bodies since 2017², and was regularly summarised in Council reports to the European Council on tax issues.³

¹ Doc. EUCO 14/17.

² See, for example Council conclusions on “Responding to the challenges of taxation of profits of the digital economy” of 2017 (doc. 15175/17).

³ See, for example, doc. 9970/21, points 6 to 18; doc. 13336/20, points 13 to 20; doc. 8891/20, points 13 to 26.

3. In this context, the ongoing work on the reform of the international rules on the taxation of the profits of multinational enterprises remains the key priority. On 8 October 2021, the OECD/G20 Inclusive Framework on BEPS reached agreement on the key aspects of this reform: the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (the ‘October 2021 statement of the OECD/G20 Inclusive Framework on BEPS’)⁴. All EU Member States expressed their support for this Statement.
4. Since then, work on Pillar Two has advanced quicker than on Pillar One: the OECD Model Rules “Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)” were approved on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS. All Member States have committed to these rules as well. The Council (ECOFIN) in its report to the European Council on tax issues on 7 December 2021 reiterated its firm support of the global minimum tax reform and committed to a swift implementation of that reform by means of Union law.⁵
5. In the aftermath of the 6 December 2022 Council (ECOFIN) meeting, the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union ('Pillar Two Directive')⁶, was adopted by written procedure⁷. In order to ensure that the implementation of the Pillar Two (GloBE rules in particular) is consistent across the EU and compatible with EU law, the Pillar Two Directive includes the necessary adaptations to the OECD model rules.

⁴ To be found under the following link: <https://www.oecd.org/tax/beps/statement-on-a-two-pillarsolution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october2021.htm>.

⁵ Doc. 14767/21, points 6 to 12.

⁶ OJ L 328, 22.12.2022, p. 1.

⁷ Doc. 15349/22 + COR 1.

6. It is of paramount importance to ensure that Pillar One is also implemented. The Council in its statement which it approved upon adoption of the Pillar Two Directive⁸ confirmed its continued support of the work at the OECD Inclusive Framework on BEPS. The Council also indicated that it fully commits to the successful accomplishment of the ongoing work on the elements of Pillar One, including the Multilateral Convention.
7. As required by the Pillar Two Directive, on 30 June 2023, the Commission issued the progress report on Pillar One.⁹ The Commission indicated in its report that it welcomes the great efforts and the progress made so far and urged all participants to make a final effort to reach an agreement on the Multilateral Convention to implement Pillar One. The Commission confirmed that it will do its utmost to ensure a timely and consistent implementation of Pillar One at EU level.
8. In July 2023, further progress on the remaining elements of the Two-Pillar reform was announced by the OECD Inclusive Framework on BEPS, as set out in its Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.¹⁰ Concerning Pillar 2, on 13 July 2023, the Inclusive Framework adopted a package of documents which included agreement on the data points of the GloBE Information Return and further administrative guidance, notably on two new safe harbours.¹¹ The Council (ECOFIN) was updated (on 14 July 2023) by the Presidency on these matters.¹²

⁸ Doc. 15349/22 + COR1.

⁹ Doc. 11298/23.

¹⁰ <https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-taxchallenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf>

¹¹ <https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july2023.pdf>

¹² Doc. 11223/23

9. To date, there has been further progress in the OECD Inclusive Framework on BEPS, in line with the revised timeline. Concerning Pillar Two, the multilateral instrument on the subject to tax rule (STTR) has been made available for signature as of 2 October 2023.¹³ This instrument will allow countries to efficiently implement the STTR in existing bilateral tax treaties. Progress is also being made on the remaining aspects of both building blocks (Amount A and Amount B) of Pillar One, and the Multilateral Convention that will implement Amount A in particular. Delegations are being regularly informed in the Working Party on tax Questions (High Level) about the state of play in these negotiations.
10. In the context of the ongoing work and bilateral contacts on these matters, the Presidency suggested that Member States discuss the possibility that the Council (ECOFIN) reconfirms its political support to the Two-Pillar solution, as these negotiations are entering their final stages. A Commission statement would be expected to be issued in that context as well.
11. Following the meeting of Fiscal Attachés on 13 October and further bilateral contacts, all delegations have indicated that they would be willing to support the text of the draft Council statement set out in the Annex I to this note. It is understood that this agreement is also subject to the Commission making a statement for the minutes of the same Council meeting, as set out in the Annex II to the present note.
12. Against this background, the Committee of the Permanent Representatives is invited to:
- endorse the draft Council statement set out in the Annex I to this note,
 - recommend the Council to approve this statement in one of its forthcoming meetings as an ‘A’ (‘no discussion’) item.
 - take note of the statement by the Commission (set out in the Annex II to this note), that the Commission intends to make at the same meeting when the Council approves its statement.

¹³ [International community adopts multilateral convention to facilitate implementation of the global minimum tax Subject to Tax Rule - OECD](#)

DRAFT COUNCIL STATEMENT

“The Council:

- I) recalls its statement approved upon adoption of the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (the Pillar Two Directive) ^[1];
- II) welcomes the progress made by the OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) on finalising the Multilateral Convention implementing Pillar One, to be swiftly open for signature, and notes the progress made on Amount B;
- III) reiterates its continued support to the ongoing work in this area, taking into account the interests of all Member States in order to ensure that all enterprises pay their fair share of tax on profits generated by their activities in the EU, as stated in the Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond, approved on 27 November 2020;
- IV) welcomes and supports the agreement reached by the Inclusive Framework on the clarifications concerning application of Pillar Two contained in the administrative guidance endorsed by the Inclusive Framework in December 2022, in February 2023 and in July 2023 – including the transitional Undertaxed Profits Rule and Qualified Domestic Minimum Top-up Tax Safe Harbours, the new guidance on Transferable Tax Credits, as well as the transitional Country-by-Country Reporting Safe Harbour and the GloBE Information Return;

^[1] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, p. 1.

- V) notes the statement by the European Commission and welcomes, in particular, its view that the administrative guidance endorsed by the Inclusive Framework in December 2022, February 2023 and July 2023 is compatible with the Pillar Two Directive;
- VI) recognizes the need to ensure consistency with the aforementioned documents when applying the Pillar Two Directive by Member States in order to avoid non-alignment or applicability of diverging standards;
- VII) recalls that the recitals of the Pillar Two Directive refer to the use of the guidance developed by the Inclusive Framework as a source of illustration or interpretation, and notes the intention of the EU Member States to follow this guidance when transposing the Pillar Two Directive into their national law in order to avoid divergences and inconsistencies in interpretation of the provisions of that Directive.”

STATEMENT BY THE EUROPEAN COMMISSION

The European Commission welcomes all agreements reached by the OECD/G20 Inclusive Framework on BEPS between December 2022 and July 2023. These agreements mark an important milestone towards the completion and full implementation of the Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy.

On **Pillar One** the Commission welcomes the release of the text of the Multilateral Convention and the technical agreement reached on key points of Amount A, which paves the way for implementing a partial reallocation of taxing rights amongst participants.

The Commission also underlines the importance of Amount B as a key component of the ongoing reform of international taxation, simplifying transfer pricing and enhancing legal certainty.

The Commission fully supports the ambition to have the agreement in force as soon as possible and will keep on working towards ensuring a successful delivery in the EU. It calls on Member States to swiftly sign and ratify the Multilateral Convention.

On **Pillar Two**, the European Commission welcomes the Statement by the ECOFIN Council (of 9 November 2023).

The Commission is of the view that the administrative guidance endorsed by the OECD/G20 Inclusive Framework on BEPS in December 2022, February 2023 and July 2023 is compatible with Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (the Pillar Two Directive). The Commission encourages all Member States to proceed swiftly with the transposition of the Pillar Two Directive and will continue to support the efforts of Member States in this regard.