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## **Fighting fiscal injustice: the work of the OECD on taxation of digital economy**

### **Report<sup>1</sup>**

Committee on Political Affairs and Democracy

Rapporteur: Mr Georgios KATROUGKALOS, Greece, Group of the Unified European Left

### *Summary*

The Committee on Political Affairs and Democracy underlines that taxation, when fair and redistributive, is both an essential tool for governments to raise the funds necessary for the proper functioning of public services and a fundamental anchor for democracy.

Frequent revelations of aggressive tax planning, tax avoidance and artificial profit-shifting practices combined with the deterioration of public finances since the 2008 global crisis and exacerbated by the Covid-19 pandemic, have made the need for internationally co-ordinated policy responses to tackle tax injustice more urgent than ever before.

According to the report, the booming digital economy, where most value is created through virtual and stateless platforms run by tech giants, calls for a rethink of the traditional model for distributing the international tax base, moving away from the concept of 'permanent establishment' underpinning it since the 1920s.

The OECD plays a key role in this field and its work on the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) is instrumental in reaching global consensus on how to make the international tax system fairer and more stable.

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1. Reference to committee: [Doc. 14976](#), Reference 4477 of 29 November 2019.



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Explanatory memorandum by Mr Georgios Katrougkalos, rapporteur .....	5
1. Introduction .....	5
2. OECD and taxation of the digital economy .....	6
3. Pillar One: a unified approach and a new taxing right .....	8
3.1. Comparison of the unified approach to Pillar One with similar European initiatives .....	9
3.2. Recent developments in Pillar One .....	9
4. Pillar Two: a minimum tax rate .....	10
5. Way forward .....	10
6. The consequences of the Covid-19 pandemic and relevant OECD work .....	11
7. Concluding remarks .....	12

## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly of the Council of Europe, enlarged to include the delegations of national parliaments of the Organisation for Economic Co-operation and Development (OECD) member States which are not members of the Council of Europe and a delegation from the European Parliament, underlines that the ability of governments to raise funds through taxation necessary for the funding of public services is a fundamental anchor for democracy.
2. The digitisation of the economy and the rise of tech giants (including GAF A, namely Google, Amazon, Facebook, Apple), the aggressive tax planning, tax avoidance and artificial profit shifting practices, adopted by numerous multinational corporations, the increased awareness of the general public to these practices and the worsening state of public finances caused by the 2008 global economic crisis and the Covid-19 pandemic have made the need for internationally co-ordinated policy responses more urgent than ever before.
3. While most value in the digital economy is created through virtual and stateless platforms, the Enlarged Assembly considers that it is necessary for States to be provided with a broader tax base again to cover their public financing needs, in particular by moving away from the concept of “permanent establishment” that underpins the traditional model for the distribution of the international tax base.
4. The Enlarged Assembly welcomes the OECD’s work on the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). It notes that the first of the many actions in the Inclusive Framework concerns policy responses for the tax challenges arising from the digital economy, and endorses the breakdown of the policy proposals into two pillars: the first Pillar addresses the broader issues of taxation of the digital economy and focuses on how taxing rights are determined (namely nexus) and how taxable profits are allocated among jurisdictions. The second Pillar tackles the remaining BEPS issues related to tax planning, through the establishment of a global minimum tax.
5. It welcomes the OECD’s instrumental role in this context and the progress made in the work on Pillar 1 and the adoption of a joint statement outlining the general framework of the discussions for the two pillars. It encourages the participating States to continue this work with a view to a consensus-based agreement on both pillars.
6. The Enlarged Assembly stresses that multilateralism, provided that it is genuinely inclusive, is the best means of achieving tangible results. It considers that achieving consensus at international level is the best way to reform the international tax system, to restore stability to the international tax framework and to avoid the risk of further unco-ordinated, unilateral tax measures which could trigger trade sanctions.
7. To ensure fair taxation of global corporate profits, the Enlarged Assembly urges the OECD and member States to:
  - 7.1. further support and promote the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) in reaching a consensus-based agreement comprising Pillars 1 and 2 within the envisaged timelines;
  - 7.2. facilitate the application of the agreed multilateral instrument to existing tax treaties;
  - 7.3. avoid and reverse a race to the bottom of national tax systems, which could undermine governments’ legitimate financing abilities in maintaining sound public finances and high-quality social services for all;
  - 7.4. adopt rules on transparency and automatic exchange of information for tax purposes between all countries in order to ensure tax fairness and compliance by both corporate entities and individuals;
  - 7.5. develop mandatory disclosure rules regarding aggressive or abusive transactions, arrangements or structures;
  - 7.6. propose measures for countering harmful tax practices more effectively, with a priority on improving transparency, including compulsory spontaneous exchange of rulings relating to preferential regimes (fiscal rulings) and on requiring substantial activity for the granting of any preferential regime;
  - 7.7. promote international coherence in corporate profit taxation, so that the design of tax policy is better informed by the increasing interconnectedness of economies and the gaps that can be created by interactions between domestic tax laws;

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2. Draft resolution adopted by the committee on 30 March 2021.

7.8. do more to take account of the needs and interests of developing countries in the design of a new post-BEPS international tax system.

## B. Explanatory memorandum by Mr Georgios Katrougkalos, rapporteur

### 1. Introduction

1. The last report of the Parliamentary Assembly of the Council of Europe, enlarged to include the delegations of national parliaments of the Organisation for Economic Co-operation and Development (OECD) member States which are not members of the Council of Europe and the European Parliament (Enlarged Assembly) dates from October 2017 and covers the OECD activities for the 2016-2017 period (see Resolution 2181 (2017)).
2. Following the meeting between the former President of the Assembly, Mr Michele Nicoletti, and the Secretary-General of the OECD, Mr Angel Gurría, in February 2018, and further to contacts between the respective Secretariats, a renewed approach to relations between the Assembly and the OECD was agreed in January 2019, aimed at a stronger and more efficient institutional relationship, streamlining procedures and making better use of both Organisations' strengths.
3. In line with this agreement,<sup>3</sup> Enlarged Assembly debates on the activities of the OECD take place every two years, on the basis of a report presented by the Committee on Political Affairs and Democracy, with the participation of delegations of national parliaments of OECD member States which are not members of the Council of Europe, and of the European Parliament, and of the Secretary General of the OECD. Reports will focus on specific themes to be defined by the Rapporteur in collaboration with the OECD. During the same year, an exchange of views with OECD experts will be organised as part of the agenda of the committee, in the context of the preparation of the committee's report on the OECD activities.
4. During the year when there is no Enlarged Assembly debate on the OECD activities, an Assembly delegation, possibly led by the President of the Assembly or the Chairperson of the Political Affairs and Democracy Committee, participates as an institutional partner to the OECD Global Parliamentary Network. During the same year, the Committee on Political Affairs and Democracy holds, in principle, one meeting at the OECD Headquarters, with the purpose to exchange views with OECD experts.
5. As a result, an Assembly delegation, led by former President of the Assembly, Ms Liliane Maury Pasquier, participated in the OECD Global Parliamentary Network in October 2019, for the first time as an institutional partner.
6. Following a motion for a resolution agreed upon by the Committee in conformity with the new modalities, in January 2020, I was appointed rapporteur for the present report.
7. As regards the scope of the report, I intend to focus on a topical issue on which the OECD has been working for the last years and which is of particular political relevance in all member States of the Council of Europe: the challenges posed by evidence of fiscal injustice in the course of the ongoing economic and employment crisis, especially taxation of the digital economy, as part of the OECD's ongoing work on Base Erosion and Profit Shifting (BEPS). I will also include a chapter related to the OECD's recent work on tax policy responses to the Covid-19 pandemic,<sup>4</sup> including its data-base<sup>5</sup> of measures implemented by governments in response to the crisis, which provides useful guidance to governments and parliaments in member States.
8. The ability of governments to raise funds through taxation necessary for the funding of public services is a fundamental anchor for democracy. When the tax avoidance strategies of companies and individuals undermine governments' legitimate financing abilities, the very fundamentals of democracy, fairness and equity are threatened.<sup>6</sup> In the framework of OECD activities, the Enlarged Assembly has already recognised the importance of addressing social inequities and implementing suitable measures to alleviate employment issues, as part of the achievement of sustainable and inclusive growth, which help restore confidence in our governance system.<sup>7</sup> I also refer to a number of relevant reports prepared by the Committee on Social Affairs, Health and Sustainable Development on tax havens; on tax on financial transactions; the Panama papers; and more recently on the platform economy.<sup>8</sup>

3. See AS/Pol(2019)04, declassified on 24 January 2019.

4. "Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience".

5. [www.oecd.org/tax/tax-policy/covid-19-tax-policy-and-other-measures.xlsx](http://www.oecd.org/tax/tax-policy/covid-19-tax-policy-and-other-measures.xlsx).

6. Resolution 1951 (2013), "The activities of the Organisation for Economic Co-operation and Development (OECD) in 2012-2013", para. 2.

7. *Ibid.*, para. 9.

8. Resolution 1881 (2012), Resolution 1905 (2012), Resolution 2130 (2016) and Resolution 2312 (2019).

9. Several studies provide evidence of competition between countries to lower corporate income tax rate, which could result to a race to the bottom: in 1980, corporate tax rates around the world averaged 40.38%, and 46.67% when weighted by GDP, whereas in 2019 the average was 24.18%, and 26.30 when weighted by GDP. Tax havens and other tax evasion practices, such as the artificial use of offshore companies, undermine public revenues and contribute to the citizens' perception of unfairness of the tax system.<sup>9</sup> However, the design of tax policies by governments and parliaments can also lead to contradictory signals on taxation, sometimes used as an incentive and therefore abused by tax planners and avoiders.

10. As the world has become more interconnected and more digital over the past few decades, a growing body of evidence has shown that aggressive tax planning and tax avoidance practices have been adopted by many multinational corporations, making international co-ordination of paramount importance in mounting a response against eroding tax bases and falling tax revenue. According to some estimates, close to 40% of multinational profits are shifted to tax havens, with European countries being the most affected.<sup>10</sup> According to other estimates, countries are losing globally a total of over US\$427 billion in tax each year to international corporate tax abuse and private tax evasion, costing countries altogether the equivalent of nearly 34 million nurses annual salaries every year.<sup>11</sup>

11. With the digitalisation of the economy and the rise of tech giants (GAFA, namely Google, Amazon, Facebook, Apple), the need for multilateralism and internationally co-ordinated policy responses are more urgent than ever before. Traditional taxing liabilities, based on concepts such as "permanent establishment", are largely outdated in the digital economy where most value is created through virtual and stateless platforms. In this context, the ongoing work of the OECD is of paramount importance and it should continue to play a leading role in international efforts to bring greater fairness to tax policy worldwide.

12. In light of the ongoing economic crisis caused by the Covid-19 pandemic, addressing these issues and providing governments with a broader tax base to cover their public financing needs becomes more urgent than ever before. [According to the statement, approved by the OECD/G20 Inclusive Framework on BEPS](#) in October 2020, "[t]he Covid-19 crisis has exacerbated these tax challenges even further by accelerating the digitalisation of the economy, increasing pressures on public finances and decreasing public tolerance for profitable multinational enterprises (MNEs) not paying their fair share of taxes".

## 2. OECD and taxation of the digital economy

13. During the Standing Committee meeting of the Assembly, held on 12 October 2020, the Secretary-General of the OECD, Mr Angel Gurría, stated: "The OECD has worked hard to build a fairer, more transparent international tax system, tackling BEPS [Base Erosion and Profit Shifting] issues as well as bottlenecks that are being faced by developing countries when it comes to taxing multinationals. We are also making tremendous progress on delivering a global solution to the tax challenges presented by our digitalised economies."

14. Through the Inclusive Framework on BEPS, work at the OECD has spearheaded and co-ordinated the efforts of countries around the world for the development of a comprehensive framework to address how highly digitalised multinational corporations should be taxed and how taxable profits should be allocated among jurisdictions. The Inclusive Framework brings together a group of 137 jurisdictions, working together on an equal footing, to implement the 15 BEPS actions agreed in 2015.<sup>12</sup> Beyond this, the Inclusive Framework is now designing new international tax rules, facing the tax challenges arising from digitalisation.

15. The cost incurred by aggressive tax planning for tax authorities and the use of technology and intellectual property by most digital multinational firms exacerbates the challenges posed by reform on international taxation. The economic and social importance of those multinationals places them at a position of "price makers" namely bearing little or no competition at all.

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9. The global offshore wealth is estimated at US\$7.8 trillion in 2016 (€7.5 trillion) or 10.4% of global GDP. The European Union share is valued at US\$1.6 trillion (€1.5 trillion), or 9.7% of EU GDP. See European Commission, "Estimating International Tax Evasion by Individuals", Taxation Papers, Working Paper No. 76 (2019).

10. Thomas R. Tørsløv, Ludvig S. Wier, Gabriel Zucman, "The missing profits of nations" (No. w24701), National Bureau of Economic Research (2018).

11. "The State of Tax Justice 2020", co-published by: Global Alliance for Tax Justice and Public Services International, 2020.

12. For the initial mandate and action plan for the BEPS scope see OECD (2013), "Action Plan on Base Erosion and Profit Shifting", OECD Publishing, Paris.

16. Amongst the many actions included in the OECD/G20 BEPS Project, Action 1 is dedicated to policy responses for the tax challenges arising from digital economy. Recent work in developing such policy proposals has made significant progress in addressing how taxing rights should be allocated between countries in response to business arrangements and transactions involving high-tax and low-tax jurisdictions.

17. The policy proposals are separated in two pillars. Pillar One addresses the broader challenges of taxation of the digital economy and focuses on how taxing rights are determined (namely *nexus*) and how taxable profits are allocated among jurisdictions. The second Pillar tackles the remaining BEPS issues related to tax planning, through the establishment of a global minimum tax.<sup>13</sup>

18. Work on Pillar One has advanced over the past years, with growing commitment by participating countries for a consensus-based solution to be reached by mid-2021. Converged country positions led to a joint statement in January 2020 outlining the general framework of discussions in the two pillars.<sup>14</sup> While unilateral country positions, actions and opinions are still strong amongst participants, work has been continuing in 2021 for a consensus-based agreement on both pillars.

19. In order to contribute to the BEPS actions on digital taxation, the European Commission published, in 2018, its own proposal on a Council Directive laying down rules for firms with a significant digital presence in European Union member States. The Directive, envisaged to establish a comprehensive solution for the taxation of digital services in the European Union, was intended to contribute to the ongoing work of the Inclusive Framework which the European Union acknowledged would be essential to reaching a global consensus.<sup>15</sup> The Commission proposals outlined criteria for establishing a taxable nexus of a digital business.<sup>16</sup>

20. Three alternative criteria representing proxies of a multinational's activity in member States were proposed in the Directive. These were aimed at determining the "digital footprint" of firms operating in member States. They were based on taxation according to the location of the permanent establishment but sought to reallocate the share of profits arising from value creation through user participation (for example, data collection through rating of goods and services on the E-platforms).

21. In addition to the Directive, the European Commission's proposals included an interim 3% tax levied on the revenue of digital activities.<sup>17</sup> The tax aimed at creating immediate revenue for member States from firms conducting digital activities in jurisdictions where they have no taxing liabilities under the current "permanent establishment rules". The Commission set up a scope for the proposed tax based on qualitative (consumption of digital services) and quantitative (firms with worldwide annual revenue over €750 million and European Union revenue over €50 million) criteria.<sup>18</sup>

22. At the European Union level, Finance Ministers discussed the European Commission proposals in December 2018 but were unable to reach agreement despite support from the majority of member States.

23. The differences in proposals among countries, evidenced by the alternative viewpoints across the Atlantic on how to treat the taxation of the digital economy, reveal the difficulties in reaching a consensus-based solution through the Inclusive Framework.

24. It is evident that developments at the global level in the business models of highly digitalised multinational corporations, together with increasing tax planning and tax avoidance practices, call for a change in the principles and norms of international taxation. Reforming international taxation at the OECD/G20 level is particularly important given that the existence of conflicting national taxing statutes give rise to litigation, legal uncertainty for the corporate taxpayer and significant administrative costs for tax authorities. As affirmed by the Secretary-General of the OECD, Mr Angel Gurría, at the Standing Committee meeting of 12 October 2020), "[...] the 137 members of the OECD/G20 Inclusive Framework on BEPS released the Blueprints of the Two Pillar approach, the Blueprint of Pillar One and the Blueprint of Pillar Two.

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13. "Addressing the Tax Challenges Arising from the Digitalisation of the Economy", Highlights, OECD 2020, including the Cover Statement by the OECD/G20 Inclusive Framework on BEPS on Pillar One and Pillar Two Blueprints.

14. See Statement by the OECD/G20 Inclusive Framework on BEPS on the "Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy", 29-30 January 2020.

15. [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/proposal\\_significant\\_digital\\_presence\\_21032018\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_significant_digital_presence_21032018_en.pdf).

16. For information on the European Commission proposal on a Council Directive see "Fair Taxation of the Digital Economy".

17. For more information on the interim European Commission proposal see "Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services".

18. European Commission Proposal for a Council Directive 2018/0073 (CNS), Ch. 1(4), p. 25.

We are reaching closer to the finishing line but not quite there yet, political differences remain to be bridged and further technical works have to be finished, but political compromises therefore are needed, so that a full-fledged consensus can be delivered by the mid-2021”.

25. Complementary to the need for reaching a consensus-based agreement for strengthening public finances in the ongoing pandemic crisis,<sup>19</sup> the cover statement by the OECD/G20 Inclusive Framework on BEPS on Pillar One and Pillar Two Blueprints, approved on 9-10 October 2020, speaks also to the continual need for improving tax fairness, through the design of a more equitable allocation of tax liability among firms and citizens and a more effective level playing field between OECD/G20 countries.<sup>20</sup>

### 3. Pillar One: a unified approach and a new taxing right

26. Following discussions on several proposals by Inclusive Framework members, a unified approach to the architecture of Pillar One was agreed to be used as a basis for negotiations that have started in January 2020. At the heart of the unified approach is a shift towards allocating some taxing rights to market jurisdictions.

27. The unified approach involves a new taxing right that is intended to apply to firms regardless of their physical presence in jurisdictions of operation. Instead, the new right seeks to allocate a portion of residual profits to market jurisdictions using a formulaic approach.<sup>21</sup> The United States has suggested a pause in the OECD talks on international taxation while governments around the world focus on responding to the Covid-19 pandemic and safely reopening their economies.<sup>22</sup> Some fear that Joe Biden’s presidency will not mark a turning point on the United States’ collaborative stance with regard to the BEPS project because of the “fundamental nature of corporate America and notion of defending [their] national champions”,<sup>23</sup> as many of the multinationals affected by Pillar One are based in the United States.

28. The need to create a taxing right for corporations with digital presence stems from the way business models have evolved over the years to become increasingly more global, more digital in their functioning and more user-based in their approach. In particular, participation of different users in the form of platforms, being either consumers or suppliers of products and services, has altered the nature of the output of production, in such a way that taxable profits can no longer continue to be allocated by rules based exclusively on physical presence in a jurisdiction.

29. Under current international tax practices, a non-resident company is taxed in a jurisdiction only if it has a permanent establishment in the form of physical presence in that country or in the form of an agent conducting business on behalf of the non-resident company. Digitalisation severely limits the ability of countries to tax a company based on presence. In the case where taxation of these companies is based on physical presence alone, the majority of countries would have no or only a limited right to tax profit from their activities, despite the fact that these companies may be generating their profits in their jurisdictions, albeit remotely. For example, a non-resident company can conduct marketing activities and negotiations through intermediaries that avoid being under the scope of the permanent establishment definition, whilst concluding contracts in overseas affiliates resident in tax havens or low-tax countries. The increase in digitalisation affects the mobility of firms and favours tax planning and tax allocation practices by the companies, which often result in limited profits being attributed to market jurisdictions. The scope of the new taxing right attempts to address this kind of activities in the digital economy.

30. In particular, the new taxing right will apply to two broad sets of businesses. Firstly, to multinational corporations that provide automated digital services around the world. Many of these businesses depend on users for the provision of services, such as, on their personal data, on personal optimisation of content and on content that users themselves supply to the platform. Companies that fall within this category include large social network platforms, search engines, and streaming services which, over the years, have grown in market size and importance becoming the most valuable in global stock markets. Beyond businesses that engage with users, the new taxing right, as defined in the Blueprint, would also apply, for example, to cloud computing. The second set of businesses are consumer facing businesses, i.e. multinational corporations generating revenue by selling goods and services both online and directly to consumer. These businesses are

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19. See above, paragraph 12.

20. See also “Addressing the Tax Challenges Arising from the Digitalisation of the Economy”, *op. cit.*

21. [www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf](http://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf).

22. See US Treasury statement. It is also worth noting that the US Treasury continued discussions on Pillar One throughout 2020, culminating in the publication of the Pillar One Blueprint in October 2020.

23. “The Impact Of The 2020 U.S. Elections On International Tax”.

able to engage with consumers in a meaningful way beyond having a local physical presence by relying on digital technology to reach consumers in order to sell their products, build business contacts and for targeting specific groups of consumers. The precise scope of the new taxing right for the latter group of corporations is being determined as part of the ongoing work of the Inclusive Framework.

### **3.1. Comparison of the unified approach to Pillar One with similar European initiatives**

31. The new taxing right diverges in several ways from the European Commission's Proposal of a Directive on taxation of corporations with a significant digital presence in 2018. Currently, jurisdictions can levy taxes based on profits reported by firms that have a physical presence in their jurisdiction. The Directive determines the attribution of a digital tax based on the location of end users but does not separate profits made in specific locations by end users. The novelty of the new taxing right manifests that a share of the multinational group's residual profit is allocated to market jurisdictions using a formula approach. This new taxing right can apply irrespective of the existence of physical presence. Moreover, the method of determining the multinationals in scope is also different, with the Directive having three thresholds, at least one of which must be fulfilled for multinationals to be in scope: corporations are liable to pay tax in member States where they report revenues of at least €7 million; or where they have at least 100 000 users; or at least 3 000 business contracts.

32. A distinction is drawn also between Pillar One and the interim solution proposed by the European Commission for a digital services tax, a similar version of which was adopted in 2019 by France in the form of the Digital Services Tax. The Commission's proposal on a digital tax targets companies which conduct services where "the participation of a user in a digital activity constitutes an essential input for the business carrying out that activity and which enable that business to obtain revenues therefrom. In other words, the business models captured by this Directive are those which would not be able to exist in their current form without user involvement".<sup>24</sup> This approach is quite different from the Inclusive Framework's approach which applies across automated digital services as well as consumer facing businesses.

### **3.2. Recent developments in Pillar One**

33. Overall, work that remains to be done by the Inclusive Framework of BEPS includes agreement on the rules, formulae and profit thresholds governing the new taxing right, as well as the agreement on the profit allocation between jurisdictions based on revenue-sourcing. An international agreement is necessary to swiftly address the remaining issues with a view to bringing the process to a successful conclusion, resolving technical issues and developing draft model legislation and guidelines to enable jurisdictions to implement a consensus-based solution for Pillar One by mid-2021.

34. Opinions held by members of the Inclusive Framework fell initially, that is at the time of the 2018 Interim Report, within broadly three groups, reflecting not only political and ideological divergence but also conflicting national interests. A first group, including the majority of European countries, regarded the highly-digitalised business models, in particular those that rely on the use of data and user participation, as a source of misalignment between the location of taxed profits and the creation of value. For this group, the value created by these firms is partly due to the user and takes place in jurisdictions away from the corporation's place of establishment. A second group of countries, predominantly emerging and developing ones, claimed that developments in the digital economy should follow more general trends in globalisation and be addressed as a whole, rather than being focused entirely on a specific sector, as a problem of profit allocation and base erosion. They regarded the changing global economy, including the rise of digital business-models, as a main driver of profit shifting. Lastly, a third smaller group of countries considered the existing international tax rules adequate for corporations and did not envisage the need for reform.

35. Several European countries argue that tech giants profit enormously from the European market while making minimal contributions to public coffers. The United States, under Trump's administration, remained opposed to digital services taxes and similar unilateral measures and attempted to establish Pillar One as a 'safe harbor' for multinational corporations. Despite the absence of an international agreement by the end of 2020, following the lead of France, Italy, Spain, Austria and the United Kingdom have all announced plans to levy digital services taxes. In response, the United States has threatened retaliatory tariffs on some imported goods from those European countries that have enacted a digital service tax. In this regard, Robert Lighthizer, the US trade representative, announced a probe into whether these digital tax measures amount to an unfair trade practice.

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24. "Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services".

36. The United States remain committed to global talks on a new global tax framework for tech companies. Besides the divergence of opinions, the Inclusive Framework members note that reaching a consensus-based resolution by mid-2021 remains of paramount importance.

#### **4. Pillar Two: a minimum tax rate**

37. Proposals in Pillar Two, providing for a minimum tax rate, are designed to reduce the pressure on developing countries to grant tax incentives, thereby limiting the tax avoidance practices of firms.

38. The primary measure of Pillar Two is the global anti-base erosion proposal (GloBE), which rests on the need for co-ordination between countries to avoid a harmful race to the bottom. The scope of the proposal is not limited to highly digitalised companies, but it also envisages a systematic solution to profit shifting and base erosion by agreeing on a minimum level of tax at a global level.

39. Work on Pillar Two has progressed in the relevant working groups of the Inclusive Framework over the past year. A general approach to the topics of Pillar Two has been agreed on and the report on the Pillar Two Blueprint<sup>25</sup> provides a solid basis for a future agreement on several aspects of the reform. Pillar Two proposes a minimum tax rate to be applied to corporations' income where the current tax rate is lower than the agreed minimum. Essentially this ensures that the income of any large multinational corporation is taxed at a minimum rate in each jurisdiction where the multinational enterprise operates, thus reducing the incentives to shift profits to low tax jurisdictions and thereby erode the tax bases of other jurisdictions. The overall design of Pillar Two rules is an essential part for a consensus-based agreement in 2021.

#### **5. Way forward**

40. In providing an evaluation of recent developments and mapping a way forward, a starting point should be the acknowledgment of the changing digital nature in business practices, the acceleration of globalisation and the increasing awareness of tax avoidance by multinational corporations.

41. Global business models and digital practices have evolved rapidly from location-based to being increasingly remote from countries of operation, with profound consequences to century-old double taxation agreements. It is clear that the 1920s agreement, designed to avoid double-taxation practices between countries and to tax firms based on their legal establishment, can no longer capture the entire tax base and allocate profits to the countries where wealth is generated. This is because provisions in those same double taxation treaties are used by taxpayers engaging in tax avoidance strategies (for example, clauses on withholding taxes). Hence, the establishment of new international taxation norms is a long overdue response by the international community to the fast-changing digitalised model of multinational companies. At the same time, maintaining established treaties on double taxation and introducing new practices to ensure full taxation of profits should not be mutually exclusive. Success lays in finding a consensus that incorporates the new tax norms and embedding them with established international taxation practices that avoid double taxation between countries.

42. The political appetite across countries for an agreement on a new norm for international corporate taxation has been driven, firstly, by an increased awareness of the general public to cases of tax avoidance and profit-shifting and, secondly, by the worsening state of public finances that the global economic crisis left behind it since 2008, which undermines the Keynesian capacities and the integrity of services of welfare states. The several cases of large multinationals using tax avoidance practices, that appeared in the media over the past years, have shifted public opinion (especially among European voters) towards the need for a fairer taxation of corporate profits. Tax avoidance schemes such as the Luxembourg Leaks, the Panama Papers and more recently the Openlux investigation, have exposed aggressive tax planning attitudes of the most powerful taxpayers in the world. The recent Paradise Papers (end of 2017) is a reminder that tax avoidance practices are a systemic and resurgent problem. For European voters in particular, a lower tax base from corporate income was associated with an increased burden of higher taxes on labour incomes and consumption, as governments sought to increase government revenue sources during the crisis.

43. Although the discordances between the European countries and the United States regarding the right to impose a digital tax will need to be overcome to reach an international agreement, a unified approach is estimated to be the most efficient solution for the global economy. The two pillars would imply a relatively small increase in the average investment costs of multinationals. The negative effect on global GDP stemming

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25. "Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint".

from the expected increase in tax revenues associated with the proposals is estimated to be less than 0.1% in the long term, since these would affect highly profitable companies. In contrast, the absence of a consensus-based solution would lead, as it has been already declared by various European countries, to a proliferation of unco-ordinated and unilateral tax measures, causing an increase in damaging tax and trade disputes. This would inevitably undermine tax certainty and result in additional compliance and administration costs, reducing the global GDP even further by more than 1%.

## 6. The consequences of the Covid-19 pandemic and relevant OECD work

44. In light of recent macroeconomic developments caused by the pandemic, both above-mentioned factors will most certainly continue to put pressure on countries in reaching an agreement on international corporate taxation in years to come. This is because, firstly, the pandemic will further exacerbate the need for increasing tax revenues. Higher government spending in automatic fiscal stabilisers, in income-support programmes and in business guarantees will need to be compensated by additional revenue sources following the pandemic. In addition, the large contraction in economic activity will reduce State revenue and will increase the gross financing needs for debt servicing in emerging and developing countries.<sup>26</sup>

45. Secondly, economy-wide lockdowns as a response to the pandemic have caused further acceleration of the digitalised economy. Many of the large multinational corporations that rely on digitalised services have recorded additional sales over the past months while most small and medium enterprises operating with limited digitalised practices within country jurisdictions had to suspend their operations. As digital habits become entrenched during the pandemic, the world has more than ever before experienced a surge in digital services. Combined with worsening public finances across countries, the digital trend will provide a renewed cause among political forces for an international agreement on corporate taxation in the digital economy.

46. According to an OECD research, during 2019, tax revenues fell across the OECD for the first time in a decade. On the other hand, the profits of the multinational digital companies have reached historical records, especially in 2020, in the midst of Covid-19 crisis. For instance, Apple's shares have surged over 1 200% in the last decade and became the first US company to surpass a market valuation of US\$2 trillion.<sup>27</sup> Amazon.com shares have swelled in just one day by 7.9%, adding thus US\$13 billion to the net worth of its CEO's assets, the largest single-day jump for an individual since the Bloomberg Billionaires Index was created in 2012.<sup>28</sup> The American digital multinationals have now a total market capitalization over US\$9.1 trillion, which is more than the entire European stock market—including the European Union, the United Kingdom and Switzerland.<sup>29</sup> An even larger decrease of tax revenues will be registered for 2021: following lockdowns and the forced closure of many businesses due the Covid-19 pandemic, the economic activity and consumption tax revenues were driven down. At the beginning of December 2020, Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, stated: "We expect to see much sharper decreases next year when the impact of Covid-19 starts to become more apparent. At some point, when the health crisis has passed and the economic recovery is underway, governments will need to reconsider whether their tax systems are up to the challenges of the post-pandemic environment."<sup>30</sup> Mr Angel Gurría also highlighted that, after the Covid-19 crisis, countries will turn to companies that are setting the pace for digital economy and increased their income during the crises or because of the crises to look for additional State revenues.<sup>31</sup> Most GAFA, for their part acknowledge how much they have at stake and assert their preference for legal certainty that comes with having an internationally agreed framework for the taxation of their digital activities.

47. The OECD is providing valuable data and analysis on the economic crisis due to the Covid-19 pandemic. The magnitude of this contraction is disclosed from the OECD forecast on real GDP annual growth rate for the year 2020, ranging from -14.4% for Spain and -9.8% for Greece, to an overall global real GDP recession of -7.6%.<sup>32</sup> The OECD has complemented these forecasts with a detailed policy tracker, which lists the actions that countries have taken during the crisis. The OECD has identified specific policy responses to support countries, advocating for increased spending in health care, complemented by several welfare

26. "OECD Secretary-General tax report to G20 finance ministers and central bank governors" (October 2020), Saudi Arabia.

27. "Apple Becomes First U.S. Company Worth More Than \$2 Trillion".

28. "Jeff Bezos Adds Record \$13 Billion in Single Day to Fortune", 20 July 2020.

29. "U.S. Tech Stocks Are Now Worth More Than \$9 Trillion, Eclipsing The Entire European Stock Market".

30. "OECD tax revenues fall slightly before the Covid-19 pandemic, but countries face much larger decreases ahead, particularly from consumption taxes", 3 December 2020.

31. Standing Committee of the Parliamentary Assembly of the Council of Europe, meeting of 12 October 2020.

32. For further data see OECD (2020), "Real GDP forecast (indicator)".

policies mitigating the impact of the crisis on business and labour. These policies include more generous welfare payments, income support for employees and deferred payments for firms. Lastly, the OECD has made available a series of resources outlining best practices and proposals in each policy area.

48. Implementing the OECD's evidence and analysis is crucial for governments in order to cushion the most dramatic effects of the current crisis, notably for more vulnerable people, and pave the way to a smooth and inclusive recovery. Targeted and timely action will avoid higher costs for governments over time. To achieve best results, the optimal course for tax and fiscal policies would be to support priority action in areas such as healthcare, trade, social and labour market.

49. In this framework, we have identified, with the Rapporteur for Opinion on this report from the Committee on Social Affairs, Health and Sustainable Development, Ms Selin Sayek Böke (SOC, Turkey), the following priority recommendations:<sup>33</sup>

- i. enhanced welfare payments and income support (on a temporary basis) to all workers, with an emphasis on lower income households and independent and precarious workers;<sup>34</sup>
- ii. expand coverage and duration of social safety nets such as unemployment insurance benefit schemes;
- iii. tax relief for workers in health and other emergency-related sectors;
- iv. lowering of taxes on essential consumer goods and services;
- v. suspending employer and self-employed social security contributions, payroll-related taxes, and, where relevant, selected taxes on essential (lifesaving) imported items;
- vi. implementation of ambitious stimulus programmes, with greater support for small and medium enterprises and green investment;
- vii. better use of rapid response mechanisms and policies that automatically adjust tax rates and transfer payments to stabilise incomes, consumption, and business spending over the business cycle (automatic stabilisers);
- viii. promotion of policies, rules and support mechanisms for teleworking.

## 7. Concluding remarks

50. The main priority of the Inclusive Framework is to deal with tax challenges arising from the digitalisation of the economy by reforming the international tax system, restoring stability to the international tax framework and avoiding the risk of further unco-ordinated, unilateral tax measures which could trigger trade sanctions. The framework gives prominence to the role of multilateralism and inclusiveness. The Covid-19 crisis has exacerbated these challenges even further by accelerating the digitalisation of the economy, enhancing pressures on public finances and decreasing public tolerance for profitable multinational corporations not paying their fair share of taxes. The Secretary-General of the OECD, Mr Angel Gurría sustains "We need to do this on a multilateral basis. [...]. [W]e need to deal with them globally, we need to deal with them multilaterally otherwise we will not make a lot of progress. The Covid-19 pandemic is a starting reminder of the transformational changes needed to build back better. But we can only change course if we act together. Put in practice the transformative power of collective actions to create better policies for better life."<sup>35</sup>

51. The OECD's co-operation with the G20 in addressing the taxation of the digital economy and the establishment of the Inclusive Framework with the participation of 137 countries, fostered inclusiveness in decision-making and pluralism of opinion. Importantly, solutions within this framework are not confined to a selective group of countries but are extended to the majority of countries in the world, who can develop a policy on equal footing. In that sense, agreement within the Inclusive Framework incorporates the opinion of emerging and developing countries, fragile nations and small countries, thus making decisions more inclusive. Since tax loopholes often arise from unilateral national measures, the wider participation provided by the Inclusive Framework contributes to the future success of agreed policies and the fostering of the agreed international norms. It is within this framework of multilateralism and inclusiveness that the success of a future agreement lays.

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33. "Covid-19: PACE rapporteurs spell out road-map for economic recovery, post-virus".

34. See also [Resolution 2197 \(2018\)](#).

35. [Standing Committee of the Parliamentary Assembly of the Council of Europe, meeting of 12 October 2020](#).

52. So far, the role of the OECD has been instrumental in facilitating discussions and providing solutions in complex multinational negotiations. The delineation of policies in the two pillars, the programme of work, the January 2020 Statement as well as the latest economic impact assessment of the tax challenges arising from digitalisation, published in October 2020, and [the Cover Statement by the OECD/G20 Inclusive Framework on BEPS](#) on Pillar One and Pillar Two Blueprints provide a concrete basis for discussion.

53. While an important number of issues remain to be resolved, credit should be given to what has been achieved so far. Countries have increased their co-operation and have abided to common principles of taxation. Furthermore, information-flow between tax authorities has increased dramatically over the past years, thereby limiting the opportunities for tax evasion and tax avoidance. As for the taxation of the digital economy, countries within the Inclusive Framework have taken significant steps in promoting full taxation of profits as an international norm.

54. Notwithstanding the progress made in recent years, several issues still require further technical work and political decisions to be resolved. Countries have so far failed to come to a common understanding on the allocation of profits in the digital economy. Strong disagreement and opposition to digital services taxes and an attempt to establish a 'safe harbor' approach to Pillar One by the United States, could lead to possible escalations of unilateral actions and continue to weigh in on the final outcome.

55. In addition, a large number of emerging and developing countries prefer to address the new taxing right with a broader approach rather than by 'ring-fencing the digital economy'. More specific issues that still await to be resolved pertain to the details of the proposal, such as the amounts of profit in Pillar One, the resolution mechanism to ensure tax certainty and practical issues in Pillar Two for a minimum tax at a global level.

56. Undoubtedly, significant work remains to be done for countries to achieve a consensus-based agreement by mid-2021. It is for this reason that the work of the Inclusive Framework has not escaped unscathed from criticism by academia, tax experts and the business world alike. It results in a combination of different proposals, building on top of century-old treaties. Yet, it is important for the remaining work to move forward, for the remaining issues to be resolved and for agreement to be reached, rather than to revert to any other alternative.

57. In game theory, a well-known result in a prisoners' dilemma shows that co-ordination between players is necessary in order to reach the most efficient outcome. In the absence of an agreement among the members of the Inclusive Framework, the world is at a greater risk of unilateral actions and escalated trade wars. Such actions might arise as a threat or as a short-run response to another country's actions. A possible escalation of actions may endanger the welfare of citizens and lead to further erosion of tax bases around the globe. Thus, co-ordination of actions is key in addressing eroding tax bases, since the benefit of one country often comes at the expense of another. Similarly, Mr Angel Gurría warned that the alternative of no agreement around the OECD proposals, on Pillar One and Pillar Two, will cause a multiplication of many countries going alone and then facing retaliation by other countries who feel that this is against their own companies. In addition, "The last thing we want in today's world is to have a revival of the trade tensions that clustered already even before Covid, a lot of growth, a lot of well-being, a lot of job and a lot of investments. I believe that the US are among the 137 countries that have been working with us. With their wisdom, they disagree but continue to work towards the technical solution and all of that is on the table."<sup>36</sup>

58. Maintaining momentum and finding solutions to the remaining issues through the Inclusive Framework is paramount for all countries and institutions involved in the process. The divergence of positions maintained in negotiations, specific country-interests and ideological differences in taxation norms pose great risks in reaching agreement within the envisaged timeframe. At the same time, the increasing trends towards digitalisation, the strain in public finances due to the global pandemic and the increased awareness of the public opinion of issues in international taxation, make the need for a timely agreement.

59. Given the role of the OECD in supporting the Inclusive Framework, the role of collaborating institutions, such as the Council of Europe, should be to support building consensus amongst its members, while offering a helping hand in bridging diplomatic ridges. Holistic policies taking account not only of tax challenges but of all aspects of countries' economic realities hold the key for an efficient response.

60. At a time when the crisis and its fallout have undermined citizens' confidence in democratic institutions, policymakers need to take a leap of faith in rebuilding trust in government, through transparent and more open institutions, high standards of integrity, particularly in high-risk areas such as lobbying, public procurement and

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36. [Standing Committee, Minutes](#) of the meeting of 12 October 2020.

political financing. Cracking down on aggressive tax avoidance and evasion, ensuring fair taxation and adequate fiscal revenues, to maintain sound public finances and high-quality social services for all citizens is an essential part of this effort.

61. To ensure fair taxation of global corporate profits, the Enlarged Assembly should urge the OECD and member States to:

- i. further support and promote the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) in reaching a consensus-based agreement, including Pillar One and Pillar Two, within the envisaged timelines;
- ii. facilitate the application of the agreed multilateral instrument to existing tax treaties;
- iii. avoid and reverse a race to the bottom of national tax systems, which could undermine governments' legitimate financing abilities in maintaining sound public finances and high-quality universal public social services for all;
- iv. adopt rules on transparency and automatic exchange of information for tax purposes between all countries in order to ensure tax fairness and compliance by both corporate entities and individuals;
- v. develop mandatory disclosure rules regarding aggressive or abusive transactions, arrangements or structures, with a focus on international tax schemes;
- vi. propose measures for countering harmful tax practices more effectively, with a priority on improving transparency, including compulsory spontaneous exchange of rulings related to preferential regimes and on requiring substantial activity for any preferential regime;
- vii. promote international coherence of corporate income taxation, so that the design of tax policy is better informed by the increasing interconnectedness of economies and the gaps that can be created by interactions between domestic tax laws;
- viii. do more to take account of the needs and interests of developing countries in this respect.

62. Willingness among countries to compromise on the main issues of the proposals such as the definition of the new taxing right, the allocation of profits between jurisdictions and the level of the minimum corporate taxation, will facilitate discussions and contribute to a renewed international tax norm. Despite the problems faced in achieving a common solution, this multilateral, inclusive approach can offer a better prospect in addressing the remaining issues in the taxation of the digital economy.