



INTERNATIONAL TAX DEVELOPMENTS: PROGRESS OF IMPLEMENTATION FOR BEPS PILLAR ONE AND TWO

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Two Pillars in 10 Questions

Pillar One

1. Why ?
2. "Gross" or "net"?
3. What is digital? The search for scope
4. How does the pillar work?
5. What is the current status
6. What's next?

Pillar Two

1. Why ?
2. How does the pillar work ?
3. What is the current focus?
4. What's next?



1. Why pillar 1?

BEPS Action Point 1 on Digital Taxation

- "Unfinished business" - the "Beyond BEPS" and the allocation of taxing rights;
- In the digital age, physical presence can no longer be the sole means of determining taxing rights;
- Ideas on digital permanent establishment are not a panacea

BEPS Action Points 8-10 on Transfer Pricing

- Transfer pricing rules have only partially achieved politically stable outcomes in particular as regards intangible assets;
- Where is "DEMPE" in the case of highly integrated cross-border value chains within an MNE?

- Academia and civil society are trying formulaic approaches;
- Leading academic thinkers in e.g. Oxford, Munich, Michigan, Washington and Berkley look to the "destination" as the key aspect in reforming corporate income tax



1. Why pillar 1?

Events & politics



- In 2016, the (Republican) Congress passed a bill on the “destination base cash flow tax”



vs



- In June 2017, a [French court](#) rules that Google has no physical permanent establishment in France → no tax liability



- In September 2017, France, Spain, Germany and Italy release a letter for the implementation of an EU Digital Tax



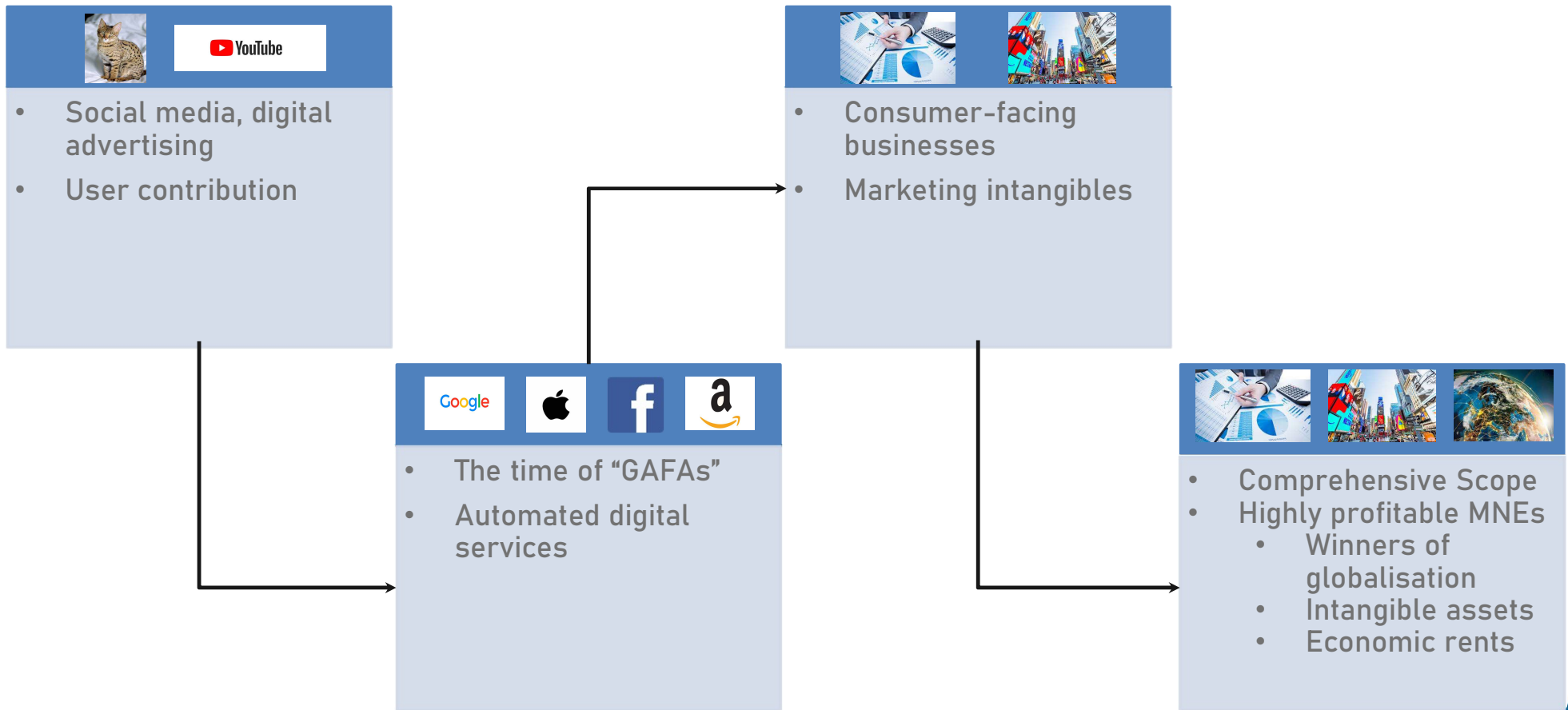


2. “Gross” or “net”?

- **“Gross” – simpler but not the long-term solution...**
 - Beginning and end of the EU directive proposal;
 - “EU digital levy” not yet off the table;
 - UN Model Convention: new draft model for income from digital services based on withholding;
 - Tariffs (Section 301) and the trade war
- **“Net” – the better response, but also the more difficult concept...**
 - More complex than the “gross” approach;
 - Elimination of double taxation;
 - Inclusive Framework – Blueprint October 2020; July and October 2021 Statements

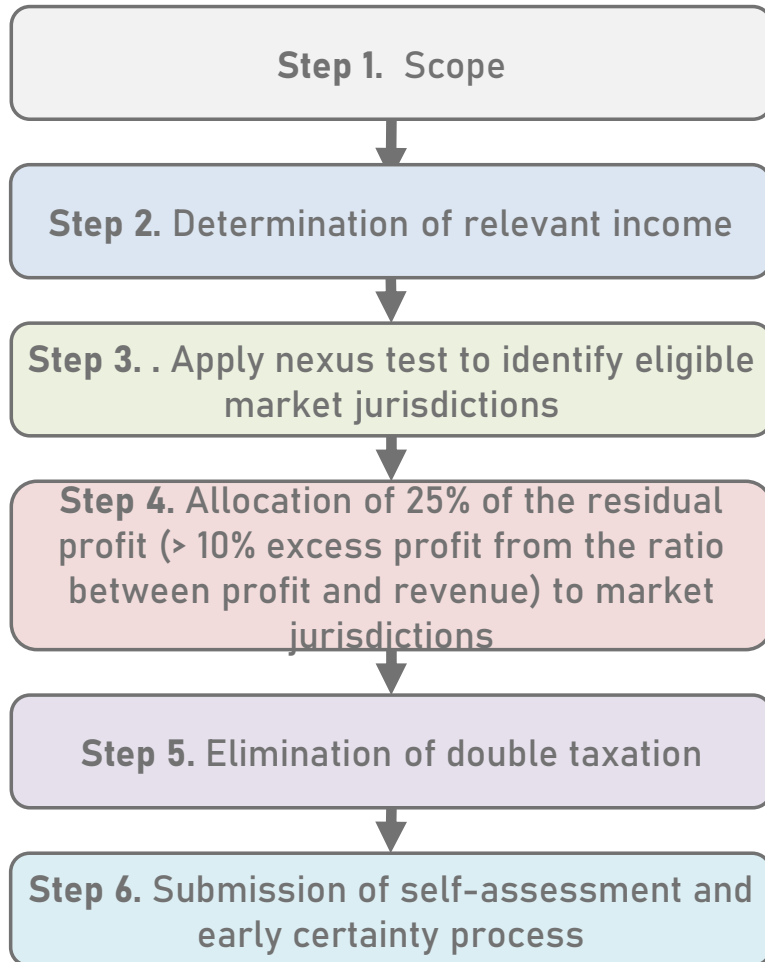


3. The search for the scope





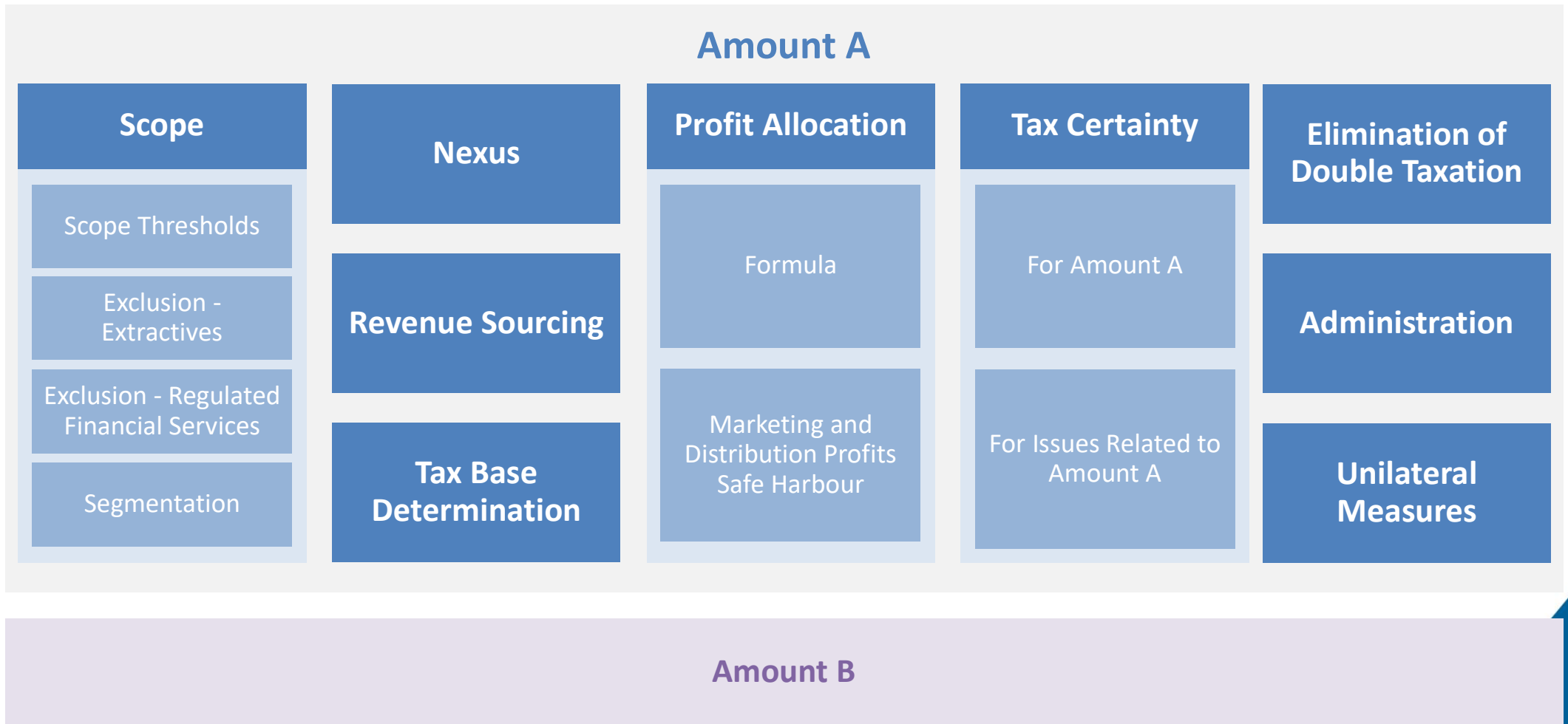
4. What is the solution?



- + Swift legal certainty on all relevant taxation issues
- + No digital service taxes or similar unilateral measures
- + No allocation of residual profits to market jurisdictions that already have residual profits



5. Current status





5. Current status

Completed

- Public consultation on Amount A - **Nexus & Revenue Sourcing**
 - 4 February, 2022 – 18 February, 2022 / 65 submissions
- Public consultation on Amount A **Tax Base**
 - 18 February, 2022 – 4 March, 2022 / 35 submissions
- Public consultation on Amount A **Scope**
 - 4 April, 2022 – 20 April, 2022 / 26 submissions
- Public consultations on Amount A **Scope Exclusion – Extractives**
 - 14 April, 2022 – 29 April, 2022 / 22 submissions
- Public consultations on Amount A **Scope Exclusion – Regulated Financial Services**
 - 6 May, 2022 – 20 May, 2022 / 51 submissions

Ongoing

- Public consultation on **Tax Certainty for Amount A**
 - 27 May, 2022 – 10 June, 2022
- Public consultation on **Tax Certainty for Issues Related to Amount A**
 - 27 May, 2022 – 10 June, 2022

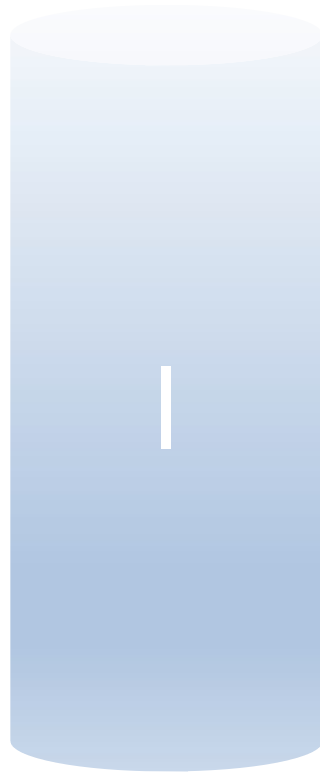


6. What's next?

- **Model Rules and MLC:** July output
- **Politics:** Taxes and beyond
- **Policy:** Cost/benefit of Pillar 1 - a template for the taxation of large business?



Pillar Two





1. Why Pillar Two?

BEPS Action 3 on CFCs

- Did not achieve intended result, although related concerns in part started BEPS Action Plan

BEPS Action 5 on FHTP

- Political “narrative” almost turned into opposite of what was intended

BEPS Actions 8-10 on TP

- Leaves technically and politically in part challenging landscape

- Major parts of the population, civil society and politicians saw and see harmful tax competition only partly in terms of substance and transparency, but also in no or very low effective tax rates;
- Substance an increasingly difficult concept
- Parts of academia seek to make corporate income taxation more resistant to manipulation, by linking it more strongly to the consumer (aspects of Pillar One) and/or to the residence of the shareholder (aspects of Pillar Two)



1. Why Pillar Two?



- GILTI in the USA as part of the US tax reform (2016/2017)



- Press publishes examples of low-taxed MNEs that are generally perceived to be "digital companies"



- Interaction with Pillar 1



2. How is the pillar designed? - Six basic building blocks plus a subject to tax rule...

Scope of application

MNEs with revenues of more than
EUR 750 million

CFC and reverse CFC

Interaction of the Income Inclusion Rule (IIR)
and the Under Taxed Payment Rule (UTPR)

Common tax base

The consolidated financial statements in
accordance with an acceptable financial
accounting standard
(e.g. IFRS or GAAP)

Jurisdictional blending

Determination of the relevant income and the
effective tax rate on a jurisdictional basis

Substance carve-outs

Substance-based Income Exclusion on book
value of tangible assets and payroll

Top-up Tax Concept

The top up tax is charged to bring the tax on the
income in the jurisdiction up to the minimum
rate



3. What is the current focus?

- Work on Implementation Framework across 4 dimensions
 - Additional clarifications;
 - Administrative procedures, exchange of information, accounting systems, IT
 - Balance between tax policy objectives and implementation effort - simplifications including safe harbours;
 - Rule co-ordination, dispute avoidance and dispute resolution



4. What's next? Timetable and outlook

- **Subject to Tax Rule**
- **GloBE Rules:** Rules in December 2021 and Commentary in spring 2022
- **Implementation Framework:** soon launching framework for a coordinated application and implementation;
- **Politics:** EU, UK, USA etc
- **Policy:** Stabilisation of the system - room to remove, revise individual measures that may no longer be needed?



Other items on the OECD tax agenda

- Carbon pricing
- Tax transparency- Crypto and e-money
- Tax administration- digital transformation
- Tax and development
- Global mobility





THANK YOU

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