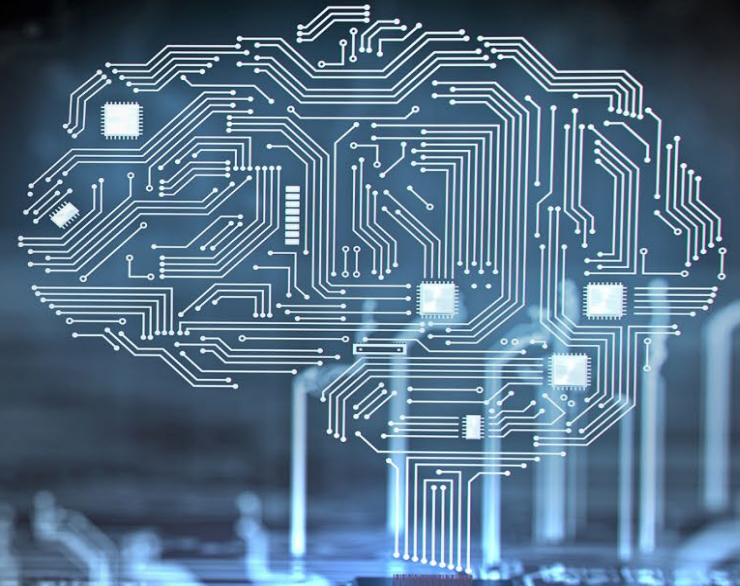


# IFA Webinar - Recent Developments on OECD Pillar 1

Hitesh D. Gajaria

3 September 2021



# Global Tax Reset



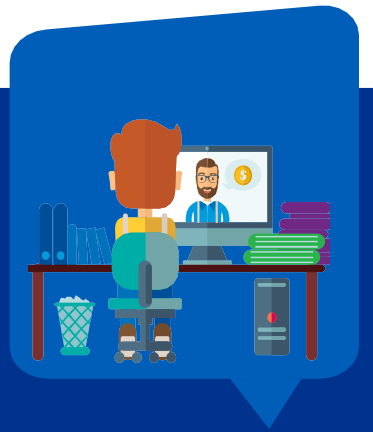
**Closing  
loopholes for  
treaty abuse**



**Enhanced  
transparency  
norms**



**Nexus beyond  
physical  
presence**

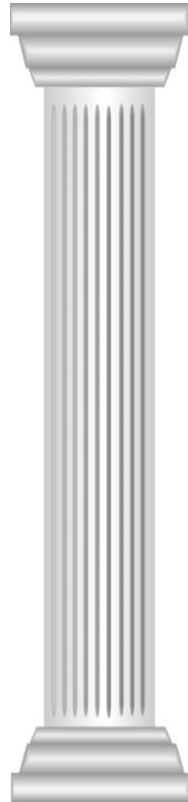


**Minimum level of  
tax**

# Pillar 1 and Pillar 2 – a High Level Overview

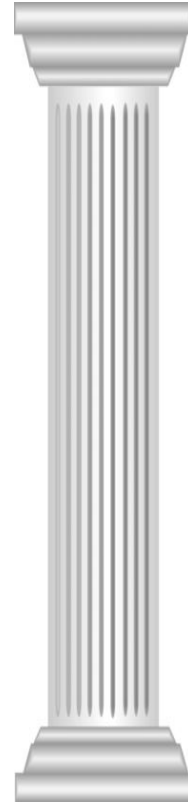
## Pillar 1

- Focuses on allocation of taxing rights between jurisdictions, new profit allocation and nexus rules
- Approach seeks to accommodate new business models and expand taxing rights of market jurisdictions (e.g., location of users)
- OECD statement indicates that the regulated financial services sector, including insurance, and extractive industries are scoped out of Pillar 1

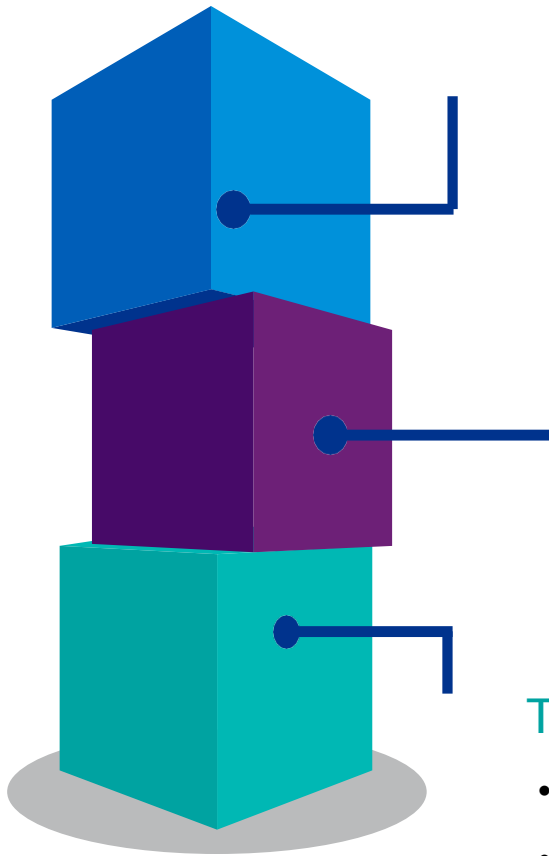


## Pillar 2

- Also called Global Anti-Base Erosion (“GloBE”) proposal - seeks to address remaining BEPS issues
- Co-ordinated set of rules to address profit shifting and unhealthy tax competition by providing jurisdictions with right to “tax back” where other jurisdictions have not exercised their primary taxing rights or income is subject to low rate of tax
- Proposed as a “top-up” tax to a minimum effective tax rate (“ETR”) to provide a level playing field for jurisdictions and taxpayers



# Elements of Pillar 1 Proposal (Blueprint and IF Statement)



## Amount A

- Portion of the MNE “deemed residual” profit to be reallocated to market jurisdictions
- Large and most profitable businesses

## Amount B

- Fixed return for certain routine marketing and distribution activities in the market / user jurisdictions
- All Businesses

## Tax Certainty

- Through dispute prevention and resolution mechanisms
- All Businesses

# Applicability of Pillar 1



## Who is in Scope?



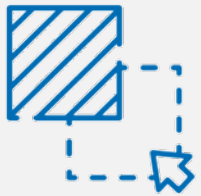
### **MNEs in Scope**

- Global turnover above EUR 20 billion; and
- Profitability above 10% (measured as profits before tax by revenue on an accounting basis)



### **Threshold adjustment**

- To reduce to EUR 10 billion 7 years after Pillar One enters into force



### **Exclusions**

- Extractive and Regulated Financial Services

# Applicability of Pillar 1 (contd..)



## Calculation of taxing right



Applicability of Amount A?

Amount B

Marketing and distribution profits safe harbour

- Profitability above 10% (measured as profits before tax by revenue on an accounting basis), deemed as residual profit
- Between 20%-30% of residual profit will be allocated to market jurisdictions with nexus using a revenue-based allocation keys
- Few adjustments, including loss carry forward rules envisaged
- **Nexus** will exist if the country sourced revenue threshold is least EUR 1 million in jurisdiction (EUR 250,000 if market GDP less than EUR 40 billion)
- Detailed **revenue sourcing rules** for specific categories of transactions will be developed
- Rules envisaged for identifying paying entities and eliminating double tax
- Simplification of application of arm's length standard to baseline marketing and distribution activities – To be simplified and streamlined by end of 2022
- If residual profit already taxed in market jurisdiction, Amount A will cap the residual profits allocated to that jurisdiction

# Implementation of Pillar 1



## Tax Certainty and Implementation



### Tax Certainty

- Commitment to binding dispute prevention and resolution mechanisms for issues relating to Amount A
- The mechanisms would generally be mandatory on countries
- However, consideration will be given to making the mechanisms elective for certain developing countries.



### Unilateral Measures

- Removal of all Digital Service Taxes and other relevant similar measures on all companies



### Implementation

- Amount A will be implemented through a multilateral instrument (“MLI”)
- The MLI will be developed and open for signature in 2022, with Amount A coming into effect in 2023

# Amount A Computation - Simplified example

Particulars	EUR Bn
Total Revenues (A)	100
PBT (B)	30
PBT / Revenues (C = B / A)	<b>30%</b>
Profitability threshold (D)	<b>10%</b>
Excess profitability (E = C - D)	<b>20%</b>
Reallocation percentage (assumed) [F]	<b>25%</b>
Reallocation % [G = E x F]	<b>5%</b>
Amount A available to be allocated to market jurisdictions [A x G]	<b>5</b>

**> 10%**

**Assumed % of residual profit between 20-30%**

**Residual profit available for distribution**