



税务快讯

【全球税制重塑 2.0 系列】

关于应对经济数字化税收挑战“双支柱”方案最新进展



2021 年 10 月 8 日，G20/OECD 应对税基侵蚀与利润转移（BEPS）问题的包容性框架（以下简称“包容性框架”）就国际税收改革方案（即“双支柱”方案）发布了一份声明（“声明”），136 个包容性框架税收管辖区（“辖区”）已对此达成共识。该声明是对包容性框架在今年 7 月发布的声明的进一步明确。

2017 年以来，140 个包容性框架辖区参与了“双支柱”方案的制定，以应对数字经济带来的国际税收挑战。2020 年 10 月，包容性框架发布了支柱一和支柱二的两份蓝图报告，即支柱一旨在制定新的联结度与利润分配规则，支柱二提出了全球最低税的国际税收规则。今年 6 月和 7 月，G7、G20 以及多数包容性框架辖区就“双支柱”方案的主要内容达成了政治共识。

本次声明明确的主要内容包括：

支柱一：联结度与利润分配规则

支柱一的金额 A 规则通过设立新的征税权，将利润重新分配给市场国。全球营业收入超过 200 亿欧元且利润率超过 10% 的跨国企业，

相关门槛按平均值计算，将高于 10% 常规利润率的剩余利润的 25% 以收入作为分配因子重新分配给市场国。10% 的利润水平按税前利润与收入的比率计算。未来如果金额 A 规则实施顺利（包含金额 A 税收确定程序），全球营业收入门槛将下调至 100 亿欧元。协议生效七年后（预计将在 2030 年）将对金额 A 是否实施顺利进行审议。引入金额 A 规则的同时，参与辖区将取消所有对企业征收的数字服务税以及其他相关类似单边措施，并承诺未来不再开征新的数字服务税（除非金额 A 规则无法在 2023 年底开始执行）。

OECD 将对金额 B 开展进一步工作，即明确适用范围，简化和优化“基本营销和分销活动”适用的关联交易定价原则。

为增强税收确定性，强制性有约束力的争议预防与解决机制将适用于所有与金额 A 相关的事项，包括转让定价、营业利润和决定某项争议是否属于金额 A 争议解决机制的范围等。有些相互协商程序争议案件较少的小规模发展中国家，将有机会选择是否适用争议解决机制（而非强制性适用）。相关辖区可以适用选择性机制的资格将被定期审议，一旦被审议认定为丧失资格，后续年度将无法恢复。

支柱二：全球最低税规则

本次声明明确，对于支柱二下全球反税基侵蚀规则¹（GloBE 规则）适用 15% 的“最低有效税率”。即大型跨国企业集团在全球各个管辖地的利润适用的有效税率如低于 15% 的最低有效税率，则需通过缴纳“补足税”的方式使得相关管辖地利润的有效税率达到“最低有效税率”要求。

针对应税规则 (subject to tax rule)，本次声明明确其适用的“最低税率”为 9%。即针对关联方之间的利息、特许权使用费和其它规定款项，如果收到款项一方的调整后的名义税率低于 9% 的“最低税率”，来源管辖地可通过征收补足税的方式将针对付款总额的税负补足到 9% 的“最低税率”。

实施计划时间表

根据本次声明所附实施计划，“双支柱”方案拟在 2022 年推进立法，2023 年生效执行。具体时间表如下：

支柱一

实施金额 A 的多边公约将在 2022 年初制定，预计在 2022 年中可供签署。多边公约将涵盖如何确定与分配金额 A、如何消除双重征税、征管程序、信息交换程序、争议预防及解决程序，并辅以解释性说明。待足够数量的辖区完成多边公约的核准程序，金额 A 规则将于 2023 年生效。

2022 年初将完成实施金额 A 的国内立法模板开发。金额 B 的最终成果将于 2022 年底发布。

支柱二

包容性框架将于 2021 年 11 月底前完成 GloBE 规则的国内立法模板及应税规则的协定范本条款设计（含注释），在 2022 年中前完成引入应税规则的多边工具的开发。

声明指出收入纳入规则将在 2023 年起生效执行，而低税支付规则将推迟至 2024 年开始实施。

德勤观察

最新的包容性框架声明对今年 7 月达成的共识方案中存在的一些遗留问题进行了明确：全球最低税的税率明确为 15%（删除了此前“至少”的描述），只允许发展中国家使用的应税规则的最低税率明确为 9%（删除了此前 7.5%-9% 的范围），以及支柱一金额 A 下分配给市场国高于 10% 常规利润率的剩余利润比例明确为 25%。另外，一个重要的进展是爱尔兰、匈牙利和爱沙尼亚经过协商签署了协议，这一进展增加了通过欧盟指令执行 OECD 关于支柱二方案建议的可能性。

此外，各方谈判达成的重要结果还包括不开征新的数字服务税（除非支柱一下的金额 A 在 2023 年底前无法实施）。此前，一些国家已计划采取新的单边措施。例如，加拿大财政部已确认，其拟议的数字服务税将通过立法，但仅在 2024 年 1 月 1 日起金额 A 规则不生效的情况下追溯至 2022 年 1 月 1 日适用。这样的安排也是为了确保美国等关键国家能够在 2022 年获得关于金额 A 规则的国内批准。

本次声明还承诺了 2023 年开始生效执行这一雄心勃勃且具有挑战的实施时间表，包括 2021 年 11 月底前出台支柱二的国内立法模板及协定范本条款（含注释），2022 年初制定实施金额 A 的多边公约及解释性说明。声明对于收入纳入规则从 2023 年起生效执行、而低税支付规则推迟至 2024 年开始实施的时间安排，也体现了 OECD 从过往国别报告执行和本地申报的复杂性中吸取了经验，便于各国在援用辅助措施之前有机会通过国内立法先行实施收入纳入规则。

本次声明并没有回答包容性框架一直在努力解决且对跨国企业来说至关重要的很多技术难题。例如，金额 A 中如何确定必须对分配给市场国的金额豁免或者抵免的“支付实体”；针对支柱二的收入纳入规则和低税支付规则如何处理时间性差异（正在考虑的方案包括修改后的递延所得税的方法和超额税收抵免结转方法）；对于金额 B（即营销和分销的转让定价基准回报），OECD 除了表示将首先致力于明确金额 B 的适用范围外，并没有其他技术点的更新。业界非常希望看到上述这些问题能够得到解决。

从时间上来看，对于支柱二下的遗留问题将在 2021 年 11 月底之前得到解决，对于支柱一下金额 A 的问题最晚需要在 2022 年初解决，而金额 B 的最终成果将在 2022 年底完成。

一直以来很多企业都提出希望在立法之前有机会对详细的技术条款参与发表意见。本次声明也指出 OECD 向企业在技术问题上进行的

咨询将随政府之间的谈判持续开展，但鉴于上述实施时间表极具挑战性，技术咨询预计只会在有限范围内进行，这将加大新规则实施后产生摩擦和争议的风险。

接下来最重要的政治挑战是美国国内对这些规则的批准，特别是与金额 A 有关的规则。美国财政部长珍妮特·耶伦发表声明称，“本次共识为国会通过提案铺平了道路，我希望这些提案能在协商进程中迅速通过。”毫无疑问，这将成为企业在 2022 年初需要密切关注的领域。

根据 OECD 的估算，支柱一将导致每年有一千二百五十亿美元利润的征税权重新分配给市场国。根据支柱二下的全球最低税规则，预计全球每年将新增一千五百亿美元的税收。截止目前，包容性框架辖区中肯尼亚、尼日利亚、巴基斯坦和斯里兰卡尚未同意相关方案提议。“双支柱”方案将提交 2021 年 10 月 13 日 G20 财长会议、10 月 30-31 日的 G20 领导人峰会进一步审议。

随着企业全球化进程持续发展，重塑国际税收规则的“双支柱”方案落地无疑会给企业的国际税收管理带来新的挑战 and 机遇。如前文所述，尽管一些技术细节尚待解决，但已经清晰的规则对企业的影响显而易见。企业一方面需要紧跟双支柱方案的进一步明确和严格执行时间表，另一方面也需要审视自身的情况，提早准备，积极应对。

注释：¹ 收入纳入规则 (income inclusion rule) 和低税支付规则 (undertaxed payment rule) 共同构成全球反税基侵蚀规则

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税务评论

P343/2021 - 2021 年 7 月 16 日

全球最低税常见问题及解答

[\[简体中文版\]](#) [\[英文版\]](#) [\[日文版\]](#)

P338/2021 - 2021 年 5 月 20 日

在不断变化的国际环境中管理和规划知识产权的注意要点

[\[简体中文版\]](#) [\[日文版\]](#)

P332/2021 - 2021 年 1 月 22 日

在不确定性中寻找机会——有关 OECD/G20 税基侵蚀和利润转移 (BEPS) 计划以及全球税制重塑 2.0 的第七次年度全球调查

[\[简体中文版\]](#) [\[日文版\]](#)

P330/2021 - 2021 年 1 月 11 日

欧盟强制税务报告制度 (DAC6) 已实施

[\[简体中文版\]](#) [\[英文版\]](#)

P327/2020 - 2020 年 11 月 19 日

OECD 就应对数字经济带来的税收挑战发布蓝图报告：支柱二之详细解读

[\[简体中文版\]](#) [\[日文版\]](#)

P325/2020 – 2020 年 11 月 4 日

OECD 就应对数字经济带来的税收挑战发布蓝图报告：支柱一之详细解读

[\[简体中文版\]](#) [\[日文版\]](#)

P323/2020 – 2020 年 10 月 22 日

变革与经济复苏下的全球税收政策导向

[\[简体中文版\]](#)

P322/2020 – 2020 年 10 月 7 日

澳大利亚发布 2020-21 年预算：政策利好复苏

[\[简体中文版\]](#)

P317/2020 – 2020 年 7 月 27 日

欧盟 – 针对特定跨境安排的强制税务报告制度

[\[简体中文版\]](#) [\[英文版\]](#)

P311/2020 – 2020 年 2 月 14 日

包容性框架成员国再次承诺将致力于解决数字化经济带来的税收挑战

[\[简体中文版\]](#)

P309/2019 – 2019 年 12 月 20 日

数字经济征税方案下“统一方法”与现行转让定价规则碰撞之初探

[\[简体中文版\]](#)

P304/2019 – 2019 年 11 月 15 日

OECD 发布最新意见征询文件：全球防止税基侵蚀提案（支柱二）

[\[简体中文版\]](#) [\[日文版\]](#)

P302/2019 – 2019 年 11 月 5 日

OECD 意见征询文件：提出对数字经济征税的“统一方法”

[\[简体中文版\]](#) [\[英文版\]](#) [\[日文版\]](#)

税务快讯

2021 年 7 月 7 日

[OECD Inclusive Framework reaches political agreement on taxing the digitalised economy and a global minimum rate](#)

2021 年 7 月 3 日

[双支柱方案得到全球性支持](#)

2020 年 10 月 13 日

[2020 年美国大选对美国企业所得税政策的影响](#)

香港税务评论

H99/2020 – 2020 年 11 月 27 日

OECD 就应对数字经济带来的税收挑战发布蓝图报告：支柱二之对香港的影响

[\[英文版\]](#) [\[简体中文版\]](#)

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Tax Newsflash

【Global Tax Reset II Series】

OECD inclusive framework updates political agreement on Pillar One and Pillar Two



On 8 October 2021, the G20/OECD Inclusive Framework on BEPS ([inclusive framework](#)) published a [statement](#) on the components of global tax reform, agreed by 136 of its members. This is an update to the [statement](#) published in July 2021.

Since 2017, the 140 member countries of the inclusive framework have been jointly developing a ‘two-pillar’ approach to address the tax challenges arising from the digitalization of the economy. Two detailed “blueprints” were published in October 2020 on potential rules for addressing nexus and profit allocation challenges ([Pillar One](#)) and for global minimum tax rules ([Pillar Two](#)). Political agreement on key aspects of the proposals was reached by the G7, G20, and many of the OECD inclusive framework countries in June and July 2021.

[Nexus and profit allocation rules \(Pillar One\)](#)

[Amount A](#)

Pillar One’s “Amount A” proposal reallocates taxing rights in favour of market countries through the creation of a new taxing right. In-scope businesses will reallocate 25% of their residual profit above a 10% profit level to market countries using a revenue-based allocation key. The 10% profit level will be calculated as the ratio of profit before tax to revenue.

Amount A will apply to multinational businesses with global annual turnover above EUR 20 billion and profitability above a 10% margin, calculated using an averaging mechanism. Businesses in the extractive and regulated financial services sectors are excluded from Amount A. The global annual turnover threshold will be reduced to EUR 10 billion in the future, depending on a successful implementation of Amount A, including in respect of tax certainty. A review to determine the success will be undertaken seven years after the rules enter into force (so expected to be in 2030).

Segmentation rules will apply only in exceptional circumstances where a segment disclosed in financial statements meets the scope of the rules.

A market country will be entitled to an allocation of Amount A if revenues of at least EUR 1 million are generated in that country. For countries with GDP lower than EUR 40 billion, this threshold will be EUR 250,000. Revenues will be sourced to the end market country where goods or services are used or consumed. Detailed sourcing rules will be developed for specific categories of transaction. Requirements to trace small amounts of sales will be kept to a minimum.

A marketing and distribution profits safe harbor will limit the Amount A allocation to market countries where residual profits are already taxed.

To eliminate double taxation, any Amount A liability will be allocated to entities that earn residual profit and relieved via either exemption or credit.

Removal of all digital services taxes (DSTs)

The introduction of Amount A will be coordinated with the removal of all DSTs and other relevant similar measures on all companies. Transitional arrangements are being discussed. Agreement has been reached that, with immediate effect, no new DSTs will be imposed on any company (unless Amount A fails to be implemented by the end of 2023). A detailed definition of what constitutes a relevant similar measure will be included in the multilateral convention to implement Amount A and its explanatory notes.

Amount B

Further work will be undertaken to simplify and streamline the pricing of “baseline marketing and distribution activities” undertaken by related party distributors, starting with work to define the scope.

Tax certainty

Mandatory and binding dispute resolution mechanisms will be available in respect of all issues related to Amount A, including transfer pricing, business profits, and determination of whether an issue falls within the scope of the Amount A dispute resolution mechanism. Some small developing economies that have few or no mutual agreement procedure cases will have access to an elective (rather than mandatory) dispute resolution process.

Global minimum tax (Pillar Two)

Income inclusion rule and undertaxed payment rule

New rules will ensure that large multinational businesses pay a minimum effective rate of tax of 15% on profits in all countries. The income inclusion rule will result in additional “top up” amounts of tax being payable by a parent entity of the group to its tax authority.

The undertaxed payment rule will apply as a secondary (backstop) rule where the income inclusion rule has not been applied. Groups with a maximum of EUR 50 million of tangible assets in overseas countries and which operate in no more than five overseas countries will be exempt from applying the rule for up to five years.

Multinational groups with consolidated revenues of at least EUR 750 million will be in scope, but countries will be free to apply lower thresholds to groups headquartered in their country. The allocation method for top up taxes under the undertaxed payment rule, including in respect of low taxed profits in the country of the ultimate parent, remains to be agreed.

The Pillar Two rules will have the status of a common approach: countries will not be required to adopt them, but if they choose to, implementation must be in a manner consistent with the model rules and inclusive framework guidance. Consideration will be given to the conditions under which the US global intangible low-taxed income (GILTI) regime will co-exist with the Pillar Two global minimum tax, including being applied on a country by country (jurisdictional) basis.

Effective tax rate calculations will use a tax base determined by reference to financial accounts, subject to agreed adjustments and mechanisms to address timing differences.

A formulaic substance carve-out will exclude income that is a 5% return on tangible assets and payroll. A transition period will apply during which 8% of the carrying value of tangible assets and 10% of payroll initially will be excluded, declining gradually over a ten-year period to 5%. There also will be a de minimis exclusion in respect of countries where a group has revenues of less than EUR 10 million and profits of less than EUR 1 million, and an exclusion for international shipping income.

Subject to tax rule

The subject to tax rule will allow limited source taxation on related party interest, royalties, and a defined set of other payments. The rule will be incorporated into bilateral tax treaties by countries that apply nominal rates of tax below a minimum rate to such receipts where requested by developing country members of the inclusive framework.

The taxing right will be limited to the difference between the subject to tax minimum rate of 9% and the tax rate on the payment.

Implementation plan

Nexus and profit allocation rules (Pillar One)

A multilateral convention to implement Amount A will be developed by early 2022, and available for signature in mid-2022. This will provide a framework for consistent implementation of Amount A, irrespective of a country's tax treaty network. The multilateral convention will contain: rules to calculate Amount A and eliminate double taxation; administration processes; exchange of information processes; and dispute prevention and resolution mechanisms. It will be supplemented by explanatory notes. The Amount A rules will enter into force in 2023 once a critical mass of countries have ratified the multilateral convention.

Model rules for domestic legislation to implement Amount A will also be developed by early 2022. Final deliverables will be released by the end of 2022 for Amount B.

Global minimum tax (Pillar Two)

Model rules to define the scope, mechanics, and administration of the income inclusion rule and undertaxed payment rule, and a model treaty provision to give effect to the subject to tax rule, will be developed by the end of November 2021. The model rules will be supplemented by commentary. A multilateral convention to facilitate the adoption of the subject to tax rule in bilateral treaties will be developed by mid-2022.

A framework for the coordinated implementation of the income inclusion rule and undertaxed payment rule will be developed by the end of 2022, potentially alongside a multilateral convention to facilitate consistency. The income inclusion rule will take effect from 2023, with the undertaxed payment rule deferred by one year to 2024.

Comments

The updated inclusive framework statement shows progress in relation to some of the political questions that remained from the agreements reached in July. The most important developments are the negotiations that have allowed Ireland, Hungary, and Estonia to sign up to the agreement, making an EU directive on Pillar Two to implement the OECD proposals more likely. These include determination of the global minimum rate for the income inclusion rule and undertaxed payment rule as 15% (removing “at least” in relation to the rate). The rate for the subject to tax rule, the enhanced withholding tax for developing countries only, is agreed at 9% (removing the range 7.5% to 9%).

Other areas of clarification include the amount of profits to be reallocated to market countries under Amount A of Pillar One – set as 25% of residual income above a deemed routine return of a 10% profit margin on sales.

The negotiations have led to agreement that no new DSTs will be introduced (unless Pillar One’s Amount A fails to be implemented by the end of 2023). This is significant, as a number of countries had announced the intention to look at unilateral measures. The Canadian Finance Ministry, for example, has confirmed that its proposed DST will be legislated but will only apply as from 1 January 2024 if the Amount A rules are not in force (but will in that case be backdated to 1 January 2022). This is designed to maintain the focus of key countries, such as the US, in getting domestic approval for the Amount A changes in 2022.

The updated statement also includes an implementation plan that reflects commitment to the ambitious and challenging objective of implementation in 2023. This includes model legislation and commentary on Pillar Two by the end of November 2021 and treaty clauses (for a new multilateral instrument) and explanatory notes for Amount A by early 2022. Implementation of the undertaxed payment rule will be deferred by one year, to 2024, to allow time for countries to enable the income inclusion rule to take effect in domestic regimes before the backstop is invoked (learning from the implementation of country-by-country reporting and the complexities of local filing).

These political and timing points aside, the statement does not answer the difficult technical questions that the inclusive framework has been grappling with over the summer and which businesses, understandably, see as important. Notably for Amount A this includes how the “paying entity” that has to exempt or give credit for amounts allocated to market countries will be determined, and for the income inclusion rule and undertaxed payment rule of Pillar Two includes how timing differences will be dealt with (a modified deferred tax approach or excess tax credit carry forward being options under consideration). There are also no further clarifications on definitions, such as how the exclusions for extractives and regulated financial services will be applied. There are no updates on Amount B (the transfer pricing marketing and distribution return baseline reward) apart from to say that the OECD will work first on scope. Businesses are keen to see these points resolved.

For Pillar Two these areas will have to be resolved by the end of November 2021 for the release of model legislation and explanatory notes. For Pillar One Amount A, early 2022 will be the latest possible date for resolution, and for Amount B it will be the end of 2022.

The OECD statement says that there will continue to be consultation with business “within the constraints of the timeline.” There has been only limited business consultation on technical matters for 12 months while government-to-government political negotiations have been continuing, and many businesses will want an opportunity to comment on detailed technical provisions before they are legislated. The challenging timeline suggests that consultations may have to remain limited, which will increase the risk of frictions and kinks in the rules that will need to be resolved post-implementation.

The most important remaining political challenge is the US domestic approval of the rules, in particular those related to Amount A. US Treasury Secretary, Janet Yellen, issued a statement saying that “This deal paves the way for Congress to enact those proposals, and I’m hopeful they’ll do so swiftly though the reconciliation process.” This will be an area that businesses will want to monitor closely in early 2022.

The OECD estimates that under Pillar One, taxing rights on more than USD 125 billion of profit will be reallocated to market countries each year. The global minimum corporate income tax under Pillar Two is estimated to generate around USD 150 billion in additional global tax revenues annually. The inclusive framework countries that have not yet agreed to the proposals are Kenya, Nigeria, Pakistan, and Sri Lanka.

Next steps

The two-pillar solution will be discussed by G20 finance ministers at their meeting on 13 October 2021, and G20 leaders at the G20 Leaders’ Summit on 30-31 October 2021.

Deloitte’s Asia Pacific Dbriefs series will hold a webcast on 11 November 2021 at 2:00 - 3:00 PM SGT to discuss the proposals. For more information and to register visit:

<https://event.on24.com/wcc/r/3388341/C6182CC99E04CD7A9D4195E825A74DB1>.

Through the "Global Tax Reset II series" articles, Deloitte will help you keep an eye on the recent major changes in the global tax system and discuss with you the far-reaching impact that it may have on multinational corporations. Please refer to the following links to access to the previous articles under the series.

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