

International Tax Policy Forum

*Whither International Taxation: A New International Tax
Architecture Based on the OECD Blueprints?*



Agenda

- 10:00 **Introductory Remarks**
John Samuels, ITPF Chairman
- 10:05 **Overview of the OECD Blueprints**
Mary Bennett (Baker McKenzie)
- 10:20 **Are New Rules Needed for Taxing International Income?**
Moderator: **James Hines** (University of Michigan)
Presenters: **Wei Cui** (University of British Columbia)
 Mihir Desai (Harvard Business School)
 Ruud de Mooij (International Monetary Fund)
 Wolfgang Schön (Max Planck Institute, Munich)
- 11:10 **Should a New International Tax Architecture Be Based on the OECD Blueprints?**
Moderator: **Will Morris** (PwC)
Presenters: **Michael Devereux** (Oxford University)
 Michael Graetz (Columbia Law School)
 Chip Harter (PwC)
- 12:00 **Keynote Address**
Introduction: **John Samuels** (ITPF)
Presenter: **Pascal Saint-Amans** (OECD)



Q&A Instructions

- You may submit a question for the presenters at anytime using the chat feature in your toolbar. On a laptop this is found on the far right of your screen. On an iOS or android device the chat can be found in your floating toolbar at the top or bottom of your screen.



Introductory Remarks

John Samuels

ITPF Chairman



Overview of the OECD Blueprints

Presenter: **Mary Bennett** (Baker McKenzie)



**Baker
McKenzie.**

Overview of the OECD Blueprints

Mary Bennett | ITPF Conference | April 30, 2021



OECD/Inclusive Framework Reform Proposals

- New taxing right to market/user jurisdictions, without regard to physical presence
- Formulaic approach based on group/business line profits
- No link to ALP

Pillar 1



Pillar 2



- Global minimum tax proposal
- Parent country could impose top-up tax on income of foreign branch or sub with ETR below a minimum rate
- Source country of intragroup payments could deny deduction or impose additional tax

OECD/IF issued Blueprints, October 2020

Technical work drafting statutory and treaty text, 2021-2022?

G20 to endorse OECD/IF Agreement, July-October 2021

Implementation – enacting laws and ratifying treaty, 2023-?

Other moving parts:

- Proliferating DSTs / USTR action and tariffs
- EU plan to propose its version of digital levy in 2021 regardless of whether OECD agreement reached

Key elements of Pillar One

Amount A

- New nexus and taxing right for market jurisdictions over X% of MNE group's residual profit

Amount B

- Fixed return for certain distribution / marketing activities physically carried on in market / user jurisdiction

Tax certainty

- Dispute prevention and resolution processes to improve tax certainty

Key open issues under Pillar One

- Amount A
 - *Threshold* -- €750m? US proposal of \$20b?
 - *Business activity* -- ADS + CFB? US proposal of quantitative-only?
 - *Carve-outs* – Extractives / financial / shipping? Limited under US proposal?
 - *Nexus* -- Revenue only or plus factors for CFB? No distinction if follow US proposal on business activity?
 - *Quantum* – how much of residual profit to reallocate?
 - *Segmentation* – Required only under safeguard criteria? Required only in very special individual cases under US proposal?
 - *Double taxation relief* – qualitative vs. quantitative factors?
- Amount B
 - *Scope* – narrow or broad definition of baseline activities
- Dispute resolution
 - *Scope of mandatory binding DR beyond Amount A*

Key elements of Pillar Two

Income Inclusion Rule (IIR) / Switch-over Rule (SOR)

- Parent (or head office) jurisdiction collects top-up tax on income of sub (or branch) with ETR below minimum rate

Undertaxed Payments Rule (UTPR)

- Source jurisdiction of deductible intragroup payments collects top-up tax assigned from low-tax affiliates not covered by IIR

Subject to Tax Rule (STTR)

- Treaty provision to allow payer jurisdiction to top up tax on intragroup payment where payee jurisdiction applies below-minimum nominal rate to payment

Key open issues under Pillar Two

- Rate
- Jurisdictional blending / Assigning income and taxes to jurisdictions
- Covered Taxes
- Use of financial accounts to determine tax base in each Constituent Entity
 - Minimal adjustments designed to bring financial accounts closer to tax principles
 - Permanent differences (e.g., treatment of bribes, fines and penalties)
 - Dividend and equity method accounting
 - Stock-based compensation
 - Temporary differences (e.g., deferred tax accounting v. carryovers)
- Carve-outs for substance (fixed assets and wages)
- Undertaxed payment rule -- simplification
- Rule coordination (e.g., STTR first, IIR priority over UTPR, IIR top-down) and GILTI grandfather

Implementation issues



- Blueprints contemplate both domestic law and treaty changes
- Likely need for a multilateral convention to implement both Pillars
- Standstill / rollback of unilateral measures (DSTs, etc.) upon implementation
- Mechanism for providing future guidance
- Deciding on what's a “critical mass” of participating jurisdictions to trigger entry into effect

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Keynote Address

Introduction: **John Samuels** (ITPF)

Presenter: **Pascal Saint-Amans**
(OECD)



Thank you for attending

A recording of the conference as well as all materials may be found on the ITPF website below.

<https://itpf.org/conferences>

