



Historically Significant Reform(ing) – How the New OECD Global Tax Agreement is Trying to
Change the World
By Catherine Goodman

The world's most profitable multinational corporations might be subject to increased taxes from multiple jurisdictions starting in 2023. Whether or not they are will depend in large part on the ability of a group called the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to draft model rules in the next month which countries around the world can easily adapt and pass as legislation domestically.

In 2013, after the financial crisis of 2008 left people wanting to hold large corporations to higher standards of accountability and fairness, the Organisation for Economic Co-operation and Development (OECD) intensified its efforts to address some of the financial impacts of an economy that is increasingly global and digital.¹ They recognized that some companies use their digital platforms to make large profits in international jurisdictions without having any physical presence there, and so avoid having to pay taxes there. Jurisdictions can end up competing to offer the best tax incentives for businesses to attract them to set up shop on their soil. In an attempt to stop, or at least discourage, that kind of competition, 140 countries and jurisdictions (including all 20 of the G20 countries) collaborated on the OECD/G20 Inclusive Framework.² Many seem to believe that international collaboration is the only way to make this kind of reform. The Italian Prime Minister, Mario Draghi, noted “going it alone is simply not an

option.”³ Meanwhile, waiting for the agreement, the Canadian Finance Minister Chrystia Freeland has even postponed a 3% tax on revenues from digital services, believing that the value of collaboration will outweigh the potential value of passing legislation unilaterally.⁴

On October 8, 2021, The United States, along with 135 other countries (together representing 90% of global GDP), made a deal to move forward with a “Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.”⁵ The pillars proposed in the agreement will make it hard for countries to compete for businesses by offering tax incentives. The primary element of the first pillar of the agreement is that multinational enterprises (MNEs) with global turnover of \$20 billion euros and more than 10% profits will be taxed based on the jurisdiction of the sources of profits.⁶ This pillar targets companies with the most reach and profitability internationally, like Google, Amazon, and Facebook.⁷ The goal of the first pillar is to keep large corporations from deriving huge profits from a jurisdiction while avoiding taking any responsibility for the people of that jurisdiction. Notable exceptions to pillar one are Extractives and Regulated Financial Services.⁸ The main element of the second pillar of the agreement is to set a 15% minimum corporate tax rate for MNEs in each of the jurisdictions that is party to the agreement.⁹

The OECD estimates that, under Pillar One of the agreement, about 20-30% of the profits of the most profitable MNEs will be “reallocated” to countries where the entities’ users and customers are located, regardless of whether the MNEs have a physical presence there.¹⁰ Pillar One also seeks to avoid situations where companies are charged taxes twice for the same transactions, and to avoid trade disputes by disallowing signee states to implement digital service taxes in addition to whatever legislation flows from the implementation of the OECD model rules.

The countries that agreed to the deal reiterated their commitment to it and called for the swift development of “model rules and multilateral instruments” to help ensure the implementation of the Pillars on the second day of the G20 Summit in Rome, on October 31, 2021.¹¹ The former Australian Finance Minister, Mathias Cormann, who assumed the office of Secretary-General for the OECD in June of this year, stressed the importance of implementation around the world in a news release: “[a]greement without implementation,” he said, “is de facto no agreement at all.”¹²

Although Secretary of the Treasury Janet Yellen has called the OECD agreement a “once-in-a-generation accomplishment for economic diplomacy,”¹³ and although the White House is already pushing to bring American tax laws in line with the standards set out in the agreement,¹⁴ it is not clear that the United States, or all 135 other countries, will be able to pass implementing legislation, with or without the model language provided by the BEPS group. If the United States, or any other countries, do fail to pass legislation domestically, what will the consequences be globally? Will a few countries remain holdouts for businesses trying to avoid taxes? Will most countries back out of the agreement if it proves impossible to get everyone on board, to avoid losing out on potential profits?

After more than a decade of work, the OECD has come up with an idea that, in its breadth and support are certainly historically significant. Much remains to be seen, however, about the extent of any reform that comes from it.

¹ Brochure: Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, October 2021, <https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/AYV7-KWKF].

² OECD: Understanding Tax Avoidance, <https://www.oecd.org/tax/beps/> (accessed Oct. 31, 2021) [https://perma.cc/95FE-TY8D].

³ *G20 Leaders Endorse Tax Deal, Pledge More Vaccines for Poorer Nations*, RTE News (Ireland) (Oct. 30, 2021), <https://www.rte.ie/news/world/2021/1030/1256800-g20-summit/#> [https://perma.cc/N4FA-LH6F].

⁴ Chris Hall, *Global tax accord could earn Canada up to \$4.5 billion per year, says Freeland*, CBC News (Canada) (Oct. 16, 2021), <https://www.cbc.ca/news/politics/chrystia-freeland-global-taxation-1.6213178> [https://perma.cc/MU6M-LK6P].

⁵ Brochure: Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, October 2021, <https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/AYV7-KWKF].

⁶ *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Base Erosion and Profit Shifting Project (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/CXL8-VYS9].

⁷ Chris Hall, *Global tax accord could earn Canada up to \$4.5 billion per year, says Freeland*, CBC News (Canada) (Oct. 16, 2021), <https://www.cbc.ca/news/politics/chrystia-freeland-global-taxation-1.6213178> [https://perma.cc/MU6M-LK6P]. See also EconPol: *OECD Tax Reform Affect Only 78 if the World's Largest 500 Companies*, EconPol (Jul. 5, 2021), https://www.econpol.eu/press_releases/2021-07-05 [https://perma.cc/MQP6-CS85].

⁸ *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Base Erosion and Profit Shifting Project (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/CXL8-VYS9].

⁹ *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Base Erosion and Profit Shifting Project (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/CXL8-VYS9].

¹⁰ Brochure: Addressing the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, July 2021, <https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf> [https://perma.cc/RPY5-PZSP].

¹¹ *G20 Rome Leaders' Declaration*, ¶ 32, G20 Italia 2021, <https://www.g20.org/wp-content/uploads/2021/10/G20-ROME-LEADERS-DECLARATION.pdf> [https://perma.cc/3SY2-ULEA].

¹² OECD Secretary-General Mathias Cormann welcomes outcome of the G20 Leaders Summit, OECD Newsroom (Oct. 31, 2021), <https://www.oecd.org/newsroom/oecd-secretary-general-mathias-cormann-welcomes-outcome-of-the-g20-leaders-summit.htm> [https://perma.cc/85UG-LF9Z].

¹³ Statement from Secretary of the Treasury Janet L. Yellen on the OECD Inclusive Framework Announcement, U.S. Dep't of Treasury (Oct. 8, 2021), <https://home.treasury.gov/news/press-releases/jy0394> [https://perma.cc/M23H-TG83].

¹⁴ Isabel Gottlieb & Michael Rapoport, *Biden Tax Plan Meant to Align with OECD Global Minimum Tax Pact*, Bloomberg Tax (Oct. 29, 2021), <https://news.bloombergtax.com/daily-tax-report-international/biden-tax-plan-meant-to-align-with-oecd-global-minimum-tax-pact> [https://perma.cc/DW7K-E58H].