

**Comments to Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, as published on 8 October 2021**

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OECD Centre for Tax Policy and Administration  
Organisation for Economic Co-operation and Development  
Paris, France

November 2, 2021

Dear Sir/Madam,

We, the signatories to this letter<sup>1</sup>, are responding to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, as published on 8 October 2021 (“the Statement”). The Statement includes a detailed implementation plan on the Pillar I and Pillar II solutions.

The signatories to this letter represent pension funds, similar government-related funds, and other sovereign wealth funds (“**Pension funds and SWFs**”). The signatories highly value and acknowledge the intensive work done by the OECD in redesigning the international tax landscape by virtue of the Two-Pillar approach. In this context, the signatories have responded to previous requests from the OECD to provide input on the Pillar I and Pillar II Blueprints with the main objective of ensuring that no unintended or adverse consequences arise for pension funds and SWFs as a result of implementing the Two-Pillar Solution.

Following the release of the Statement on October 8, the signatories wish to ensure that the outcomes of previous interactions with the OECD remain valid and that no ambiguities in relation to the scope of the Two-Pillar Solution arise.

**1 Clarification on the scope of Pillar I**

The Statement mentions that the scope of Pillar I is in principle limited to multinational enterprises (MNEs) with a global turnover above 20 billion euros and profitability above 10% (i.e. profit before tax/revenue). An exclusion is provided for extractive companies and regulated financial services.

The Pillar 1 Blueprints released in July 2020 mentioned a particular scope of activities which were to be included in the Pillar 1 Solution, being Automated Digital Services and Consumer Facing Business. With the only exclusions mentioned in the Statement being for Extractives and Regulated Financial Services, certain parties may be unintentionally brought into scope. This may be the case for certain pension or SWF activities which may not be regulated (for example investment activities or wholly government owned funds) or are regulated in a manner not presently envisaged by the financial services exclusion.

Based on previous interactions between the signatories to this letter and the OECD, the policy intention seems not to target pension funds and SWFs themselves under Pillar 1. Our understanding is that the rules are primarily aimed at MNEs conducting commercial operations in different markets where they have a certain nexus by virtue of their consumers or clients. The wide concept and terminology used for MNEs may create unintended uncertainty upon implementation of these rules locally where the context and/or policy intent may lead to interpretative ambiguity or may be interpreted in a broader sense than intended.

A consistent implementation across countries is in our view key to preventing any unintended impact of the Two-Pillar Solution. Hence, we respectfully request the OECD to clarify the scope and policy intent and include guidance in the technical implementation package.

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<sup>1</sup> This group is representative of a larger global constituency of pension funds and SWF's. Pension assets have reached USD 44.1 trillion worldwide at the end of 2018 (<http://www.oecd.org/daf/fin/private-pensions/globalpensionstatistics.htm>) and global SWF assets are estimated at USD 7.5 trillion per March 2018 (<https://www.reuters.com/article/us-global-swf-assets/global-sovereign-fund-assets-jump-to-7-45-trillion-preqin-idUSKBN1HJ2DG>).

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## 2 Pillar 2 exclusion in relation to the Subject To Tax Rule

Based on the Pillar 2 Blueprints released in October 2020, the exclusion provided for pension funds, SWFs and investment funds was broadly defined and deemed applicable to the Pillar 2 measures in their entirety, i.e., excluding pension funds, SWFs and investment funds from the scope of the Income Inclusion rule, Undertaxed Payments Rule and Subject To Tax Rule. See for example paragraph 573, sub d, and paragraph 617 of the October 2020 Blueprints, where it is explicitly mentioned that the exclusions should also apply with respect to the Subject To Tax Rule.

The Statement and implementation plan seem to make a distinction between the Income Inclusion Rule and Undertaxed Payments Rule on the one hand (which are together defined as the 'GLOBE rules') and the Subject To Tax Rule on the other hand. The Scope of the GLOBE rules is meant to include MNEs that meet the 750 million euros threshold as determined under BEPS Action 13. Certain government entities, international organisations, non-profit organisations, pension funds or investment funds that are Ultimate Parent Entities (UPE) of an MNE Group or any holding vehicles used by such entities, organisations or funds are explicitly mentioned as not being subject to the GLOBE rules.

However, with regard to the Subject To Tax Rule, it is not made expressly clear in the Statement and the implementation plan that the same exclusion would apply. In this regard, the signatories to this letter acknowledge that a detailed Model Treaty provision to give effect to the Subject To Tax Rule is being designed and scheduled to be released by November 2021.

From the perspective of the overall objective of Pillar 2, it would in view of the signatories not be reasonable to have the Subject To Tax Rule essentially 'overwrite' the scope exemption provided for the GLOBE rules, given that the aim of a domestic exemption for e.g. pension funds and SWFs is to achieve tax neutrality for the ultimate beneficiaries. Further, if the Subject To Tax Rule were to be implemented separately from the other GLOBE rules, this would unilaterally provide countries with the opportunity to tax certain profits attributable to organisations that are in their home state tax exempt by virtue of their particular characteristics or activities. In view of the clear societal function of these types of organisations, we would consider such an effect undesirable and unintended.

The signatories to this letter respectfully ask the OECD to explicitly include similar scoping exclusions in the Subject To Tax Rule to ensure that no adverse consequences may arise for this particular group of organisations. This would also serve the purpose of achieving consistency in the implementation of the Subject To Tax Rule across different jurisdictions.

## 3 Miscellaneous

With regard to the definition used in the Pillar 2 Blueprints, we kindly ask the OECD to consider including a further clarification that besides 'Government Entities', also the government itself would not be in scope of the Pillar 2 measures. This to prevent any misunderstandings on the on the policy rationale. For completeness, it may therefore be considered to add a statement to the recitals clarifying that a government entity or arrangement established by the government also includes the government itself.

## 4 Conclusion

We highly value the OECD work released to date and acknowledge the challenges ahead in ensuring swift and consistent implementation. We kindly ask the OECD to consider the concerns outlined above and address these by adding further scoping clarifications in the final implementation packages.

We will of course be at your disposal to provide further information or views on the next steps in this challenging process.

Sincerely,

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