

November 16, 2021

To: The Chairs & Members of the Task Force on the Digital Economy (TFDE) and Working Party 11 on Aggressive Tax Avoidance (WP11)

c/o Pascal Saint-Amans, Grace Perez Navarro and Achim Pross  
OECD Centre for Tax Policy and Administration (CTPA)

Dear Chairs and Members of the TFDE and WP11,

I am writing to you about the OECD/G20 project on Addressing the Tax Challenges Arising from the Digitalization of the Economy (“Pillar One”, “Pillar Two” and “the Project”) to raise points both from the *Business at OECD* (BIAC) Tax Committee as a whole, as well as points made by members of the two BIAC Business Advisory Groups (BAGs).

It is important to state very clearly at the outset that *Business at OECD* members acknowledge that the policy decisions on the Project have now largely been made. The comments in this letter, therefore, relate solely to the issues that will arise in the implementation of these policy choices, and the technical and practical help that our members hope they can offer in this regard.

### **Introduction**

I (we all) completely understand that the past twelve months – both because of the pandemic, as well as the political timetable – have made working with non-governmental stakeholders more difficult. But the Project is a massive and complex one, which frequently draws the accolade “historic” in the media. In its scope and range it is exactly that. And what that also means is that this is a project with multiple impacts – some of which cannot yet be foreseen – that will affect not just important, but narrow, questions of tax revenue, but also large macroeconomic questions around trade, investment, jobs and growth.

It is in all our interests that the Project be successful, and for that to happen the rules need to be not only conceptually strong, but functional and capable of being administered by a wide range of countries, as well as capable of being complied with by a wide range of taxpayers. The *Business at OECD* Tax Committee, and particularly the BAGs, stand ready to help you, the TFDE and WP11, work on these rules with practical and technical advice, and we very much hope that you will accept our offer.



## ***Business at OECD and the BAGs***

Before dealing with the concerns about lack of consultation during the past several months, and our offer of, and hope for, interaction in the coming months, let me say a word about the historic role of *Business at OECD* (BIAC), and the more recent formation and purpose of the BAGs.

*Business at OECD* was formed in 1962 – just after the founding of the OECD – as the official OECD business stakeholder organization. As our original full name – Business and Industry Advisory Committee to the OECD – indicates, *Business at OECD* was intended not just to represent business views, but also to **advise** the OECD. This role has continued to grow to this day through formal mechanisms of regular meetings and consultations with the OECD Secretariat and Committees, including at the Ministerial level. Through *Business at OECD*, industry stakeholders provide technical and practical input to help the OECD build more effective policies. In the tax area the *Business at OECD* Tax Committee has long played this role through close cooperation and engagement with the Centre for Tax Policy and Administration and its predecessors, giving practical advice on what might work, and what might not, all with the aim of crafting successful policies. We aim to, formally and informally, bring technical and practical skill and expertise together from a wide range of sectors and geographies to constructively inform the output of the OECD. This remains a crucial resource for the OECD, and one which could be used even more effectively.

Given the complexity of the OECD/G20 Tax and Digital Project, we felt that there was an urgent need for a more focused way of offering business advice, in line with our founding objective. As a result, several months ago, with the support of the OECD, *Business at OECD* established two Business Advisory Groups (again, **advisory**), one on each of the pillars, to provide practical and technical input to the TFDE and WP11 respectively. These groups were formed with the expectation that they would speak and meet (virtually) on a regular basis with you as well as with the Secretariat. It was understood that the BAGs would not express views on policy matters, but it was expected that the consultation on technical issues would, inside a necessary zone of confidentiality, be comprehensive and substantive. This was done with the express purpose of allowing the TFDE and WP11 (and Secretariat) to receive detailed business advice on practicality and implementability – both of which are crucial to the restoration of stability and certainty – of key policy decisions made by you.

To summarize, *Business at OECD* does not just exist to represent general business views; it has always existed also to offer the OECD advice on policy design and implementation, based upon its knowledge and experience of how business works, and what is practicable – all in support of the OECD's evidence-based standard-setting role.



That remains our offer to you today, and I have been asked to write to you to express concern that that has not happened, but, more importantly, to reiterate and reemphasize what it is we believe we can still contribute towards the successful implementation of the Project's complex new policies.

## **Business at OECD Tax Committee**

Let me deal first with the BIAC Tax Committee as a whole. At our Committee meeting in Paris on Friday, November 5, the Tax Committee expressed their significant concern with the lack of interaction between business and the Inclusive Framework (IF) since the release of the Blueprints and the subsequent consultations in January 2021. This, however, is not just concern with the lack of formal consultation, but also with business' inability to informally engage with either you or the OECD Secretariat on the Project. It is important to emphasize that this was the unanimous view of the Tax Committee, representing very different geographies and sectors – not just the view of one sector, nor just views from one country.

The Tax Committee understands the constraints the pandemic has placed upon the process. Nevertheless, the Tax Committee has asked me to make clear how concerned they are that this current process will not lead to administrable outcomes. Therefore, what the Tax Committee would now like to propose is that we rapidly engage in depth in an advisory capacity on the technical issues through a formal, transparent and understandable process. I do hope that this will be possible, otherwise implementation of the Pillar One and Pillar Two rules may prove more difficult than need be the case, and there is a real danger (based on comments at our November 5 meeting) that many businesses will decline to engage with the multilateral process in the future – and either of those would be highly unfortunate for the success of the Project.

## **Business Advisory Groups on Pillar One and Pillar Two**

I have set out above the intention underlying the formation of the BAGs for close interaction with you and the Secretariat. Unfortunately, for the most part, that interaction has not yet occurred, either through meetings between the BAGs and the TFDE or WP11, or through the sharing of those parts of documents which could then be the basis for detailed BAG comments on possible technical and practical improvements.

Again, however, what is important now is charting a path forward, which makes the outcome of the project on both pillars as successful as it can be. To that end, immediately below are some recommendations based on comments I have received from the BAG co-chairs.



## **Pillar One BAG going forward**

So far, the Pillar One BAG has been engaged in only a limited way in one area – concerning how the sales of the 100 largest companies could be sourced to the country of end consumers. The BAG acknowledges that this is a challenging question for tax authorities, given that many businesses in scope use independent distributors or provide services or components to OEM's. However, it is also true that there are many other equally critical issues where the BAG could offer the TFDE vital technical and practical advice. With that in mind, the Pillar One BAG has identified the following four issues as being foundational to the successful design and implementation of Pillar One:

- How will the location of residual profits (and therefore the paying entities for Amount A) be established?
- How will issue of double counting - where the relevant profits are already taxed in the country of the end consumer - be addressed? What role can a Marketing and Distribution Safe Harbor play?
- Given that Pillar 1 seeks to reallocate taxable income and not increase taxable income, how will effective tax relief for Amount A be provided?
- How can a process to provide tax certainty for the above be made to work?

The Pillar One BAG hopes that it will be possible to engage with the TFDE and the Secretariat in its advisory role at the earliest possible opportunity on these issues.

## **Pillar Two BAG going forward**

Contrary to original expectations, the Pillar Two BAG has had little direct contact with WP11. Up until late September, the Pillar Two BAG did have extensive interaction with the Secretariat, but little since then. A very useful interaction with the Secretariat did take place on the crucial question of how to deal with timing differences in the construction of the Pillar Two tax base (deferred tax accounting vs. carryforwards). But, as with Pillar One, there are a host of other issues where the Pillar Two BAG – if invited – could offer crucial technical and practical advice on key issues, such as safe harbors, as well as a host of definitional issues.

Providing informed advice to the OECD depends upon BAG members having sufficient information on the content of the draft rules. In the Pillar Two context, the content is clearly the model rules themselves. The BAG members have heard that the model rules have been changing quite substantially in a number of important areas over the last couple of months. But without the draft model



rules content, the BAG is unable to share practical, technical advice that might help avoid difficulties that will have to be rectified later.

We realize that there is expected to be a period next year when detailed guidance on Pillar Two will be formulated, and the Pillar Two BAG very much hopes to be closely involved with both WP11 and the Secretariat in that process. The Pillar Two GLOBE rules contain new concepts, based on a novel and untested tax base, and involving potentially scores of countries. In these circumstances, business input and advice will be crucial to ensuring the guidance adequately clarifies the technical application of what will be an extremely complex set of rules, so that those rules can both be administered by a broad range of tax authorities, and complied with by a broad range of taxpayers.

## **Conclusion**

Let me close by reemphasizing that both the *Business at OECD* Tax Committee and the BAGs stand ready to offer practical and technical advice to the TFDE and WP11 that we hope will result in the Project restoring stability and certainty to the international tax system for all stakeholders.

The past several months have been, we believe, an aberration. We, thus, look forward to restoring a relationship where – to be very clear – you make the policy calls, but where we can advise on ways of designing rules that embody those policies which will carry the greatest chance of consistent and successful implementation. Again, we very much hope that you will accept this offer.

Sincerely,

A handwritten signature in black ink that reads "William H. Morris".

William H. Morris

Chair, *Business at OECD* (BIAC) Committee on Taxation and Fiscal Affairs

Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)