



International Tax Updates

1. The OECD's updated statement on the two-pillar solution under BEPS

Further to the "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy" issued by the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting on 1 July 2021 (the 1 July Statement), the IF released an updated and finalised version of the 1 July Statement on 8 October 2021 (the 8 October Statement). The 8 October Statement incorporated the latest details of the Pillar One and Pillar Two rules that have been agreed by 136 of 140 IF member jurisdictions.

The key updates in the 8 October Statement are:

Pillar One

- the global revenue threshold for determining whether a multinational group is within the scope of Pillar One (i.e., initially above EUR 20 billion and profitability of above 10%) will be calculated using an averaging mechanism;
- elective instead of mandatory binding dispute resolution mechanism will be available for developing countries, subject to certain conditions; and
- Amount A under Pillar One - 25% of the residual profits of the in-scope multinational groups will be subject to reallocation to the market jurisdictions.

Pillar Two

- the global minimum tax rate will be set at 15%;
- the substance carve-outs will be 8% of the carrying value of tangible assets and 10% of the payroll at the initial stage, declining to 5% for both in a transition period of 10 years;
- there will be a *de minimis* exclusion from the application of the GloBE rules for those jurisdictions where the multinational group has revenue of less than EUR 10 million and profits of less than EUR 1 million;
- the minimum tax rate for the subject to tax rule (STTR) will be 9%;
- implementation of the undertaxed payment rule (UTPR) will be deferred to 2024; and
- there will be an exclusion from the UTPR for multinational groups in the initial phase of their internationalization (defined as those groups that have a maximum of EUR 50 million of tangible assets abroad and that operate in no more than 5 other jurisdictions) for a period of five years.



Implementation timeline

A more detailed implementation timeline is set out for Pillar One and Pillar Two respectively:

- the detailed GloBE rules and the model treaty provision to give effect to the STTR will be developed by the end of November 2021;
- the Multilateral Convention for implementing Amount A under Pillar One (MLC) and its Explanatory Statement will be concluded by early 2022, with the MLC opened for signature by mid-2022; and
- Amount A under Pillar One, the income inclusion rule and the STTR are expected to come into effect in 2023.

For more details and a copy of the OECD's 8 October Statement, please refer to this [Link 1](#) to the OECD's website.

2. The OECD Tax Report to the G20 Finance Ministers and Central Bank Governors

The OECD presented a report to the G20 finance ministers and central bank governors at a meeting held in October 2021.

The report provided an overview of the latest developments in the OECD's international tax agenda, including the progress of the global tax reform under BEPS 2.0, the tax policy aspects of climate change and progress made in support to developing countries in building sustainable tax systems.

For a copy of the report, please refer to this [Link 2](#) to the OECD's website.

3. The OECD's stage 2 peer review report on BEPS Action 14 on Hong Kong

On 18 October 2021, the OECD published the BEPS Action 14 stage 2 peer review reports on several jurisdictions, including the Mainland China and Hong Kong. The reports evaluated the progress made by these jurisdictions in implementing recommendations resulting from their Stage 1 peer review. As far as Hong Kong is concerned, the report highlighted that:

- the Multilateral Instrument on BEPS was signed but not yet ratified by Hong Kong;
- Hong Kong has now put in place a documented bilateral notification/consultation process for cases where an objection is considered as being not justified by its competent authority;



- Hong Kong has added more personnel to the competent authority function and/or has made organisational improvements with a view to handle mutual agreement procedure (MAP) cases in a more timely, effective and efficient manner;
- Hong Kong closed MAP cases within the pursued average time of 24 months; and
- Hong Kong has issued/updated its MAP guidance.

The report also included the MAP statistics for Hong Kong (and the Mainland China) for 2016-2019.

In addition to BEPS Action 14, the OECD also published a review report on the implementation of BEPS Action 13 on country-by-country reporting.

For more details and copies of the peer review reports for the Mainland China and Hong Kong, please refer to these [Link 3](#), [Link 4](#) and [Link 5](#) to the OECD's website.

4. The OECD statement on the Pandora Papers leaks

The International Consortium of Investigative Journalists (ICIJ) published the "Pandora Papers" on 4 October 2021. Similar to the Panama and Paradise Papers, the Pandora Papers unveil the use of offshore shell companies and trusts, etc. by individuals to purchase and hold assets and investments offshore. Jurisdictions involved in the Pandora Papers include the BVI, Hong Kong and Panama.

On 14 October 2021, the OECD Forum on Tax Administration and the Joint International Task Force on Shared Intelligence and Collaboration (JITSIC) Network released a joint statement confirming their commitment to a collaborative approach in identifying and addressing aggressive tax avoidance and tax evasion involving multiple jurisdictions based on the data made available from the Pandora Papers leaks.

For more details and a copy of the joint statement, please refer to this [Link 6](#) to the OECD's website.

5. Hong Kong is included in the EU's grey list for tax purposes

On 5 October 2021, the European Union (EU) issued a press release on its updated list of non-cooperative jurisdictions for tax purposes (the EU list).

While Anguilla, Dominica and Seychelles have been removed from the blacklist and added to the grey list / watchlist, Hong Kong has also been included in the updated grey list because the EU considers Hong Kong does not meet the criterion



of “fair taxation” due to an existence of a harmful tax regime (i.e. the offshore regime).

The EU issued a guidance on foreign source income exemption regimes in October 2019 and conducted a review of such regimes in several jurisdictions, including Hong Kong.

Based on the EU’s guidance, a tax system that fully excludes passive income with a foreign link from taxation without any conditions is harmful. In the EU’s view, foreign source income exemption regimes that are broad enough to include passive income in the exemption, without any conditions, can result in ring-fencing and a lack of substance. Such regimes will not only prevent double taxation, but also create situations of double non-taxation.

The HKSAR Government issued a press release on the same day (i.e., 5 October 2021) in response to the inclusion of Hong Kong in the EU grey list with the following key points:

- the EU is concerned that corporates with no substantial economic activity in Hong Kong are not subject to tax in respect of certain offshore passive income (such as interest and royalties), hence leading to circumstances of “double non-taxation”;
- the HKSAR Government has committed to the EU to amend the Inland Revenue Ordinance by the end of 2022 and implement relevant measures in 2023;
- Hong Kong will maintain the territorial source principle of taxation;
- the legislative amendments will only target corporations, particularly those with no substantial economic activity in Hong Kong, that make use of passive income to evade tax across a border;
- individual taxpayers will not be affected;
- there will be consultation with the stakeholders on the specific contents of the legislative amendments;
- Hong Kong enterprises will not be subject to defensive tax measures imposed by the EU as a result of Hong Kong being included in the grey list; and
- The HKSAR Government will request the EU to swiftly remove Hong Kong from the grey list after amending the relevant tax arrangements.

For more details and copies of the EU and HKSAR Government press releases, please refer to these [Link 7](#) and [Link 8](#) to the EU’s and HKSAR Government’s websites.

6. The joint statement issued by the US and a few European countries on the transitional approach of removing the digital services taxes



香港稅務學會
THE TAXATION INSTITUTE OF HONG KONG
(Incorporated in Hong Kong as a company limited by guarantee)



The US Department of the Treasury issued a press release on 21 October 2021 announcing that it has reached a political compromise with Austria, France, Italy, Spain, and the UK for removing their existing digital services taxes (DST) on a transitional approach during the interim period before BEPS Pillar One is in effect. Based on the joint statement:

- Austria, France, Italy, Spain and the UK are not required to withdraw their DST until Pillar One takes effect;
- however, a tax credit will be available for the excess of DST accrued to these countries during the “interim period” over an amount equivalent to the tax due under Pillar One in the first full year of implementation of Pillar One;
- the “interim period” is the period beginning on 1 January 2022 and ending on the earlier of the date the Pillar One multilateral convention comes into force or 31 December 2023; and
- the US agrees to terminate proposed trade actions and commit not to impose further trade actions against these countries in respect of their DST until the end of the interim period.

For more details and a copy of the joint statement, please refer to this [Link 9](#) to the US Treasury’s website.