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<u>Subject</u>: Public Consultation Document – Reports on Pillar One and Pillar Two Blueprints.

With respect to the issues raised in the "*Public Consultation Document – Reports on the Pillar One and Pillar Two Blueprints*", published on 12 October 2020, Tremonti Romagnoli Piccardi e Associati appreciates the opportunity to submit the following observations and comments in relation to the tax challenges of the digital economy, focusing on sections I, II and XI of the Pillar One Blueprint, and on sections II, III, IV, V, VI, VII, VIII, IX, X of the Pillar Two Blueprint.

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1. <u>Report on Pillar One Blueprint</u>.

"I. The activity test to define the scope of Amount A. Comments are invited on the design and implementation of the proposed activity test relating to Automated Digital Services and Consumer-Facing Businesses, including any challenges and suggestions on how to address them?".

a. By way of introduction, we would like to outline our appreciation for the OECD's intention to reach a shared solution to address the pending issues related to the implementation of Pillar One, aimed at solving the tax challenges of the digitalization of the economy by introducing new profit allocation and nexus rules to be applicable to business profits.

It is well known that the main challenge of digital economy taxation is the necessity to introduce tax rules in order to allow the fair taxation of profits generated by businesses without a physical presence in the market jurisdictions.

In fact, under the existing tax rules, taxing rights derive exclusively from the physical presence of taxpayers in a specific jurisdiction (i.e. through a subsidiary or a permanent establishment - hereinafter, "PE"). However, given the increasing digitalization of the economy, MNEs could participate in an active and sustained manner in the economy of a market jurisdiction without being physically there.

With this in mind, it is self-evident that the existing tax rules need to be changed, or properly amended in order to attract these new types of income to fair taxation.

This will hopefully produce clarity in the set of rules to be followed by the digital players.

To this end, Pillar One seeks to adapt the international tax framework to the digital revolution by proposing the introduction of new profit allocation and nexus rules, to be implemented through a multilateral convention which "*would provide a multilateral framework to facilitate the coordinated and effective implementation that is necessary between multiple jurisdictions and would, for its parts on the* *determination of Amount A tax and elimination of double taxation, supersede all bilateral tax treaties"*[1].

However, while trying to reach such consensus internationally, some OECD member countries - including Italy - have amended their domestic provisions in order to capture additional taxing rights in relation to those businesses with a significant economic presence in the relevant jurisdiction irrespective of their physical presence[2] and, in any case, present business models highly fragmentated.

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[1] See para. 840, Chapter 10, *Tax Challenges Arising from Digitalization – Report on Pillar One Blueprint* (hereinafter, the "Report").

[2] In more detail, Article 162 of Presidential Decree 917 of 22 December 1986 (the "Italian Tax Code", or "ITC"), has recently been amended to include within its scope those subjects with *"a significant and continuous economic presence in the territory of the State built in such a way not to result in any physical presence on the same territory".*
However, as a preliminary note, the above amendment cannot lead to any appreciable consequence, since in order to claim any additional taxing right on businesses (supposedly) operating in Italy, the change has to be made at the international Double Tax Treaty level. In practical terms, the inclusion of new nexus rules in the Italian legal framework appears to be a mere cosmetic exercise, given that it would not change the set of rules applicable in all cases where the foreign MNE resides in a State with which Italy has entered into a Double Tax Treaty (hereinafter, "DTT").
In essence, although DDTs do not consider the taxation of business profits of non-resident enterprises in the absence of a PE to which these profits are attributable, the issue of nexus goes beyond the same PE concept. In fact, even in the absence of limitations imposed by DDTs, many jurisdictions - including Italy – would not in any case consider a nexus to exist under their domestic legal framework.
In other words, many countries would not tax income derived from remote sales to customers located in the given jurisdiction if the foreign enterprise does not maintain some degree of physical presence in that jurisdiction.
Some additional misalignments may then be seen also in the position outlined by the same OECD under Action 1: 2015 Final Report *Addressing the Tax Challenges of the Digital Economy* in which some issues are raised in relation to the possibility that businesses may indeed have a

This particularly has been done by amending the domestic "PE" provisions.

In this respect, as far as Italy is concerned, it is worth mentioning that until 2017 the Italian definition of PE was fully aligned with the OECD model, therefore including only purely physical PEs. As a consequence, significant room for interpretation is left, so that the Italian Supreme Court issued several decisions providing a wide interpretation of the PE definition in an attempt to bring it more into line with the new business models which developed over time: digital players, however, obviously do not present physical features, making it difficult or even impossible for them to fit into the current scope of application of the PE legislation.

As briefly mentioned, additional unilateral amendments to the PE feature have been introduced over time by certain jurisdictions in line with the recent *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (hereinafter, "Multilateral Instrument" or "MLI")[3] – in

significant presence in a given jurisdiction without triggering any tax (see. Para. 7.3 *Nexus and the ability to have a significant presence without being liable to tax*, pp. 100-102).

[3] In November 2016, over 100 jurisdictions concluded negotiations on the MLI that will swiftly implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. The MLI already covers 95 jurisdictions and entered into force on 1 July 2018. Signatories include jurisdictions from all continents and all levels of development and other jurisdictions are also actively working towards signature.
The MLI will enter into force on the first day of the month following the third month after submission of instruments of ratification to the OECD.

order to enlarge their taxing rights. This is the case of certain schemes which may be seen in businesses that for instance sell their products/services remotely in the given jurisdiction relying on the support of (related) entities in that same jurisdiction which carry out complementary functions that may be seen as part of a single main business operation.[4]

In other words, said amendment goes in the direction of preventing an enterprise or a group of closely related enterprises from fragmenting a cohesive business operation into several small operations in order to argue that each one is merely engaged in a preparatory or auxiliary activity, without triggering therefore any form of taxation locally.[5]

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[4] See MLI, *Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity*, Opt. A.

[5] The "anti-fragmentation rule" – which prevents from providing an exception from PE status for activities that might be viewed in isolation as preparatory/auxiliary, but if combined constitute complementary functions that are included in the PE definition - responds to the need to deal with cases which, due to specific business models, do not fall within the scope of the PE legislation.
In particular, under Article 162(5), ITC, it is stated that the so-called negative list does not procure any effect with regard to a "*sede fissa d'affari che sia utilizzata o gestita da un'impresa se la stessa impresa o un'impresa strettamente correlata svolge la sua attivita' nello stesso luogo o in un altro luogo nel territorio dello Stato e lo stesso luogo o l'altro luogo costituisce una stabile organizzazione per l'impresa o per l'impresa strettamente correlata in base alle previsioni del presente articolo, ovvero l'attivita' complessiva risultante dalla combinazione delle attivita' svolte dalle due imprese nello stesso luogo, o dalla stessa impresa o da imprese strettamente correlate nei due luoghi, non sia di carattere preparatorio o ausiliario, purche' le attivita' svolte dalle due imprese nello stesso luogo, o dalla stessa impresa, o dalle imprese strettamente correlate nei due luoghi, costituiscano funzioni complementari che siano parte di un complesso unitario di operazioni d'impresa*", which can be translated as follows. "*A fixed business seat utilized or managed by an enterprise if the same enterprise or a strictly related enterprise carries out its activity in*

With respect to the Italian context, it is worth noting that "anti-fragmentation" recharacterizations, in accordance with the OECD position, were indeed maintained by the Italian Supreme Court (see decision 7 October 2011, No. 20597; decision 17 January 2013, No. 1118) and therefore recently inserted into Article 162, ITC, in 2017.

That said, the amendment in question aligns the local PE provision to the cited jurisprudence.

To conclude, the emphasis on the "significant economic presence" and the "anti-fragmentation rule" are therefore efforts made (also) by the Italian lawmaker to broaden the nexus rule (rectius, the self-attribution of taxing right) in the context of an international legal framework that is inadequate.

However, while the anti-fragmentation topic has achieved some degree of implementation internationally thanks to efforts produced with the MLI[6], the discussion on the "significant presence" topic still remains at a preliminary stage after decades of the internet era.

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the place or in a different place however situated in the Italian territory and the former or the latter place qualifies as a PE for the enterprise or for the strictly related enterprise under the provisions of the present Article, or the overall activity resulting from the combination of the activities carried out by the two enterprises in the same place, or by the same enterprise or by the strictly related enterprises in the two places does not qualify as preparatory or auxiliary, to the extent that the activities carried out by the two enterprises in the same place, or by the same enterprise, or by the strictly related enterprises in the two places qualify as complementary functions that are part of a cohesive business operation".

[6] Several Countries (including Italy) have not ratified the MLI yet, while others (e.g. the United States, Brazil) are not among the signatories.

With the consequence that, on some occasions local administrations have resorted to extensive interpretation of the existing legal framework fostering uncertainty and litigation.

In addition, several unilateral measures (i.e. digital services taxes) have temporarily been implemented locally[7], with the aim of identifying the quota of MNE group profits to be locally taxed, basically derived from **(i)** the sale of local users data, and **(ii)** the interaction between the local users on digital platforms.

The borders of the Italian Digital Service Tax are however still quite vague and require opportune instruction for the proper application[8].

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[7] Within the European Union the following Member States have implemented local web/digital taxes: France, Spain, Italy, Austria, Hungary and the United Kingdom.

[8] The 2019 Italian Budget Law (in particular, Art. 1, par. 35 et seq., of Law 30 December 2018, No. 145) introduced a unilateral digital service tax ("DST") to be applied on the turnover that (essentially digital) companies derive from the supply of certain B2B and B2C digital services supplied to users located in Italy (both consumer and business).
While the 2019 Italian Budget Law set out the general principles of application of the new DST, inspired by the EU digital service tax proposal resulting from the draft for Council Directive No. COM(2018)148 Final, it never became effective. In fact, the implementing Ministerial Decree was never adopted by the Italian Government and DST never came into force.
With the 2020 Budget Law (Art. 1, par. 678, Law 27 December 2019, No. 160), the abovementioned provisions were partially modified, mirroring the French DST and the mentioned EU digital service tax proposal resulting from the draft for Council Directive No. COM (2018)148 Final. The amended DST entered automatically into force starting from 1 January 2020, without the need for further implementing rules to be adopted.
However, the relevant provision states that the Director of the Italian Revenue Agency is required to release one or more specific ad hoc regulations in order to provide more specific implementing measures,

In respect of all the above, the speech of the European Commissioner of Economy Mr. Paolo Gentiloni during a recent hearing in front of the Italian Parliament is significant. The latter pointed out that the introduction of a new taxing right that can ensure the fair taxation of the digital economy should be seen globally as a priority, considering that during 2020 the big players of the digital economy, despite the negative effects that the Covid-19 pandemic emergency has had on the world economy, dramatically increased their turnover at the expense of traditional businesses.

Therefore, "*in the context of a 'last century' taxation system not anymore suitable to ensure a fair taxation*", Mr. Gentiloni highlighted the need to achieve a global agreement within the first half of 2021, in the absence of which the European Commission will put forward its proposal for a European digital tax[9].

In light of the above, timely action by the OECD is crucial in order to ensure a coordinated response to the challenges of digital taxation, and to avoid legal fragmentations due to unilateral measures adopted on a national basis, which indeed would sound like the failure of the discussions here at stake.

Although clearly one could fairly argue that no technical solution can be found without political consensus, therefore some solid orientation should be expected from the international initiative at the G20.

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which are soon expected (although no deadline for the issuance of the aforementioned regulations is provided).

[9] Please see Italian Parliament hearing, 17 November 2020.

b. All the above considered, while we appreciate the present effort of the OECD to implement Pillar One trying to include in the scope of Amount A each of the business models potentially in a position to create value in the given jurisdiction notwithstanding the absence of a physical presence (this – at least - is the ambitious goal that the "automated digital services" and "consumer-facing businesses" features intend to pursue), we also believe that excessively broadening the scope could lead to forms of overregulation and, worst of all, additional delays which may jeopardize the effectiveness of the intervention.

Indeed, although on one hand the idea not to procure the "ring fencing" of the digital economy within the context of the new framework in question can be shared, on the other hand it is evident that the current international legal basis is now obsolete and deserves some immediate updates. In this scenario further delays in addressing the topic contributes to the persistence of unfair taxation with significant repercussions on tax certainty for the digital environment[10].

[10] In this regard - as we pointed out on the occasion of the Public Consultation on the *Secretariat Proposal for a "Unified Approach" under Pillar One* - we reiterate the view that focusing on the digital economy when defining the new set of rules under analysis is not *per se* a synonym of unfair treatment to the digital players. At least it has not been considered so in the past when - *mutatis mutandis* - specific rules were introduced to punctually allocate taxing rights for some specific economic sectors. Examples can be seen in the definition of PE of the extractive industries, as provided for in Article 5, para. 2 of the OECD Model Tax Convention.
In fact, under the cited provision taxing rights are attributed for "*a mine, an oil or gas well, a quarry or any other place of extraction of natural resources*".
In the same direction, the OECD Model Tax Convention also treats the building sites - as addressed by para. 3 of the Article 5, quoted - by

In particular, the inclusion in the scope of Amount A of "consumer-facing businesses" (i.e. "*businesses that generate revenue from the sale of goods and services of a type commonly sold to consumers, and / or licenses or otherwise exploits intangible property that is connected to the supply of such goods or services*"[11], hereinafter "CFBs"), could be seen by some as a distraction from the main topic.

The definition of CFBs embraces not only the players of the digital economy, but also traditional business models which present consumer-facing elements, probably with the aim of not procuring forms of the said ring-fencing of the digital economy. This means in essence that also businesses *prima facie* not belonging (or not belonging at all) to the digital economy could be hit by the provisions under discussion.

And yet the existing legal framework already provides an acceptable degree of taxation for traditional businesses (which probably needs to be updated less urgently), while several digital players do not at all encounter provisions decently fitting with their profile for a fair and balanced levy. As a result, excessive room for interpretation is left to the local tax Authorities and Courts.

For these reasons, we believe that it should be opportune – at least at this initial stage - to remove the CFBs from the current Amount A concept, considering

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setting peculiar (timing) conditions in order to evaluate the existence of a PE.

[11] See para 52 ss., Chapter 2, Report.

that the present framework could still allow forms of proper taxation.

Moreover, the inclusion of CFBs in the scope of Amount A could be excessively time-consuming, considering that a shared agreement on their inclusion in the new taxation system might slow down the decision-making process, with a negative impact in terms of effectiveness.

In conclusion, considering that the main goal of Pillar One is to propose in the quite near future the fair taxation of profits generated by digital players (despite their physical presence in certain markets) through the introduction of new allocation and nexus rules, we suggest to exclude, at least temporarily, CFBs from the scope of Amount A.

c. On the other hand, we consider appropriate the proposed definition of "automated digital services" (hereinafter, "ADSs") and the approach of proposing a general definition, a positive list of ADS activities and a negative list of non-ADS activities.

In fact, while a positive and a negative list grant certainty both to taxpayers and tax administrations, specifically identifying which business models should be included in the Amount A taxation, a general definition ensures adaptability of the new tax rules to rapid changes of digital business models.

Also, the mentioned approach catches all the activities that meet the requirements to be included in the scope of Amount A. In this respect, it does not seem necessary to highlight the opportunity of a periodic update of the positive and negative lists.

Nevertheless, a provision should be opportunely introduced to the effect that if the activities included in the positive list are supplied to associated enterprises[12], those activities are included in the negative list (we see for instance such exclusion under the Italian "Web Tax"[13]).

"II. The design of a specific Amount A revenue threshold (in addition to a global revenue threshold) to exclude large MNEs that have a de minimis amount of foreign source in-scope revenue. More specifically, comments are invited on what would be the best approach to define and identify the domestic or home market of an MNE group (e.g., the residence of the ultimate parent entity)".

a. With respect to the threshold test, aimed at defining whether the MNE groups, carrying out activities included in the activity test, fall within the scope of Amount A based on a size requirement, we strongly agree with the opportunity to recognize that below a certain overall size of the MNE group, a fair balance of cost and benefits does not justify the application of Amount A rules.

With this in mind, the proposal to take into consideration for the purpose of the "global revenue test" a € 750 million revenue threshold seems to be appropriate and surely in line with the current legal standard.

The above-mentioned threshold – which is consistent with the "country-by-country reporting" regulation (the

[12] As defined under Article 9 of the OECD Model Tax Convention.

[13] Please see Article 1, para. 35 ss, Italian Law No. 145/2018.

"CbCR regulations")[14] – may limit the additional administrative burden to taxpayers that are already required to carry out consolidated reporting.

Moreover, the € 750 million revenue threshold is consistent with the threshold currently adopted in order to identify the taxable person for the purposes of the European "Digital Services Tax" proposal[15], as transposed, by way of example, into the Italian "Web Tax"[16] and into the French one.

b. With respect to the "de minimis foreign in-scope revenue test", which aims to exclude from the Amount A taxation MNEs that exceed the global revenue threshold but only have a small amount of foreign source in-scope revenues, some observations seem to be needed.

As described under para. 183 and 184, Chapter 2, of the Blueprint, the "de minimis foreign in-scope revenue test" would be set as an absolute number, rather than being relative to the size of an MNE's domestic business. The test would have two steps: firstly, it should be tested whether the revenues from ADSs or CFBs activities exceed the de minimis threshold; secondly, it should be tested whether the above-mentioned

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[14] See, OECD/G20 Base Erosion and Profit Shifting Project Transfer Pricing Documentation and Country-by-Country Reporting, Action 13: 2015 Final Report.

[15] Article 4, Proposal for a COUNCIL DIRECTIVE on the common system of a digital services tax on revenues resulting from the provision of certain digital services , 21 March 2018, n. 148.

[16] Please see Article 1, para. 36, Italian Law No. 145/2018.

revenues exceed the threshold thanks to "foreign" in-scope activities[17].

To this end, it is necessary to precisely identify the "home market", considering that MNE groups need to determine whether they derive more than the de minimis foreign in-scope revenue threshold amount thanks to in-scope activities in jurisdictions outside their own "home market".

In this regard, it seems advisable that the identification of the "home market" would be consistent with the identification of the "MNE group's co-ordinating entity" and of the "lead tax administration" for the purposes of the tax certainty procedure. In other words, the "home market" would be the jurisdiction in which the above mentioned "entities" are located.

With this in mind, the "home market" should be identified as the ultimate parent company jurisdiction only when such a company and its tax administration meet the requirements to lead the Amount A taxation procedure, in terms of substance, resources and technical skills.

[17] The Italian lawmakers have seen as well considered the in-scope threshold while implementing the local web tax. In particular, The Italian DST will apply to companies that (individually or at the level of the group) jointly meet the following revenue thresholds (see Art. 1, par. 36, of 2019 Italian Budget Law):

- the amount of worldwide revenues of at least Euro 750 million;
- the amount of revenues derived from the supply of qualified digital services provided to users located in Italy of at least Euro 5.5 million.

Such revenue thresholds should be met in the fiscal year preceding the one in which the DST is due (e.g. in order to verify if the DST will be due in relation to revenues accrued in FY 2020, companies must verify if the revenue thresholds are exceeded in FY 2019).

If the ultimate parent company or its tax administration would not be the most suitable "entities" to lead the Amount A taxation procedure, alternative criteria could be identified, such as the jurisdiction in which the MNE's (operative) headquarters are located, or the jurisdiction in which most of the MNE group's in-scope revenues are achieved.

"XI. The development of an early tax certainty process to prevent and resolve disputes on Amount A. More specifically, comments are invited on the following points:

a. What do you consider will be the key challenges in the early tax certainty process described in the Blueprint and how do you think would they best be addressed?".

a. By way of introduction, we strongly agree with the consideration for which tax certainty is an essential element of Pillar One and that any disputes related to Amount A should be opportunely avoided.

Such a consideration is mainly due to the fact that several tax jurisdictions would potentially be involved in the taxation process under Pillar One, with the consequence that any possible disputes related to the determination and allocation of Amount A could involve a multitude of burdensome procedures for the taxpayers and the tax administrations involved.

On one hand, any affected tax administrations could unilaterally assess the MNE's determination and allocation of in scope revenues to be taxed in its own jurisdiction; on the other hand, the MNEs could address the potential disputes arising through the existing unilateral/bilateral measures, thus giving rise to several procedures to be coordinated.

In light of the above, it is clear that it would be ineffective to manage and coordinate all the actions that could unilaterally be taken, with the consequence that it is appropriate to seek certainty before tax administrations have made any adjustments to the tax position filed by MNE groups, thus preventing the emergence of any disputes.

In view of the above, we really appreciate the OECD intention to introduce, as a part of Pillar One, a binding dispute prevention procedure that would provide tax certainty at an early stage to avoid disputes related to the Amount A taxation process.

However, while we appreciate the effort made in the Report by the OECD in delineating the procedure – also considering the practical difficulties related to its implementation, mainly due to the number of subjects potentially involved - we believe that some adjustments to the proposal are needed, in order to simplify the procedure and to encourage MNE groups to submit it.

b. With respect to the OECD’s proposal, as described under Chapter 9 of the Report, access to the early tax certainty process is subject to the request of the “MNE group’s co-ordinating entity” - which has been delegated from the other group entities involved - to be submitted to its “lead tax administration”.

At the first stage, the MNE’s global self-assessment return, supported by a documentation package, is summarily reviewed by the “lead tax administration”.

Except in rare cases, specifically identified in the Report, the self-assessment return is subsequently revised by a “review panel”, which, as a first approximation, consists of 6/8 of the affected tax administrations, representative of the geographical spread of the MNE group. The outcome of the "review panel" is submitted to the comments of the other affected tax administrations not on the panel, which can raise objections to the agreement, thus reopening the discussion within the "review panel".

In the event that no agreement is reached within the "review panel", the relevant unresolved questions would be submitted to a second "determination panel", the composition of which remains to be determined, which is obligated to reach a decision, to be accepted by the "MNE group's co-ordinating entity" on behalf of the MNE group.

Although the procedure described in the Report properly tries to reconcile the MNEs needs for tax certainty with the claims of any affected tax administrations to participate in the determination and allocation of Amount A, doubts arise in relation to its practical implementation.

The concrete difficulties in co-ordinating the discussion among several tax administrations, the different positions to be reconciled to reach an agreement, along with the length of the procedure and, more generally, its complexity, could strongly discourage the participation in the early tax certainty process by the MNE group. In addition, the marginal role reserved for the "MNE group's co-ordinating entity" during the course of the procedure could increase the risk that the hard-won agreement is eventually, after a long and tough discussion, not accepted by the taxpayer.

c. Given the above, in order to make the procedure more effective and to reduce the overall resources needed for its implementation, it seems advisable to streamline the procedure as much as possible. In this respect, we would suggest the elimination of the "review panel" phase, to be replaced with a procedure based on the discussion between the "MNE group's co-ordinating entity" and its "lead tax administration".

More specifically, the procedure would be structured as a "unilateral" ruling system, aimed at determining, on a consensual basis, the overall calculation of Amount A and its allocation among the affected jurisdictions, as well as the identification of the paying entities in the MNE group and the relief from double taxation that should be provided by relieving jurisdictions.

Once an agreement is reached on the quantification and allocation of Amount A among the tax jurisdictions, thanks to the fruitful collaboration between the "MNE group's co-ordinating entity" and the "lead tax administration", the proposed agreement would be shared with the other affected tax administrations, in order to receive their possible comments.

In this respect, it seems opportune, with a view to further simplifying and speeding up the procedure, to set a threshold (i.e. an in-scope revenue test) in order to identify the tax administrations entitled to raise comments, based on the envisaged relevance of the Amount A quota to be taxed in their market jurisdictions. In this way it would be possible to avoid exceptions that are quantitatively irrelevant, but which could complicate and delay the process.

Only in the event that the "MNE group's co-ordinating entity" and the "lead tax administration" are unable to reach a final agreement, also with reference to the comments raised by the entitled affected tax administrations, the unresolved questions would be submitted to a "decision panel", which is obligated to reach a decision.

The agreement reached in the scope of the early tax certainty procedure, if accepted by the "MNE group's co-ordinating entity" on behalf of the other group entities, would be binding for all the affected tax administrations and the taxpayers.

The above described procedure, mainly grounded on the leading discussion between the "MNE group's co-ordinating entity" and the "lead tax administration" would considerably simplify the procedure and increase the chances of the agreement being accepted by the MNE group, with all the advantages in terms of certainty.

"b. Do you consider that there are circumstances where an MNE group's ultimate parent entity would not be the most suitable constituent entity to be the group's co-ordinating entity? If so, which constituent entities in an MNE group are likely to be more suitable".

In general, as provided under paragraph 718, Chapter 9 of the Report, the "MNE group's co-ordinating entity" will be identified as the ultimate parent entity of the MNE group and, as a consequence, the "lead tax administration" will be that of the jurisdiction where the ultimate parent company is resident. However, as rightly pointed out, there are circumstances where the ultimate parent entity or its tax administration would not be the most suitable to lead the Amount A taxation procedure.

With respect to the "MNE group's co-ordinating entity", it may happen that the ultimate parent entity is a pure holding company, without the appropriate structure to manage the taxation procedure and, possibly, the early tax certainty process. Furthermore, it does not seem appropriate to identify the "lead tax administration" in a jurisdiction where the MNE group, as probably most of the companies established therein, only has "nominal" activity.

Also, it may happen that the jurisdiction where the ultimate parent entity is resident is not a member of the Inclusive Framework or it has not implemented Amount A taxation. Furthermore, it may not have the necessary skills and/or resources to effectively act as a representative of the affected tax administrations involved in the taxation process.

In order to avoid the above-mentioned issues, it seems advisable to identify the most suitable group co-ordinating entity taking into consideration the actual capabilities of the jurisdiction where such an entity is resident. In this respect, a coordination with the criteria set for the identification of the "home market" jurisdiction for the purposes of the de minimis test is recommended (see above).

One option could be that of identifying the "lead tax administration" with the jurisdiction in which the MNE's (operative) headquarters are located. Another option could be to take as a reference the jurisdiction in which most of the MNE group's in-scope revenues are produced.

"c. Are there any features that could be incorporated into the Amount A tax certainty process to encourage participation by MNE groups? Do you see any features in the proposed design that could discourage participation by MNE groups?".

As mentioned above, the foreseeable difficulties in implementing the tax certainty process and its general complexity, mainly due to the number of subjects potentially involved, could discourage the participation in the procedure by MNE groups. In light of the above, the procedure described in the Report could be streamlined as a first step in order to encourage participation by taxpayers.

Moreover, the lack of any actual involvement of the taxpayers in the process could discourage the MNE groups from accessing the procedure and could increase the risk of their withdrawal due to unsatisfactory results. With this in mind, a procedure based on a structural and continuous discussion between the "MNE group's co-ordinating entity" and the "lead tax administration" seems to be advisable.

That being said, we believe that there are some other features which could be included as part of the tax certainty process in order to increase its attractiveness for MNE groups.

Firstly, we recommend to provide specific time limits with regard to each phase of the procedure. It is well known that the drawbacks of most of the existing tax dispute resolution mechanisms are related, *inter alia*, to the absence of mandatory time frames within which the procedures must be concluded.

Secondly, we suggest to attribute multi-year relevance to any agreement reached among the MNE groups and the affected tax administrations. During this multi-year period, the taxpayers would apply the agreed criteria in order to determine and allocate Amount A, while the affected tax administrations could only verify if the terms of the agreement are complied with and ascertain whether any material changes have occurred to the "de facto" or "de jure" conditions which constitute the basis of the agreement. At the end of the period of validity, the MNE should be allowed to submit an application for renewal.

Furthermore, consistent with the best international practice with regard to APAs, a roll-back mechanism could be introduced, subject to specific time limits, such as the date of the submission of the request for early certainty, where the relevant facts in the prior tax years are the same.

More specifically, a roll-back mechanism should be accompanied by a provisional payment of taxes due in relation to Amount A and a suspension of the tax administration assessment activities in the market jurisdictions involved with respect to Amount A from the date of the submission of the request until the end of the process.

Moreover, an extension of the ordinary statute of limitations, along with the possibility for the taxpayer to adjust its tax returns, should be allowed.

The above-mentioned measures, together with a general simplification of the procedure and a greater involvement of the taxpayer as a major actor, could encourage participation in the tax certainty procedure by MNE groups.

"d. Do you consider that a separate process to determine whether an MNE group is within scope of Amount A would be beneficial, or that in practice this is unlikely to be used?".

As described under para. 729, Chapter 9 of the Report, the tax certainty process covers all possible disputes related to Amount A taxation, including whether an MNE is within the scope of Amount A.

In this respect, we appreciate the OECD's intention to provide for a "simplified approach", aimed at ensuring tax certainty as to whether MNE groups are within or outside this scope without the need for the "ordinary" tax certainty procedure to be initiated. We totally agree on the application of a different procedure to verify the requirements to fall within the scope of Amount A or whether a State is (or not) a market jurisdiction.

However, we believe that the procedure delineated under para. 782, Chapter 9, of the Report could be further simplified. In this respect, we suggest to provide for the establishment of a "determination panel" - the composition of which has to be determined consistently with the information contained in the self-assessment return and in the documentation package - to which the relevant questions are directly submitted by the "MNE group's co-ordinating entity"[18]. The decision of the "determination panel", if accepted by the "MNE group's co-ordinating entity", would be binding on all tax administrations involved and for the taxpayer[19].

Moreover, the opportunity to introduce multi-year relevance of the decision could be considered. During this time period the MNEs would apply the criteria agreed within the "determination panel", while the affected tax administrations would verify that the terms of the binding decision are complied with and also ascertain whether any changes have occurred to the "de facto" or "de jure" conditions on which the decision is based. At the end of the period of validity, the

[18] In this respect, please see the *Tax Dispute Resolution Mechanisms* Directive (EU) No. 2017/1852, which provides for the "Advisory Commission" to be set up in order to address (*inter alia*) preliminary issues, namely the rejection of the complaint submitted by the affected person to access the dispute resolution mechanism.

[19] Alternatively, the opportunity might be considered to establish a permanent body at the OECD level in charge of giving opinions on the above-mentioned questions.

MNEs should be allowed to submit an application for renewal.

* * *

2. Report on Pillar Two Blueprint.

"II. Chapter 2: Scope of the GloBE rules

a. The treatment of investment funds (as defined in Section 2.3.) under the GloBE rules.

1. Considering that the GloBE rules only protect the tax neutrality of investment funds that are at the top of an MNE Group's ownership chain, are there specific situations in which the GloBE rules do not adequately protect the tax neutrality of investment funds?
2. In the case of an investment fund under the control of an MNE Group, what additional rules would be needed to ensure the tax neutrality of the fund and ensure that: i. the MNE Group's share of the fund's income is not excluded from the GloBE tax base? and ii. related party payments to and from the fund cannot be used to circumvent the UTPR?"

a. In the first instance, it seems appropriate to make a few preliminary remarks on the treatment of the investment funds both within the GloBE rules and in national law.

The guarantees provided by domestic law in favour of the Funds arise from reasons of fiscal policy, which aims to encourage investment through these vehicles.

To ensure the achievement of this goal, investment funds are subject to a so-called vertical neutrality regime. This system allows **(i)** to tax the returns earned by the investors in their jurisdiction, and **(ii)** to exclude the income of the funds from taxation.

The GloBE rules also ensure fiscal neutrality of investment funds, and, for this reason, the funds are treated as excluded entities.

However, this regime is only ensured with reference to entities which are at the top of the group ownership chain (the so-called "**Ultimate Parent Entity**" or "**UPE**").

As a result, the GloBE rules do not adequately protect the neutrality of investment funds that are not at the top of the MNE Group and, therefore, they are not considered as excluded entities.

In order to ensure the fiscal neutrality of the intermediate funds, the issue could be resolved by applying the tax transparency regime to these entities.

As explained in the Report, under the tax transparency regime "*the entity or arrangement is not subject to tax on its income. Instead, the income of the entity is passed through to the owners proportionally and taxed at the owner level*"[20].

In accordance with the GloBE rules set out in the Report, an entity or arrangement, that is treated as tax transparent by all of its owners and in the jurisdiction where it is created, is considered a stateless entity.

Nevertheless, the GloBE rules[21], concerning the assignment of profits and covered taxes, provide that both profits and taxes paid on the income of the transparent entity are allocated to the owner's (as a Constituent Entity) jurisdiction. Thus, these amounts

[20] Para. 101; Chapter 2, Report.

[21] Moreover, these rules are in accordance with those laid down under the CbCR.

(e.g. profits and covered taxes) are included in the jurisdictional ETR computation.

On that basis, the application of the tax transparency regime to the intermediate investment fund allows the taxes paid on the fund's income to be taken into account, allocating them to the owner's jurisdiction.

This approach aims to **(i)** avoid the exclusion, from the ETR computation, of the income of the funds, and **(ii)** ensure the neutrality of the fund, whose income is taxed at the Constituent Entity level, proportionally to the share of the fund's income[22].

"III. Chapter 3: Calculating the ETR under the GloBE Rules

a. Treatment of dividends and gains from disposition of stock in a corporation.

1. Do you have any views on the appropriate ownership threshold and the methodology of how to determine that threshold, both for the exclusion of portfolio dividends and the exclusion for gains and losses on the disposition of stock from the GloBE tax base?"

a. As explained in the Report, the internal regulatory frameworks provide for the exemption of dividends and gains, in order to avoid the risk of double economic taxation. Such a tax treatment aims to

[22] Furthermore, as shown in the Report, tax transparency regime creates issues with regard to entities or arrangements which are at the top of the group chain. In this case, as the transparent entity is not subject to tax under the GloBE rules, taxes paid by the owners of these entities are not included in the ETR computation.
On the contrary, this issue does not arise in relation to intermediate funds. If the fund was considered transparent, the income and covered taxes will be allocated to the Constituent Entity, that is a company included in the MNE's Group chain.
Para. 102-103, Chapter 2, Report.

avoid the risk of a stratification of multiple levels of taxation by excluding, from the tax base, dividends and gains, that are expressions of amounts already subject to taxation.

However, domestic law also makes specific exceptions for certain types of shareholdings (such as investments that are not fixed assets), establishing that the dividends or capital gains, arising from the above-mentioned participations, do not benefit from the participation exemption regime and, consequently, are taxed as a whole.

In order to adequately take into account these situations and, consequently, to avoid the exclusion of taxable dividends and capital gains from the calculation of the ETR, we agree with the approach, adopted under the GloBE proposal, which suggests to identify a single threshold, enforceable against all the entities of the MNE Group.

This solution allows **(i)** to ensure the certainty and consistency of the system, regardless of the specific rules existing within the individual jurisdictions, and **(ii)** to avoid any abuse by taxpayers.

From this perspective, however, we believe that it would be appropriate to identify a threshold that is proportionate with respect to the specific features of the considered companies. To this end, by way of example, we believe that it would be opportune for the ownership threshold to be different between listed and non-listed companies.

More specifically, as regards the methodology of how to determine that threshold, one may focus on situations where, as a consequence of the low percentage of equity ownership (one may think of 1% for listed companies and 10% for non-listed companies), the shareholder is typically not involved in the management of the participated companies, acting instead as a financial investor (generally these companies have a diversified investment portfolio and/or are involved in a number of different business). In such cases dividend/gains exemption regimes might be applied less frequently (and in such cases the above-mentioned exemption regimes might have a lower impact on the ETR).

Moreover, we do not consider it appropriate that the threshold, to exclude dividends and capital gains from the calculation of the ETR, should be identified separately according to whether the participation refers to domestic or foreign corporations. That distinguishing criterion is discriminatory and, therefore, not acceptable in a system which aims for the uniform taxation of MNE Groups.

"b. The treatment of re-organisations under Pillar Two

1. What types of re-organisations risk inappropriately triggering a liability under the GloBE rules and what are the technical issues that need to be considered in developing a rule that will allow MNE groups to undertake those re-organisations without triggering a liability under the GloBE rules?

2. Should the rule apply to a re-organisation involving an acquiring entity and an acquired entity located in different jurisdictions? How can these issues be addressed in the design of a rule that minimises compliance costs and the risk of over- or under-taxation?"

b. With regard to re-organization and restructuring transactions that risk triggering a liability under the GloBE rules, in our opinion it is appropriate to distinguish between **(i)** operations within the same jurisdiction, and **(ii)** operations between different jurisdictions, always undertaken by the same MNE Group.

Concerning the first scenario, we believe that there should be no risk of a tax liability. If the re-organisation is carried out within the same jurisdiction, the operation should be considered neutral from an accounting point of view due to the possibility to use the data contained in the consolidated financial statements, with the consequence that costs and plus-values, relating to the different companies of the group, are offset.

Moreover, according to the IAS-IFRS accounting principle and its interpretation (adopted, for instance, in Italy), such offsetting should also in principle be realized in the stand-alone financials of the companies when the re-organisation is carried out between "under common control" entities.

Consequently, according to the above, re-organisation and restructuring operations within the same jurisdiction do not lead to under or over taxation problems.

With regard to re-organisations carried out within different jurisdictions, we believe that the risk of a tax liability under the GloBE rules is limited. In fact, one should note that in each jurisdiction there are rules that provide for the taxation of latent surplus on assets belonging to companies involved in reorganization transactions.

For this reason, even in the case of re-organisation between companies located in different jurisdictions, there should not be problems of misalignment and the operation should not involve risk of lower taxation and, consequently, tax liabilities under the GloBE rules.

"c. Rules to adjust for accelerated depreciation

1. *What are the technical issues that need to be considered in developing a rule that will minimise the instances of a tax charge under the GloBE rules and a corresponding IIR tax credit due to accelerated*

depreciation or immediate expensing of assets capitalised in the financial accounts?

2. How can these issues be addressed in the design of a rule that minimises compliance and administration costs? Should the rule be based on deferred tax accounting, or rather allow the GloBE tax base to be computed by reference to tax depreciation instead of financial accounting depreciation?"

c. In order to identify solutions to the issues arising from immediate expensing and accelerated depreciation, we believe that a prior comparison between the models of **(i)** carry forward and **(ii)** deferred tax accounting, is appropriate.

As explained in the Report, both the carry-forward method and the deferred tax accounting method are used to resolve temporary differences. However, although the deferred accounting method is generally more favourable to the taxpayers (it leaves intact the effects of any incentive measures, such as accelerated depreciation), this method has the downside of relying on estimates, unlike the carry-forward method, which is based on the actual liabilities, existing at the time of recognition.

The GloBE rules have, therefore, preferred to adopt the carry forward method. The choice of the carry forward method, to address temporary differences, implies the need to have recognized the depreciation relevant for tax purposes rather the one relevant for accounting purposes, also in order to avoid excessive charges to taxpayers.

The use of the tax depreciation method allows to reduce the issues related to the creation of an IIR tax credit, which could not be used retroactively. Also, such a method appears to be the least burdensome for taxpayers.

However, one should note that, despite the above, the tax depreciation method could raise issues in terms of potential absence of the reversal effect of such minor taxation. In fact, if there is no expectation for a subsequent reduced depreciation of the assets relevant for tax purposes, the risk is that the accelerated depreciation loses the status of a temporary tax incentive, in order to become a permanent tax incentive.

For this reason, it would be appropriate to set a time limit according to which accelerated depreciation may be considered relevant for the application of this specific exception to the carry forward mechanism which relies on accounting data (rather than tax data) and covered taxes.

Finally, as a general comment it may be noted that the above-mentioned consideration regarding the poor reliability of the Deferred Tax Accounting mechanism should not in principle apply to the case of accelerated depreciation or immediate expensing as those items lead to the registration of Deferred Tax Liability ("DTL") and not to Deferred Tax Accounting ("DTA"). Indeed, only the latter are generally subject to a potential discretionary approach while the DTLs must be posted whenever they are due.

"d. The treatment of tax transparent entities.

1. Are there further technical issues to consider in regard to the treatment of fully or partially tax transparent and (reverse) hybrid entities?"

d. As a preliminary observation, we believe that the model of income and tax assignment, described in the Report, has the advantage of providing consistency to the system.

In particular, we agree with a mechanism that ensures **(i)** the assignment of income to the jurisdiction in which the income is earned, and, in parallel, **(ii)** the allocation of covered taxes in the same jurisdiction.

However, we should formulate some considerations regarding the treatment of transparent and reverse hybrid entities. While under the GloBE rules, both types of entities are treated as "stateless" entities, in consistency with the provisions of the CbCR rules, for allocation (of income and covered taxes) purposes, they are treated differently. In the case of the transparent entity, the income (and, consequently, the taxes covered) are assigned to the jurisdiction of the owners of the entity, to the extent that "*the tax jurisdiction of an owner or owners of the entity treats the entity as tax transparent*"[23].

Despite the above, the income and covered taxes of a reverse hybrid entity[24] will be assigned to the stateless jurisdiction. As a result, covered taxes and income of the reverse hybrid entity will be considered within the ETR computation of the stateless jurisdiction.

In our opinion, the "creation" of a stateless jurisdiction is a further complication, which could be avoided by treating the income, produced by a reverse hybrid entity, as income of the jurisdiction where the entity is incorporated. A possible solution to this matter could be to assign to the jurisdiction where the reverse hybrid entity was incorporated the income (realized in the reverse hybrid jurisdiction) and the taxes (due either in the reverse hybrid jurisdiction or

[23] Para. 275, Chapter 3, Report.

[24] As illustrated in the Report, a reverse hybrid entity is "*a business unit that is treated as tax transparent in the jurisdiction where it was created but as a separate entity for tax purposes in the jurisdiction of at least one of its owners*".
Para. 56, Chapter 2, Report.

in its jurisdiction as shareholder) of the reverse hybrid entity.

"e. Allocation of "cross-jurisdictional" taxes (particularly, anti-avoidance rule).

1. Do you have any views on how to allocate the "cross-jurisdictional" taxes (e.g. CFC regime taxes and withholding taxes)? In your response please also consider the following: i. Given the significant planning opportunities of reducing the MNE's tax liability by taking advantage of those "cross jurisdictional" taxes described in paragraph 284, do you have any ideas on the design of an anti-avoidance rule to avoid such planning opportunities and what are the technical issues that need to be considered in developing such a rule? ii. How can these issues be addressed in the design of a rule that minimises compliance and administration costs?"

e. With respect to the allocation of the "cross-jurisdictional" taxes (such as CFC regime taxes and withholding taxes), we agree with the idea of setting up an anti-abuse rule, aimed at avoiding an undue allocation of high-tax income to jurisdictions that, otherwise, would have an ETR below the minimum.

In this regard, by a way of example, the rules described in the Report, in respect of the assignment of withholding taxes (with the exception of dividends), provide that these covered taxes should be allocated to the jurisdiction in which the Constituent Entity that earned the income is based.

Such a rule can be used abusively by the taxpayers, which could **(i)** fulfill a transfer of income in tax jurisdictions otherwise considered low-tax and **(ii)** as a result, register an ETR compliant with the GloBE rules in these countries.

In order to avoid this result, we believe that a rule should be developed whereby withholding taxes are assigned to the jurisdiction of the recipient, exclusively when the aforementioned earner is the "*beneficial owner*" of the income (being on the contrary assigned to the jurisdiction where the withholding tax was paid).

In this regard, the principles already elaborated within the OECD Model Tax Convention in relation to the concept of beneficial owner can be applied also for GloBE purposes in order to ensure its proper implementation.

This said in relation to withholding taxes, in respect of the assigning of CFC regime taxes, the GloBE rules provide that the covered taxes, paid under CFC regime, are assigned to "*the CFC because those taxes are paid in respect of CFC's income*"[25].

As a preliminary comment, we acknowledge also here the consistency of a system that links the covered taxes to the jurisdiction in which the income has been produced.

Also in this case, we tend to believe that it would be appropriate to assign these covered taxes to the CFC jurisdiction only when the Constituent Entity carries out an effective economic activity. Such a rule would prevent taxes from being assigned to the CFC jurisdiction, if the Constituent Entities, here located, are purely artificial arrangements, which do not represent a genuine economic reality and that have been located in such jurisdiction only in order to increase the local ETR for GloBE purposes.

[25] Para. 280, Chapter 3, Report.

However, from a broader perspective, such solution could be seen as "circular" since the configuration of a CFC is usually excluded when there is substance.

Finally, should such risk be felt very concretely by the OECD, the possibility that the income and the related covered taxes are assigned to the jurisdiction of the shareholders could be ultimately evaluated.

"IV. Chapter 4: Carry-forwards and carve-out

a) ***Treatment of pre-GloBE losses and excess taxes under the carry-forward approach.***

1. What technical issues should be taken into account in developing a rule that would recognise the impact of pre-regime losses and benefit of taxes paid by the Constituent Entities of an MNE Group prior to becoming subject to the GloBE rules?
2. How can these technical issues be addressed in the design of the rule?
3. Do you have any views on the appropriate period for such losses and taxes being recognised and how to determine that period?
4. Are there special considerations that apply to certain industries?"

a) With respect to the recognition of pre-regime losses issues, we believe that the only potential alternative to the proposed solution could consist in **(i)** disregarding the amount of losses - realized by the Constituent Entity prior to the first application of the GloBE rules or earlier than the entrance into an MNE Group that applies such regulatory framework - within the computation of the "*Adjusted GloBE Income*", while **(ii)** determining the amount of Covered Taxes due on a figurative basis.

This solution would prevent the need to re-determine the pre-regime losses in accordance with the GloBE rules. Indeed, the ETR of the FY under analysis would be determined in accordance with the rules set forth by the GloBE framework.

A different option, which goes in the priority direction of creating a simple and easy to apply system, would be (not provide for technical transitional rules as regards pre-regime losses etc. but) to forfeit/lower the GloBE taxation mechanisms for the first FYs of application (in order to limit the effects deriving from pre-regime tax figures thanks to a milder mechanism for the first FYs).

"b. Formulaic substance-based carve-out.
1. Do you have any comments on the overall design of the carve-out?"

b) In accordance with the GloBE proposal, we tend to agree with the view that a proper carve-out mechanism should mainly rely on concrete elements, such as employees and tangible assets.

However, it could be appropriate to evaluate the integration of some other elements that do not purely focus on the above-mentioned factors, also in order to apply carve-out to the companies that do not base their activities primarily on material items.

In this regard, a specific carve - out could be introduced based on factors such as, by way of example:

(i) the amount of sources and use of funds within the jurisdiction of establishment of the company;
(ii) the amount of financial assets (i.e. shareholdings) located in the same jurisdiction of incorporation.

In this respect, a uniform treatment of different companies would be achieved and, at the same time, the computation of the carve-out would be based on elements that express a close connection with the jurisdiction of establishment of the company.

With regard, instead, to the current formulation of carve out, we believe that the opportunity to add, to the amount of "*Adjusted Covered Taxes*", also the Payroll taxes could be evaluated. These amounts, although paid within the relevant jurisdiction, are not shown in the P&L statement due to the fact that they are paid by the employees.

In this respect, the inclusion of the Payroll taxes in the computation of "*Adjusted Covered Tax*" would represent a further adjustment of the framework. In fact, this provision would be compliant with the underlying rationale of the carve-out mechanism, which aims to minimize the burdens for taxpayers with a tangible presence in the territory.

"c. Computation of the ETR and top-up tax.
1. Do you have any comments on the proposed calculation of ETR and top-up tax?"

c) With reference to the computation of ETR and top-up tax, we tend to agree with the approach adopted by the OECD – in proceeding, **(i)** first, with the calculation of jurisdictional ETR, **(ii)** second, with the determination of top-up tax (when the jurisdictional ETR is below the minimum rate), and **(iii)** finally, with the allocation of top-up tax for each Constituent Entity.

However, we believe that further considerations should be made regarding the computation of the "*Adjusted GloBE Income*" of the Constituent Entity, in particular with reference to the allocation of the carve-out amount.

In this respect, the Report highlights that both **(i)** the payroll component of the carve-out, and **(ii)** the tangible asset component are computed on a jurisdictional basis.

In our view, an alternative solution to the approach described above might be represented by the allocation of the carve-out amount on a punctual basis.

In other words, we consider that a mechanism based on the assets and employees held by a single Constituent Entity – and, as a consequence, the allocation of the carve out amounts based on the items held by each Entity – could **(i)** avoid the utilization of a "driver"(i.e. the net income), in order to allocate the exclusion deriving from payroll and tangible assets on a proportional basis, and **(ii)** allow these amounts to be assigned consistently with the territory where the activities are actually carried out.

"V. Chapter 5: Simplification options.

a) General. The Blueprint describes four potential simplification measures, including (i) CbC Report ETR safe harbour, (ii) de minimis profit exclusion, (iii) single jurisdictional ETR calculation to cover several years, and (iv) tax administrative guidance.

1. Are there any options that you consider would offer the most potential for simplification? Are there any options that you consider would offer little potential for simplification?
2. Do you have any comments regarding how any of these options could be improved in order to provide greater simplification?
3. Can you identify any other overall simplification measures that could be explored by the Inclusive Framework or potential simplifications to the design or application of specific elements of the IIR or the UTPR that would not undermine their objective or effectiveness?

b) CbC Report ETR Safe Harbour.

1. Does the requirement for using the parent's consolidated financial accounts significantly reduce

the number of MNEs able to use this simplification measure?
2. Do any of the required adjustments, as described in the Blueprint, create significant additional complexity? Do you have any suggestions on how to streamline these required adjustments?
3. Do you support the idea of using deferred tax accounting to provide a more accurate picture of the MNE's expected tax liability in each jurisdiction without the burden of computing and tracking carry-forwards? Would doing so add material complexity?
4. Do you have ideas on how this simplification measure should be coordinated with the carry-forward mechanisms described in Blueprint? For example, in instances where the MNE has an ETR that is above the safe-harbour ETR for one or more prior years, but one that is below the safe-harbour ETR in the current year, should the MNE be allowed to go back and compute its carry-forward attributes for the prior years?"

a), b) In the first instance, it seems appropriate to make a few preliminary remarks on the simplification measures evaluated within the GloBE proposal, in order to reduce the complexity and administrative burdens related to the application of GloBE rules.

In this scenario, the Report proposed different simplification options: first of all, it evaluates the opportunity to use the data deriving from the Country-by-Country Report, in order to exploit jurisdictional financial information already processed within large MNE Groups.

As an alternative, the Commentators suggested the exclusion from the scope of those jurisdictions that record a low level of profits before tax within the MNE Group (i.e. "*de minimis profit exclusion*" method).

Furthermore, consideration is given to the possibility of calculating the jurisdictional ETR in the base year and then, if the ETR of a particular jurisdiction is above the minimum rate, it will no longer be computed for some years.

Finally, an alternative solution to the approaches described above would be the identification, by tax administrations, of jurisdictions whereby both tax base and tax rate are compliant with the GloBE proposal. As a consequence, the aforementioned solution would result in a presumption, on the basis of which MNE Groups located in those jurisdictions have an ETR above the agreed minimum rate.

This being said, one should note that the CbC Report ETR Safe Harbour represents the simplest alternative, since the data, required to make the GloBE mechanism work, are in principle the same as those already available for CbCR purposes.

However, considering that such alternative should require some "adjustments", as described under Paragraph 5.2.1 of the Report, the abovementioned attractiveness would be reduced.

In this respect, we believe that, even if some adjustments could in principle be required in order to align the CBCR system to the GloBE proposal, they should be restricted to the modifications related to the inclusion of deferred tax accounting information.

This solution would be, indeed, the only one consistent with the underlying principle of the Country-by-Country Report ETR Safe Harbour, given that this mechanism is based on accounting data only without further elaboration of the available data, as instead required by the GloBE proposal.

However, it must be noted that if this solution were accepted, it would certainly represent a step back in relation to the application of the carry forward (rather than the deferred tax accounting) as a mechanism to solve "temporary tax adjustment" issues.

As explained in the comments reported "sub" 3, in our view, the deferred tax accounting should be preferred with respect to the carry forward mechanism, even if this solution seems to be inconsistent with the approach outlined in the Draft.

As a consequence, we believe that the GloBE rules **(i)** either adopt this solution (i.e. using the deferred tax accounting method), **(ii)** or do not require taxpayers to make any adjustment to the CbC Report ETR Safe Harbour. In fact, as we said above, any adjustment to the CbC Report would heavily reduce the simplification appeal of such option.

"c) De minimis profit exclusion.

1. Does the requirement to compute the profit before tax for every jurisdiction pursuant to the GloBE rules materially reduce the simplification benefits of this option?
2. Do you have suggestions as to how this determination could be streamlined, for example by using 'Profit (Loss) before Income Tax' as reported in the CbC report?
3. Do you consider the requirements provided in BEPS Actions 8-10, including DEMPE functions, sufficient to address the risk of fragmentation, or would targeted measures be required to neutralise such risk?
4. Do you have ideas on how to coordinate this simplification measure with the carry-forward mechanisms described in Blueprint?
5. In order to be effective, how should the de minimis threshold be set? Should it be a percentage of group profit, a fixed monetary amount threshold, or a combination of the two?"

c) As highlighted in the above paragraph, the "*De Minimis Profit Exclusion*" approach provides a simplification in terms of number of jurisdictions to oversee, in order to compute the jurisdictional ETR under the GloBE rules.

However, this method does not exclude the need to proceed with a computation of the profit before taxes recorded in jurisdictions in which the MNE Group is located.

In light of the above, we believe that the above-mentioned burden would not meaningfully reduce the benefits (in terms of simplification) of this option.

In addition, we share the view that the use of the accounting data shown in the CbC Reporting, as a first screening for the exclusion of the entities, is an appreciable proposal, in order to increase the effectiveness of the simplification option under analysis.

Instead, with reference to the conditions provided in the BEPS Action 8-10, we believe that the abovementioned requirements would not represent, on a standalone basis, a measure capable of excluding the risk of business fragmentation, since the underlying principle simply relies on the identity of the country **(i)** where the intangible assets are located and **(ii)** in which the so-called DEMPE functions are carried out.

As a consequence, we believe that the issues related to the risk of fragmentation could be addressed through the provision of a proper anti-fragmentation rule, maybe structured in line with the one set forth under art. 5 of the OECD Model Tax Convention, with reference to the treatment of "*permanent establishment*".

With reference to the impact of the "*De minimis profit exclusion*" measure and the correlation with the carry forward method, we believe that the carry-forward mechanism should not have an effect on the calculation of the profit (or loss) before taxes.

In fact, the "*De minimis profit exclusion*" method, as explained under Paragraph 395, aims to set a threshold, based on a percentage of pre-tax profit. As a consequence, an MNE Group would be required to compute covered taxes for jurisdictions with profit above the established threshold.

Finally, regarding the setting of the de minimis threshold, we believe that an effective rule should be developed, in order to manage situations where the profit of the Constituent Entities, that are part of MNEs, changes from year to year.

In order to adequately consider these eventualities and, furthermore, for the purpose of avoiding unlawful discrimination, we believe that the adoption of a "mixed" approach could be evaluated, that is the result of a combination of both **(i)** a percentage of MNE Group profit, and **(ii)** a fixed monetary amount.

"d) Single jurisdictional ETR calculation to cover several years.

1. Do you agree with the text in the Blueprint that this simplification option may not offer material simplification given that it requires computing an ETR in every jurisdiction in the base year?
2. Do you agree with the text in the Blueprint that this simplification measure would likely require targeted rules to address potential abusive arrangements, which would further undermine its intended simplification?"

d) As correctly highlighted by the Report, the simplification option of ETR computation to cover several years presents the undoubted advantage of avoiding the calculation of jurisdictional ETR for a relevant time period, in the knowledge that the abovementioned tax rate complies with the minimum required under the GloBE rules.

Even if the aforementioned solution seems to depart from the overall GloBE proposal (which is based on the assumption that the jurisdictional ETR could vary from year to year due to the presence of tax adjustments), we believe that applying such a simplification option, keeping a significant threshold rate so as not to exclude border-line jurisdictions, would lead to a substantial reduction in the administrative burdens for taxpayers.

We tend to agree with the consideration that such an option could result in arbitrary behaviour from the taxpayers, in view of the indisputable advantage deriving from the jurisdictional ETR computation to cover several years.

Therefore, the introduction of simple anti-avoidance rules, along with the above mentioned significant threshold would be opportune.

"e) Tax administrative guidance.

1. Which specific factors would you consider relevant to the determination of a "low-risk" jurisdiction?
2. Does the possibility that a tax authority could, within a certain period of time, require an MNE in a "low-risk" jurisdiction to perform the ETR calculation for that jurisdiction, reduce tax certainty and therefore limit the practical benefit of this simplification?
3. What can be done to minimise uncertainty to taxpayers?
4. In view of the necessary re-determination of a jurisdiction's "low-risk" status in the case of tax law revisions or reform that materially change the jurisdiction's tax base or rate, what can be done, in terms of processes and notification, to minimise uncertainty to taxpayers?
5. Do you have any additional comments regarding this simplification, including how it could be improved to offer greater simplification and certainty?"

e) Although the first two options proposed represent feasible alternatives, in terms of simplification, we acknowledge that the determination of a "low tax" jurisdiction, carried out by tax administrations, would have the undisputed advantage of minimising the element of discretion used in applying the GloBE rules by the taxpayers.

In fact, under the latter simplification option, tax authorities work to detect the so-called "white-listed" jurisdictions, i.e. the countries in which the tax rate complies with the minimum required by the GloBE rules.

In order to avoid the risk of discrepancies within different jurisdictions, due to the different guidance adopted by tax authorities, the identification of compliant jurisdictions should be carried out by a supranational institution, such as, by way of example, a special OECD Commission.

In this respect, the only relevant item for the identification of the "low-risk" jurisdictions would be, in our view, the effective corporate income tax rate (in case, the effective tax rate might be computed in each jurisdiction with reference to different areas of activity, such as industrial businesses; financial industries; third sector organisations).

Furthermore, in order to ensure system certainty, we believe that such list of "low-risk" jurisdictions should be updated on a yearly basis.

In order to minimize uncertainty for the same taxpayers, the OECD white list should be the only reference guide for taxpayers. As to updating the list, a system could be developed whereby the OECD Commission had the power to periodically request data on effective tax rates and tax systems from any jurisdiction.

In case of omissions by the local tax authorities in providing the requested information, such jurisdiction would automatically be included in the "high-risk" list.

"VI. Chapter 6: Income Inclusion and Switch-over rules

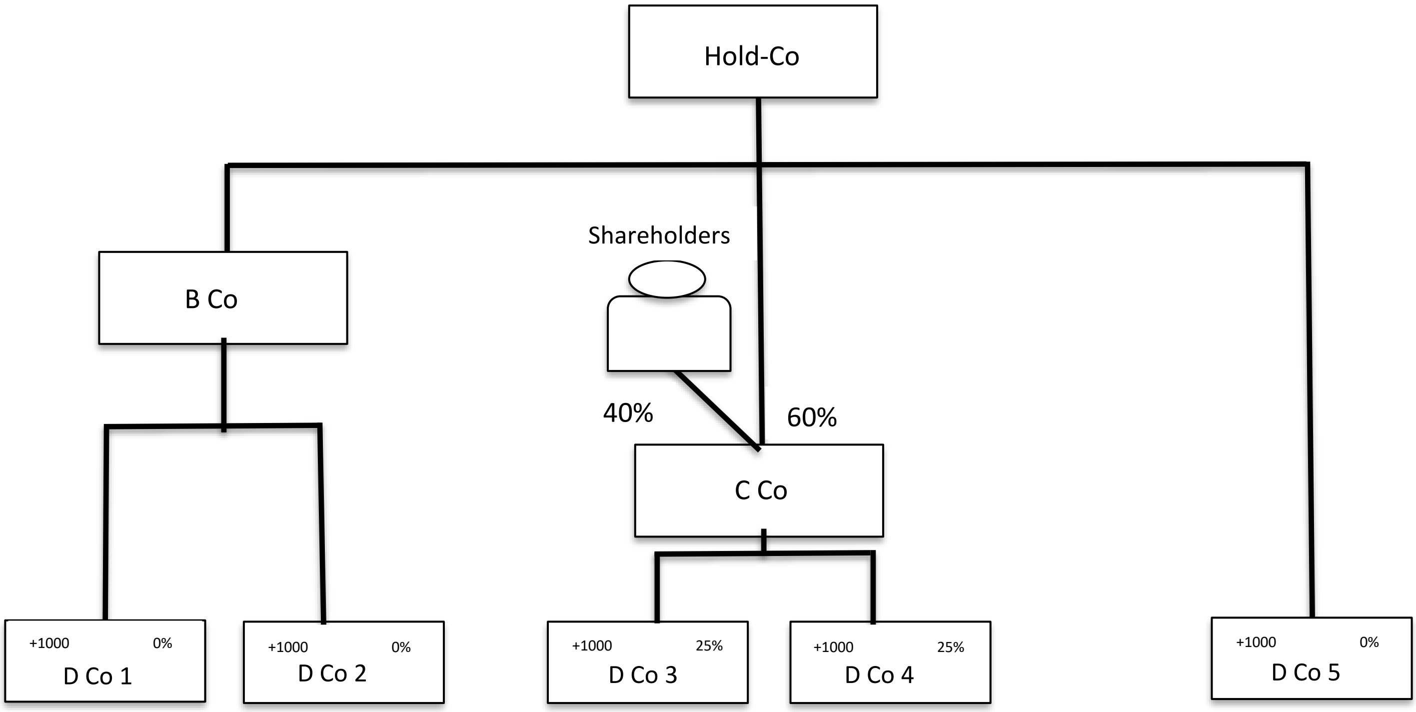
a) Top-down approach.

1. Do you have any comments on the detailed approach outlined in the report for designing and implementing a top-down income inclusion rule?"

a) With reference to the design of a top-down income inclusion rule approach, we believe that the overall drafting of the rule could result in a potential disadvantage for third party minority investors, when the application of a top-down approach is combined with the split ownership rule. This issue is explained as follows.

Considering the example 6.1.B and assuming that Hold-Co owns 60% of the shares of C Co, while the remaining 40% of shares are held by minority shareholders, the application of GloBE rules with reference to C Co would create a downside for minority shareholders that own shares of a sub-group of Hold Co (C Co and its subsidiaries D Co3 and D Co4), which shows an ETR above the minimum rate in jurisdiction D (since the companies D Co 3 and D Co 4 present a tax rate of 25%).

The scenario described is illustrated below:



In fact, third party investors are damaged, since the overall MNE Group presents an ETR of 10% (therefore, a tax rate below the minimum) and C Co is forced to tax the "untaxed" income of Jurisdiction D, pro-quota with respect to the profits of D Co3 and D Co4, due to the application of the top-down approach.

In this respect, a mechanism should be adopted in order to restore the tax status of C Co and, indirectly, of the minority shareholders, in order to offset **(i)** the higher taxes paid and **(ii)** the reduced income received by the minority shareholders of C Co due to the application of GloBE rules.

Alternatively, a solution could be evaluated in terms of **(i)** exclusion from taxation of C Co and **(ii)** assigning that income to any other Constituent Entity which is wholly controlled by Hold-Co.

"b) Integrity measures.

1. Do you have comments on the types of structures that could erode the integrity of the IIR (e.g., through the use of passive holding companies at the top of the ownership chain) and the types of rules that would protect the IIR's integrity while avoiding undue compliance costs and administrative burdens?"

b) By way of introduction, we believe that the top-down approach is useful, since **(i)** it allows the application of the mechanism in the most effective way and **(ii)** it avoids the intervention of the UTPR rule, as a back-stop mechanism.

Of course, the presence of a passive holding company at the top of the ownership chain could jeopardize the abovementioned mechanism, in the event that such entity is located in a jurisdiction which refunds the company for the higher taxes paid in application of the IIR.

However, we believe that, also in this case, the UTPR mechanism should safeguard such issue. In fact, the UTPR functioning aims to tax the "separate" income earned by a passive holding company, which would benefit from lower taxation due to the regulatory framework of the holding jurisdiction.

For this reason, the UPE, which applies the IIR, would be subject to the UTPR mechanism, that covers the untaxed profit of the abovementioned company.

"c) Split-ownership.

1. Do you have comments on the design of the proposed split-ownership rules?
2. What would be an appropriate minority ownership percentage to use when applying such a rule and what

impact would the rule then have on common multinational group structures?"

c) Regarding the minority ownership percentage to use when applying the spilt-ownership rule, we believe that such a percentage should be consistent with the one agreed to be applied in relation to the exclusion of portfolio investments, the rationale behind the two being analogous.

However, in our view, the percentage should be identified in such a way as to guarantee the interests of third-party investors.

Therefore, we believe that the ownership percentage should not be too small, in order to **(i)** minimize the complexity of the mechanism, and **(ii)** apply the IIR at the top-chain level.

That said, making reference to the example given under our answer to question a) of Paragraph 6, we tend to believe that it is always more appropriate to apply the rule at UPE level, where the corresponding jurisdiction applies the IIR, in order to minimize the downsides for (and protect the position of) minority shareholders.

This said, we understand that in such a case the income subject to tax at the UPE level would be equal to the share of the income belonging to the UPE.

"VII. Chapter 7: Undertaxed payments rule

a) General design.

1. Are additional rules necessary to ensure that there is no overlapping application of the UTPR and the IIR? 2. Do you have comments on the approach for allocating the top-up tax between constituent entities?"

a) Considering that the UTPR works as a backstop mechanism, since it allows the tax imposition of the whole untaxed income under the IIR provision, the UTPR relies on a different assumption.

In fact, the UTPR mechanism is based on the costs sustained towards the low tax jurisdiction, instead of the ownership percentage held in the Constituent Entity located in low-tax jurisdiction.

This being said, we believe that:

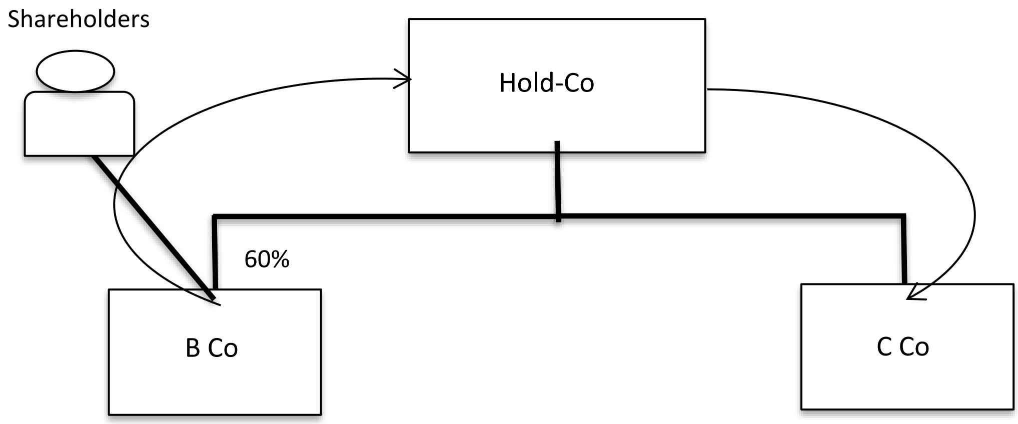
- there should not be an overlapping application of the UTPR and IIR, since the UTPR does not apply when IIR applies and, so, we should not register situations where both rules are applicable;
- as highlighted above, this mechanism allows the interest of minority shareholders to be protected.

This being said, assuming a case where:

(i) HoldCo is located in a jurisdiction that does not apply the IIR;
(ii) HoldCo owns 60% of the shares of B Co, a Constituent Entity located in jurisdiction B (high tax country) that applies UTPR;
(iii) third party investors hold the remaining 40% of shares of B Co;
(iv) HoldCo wholly controls C Co, a Constituent Entity located in jurisdiction C (low tax country).
(v) B Co makes a payment towards Hold-Co, in respect of management fees;
(vi) Hold-Co makes a payment towards C Co, in respect of royalties;

we come to the conclusion that jurisdiction B suffers the over-payment of taxes due to the whole undertaxed income of C Co.

The scenario described is illustrated below:



Thus, the higher taxes paid by B Co would decrease the profits of B Co to be received by the minority shareholders even if, on one hand, the profits corresponding to the fees paid by B Co are fully taxed in the Hold-Co jurisdiction and, on the other hand, the untaxed income of C Co are related to payments made by Hold-Co.

This said in terms of possible side effects of the application of the UTPR, from a broader perspective we may say that regarding the application of such rule it was our first impression that the jurisdiction that applies the UTPR mechanism should disregard only the deduction of expenses that are not taxed in the payee low-tax (jurisdiction due to the non-application of the IIR).

In other words, we believe that the final design of the UTPR mechanism is not fully in line with the initial thought for the application of this specific provision (i.e. to tax the low taxed (or untaxed) income on the basis of a strict correlation between profits and the related expenses).

This said, the different mechanism of application of the UTPR provision being understood, we tend to believe that, while the first allocation key is in line with the abovementioned initial (in our mind) underlying principle, the second allocation key seems to be a little bit too far from it.

In fact, while we understand the willingness to attract the whole amount of untaxed income, the UTPR should be configured as part of the application mechanism of the IIR rather than a single provision. In other words, a jurisdiction that applies the IIR cannot avoid also applying the UTPR.

It could have been qualified as a separate provision, if it had focused only on the non-deductibility of the expenses sustained by the company.

Instead, the mechanism developed is capable of closing the possibility that any (initially) untaxed amount remains (finally) untaxed.

In this respect, should the Commissariat desire to stay closer to what, in our understanding, was the initial rationale of the UTPR provision, one should consider that, under Italian Tax legislation, a specific provision was introduced some years ago, under which the deductibility of expenses and other negative income components was not allowed, when the recipient of the income was located in countries with privileged taxation.

Thus, the Italian regulatory framework provided that the expense was not deductible if the corresponding income was not properly taxed.

Such simpler solution could be a possible alternative to the aforementioned UTPR mechanism, but we are aware that this solution does not represent a full back-stop mechanism to the IIR.

"b) Compliance and administration.

1. Do you have comments on the efficacy of the certification requirements, standardized self-assessment returns, and local filing requirements provided under the UTPR either in the application of the rule or the deactivation of the rule in situations where the IIR applies?
2. Are there ways in which these can be improved to further streamline the compliance burden on MNEs?"

b) Given the complexity underlying the application of the UTPR, we fully agree with the general consideration that some simplification measures are desirable.

With this in mind, as a first statement, we believe that the UTPR application process should take a longer period than the IIR.

As a consequence, as proposed under paragraph 7.7.4, the taxpayer should be provided with a longer timeframe in order to comply with this provision (maybe one year for the IIR and two years for the UTPR).

This said, in terms of compliance formalities we agree with both the considerations that:

- standardized certifications are a must in order to properly apply this rule, and
- every entity of the MNE Group should be capable of providing the relevant information and applying the rule in the easiest possible way.

To this end, we fully agree with the view that a major role should be played by the UPE, even if this entity could not be – directly – hit by the application of the GloBE rules.

To this end, even if we of course consider the need for such activity to be done jointly with the tax departments of the off-shore companies, these certifications should be issued directly by the UPE (which will be the sole entity liable for its fulfillment) rather than the subsidiaries of the MNEs.

A further way to streamline the compliance of such rule could be to focus reporting obligations - towards the tax authorities of the constituent entities jurisdictions - on the UPE rather than adopting a local filing approach.

This solution would of course require a certain level of coordination between the local tax authorities of the UPE jurisdiction and the subsidiaries' jurisdictions.

To this end, this simplification measure could be enhanced by the intervention of a supranational organism, such as the OECD, that coordinates all the work to be done among administrations.

"VIII. Chapter 8: Special rules for Associates, joint ventures and orphan entities

a) Simplified IIR for associates and joint ventures.

1. Do you have comments on the design of a simplified IIR that would apply in respect of associates and joint ventures accounted for under the equity method?
2. What are the technical issues or practical challenges that need to be considered in developing a simplified IIR? How can these issues be addressed in the design of a rule that minimises compliance costs and the risk of over- or under-taxation?
3. Do you have any views on the application of the simplified IIR in a broader context of the application of the IIR described in Chapter 6, including the top-down approach and the split-ownership rules?"

a) The implementation of a simplified IIR for associated and joint ventures even if, in principle, represents a simplified solution in order to tax the untaxed income of quasi-controlled entities, on the other hand, could lead to further difficulties in the application of the GloBE rules, since the underlying mechanism heavily departs from the ordinary IIR.

Therefore, in our view, the application of the ordinary IIR mechanism (as explained under Chapter 6 of the Report) also in the case of Joint Ventures should be preferable. However, to this end, it should be agreed in which of the two MNE groups (representing the shareholders of the JV) the JV should fall for the purposes of the application of GloBE rules.

This solution does not have the same benefits as applying a simplified IIR, since the latter rule potentially allows the taxation of 100% of the (untaxed) income of the JV. In fact, assuming that the ordinary IIR applies in relation to only 50% of the income of the JV, the other 50% of the income potentially remains untaxed.

However this conclusion is in line with a situation where the controlling shareholder holds only 51% of the shares of the JV. Indeed, also in this case the remaining 49% of the income of the JV could remain untaxed.

This said, with reference to the technical aspects of the simplified IIR, we agree with the proposed simplifications in terms of (**i**) application of a worldwide blending, (**ii**) implementation of the corporate income taxes based on the accounting rules, including deferred tax accounting, and (**iii**) recognition of the accounting principles without adjustments.

In light of the above, one should consider that this solution could create some discrimination, in terms of interactions with the ordinary rules, the main discrimination being the lack of a carve-out for a fixed return.

Indeed, the enjoyment of the carve-out provision should also be given to joint ventures since those are generally created when a substantial business is carried out.

Therefore, excluding such type of exemption could create a prejudicial restriction.

"b) Orphan Entity rule.

1. Do you have comments on the design of an Orphan Entity rule?
2. What are the technical issues and practical challenges that need to be considered in developing an Orphan Entity rule and how can such challenges be addressed?
3. How can these issues be addressed in the design of a rule that minimises compliance costs and the risk of over- or under-taxation?"

b) The orphan entity rule represents a further useful instrument in order to exclude risks associated with the possibility that an MNE group is structured in a way that the GloBE rules do not ultimately apply and therefore some income remains (fully or partially) untaxed.

Indeed, by way of example, we can have the case where an orphan entity **(i)** is a foundation located in a low taxed jurisdiction, **(ii)** owns the IP of the MNE group, which the individual shareholders of the group "donated" to the orphan entity, and **(iii)** receives royalty payments for the exploitation of the IP by the distributing companies of the group.

Under the abovementioned scenario, it is from our perspective appropriate that the income of the orphan entity should be subject to the Globe rules.

In particular, according to the proposal, under the assumption that an orphan entity is not controlled by another entity and, therefore, it is not subject to the IIR, such an orphan entity should at least suffer the application of the UTPR by entities belonging to the same MNE group.

However, here too, the orphan entity rule departs from the principles, set forth under paragraph 2 of the Report, that mainly rely on the accounting rules and, as a consequence, it creates further burdens for taxpayers.

In this respect, even if it could be seen as a sort of paradox, rather than applying the UTPR alone it should be evaluated to extend the application of the IIR as a primary rule also to orphan entities under the same "connected persons" definition.

"IX. Chapter 9: Subject to tax rule

a) Covered payments and low-return exclusion.

1. Do you consider that the categories of covered payments and the exclusion for low-return payments ensures that the STTR focuses on the transactions that present significant BEPS risks?

2. Do you have any views on the design and practical application of this rule component as well as potential simplifications?"

a) In our view, the covered payments should contain any type of income which is usually subject to taxation in the source country (usually by means of a withholding tax whose application is limited/excluded due to the precedence of the Conventions for the avoidance of double taxation over the domestic legislation).

This said, it seems to us that the covered payments detailed in the proposal are mainly the incomes that in order to be taxed in the source jurisdiction must usually have the presence of a permanent establishment.

As a consequence, in our view, the STTR should not work in relation to covered payments that in order to be taxed in the source country requires the presence of a permanent establishment. The configuration of a "hidden permanent establishment" in order to tax those types of incomes simply because they have not been properly taxed in the residence jurisdiction should not apply in the context of an STTR.

Therefore, each jurisdiction should autonomously determine the categories of covered payments, without limitations imposed by the OECD rules.

For the same reasons, we tend to believe that the low return payments should not be excluded from the application of the STTR.

"b) Materiality threshold.

1. What are your views on including a materiality threshold?
2. Would such a threshold simplify the administration of the rule and limit compliance costs in a material way?
3. Do you have any views on the different approaches suggested for the materiality threshold as well as on their application in isolation or combination?"

b) Rather than the exclusion of certain types of incomes, we believe that the inclusion of materiality thresholds could be preferable, in terms of simplification options.

From our perspective, this solution would definitively decrease the effort required to handle this rule by the taxpayers.

The first threshold should be of course represented by the size of the MNE. Indeed, considering that the STTR falls under the GloBE purposes, we believe that the first and essential condition in order to apply the STTR is that the payor and payee belong to an MNE group with a turnover of at least 750 million Euro.

The second threshold should rely on the configuration of a safe harbour for "minor expenses", in line with the one adopted under the UN Transfer Pricing Model.

"c) Administrative considerations.

1. Further technical work will be undertaken in the Inclusive Framework on administrative approaches that could deliver these aims. This will include work on (i) applying the top-up tax as an ex-post annualised charge, (ii) a certification system providing for reduced rates of withholding tax, and (iii) the application of contingent withholding taxes set at a level that would generally result in an annual ex-post balancing payment by the taxpayer (rather than a repayment). Which administrative approach do you consider to be the most suitable?

2. Do you have other suggestions to minimize the administrative burden and to facilitate the collection of the top-up tax?"

c) Among the three proposed mechanisms to minimize administrative burdens and to facilitate the collection of the top-up tax, we tend to prefer the first mechanism as this is the only one that **(i)** grants certainty to the taxpayer and, above all, **(ii)** allows the taxpayer to compute the STTR only once when the figures are final.

Moreover, regarding the two proposed "collection approaches", i.e. whether the ex-post annual charge should be borne by the payor or by the payee, one should consider that the compliance issues regarding the collection of such taxes should prevail over any other reason in the choice of the best approach. As a consequence, we tend to believe that the charge should be suffered by the payor rather than the payee.

"X. Chapter 10: Implementation and rule co-ordination

a) Effective co-ordination of the GloBE rules.

1. Are there any co-ordination mechanisms or other features of the GloBE that you would suggest exploring in order to provide for more tax certainty in applying the Pillar Two rules?

b) Dispute prevention and resolution.

1. In addition to the design features and proposed approach to implementation of the IIR and UTPR, what additional options do you think should be considered to minimise the scope for double taxation and dispute?"

a), b) We are of the firm opinion that a further feature of the GloBE proposal capable of granting tax certainty and minimizing the scope for double taxation and disputes could be represented by the exchange of information/data among the jurisdictions where the MNE group is based.

In other words, further to the knowledge that the GloBE rules have been properly incorporated into the domestic legislation, it is also deeply important to know whether they have been properly applied by the taxpayers.

Given the magnitude, complexity and the impacts from the potential wrong application of the GloBE rules, one should carefully evaluate the possibility that – through the implementation of a very efficient and time effective reporting system – its application is approved in advance by either a supranational organization, such as the OECD, or, even better, the most impacted tax administrations.

Such "preemptive" approval of the correct application of the rules made by, for instance, the five major tax administrations involved in cross-border transactions, could represent something that will be trusted by the tax authorities of the other jurisdictions and will therefore grant tax certainty, exclude risks of double taxation and, last but not least, minimize any risk of disputes.

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If you have any questions or you would like further clarification regarding any of the points discussed above, please contact milano@virtax.it.

Respectfully submitted,

Yours sincerely,

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