



The Director
CENTRE FOR TAX POLICY AND ADMINISTRATION

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OECD Ref: PSA/DO(2022)44

Paris, 27 April 2022

Your reference: AL OTH 21/2022

Dear Prof. Waris, Mr. Alfaragi, Mr. Sewanyana and Mr. De Schutter,

JOINT COMMUNICATION FROM UN HUMAN RIGHTS SPECIAL PROCEDURES

Thank you for your joint communication dated 30 March 2022, of which we have taken note. We fully subscribe to the importance of UN human rights mechanisms to advance the implementation of international human rights standards. In that context, we have been very surprised by and we strongly disagree with the overview and concerns as presented in your communication, in particular that the tax discussions among more than 140 jurisdictions in an intergovernmental body, the Inclusive Framework on Base Erosion and Profit Shifting (hereafter “BEPS IF”), are considered to be “a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring”. We respectfully reject these conclusions and would like to provide the following information and clarifications:

- **Scope and Objective of the Two-Pillar Solution:** The agreement reached on 8 October 2021 by 137 BEPS IF members is known as the Two-Pillar Solution (see [press release and related information](#)). The Two-Pillar Solution is a continuation of the project to prevent base erosion and profit shifting by multinational enterprises (MNEs) with a view to establish a fairer international tax system. The objective of the Two-Pillar Solution is to ensure that MNEs will be subject to a minimum tax rate of 15% and will pay their fair share of tax in the jurisdictions in which they operate. This agreement will seriously limit tax competition and the race to the bottom, which has harmed revenues of both developed and developing countries. The agreement can also stabilise the international tax environment and defuse the trade tensions that result from a proliferation of unilateral measures creating a drag on the world economy precisely at a time when all economies are trying to rebuild the fiscal space needed to address the economic shock of the COVID pandemic.
- **Process for Agreeing on the Two-Pillar Solution:** The [Statement on a Two-Pillar Solution](#) was the result of extensive and thorough intergovernmental negotiations within the BEPS IF that took into account the different positions of participating jurisdictions. The BEPS IF is composed of jurisdictions participating on an equal footing, including low and middle-income countries, with regional tax organisations taking an active part in the negotiation. The discussions in the BEPS IF are now focusing on the implementation of the Two-Pillar Solution and, there again, each jurisdiction will decide whether or not to take the measures necessary for implementation.



- **Modalities to Support Low and Middle Income Countries:** A number of the features of the Two-Pillar Solution respond directly to concerns or positions put forward by low and middle income countries. Specifically:
 - The threshold to re-allocate profits to markets under Amount A of Pillar One has been set at a low level of 1 million euros to ensure that the widest number of jurisdictions can benefit, and for smaller jurisdictions with GDP lower than 40 billion euros, the threshold is 250 000 euros.
 - Extractive industries are excluded from the Scope of Amount A of Pillar One.
 - An elective – as opposed to mandatory – binding dispute resolution mechanism will be available for issues related to Amount A for developing economies in certain circumstances.
 - Amount B of Pillar One provides that the application of the arm’s length principle to in-country baseline marketing and distribution activities will be simplified and streamlined, with a particular focus on the needs of low capacity countries.
 - The GloBE rules of Pillar Two contains a carve-out for substantial business activity to protect the ability of countries to use tax incentives to attract real investment.
 - The subject to tax rule (STTR) will be a minimum standard that must be granted by BEPS IF members to developing countries to protect their tax base from base eroding payments such as interest and royalties.
 - The Detailed Implementation Plan provides that developing countries will benefit from bespoke technical assistance to support all aspects of implementation.
- **Role of the OECD and Choice of Forum:** The OECD provides the forum and technical support for the BEPS IF but the negotiations are in the hands of the member jurisdictions of the BEPS IF. Those jurisdictions have agreed to participate in these discussions within the OECD/G20 BEPS IF. It is not for the OECD to comment on whether it is the appropriate forum for this work: that is the sovereign choice of the 141 jurisdictions that are participating in the discussions. In its support to BEPS IF members, the OECD is acting under its mandate as set out in the OECD Convention and draws on its vast experience supporting the development, and implementation of international tax standards, in particular in the fight against tax evasion and avoidance.

In light of the above, we cannot agree with the assertion that the discussions taking place among BEPS IF members on the Two-Pillar Solution could be considered to be an actual or potential violation of human rights or a retrogressive measure under the International Covenant on Economic, Social and Cultural Rights.. The place for discussion of any substantive issues concerning the Two-Pillar Solution is among the members of the BEPS Inclusive Framework.Text

Yours sincerely,

Pascal Saint-Amans
Director, CTPA