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THE OECD-INCLUSIVE FRAMEWORK OUTCOME STATEMENT ON PILLAR 1 AND PILLAR 2: KEY CONSIDERATIONS FOR WATAF MEMBERS

Whereas the OECD-Inclusive Framework, which has in its ranks 10 WATAF members, published a statement on 12 July, 2023, on the Two-Pillar Solution to address the tax challenges of the digitalised economy.

Whereas the outcome statement, which was endorsed by 138 jurisdictions, including the WATAF contingent, outlined the status of work on the development of the Two Pillar Solution, viz:

Pillar 1 - Amount A

- A text of a Multilateral Convention (MLC) developed by the Inclusive Framework, which allows jurisdictions to reallocate and exercise a domestic taxing right over a portion of MNE residual profits (Amount A of Pillar One). The Inclusive Framework will publish the text of the MLC once it has been prepared for signature, upon resolution of a small number of specific items, as a few jurisdictions have expressed concerns with some specific items in the MLC;
- The MLC retains a commitment for countries to refrain from imposing newly enacted digital services taxes or relevant similar measures on any company before 31 December, 2024, or the entry into force of the MLC if earlier, provided that the signature to the MLC has made sufficient progress by the end of 2023.
- The MLC will be opened in the second half of 2023, and a signing ceremony will be organised by year's end, with the objective of enabling the MLC to enter into force in 2025, allowing for the domestic consultation, legislative, and administrative processes applicable in each jurisdiction.

Pillar 1 - Amount B

- Work on Amount B is to be completed before the end of 2023.

- Amount B will be implemented through the OECD Transfer Pricing Guidelines.
- The date of implementation is yet to be determined

Pillar 2 - STTR

- The Subject-to-Tax Rule (STTR), together with its implementation framework, will enable developing countries to update bilateral tax treaties to "tax back" income on certain intra-group income where such income is subject to low or nominal taxation in the other jurisdiction.
- The MLI implementing the STTR will be open for signature on 2 October, 2023. Inclusive Framework members can elect to implement the STTR by signing the MLI or bilaterally amending their treaties to include the STTR when requested by developing Inclusive Framework members.

In view of the above, WATAF members are called to note that:

1. Endorsing the outcome statement does not mean that a member must sign the MLC.
2. Pillar 1 Amount A still brings little or no returns per revenue to smaller economies, as typified by many of our members.
3. Some of our members may be out of scope for elective mandatory dispute resolution.
4. Pillar 1 Amount B could be implemented the same way members have implemented Transfer Pricing Guidelines, where deemed important by members.
5. The integration of amount B in the Transfer Pricing Guidelines as mentioned by the outcome statement is a good way to facilitate its implementation.
6. The consideration of Amount B as the most appropriate method for baseline marketing and distribution activities, except Comparable Uncontrolled Price (CUP), should be a priority for WATAF members
7. Pillar 2-GloBE rules are already being implemented by other jurisdictions with the potential to negatively impact the tax bases of member states whose effective tax rate is below 15%.
8. As a part of the outcome statement, countries are to refrain from enacting a new law for imposing digital services taxes or relevant similar measures on any

company before 31 December, 2024, or the entry into force of the MLC if earlier, provided the signature of the MLC has made sufficient progress by the end of the year. However, this does not stop members from implementing existing tax measures or introducing additional measures to protect their tax bases.

Accordingly, WATAF members are advised to:

1. Critically review the agreement with a view to weighing its economic implications for each member state.
2. Carry out revenue impact analysis to ensure that Amount A rules deliver positive revenue outcome before committing to its implementation.
3. Make any decision of signing or otherwise of any MLC only where the benefit of such MLC can be empirically confirmed to outweigh its cost, including the cost of administration and the cost of forgone Digital Service Taxes, which are to be withdrawn with respect to all companies in the case of Amount A.
4. In respect of Pillar 2, carry out a quick reform to weed out wasteful tax incentives and introduce countermeasures like alternative minimum taxes, domestic top-up taxes, and similar fiscal policy measures. WATAF members should prioritise having in their domestic law a domestic minimum top up tax and to revise their incentives' policy.
5. Continue to build capacity in the area of international tax and the taxation of the digital economy so as to better understand the issues and how they impact member states. WATAF is readily available to assist members in this regard.
6. Note that the major benefit of the work for member states will be behavioural changes in members' approach to fiscal policies, wherein members are expected to become more prudent with respect to tax incentives and measures to protect their domestic tax base.

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