



**THE INTERGOVERNMENTAL  
ORGANISATION  
OF THE SOUTH**





## Implementation Considerations

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# PRESENTATION OUTLINE

## Treaty-based options:

- OECD Amount A
- UN Article 12B
- Revenue estimate comparison

## Domestic Law Measures

- Significant Economic Presence (SEP)
- Digital Services Taxes (DST)/ Equalisation Levy (EL)
- Withholding tax (WHT)

Conclusion

## TREATY – BASED OPTIONS

### OECD INCLUSIVE FRAMEWORK TWO PILLAR SOLUTION (AMOUNT A)

#### **Prerequisites for Amount A to work:**

- *Developed Countries, especially USA, must ratify through ‘30-60 rule’ for profits to be redistributed*
- *Tax Havens Must Also Ratify*
  - *MNE profits usually shifted to tax havens*
  - *Tax Havens like Ireland and Bermuda will likely end up being ‘relieving jurisdictions’ under the elimination of double taxation rules of Amount A, meaning they will actually pay the tax*

#### **If Amount A comes into force:**

- *Implementation challenging, particularly ‘tax certainty’*
- *Tax certainty on issues relating to Amount A particularly concerning for developing countries*

## TREATY – BASED OPTIONS: AMOUNT A

### OECD INCLUSIVE FRAMEWORK TWO PILLAR SOLUTION (AMOUNT A)

#### ■ Main Headquarter Countries Who Must Ratify

Country by Country Breakdown of Covered Groups and Their Amount A profits under Pillar One Reform

Headquarter jurisdictions	Covered groups	% of Covered groups	Amount A profits	% Amount A profits
United States	31	45,6%	52 853	57,9%
China	13	19,1%	15 800	17,3%
France	5	7,4%	3 818	4,2%
Switzerland	4	5,9%	5 442	6,0%
Japan	3	4,4%	2 419	2,7%
United Kingdom	3	4,4%	3 354	3,7%
Germany	3	4,4%	1 629	1,8%
South Korea	2	2,9%	2 942	3,2%
Hong Kong	1	1,5%	2 017	2,2%
Ireland	1	1,5%	490	0,5%
Spain	1	1,5%	418	0,5%
Canada	1	1,5%	45	0,05%
Total	68	100%	91 227	100%

Barake and Le Pouhaër (2023)

## TREATY – BASED OPTIONS

### OECD INCLUSIVE FRAMEWORK TWO PILLAR SOLUTION (AMOUNT A)

- Implications of Amount A Multilateral Convention (MLC) not being signed by end 2023;
  - OECD Inclusive Framework (IF) Members can proceed with unilateral measures
  - Can proceed with unilateral measure even now; July Statement not a binding legal commitment

## TREATY – BASED OPTIONS

### OECD INCLUSIVE FRAMEWORK TWO PILLAR SOLUTION (AMOUNT A)

- Implications of Amount A MLC not being signed by end 2023;
  - EU, Canada, New Zealand and other developed countries have standby DST legislation
  - It is unlikely that the USA would be able to stop the whole world from initiating or continuing with any unilateral measures; *more countries that proceed with unilateral measures makes it easier for the rest*
  - Boost to the negotiations on UN Tax Convention in the UN General Assembly
  - *Multilateral Approach to Digital Services Taxes as a possible alternative to Amount A?*

## TREATY – BASED OPTIONS

### UN ARTICLE 12B OF MODEL TAX CONVENTION (MTC)

- Needs to be included into bilateral tax treaties with developed countries
- Developed countries most unlikely to agree to inclusion
- Power asymmetries will make negotiations very challenging
- Introducing DST out of Income Tax law will mean the lack of inclusion of 12B into the treaty will hurt the taxpayers of developed countries
- Individually renegotiating 12B can be extremely resource-intensive...
- ...but developing countries, especially LDCs, usually have a small treaty network

## TREATY – BASED OPTIONS

### UN ARTICLE 12B OF MODEL TAX CONVENTION (MTC)

- UN Tax Committee also contemplating a UN Multilateral Instrument (MLI) to fast-track implementation of Article 12B
- The MLI will result in Article 12B being included into multiple treaties simultaneously, without the need for individual renegotiation, provided treaty partners agree to provisions being included.

## TREATY – BASED OPTIONS

### UN ARTICLE 12B OF MODEL TAX CONVENTION (MTC)

- Needs domestic law provisions to enable both gross and net method
- Gross method: DST
- Net method: needs data on profitability of the beneficial owner, ADS segment and MNE group to be effectively applied
- Taxpayer can be denied option of net method if this data not provided to the tax authority

## DOMESTIC LAW MEASURES

### SIGNIFICANT ECONOMIC PRESENCE (SEP)

- Despite India introducing the SEP provision within its regulation, the same is yet to be implemented on account of lack of corresponding treaty provisions.
- Verifying whether the revenue and user thresholds have been met can be a challenge
- Enforcement; how to collect when taxpayer is not physically present?
- Profit attribution complex

## DOMESTIC LAW MEASURES

### DIGITAL SERVICES TAXES(DST)/EQUALISATION LEVY(EL)

- The design of DSTs leaves them out of the purview of DTA application.
- In principle, these can continue or be implemented should other treaty-based solutions remain unimplemented.
- For example, Kenya, a prior hold-out to the initial statement on the Two Pillar Solution in July 2023, signed on but has its DST still in place.
- There is a risk of trade-related retaliatory measures, as seen with the halted measures following investigation by the US of DSTs adopted by the UK, Austria, India, Spain and Turkey.
- Countries with DSTs have already mobilised significant revenue.
- The UK expended approx. USD 7.8 million in implementation costs for USD 445 million in collected revenues in 2021 and projects a revenue yield of approx. USD 3.7 billion by 2024-2025
- Kenya had collected approx. USD 1.2 million between June and December 2022 contrasted against the year to June 2022 when the collection was USD 1.6 million.

## DOMESTIC LAW MEASURES

### WITHHOLDING TAXES (WHT)

- These are relatively easy to administer and apply to a wide range of services; thus, the decision needs to be made on a country level regarding scope.
- In-scope services should be clearly defined to provide high tax certainty. However, a 'definitive list' should be as limited as is practical to avoid providing avenues for mischaracterisation of transactions.

## CONCLUSION

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Countries that are yet to implement any measures to tax the digital economy cannot afford to continue to not act.

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Due consideration is needed on what feasible alternatives exist for countries where the treaty-based solutions remain unimplemented.

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Revenue Estimates on different policy options highly recommended

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Lived country experiences in the implementation of the various options are useful in providing a basis for evaluation for those countries looking to implement new measures.

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Cost Benefit Analysis needed for tailored and relevant solutions considering impact on wider economy (e.g.: on competition, investment landscape, MSME development)

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