Deloitte Tax looks at Pillar One draft treaty

The OECD on October 11 published the "current consensus" of a multilateral convention for the implementation of Pillar One Amount A (the "Pillar One MLC" or MLC). The Pillar One MLC was accompanied by an explanatory statement and an Understanding on the Application of Certainty under Amount A. The OECD also published an updated estimate of the economic impact of Amount A and an overview document. Taken together, these documents represent about 1,000 pages of text.
URL: https://www.oecd.org/tax/inclusive-framework-releases-new-multilateral-convention-to-address-tax-challenges-of-globalisation-and-digitalisation.htm
URL: https://www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.pdf
URL: https://www.oecd.org/tax/beps/explanatory-statement-multilateral-convention-to-implement-amount-a-of-pillar-one.pdf
URL: https://www.oecd.org/tax/beps/understanding-on-the-application-of-certainty-for-amount-a-of-pillar-one.pdf
URL: https://www.oecd.org/tax/beps/multilateral-convention-amount-A-pillar-one-overview.pdf

Some unfinished business

Importantly, the Pillar One MLC is not yet open for signature as there are still areas being negotiated, largely defined in the footnotes to the Pillar One MLC. On October 16, US Treasury Secretary Janet Yellen told reporters that the negotiations with respect to the Pillar One MLC "will take into next year." (For prior coverage, see *Tax News & Views*, Vol. 24, No. 35, Oct. 20, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231020_2.html

In a previous July 2023 Outcome Statement, the OECD had expressed the view that "[t]he MLC will be opened in the second half of 2023 and a signing ceremony will be organised by year 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."
URL: https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.htm

The July Outcome Statement also explained that, subject to at least 30 jurisdictions accounting for at least 60 percent of the Ultimate Parent Entities (UPEs) of in-scope multinational entities (MNEs) signing the MLC before the end of 2023, members of the Inclusive Framework agreed to refrain from imposing newly enacted digital services taxes (DSTs) or relevant similar measures, as defined in the MLC, on any company between January 1, 2024, and the earlier of December 31, 2024, or the entry into force of the MLC. This represents a one-year extension of the current moratorium on such taxes, which was originally agreed to run through the end of 2023 unless the MLC came into force sooner. Given the ongoing negotiations and the fact that the MLC will not meet the target metrics for signatories before year-end, it remains an open question whether countries will agree to a continuation of the DST standstill. (It's worth noting that Canada appears intent on collecting its new DST beginning in 2024. For prior coverage, see *Tax News & Views*, Vol. 24, No. 31, Sep. 22, 2023.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230922_4.html

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Public comments requested

The Treasury Department announced a request for public comments on the Pillar One MLC and accompanying documents by December 11, 2023. Treasury Assistant Secretary for Tax Policy Lily Batchelder stated in the announcement that the release of the MLC and supporting documents is "a key step forward in the Pillar One negotiations," adding that the materials "reflect countless hours of discussions, across multiple US administrations, and among hundreds of negotiators."

Batchelder noted that "Treasury stands behind the negotiations, which have resulted in many difficult compromises by all sides with respect to both the design of the partial reallocation of taxing rights and the elimination of discriminatory digital services taxes and similar measures"; but she added that "Pillar One represents a uniquely significant reform to the international tax system" and "[b]ecause of the breadth and complexity of the changes proposed, we view public input as critical to our process—to ensure transparency, to facilitate the resolution of several remaining open issues, and to hear whether the proposed framework would be workable for US taxpayers and other stakeholders."

Notable details

The Pillar One MLC follows the contours of the Amount A discussions to date without notable departures, although there is surely more detail in these documents than was previously available in public. Among the items worthy of note:

- Issues around withholding tax at the source on royalties, technical fees/services, and interest that already allocates tax to market countries have been largely addressed with adjustments to minimize double taxation. Some open points remain under discussion, however, particularly on the adjustments for withholding taxes, and the text of the multilateral convention notes objections by India, Brazil, and Colombia in this regard.
- Amount A now includes a targeted exclusion for defense entities, which uses broadly the same approach as the exclusions for extractives and regulated financial services, as well as an exemption for "purely domestic-oriented" businesses.

For businesses within the scope of DSTs, there is a useful annex identifying the specific DST measures (including the UK DST and other European DSTs, plus the equalization levies in India) that will be withdrawn as part of the Amount A implementation. Signatories of the MLC will also commit not to introduce a DST or relevant similar measure in the future. A country that does so will not receive an allocation of Amount A tax.

Find out more

The relevant provisions of the Pillar One MLC are described in a new international tax alert from Deloitte Tax LLP.
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231103_3_suppA.pdf

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