

## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

14<sup>th</sup> December 2020

To,

OECD Centre for Tax Policy and Administration

Paris, France

Dear Sir/Madam,

### **Ref.: Comments and Suggestions on Reports on the Pillar One and Pillar Two Blueprints released on 12<sup>th</sup> October 2020**

This is with reference to the comments and suggestions invited on reports on the Pillar One and Pillar Two Blueprints through a public consultation document released on 12<sup>th</sup> October 2020 by the OECD under OECD/G20 Inclusive Framework on BEPS.

Before we make our suggestions on the said Reports permit us to introduce ourselves.

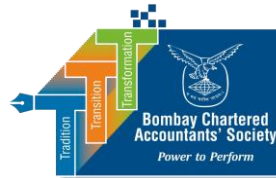
Bombay Chartered Accountants' Society (BCAS) is a voluntary organisation established on 6th July 1949 in Mumbai, India. BCAS has presently more than 9,000 members from all over India and abroad. BCAS is a principle-centered and learning-oriented organisation promoting quality service and excellence in the profession of Chartered Accountancy. The organisation is a catalyst to bring out better and more effective Government Policies and Laws in order to have clean and efficient administration and governance.

In this document, we have made an attempt to give our comments and suggestions on some of the specific questions raised for consultation.

#### **1. Overall Suggestion**

Before we proceed to give our comments on specific questions, our overall suggestion after going through the Blueprint of Pillar One and Two is as follows:

While we sincerely appreciate OECD's efforts and hard work in developing Pillar One and Pillar Two towards finding a solution to the taxation of digitised economy, we feel that the proposed solution is highly complex and fraught with higher compliance



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

burden and litigation. Computation of profits at a global level, with companies operating in different jurisdictions with different tax years and currencies, in a limited time frame would be a herculean task for an enterprise of any size. Pillar One in its present form would require rewriting of international tax laws. Political consensus on Pillar One also looks difficult and several countries have already adopted unilateral measures.

Assumptions will be made as to the percentages of routine profits and residual profits (Industry wise) while arriving at the “Amount A” under Pillar One. Thus, even Pillar One cannot give us scientific basis of determination or allocation of profits using “nexus” approach. Under the given circumstances, we strongly feel that the alternative approach to tax Automated Digital Services (ADS) be explored as suggested by the UN Committee of Tax Experts under new Article 12B. Further research and studies can be made to find a simple solution to tax profits of Consumer Facing Businesses (CFB) also on the lines of the new Article 12B suggested by the UN Committee of Experts. Accordingly, to reduce complexity, it may be considered to deal with tax issues of ADS and CFB businesses separately and independently.

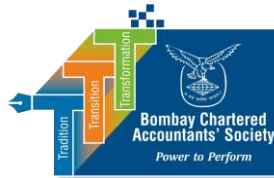
### **2. Pillar One Blueprint**

#### **I. 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? *[Refers to paragraphs 38-170 of the Blueprint]*

#### **BCAS Comments & Suggestions**

In this regard, it is suggested that the concept of ‘positive list’ and ‘negative list’, as suggested in the blueprint, may be replaced by a single exhaustive list which may be expanded at regular defined intervals. A definitive list will avoid disputes of classification under positive or negative list with certainty of automated digital services (ADS) and consumer-facing business (CFB) and would leave no scope of



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

interpretation for the MNEs or the tax administration. The 'positive list' should be supplemented by a detailed commentary.

### **II. 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). *[Refers to paragraphs 182-184 of the Blueprint]*

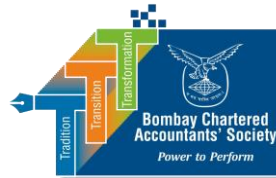
#### **BCAS Comments & Suggestions**

In this regard, it is suggested that rather than treating only the residence jurisdiction of the Ultimate Parent Entity (UPE) as the domestic/home market, all jurisdictions where the MNE group has its presence may be considered as domestic/home market. This suggested approach will be more suitable practically, especially in cases where the UPE is not an operating company and only has passive incomes (royalty, interest, dividend) – in such a case, entire income from jurisdictions, other than UPE jurisdiction, become foreign sourced income. This would mean more MNE groups crossing the de minimis threshold and falling under the ambit of Pillar One. In short, only the revenue actually earned outside the local jurisdiction of each MNE entity will be considered as foreign sourced revenue.

### **III. The development of a nexus rule.**

More specifically, comments are invited on the following points:

- a. The “plus factors” suggested for CFB will be examined as potential indicators which denote an engagement with the market beyond the mere conclusion of sales. In terms of compliance costs and administrability, do you have any comments on these plus factors? *[Refers to paragraphs 202-211 of the Blueprint]*
- b. Do you consider the suggested plus factors (and hence a taxable nexus under Amount A) could be deemed to exist once a certain level of sales is exceeded?



## Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS

---

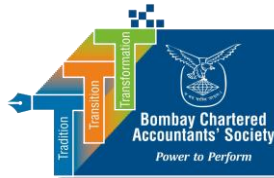
If so, what should be the criteria for establishing such level? [*Refers to paragraph 212 of the Blueprint*]

- c. Should the market revenue threshold contain a temporal requirement of more than one year? If so, what should it be? [*Refers to paragraph 196 of the Blueprint*]

### **BCAS Comments & Suggestions**

- a. The plus factors currently proposed include the following:
- ***Sustained presence of CFB's personnel in the market jurisdiction*** – These criteria may lead to numerous administrative challenges and disputes in terms of deciding which personnel should be considered, level of designation, underlying experience of such personnel, etc.
  - ***AMP expense in the market jurisdiction*** – This could be considered provided that it is not applied on a mechanical basis without acknowledging various factors (market penetration, new product launch, etc.) which may require higher AMP spending. Furthermore, the AMP spend for in-scope activities will need to be monitored separately by the MNE.
  - ***Physical presence test*** – One may not be able to rely upon the traditional definition of PE and devising a new definition for Pillar One will only complicate things. Having said that, for CFBs, one may consider having warehouse PE definition included in the OECD model tax convention itself.
- b. Deeming 'plus factors' to exist in case certain sales level threshold is met is a practical and simple approach.
- c. Temporal requirement is not desirable for the purpose nexus test. Such requirement will reduce the chances of allocation of new taxing right to the market jurisdictions and will not be in the interest of developing countries.

Furthermore, it is also suggested that, while the report acknowledges to fix a lower threshold for small developing economies, it would be worth exploring to fix such



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

threshold based on broad buckets of GDP of each jurisdiction rather than fixing individual amounts for each such jurisdiction. This will make things much simpler and justifiable for the respective jurisdiction.

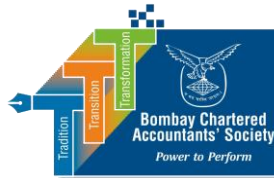
### **IV. The development of revenue sourcing rules.**

More specifically, comments are invited on the following points:

- a. Do you have any comments with respect to the proposed sourcing rule and proposed hierarchy of indicators as the basis for the sourcing of revenue for Amount A? *[Refers to paragraphs 227-321 of the Blueprint]*
- b. What factors should be taken into account in determining “reasonable steps” required to obtain information that is unavailable (such as changing contracts with third party distributors)? *[Refers to paragraphs 378-387 of the Blueprint]*
- c. What simplification measures, if any, should be considered in the revenue sourcing rules, such as safe harbours or de minimis rules? *[Refers to paragraphs 388-405 of the Blueprint]*
- d. Do you consider that VPNs and/or any other emerging technology may have an impact on the accuracy and/or reliability of proposed revenue sourcing rules? If yes, what options or design changes should be considered to eliminate or minimise such an impact? *[Refers to paragraphs 305-309 of the Blueprint]*

### **BCAS Comments & Suggestions**

- a. The proposed structure looks too complex and should be simplified.
- b. It is too subjective to define ‘reasonable steps’ to be taken by the MNEs. However, one may explore obtaining a certificate from an expert (particularly an information technology expert) who understands the technical workings of obtaining the relevant data and give certification as regards hierarchy of indicators, reasonable steps by the MNE etc.



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

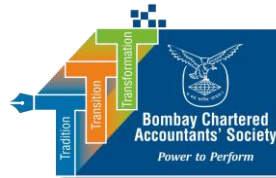
Furthermore, assuming the contract with third party distributors are amended to include a clause for sharing the relevant information, it is difficult to comprehend enforceability of such clause in the contracts. This, in our humble opinion, may not guarantee accuracy or even elicit a response from the distributor. On a practical side, one may not sue a distributor for not complying with this new clause, let alone terminating the contract for this very reason. In short, no undue burden should be imposed on the MNEs or their distributors to obtain the data points.

- c. One may certainly consider having some sort of safe harbour in place to effectively implement the Pillar One project without putting too much burden on the stakeholders.
- d. Even though this is outside our domain of expertise but we certainly believe there would be technological tools to take care of do it. A domain expert like an information technology expert could certify the accuracy of data points.

### **V. Framework for segmenting the Amount A tax base.**

As a simplification, this framework includes different options to limit the need for segmentation, including calculating the Amount A tax base on a consolidated basis as a default rule (and applying it to in-scope revenues to produce a proxy for in-scope profits.). More specifically, comments are invited on the following points:

- a. Do you consider that hallmarks drawing on IAS 14 constitute an appropriate basis for developing a test to determine whether an MNE group is required to segment? If not, what other options should be considered to identify relevant segments for Amount A purposes? *[Refers to paragraphs 456-461 of the Blueprint]*
- b. Do you consider that existing segments (under financial accounting standards) should be used in the majority of cases as a basis for segmenting the Amount A tax base (for example by using a rebuttable presumption)? If not, what other options should be considered? *[Refers to paragraphs 462-463 of the Blueprint]*



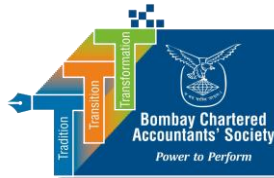
## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

- c. Do you consider that groups should be permitted to calculate Amount A on a geographically segmented basis? If so, what should be the criteria for determining when geographical segmentation is permitted and what those geographic segments should be? *[Refers to paragraph 459]*
- d. Alternatively, do you consider that MNE groups should be required or permitted in some cases to segment their profits before tax between in-scope activities (i.e. ADS and/or CFB) and out-of-scope activities? If yes, what criteria could be used to determine when this approach to segmentation should be applied as opposed to calculating the Amount A tax base on a consolidated basis? *[Refers to paragraphs 442-446 of the Blueprint]*

### **BCAS Comments & Suggestions**

- a. In this regard, it is suggested to have a separate mechanism to draw segmental results for Pillar One as the purpose of segmental reporting in the financial statements is completely different from what the Pillar One intends to use it for. Furthermore, the accuracy of segmental Profit Before Tax (PBT) will always be questionable due to cost allocation issues. These facts have also been acknowledged by OECD itself in its report on Pillar One blueprint.
- b. Please refer our comments on point V(a) above. Additionally, using the rebuttable assumption may lead to disagreement by the stakeholders leading to litigation.
- c. Yes, geographical segmentation may be permitted as long as it is easier to implement and administer in terms of costs involved.
- d. Yes, segmentation may be allowed for in-scope and out-of-scope activities supported by a certification by expert professional to validate its accuracy.



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

### **VI. Loss carry-forward regime.**

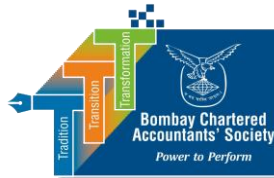
More specifically, comments are invited on the following points:

- a. Do you consider that Amount A tax base rules should apply consistently at the level of the MNE group (or segment where relevant) irrespective of whether the outcome is a profit or loss (symmetry)? *[Refers to paragraphs 475-476 of the Blueprint]*
- b. Do you consider that the carry-forward regime should account for some pre-regime losses and, if so, are any specific rules required to ensure symmetry, limit complexity and compliance costs (e.g., time limitations)? *[Refers to paragraphs 477-478 of the Blueprint]*
- c. Do you consider that losses for Amount A purposes should not be allocated to market jurisdictions (unlike profits), but instead reported and administered through a single account for the MNE group (or segment where relevant) and carried forward through an earn-out mechanism? If so, do you have specific suggestions to improve the design and administration of this approach? *[Refers to paragraphs 479-480 of the Blueprint]*
- d. What is your view of the proposal to extend the carry-forward regime to 'profit shortfalls'? Do you or do you not agree with the conceptual rationale behind it? *[Refers to paragraphs 488-491 of the Blueprint]*

### **BCAS Comments & Suggestions**

- a. Yes, Amount A tax base rules should apply consistently to the outcome (profit or loss).
- b. No, pre-regime losses may not be relevant unless they are re-casted as per Pillar One approach which will be a herculean task for MNEs.
- c. There are two school of thoughts on this point. Allocation of losses to each market jurisdiction or maintaining a central pool both will have its pros and cons. However, based on our preliminary analysis, it is suggested to allocate losses





## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

to each market jurisdiction as the central pool approach may not maintain a level playing field for all entities in the MNE group.

- d. It is suggested to extend the carry-forward regime to 'profit shortfalls.'

### **VII. Double counting issues.**

More specifically, comments are invited on the following points:

- a. Do you consider that the proposed mechanism to eliminate double taxation from Amount A will have an impact on the scope and relevance of possible double counting issues? Do you have suggestions on the design of this mechanism that would improve its ability to resolve (or reduce) possible double counting issues? *[Refers to paragraphs 531-532 of the Blueprint]*
- b. Do you consider that there is an interaction between withholding taxes in market jurisdictions and the taxes under Amount A? If so, how could such interactions, including double counting issues, be addressed *[Refers to paragraphs 506, 528 and 555 of the Blueprint]*?
- c. What would be the most important design and technical considerations in developing a marketing and distribution profits safe harbour for MNE groups with an existing taxable presence in the market jurisdiction? For example, do you consider this approach would be effective in dealing with possible double counting issues? Do you have views on how the fixed return could be designed? How should subsequent transfer pricing adjustments be dealt with in relation to this safe harbour? *[Refers to paragraphs 533-546 of the Blueprint]*
- d. Should a domestic-to-domestic business exemption be considered to exclude part of a group's business that is primarily carried on in a single jurisdiction from the calculation of the Amount A tax base? If so, do you have views on how this exemption could be designed? *[Refers to paragraphs 547-553 of the Blueprint]*
- e. Besides the mechanisms proposed in the Blueprint, do you have any other suggestions on how to resolve the possible double counting issue?



**Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020  
Comments and suggestions by BCAS**

---

**BCAS Comments & Suggestions**

The proposed mechanism seems too complex and a much simpler mechanism would be required.

**VIII. Eliminating double taxation.**

**BCAS Comments & Suggestions**

We have no comments on this aspect at this stage.

**IX. Issue of scope of Amount B and definition of baseline marketing and distribution activities.**

**BCAS Comments & Suggestions**

We have no comments on these aspects at this stage.

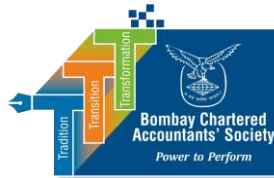
**X. Appropriate profit level indicator (PLI) for calculating Amount B.**

More specifically, comments are invited on the following points:

- a. What the appropriate profit level indicator should be, for example whether a return on sales set at the (potentially adjusted) EBIT or PBT level should be used? *[Refers to paragraphs 686-688 of the Blueprint]*
- b. Do you consider that Amount B should account for variation in returns to baseline marketing and distribution activities by industry and/or region? If yes, what industry and/or regional variations should be considered? Are there any other differentiation factors that should be considered? *[Refers to paragraphs 690-693 of the Blueprint]*

**BCAS Comments & Suggestions**

- a. It is suggested to set the PLI at EBIT level.
- b. Yes, industry-wise and region-wise variation should be considered while arriving at Amount B.



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

### **XI. Tax certainty process to prevent and resolve disputes on Amount A.**

More specifically, comments are invited on the following points:

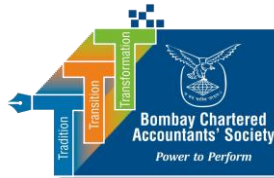
- a. What do you consider will be the key challenges in the early tax certainty process described in the Blueprint and how do you think would they best be addressed?
- b. Do you consider that there are circumstances where an MNE group's ultimate parent entity would not be the most suitable constituent entity to be the group's co-ordinating entity? If so, which constituent entities in an MNE group are likely to be more suitable. *[Refers to paragraph 718 of the Blueprint]*
- 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? *[Refers to paragraphs 728-729 of the Blueprint]*
- 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? *[Refers to paragraphs 729 and 782 of the Blueprint]*

### **BCAS Comments & Suggestions**

It is expected that MNEs would prefer opting for the early tax certainty. The important aspect is to ensure that the prescribed timelines are strictly adhered to in order to achieve the desired objective.

### **XII. Greater certainty beyond Amount A.**

More specifically, recognising that Inclusive Framework members continue to hold different views as to the extent to which Pillar One should incorporate new tax certainty approaches beyond Amount A, what are your views on the four-element approach explored in the blueprint? What other suggestions and ideas do you have that would take into account these different views and help advance tax certainty beyond Amount A? *[Refers to paragraphs 710 and 801 of the Blueprint]*



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

### **BCAS Comments & Suggestions**

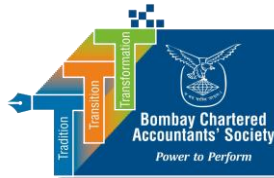
It is quite possible that members of Inclusive Framework may not have consensus on methods of determination of Amount A and the entire framework of Pillar One due to complexity, uncertainty involved and perceived loss of revenue. Therefore, we suggest that the Alternative approach suggested by the UN Committee of Experts may be explored subject to further study and research.

### **3. Pillar Two Blueprint**

The Cover Statement by the OECD/G20 Inclusive Framework on BEPS on the Report on the Blueprint of Pillar Two (focused on a global minimum tax intended to address remaining BEPS issues) states that a consensus-based solution on the same will play an important role to ensure fairness and equity in tax systems and fortify the international tax framework in the face of new and changing business models. It can also help put government finances back on a sustainable footing. At the same time, while it acknowledges that jurisdictions are free to determine their own tax systems (including whether they have a corporate income tax and the level of their tax rates), it also considers the right of other jurisdictions to apply an internationally agreed Pillar Two regime where income is taxed below an agreed minimum rate. Though no agreement has been reached, the Blueprint provides a solid basis for future agreement on various aspects.

At the outset, it appears that the initial BEPS initiative did not include the issue of a minimum level of tax for MNEs. Further, the provisions of Pillar Two, seem to cover MNEs across all industries and not only those whose business operate in the digitalized economy or pose a risk of BEPS through use of intangibles asset or other measures.

**In substance, Pillar Two proposes complex changes to international taxation provisions which not only require rewriting laws but also a require fresh learning of a new and complicated system of taxation across professionals, MNE businesses and tax administrations.** It also creates tax uncertainties and



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

compliance burden on MNE businesses already struggling due to economic impact of Covid-19 coupled with burden of recently introduced BEPS measures such as Country-by-Country Reporting (CbCR) and Multilateral Instrument (MLI) (which in itself includes provisions anti-abuse provisions of Principal Purpose Test, Simplified Limitation of Benefits clause, etc.)

In fact, a lot of commendable work has been completed under BEPS Action 5 where beneficial tax regimes of various nations (having low / NIL income-taxes) have been assessed from the perspective of countering harmful tax practices more effectively by taking into account transparency and substance. Tax regimes of various such jurisdictions have been held to be not harmful. Wherever required, deficiencies have been identified and amended.

**It is our suggestion that implementation of Pillar Two provisions should only be contemplated once the impact of the above-mentioned BEPS measures is known in a few years' time and the need for their implementation is justified. This would help reduce tax uncertainty and disputes.**

Nevertheless, we have proceeded to provide in-principle comments and suggestions on Pillar Two proposals which, in our view, merit attention.

### **I. Chapter 1: Introduction and Executive Summary**

We have no comments on GILTI co-existence at this stage.

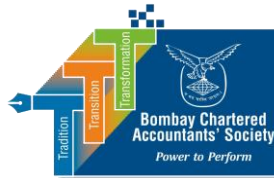
### **II. Chapter 2: Scope of the GloBE rules**

We have given our comments on the scope of GloBE rules in the opening paragraphs under the title "Pillar Two Blueprint" herein above.

### **III. Chapter III: Calculating the ETR under the GloBE Rules**

**a. Treatment of dividends and gains from disposition of stock in a corporation. [Refers to paragraphs 181-191 of the Blueprint]**

1. Do you have any views on the appropriate ownership threshold and the



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

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?

### **BCAS Comments & Suggestions**

Threshold of 10% suggested in the Blueprint to distinguish portfolio and non-portfolio investments seems to be reasonable. However, as per Pillar Two, intra-group dividends are sought to be excluded from GloBE tax based on the ground that they represent income which has already been taxed under GloBE.

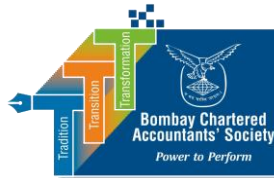
In our view, similar treatment should also be provided to portfolio dividends as the rationale of the same being tax paid profits continues to apply. This will not only maintain consistency but also ensure simplicity.

#### **c. Rules to adjust for accelerated depreciation. [Refers to paragraphs 220-225 of the Blueprint]**

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?

### **BCAS Comments & Suggestions**

The Blueprint on Pillar Two recognizes the fact that immediate expensing and accelerated depreciation of business assets is one of the most common income tax incentives offered by jurisdictions. These tax incentives will likely be a common cause of significant temporary differences which may cause the ETR in the jurisdiction to



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

fall below the minimum tax rate, producing tax liability under the income inclusion rule, and resulting in significant and frequent IIR tax paid.

Once the differences reverse, they will create IIR tax credits. The IIR credit may not arise or get utilized in capital intensive businesses which require continuous re-investments in assets.

Accordingly, it is suggested that GloBE tax base should take into account deferred tax accounting.

### **e. Allocation of “cross-jurisdictional” taxes (particularly, anti-avoidance rule).**

[Refers to paragraph 284 of the Blueprint]

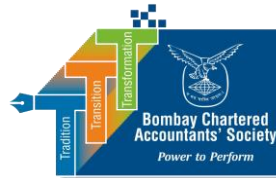
1. Do you have any views on how to allocate the “cross-jurisdictional” taxes (e.g. CFC regime taxes and withholding taxes)? In your response please also consider the following:
  - i. Given the significant planning opportunities of reducing the MNE’s tax liability by taking advantage of those “cross 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?

### **BCAS Comments & Suggestions**

There are enough anti-avoidance measures in terms of GAAR, PPT, LOB, Transfer Pricing, etc. This may be considered in the future only if it is found that the provisions are misused.

### **IV. Chapter 4: Carry-forwards and carve-out**

We have no comments on these aspects at this stage.



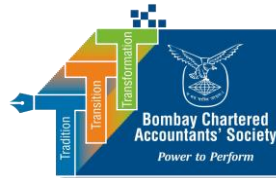
## Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS

---

### 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.** *[Refers to paragraphs 381-390 of the Blueprint]*
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





## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020** **Comments and suggestions by BCAS**

---

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?

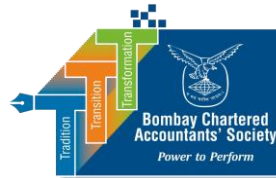
**c. De minimis profit exclusion.** *[Refers to paragraphs 391-398 of the Blueprint]*

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?

**d. Single jurisdictional ETR calculation to cover several years.** *[Refers to paragraphs 399-403 of the Blueprint]*

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?

**e. Tax administrative guidance.** *[Refers to paragraphs 404-409 of the Blueprint]*



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

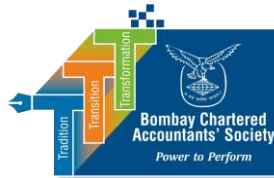
---

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?

### **BCAS Comments & Suggestions**

The above-mentioned approaches require further work to identify areas of simplification for Pillar Two proposals. In addition to these approaches, to simplify the proposals of Pillar Two, some of the following suggestions may be considered:

- a. Use of deferred tax accounting in computing ETR to tackle temporary differences.
- b. Countries should notify other jurisdictions on which of its taxes are ‘covered taxes’ for computing the ETR. There should be global consensus on type of taxes covered for ETR.
- c. MNEs which are able to demonstrate that its effective ETR on consolidated profits in its home jurisdiction is above the agreed minimum rate, should not be required to undertake GloBE compliances.



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

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

We have no comments on these aspects at this stage.

### **VII. Chapter 7: Undertaxed payments rule**

#### **a. General design.** *[Refers to Chapter 7 of the Blueprint]*

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?

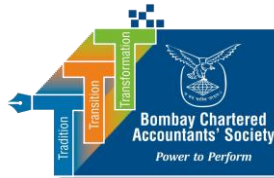
#### **b. Compliance and administration.** *[Refers to paragraphs 526-537 of the Blueprint]*

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?

### **BCAS Comments & Suggestions**

As per the Blueprint, IIR has priority over the UTPR. The UTPR will serve as a backstop to the IIR by providing a mechanism to collect any remaining top-up tax in relation to foreign profits that are not in scope of an applicable IIR. The UTPR can be implemented either through disallowance of intra-group payments or by way of a separate charge.

Given the supporting nature of UTPR, it is suggested that UTPR tax be collected by way of a separate charge rather than disallowing intergroup payments or levying additional withholding taxes. Computation of UTPR will require significant amount information and extracting such information would take time. To require the MNE



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

group to compute UTPR tax on its own along with the IIR filing may present a challenge in terms of non-availability of detailed information of all intergroup payments, ETRs in the concerned jurisdictions, etc. The same will result in tax uncertainty and possible disputes. A preferred approach would be that the tax administration computes UTPR liability based on information submitted by the MNE and obtained from other jurisdiction and requests the MNE to pay such tax. Thus MNE need not determine UTPR liability on its own and UTPR liability will trigger after computation made by the tax administration.

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

We have no comments on these aspects at this stage.

### **IX. Chapter 9: Subject to tax rule**

**a. Covered payments and low-return exclusion.** *[Refers to paragraphs 588- 616 of the Blueprint]*

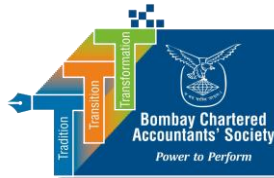
1. Do you consider that the categories of covered payments and the exclusion for low-return payments ensures that the STTR focuses on the transactions that present significant BEPS risks?
2. Do you have any views on the design and practical application of this rule component as well as potential simplifications?

**b. Materiality threshold.** *[Refers to paragraphs 623-636 of the Blueprint]*

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?

**c. Administrative considerations.** *[Refers to paragraphs 661-667 of the Blueprint]*

1. Further technical work will be undertaken in the Inclusive Framework on



## **Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020 Comments and suggestions by BCAS**

---

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?

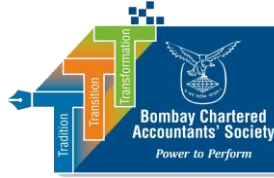
2. Do you have other suggestions to minimize the administrative burden and to facilitate the collection of the top-up tax?

### **BCAS Comments & Suggestions**

As per the Blueprint, STTR is complementary to IIR and UTPR. STTR it is based on the rationale that a source jurisdiction that has ceded taxing rights in the context of an income tax treaty should be able to apply a top up tax to the agreed minimum rate where, as a result of BEPS structures relating to intragroup payments, the income that benefits from treaty protection is not taxed or is taxed at below the minimum rate in the other contracting jurisdiction. The STTR will apply in case of certain payments, at the entity (person resident in a contracting jurisdiction) level and to individual payments (items of income).

Again, as mentioned in context of UTPR, the STTR tax should be collected by way of a separate charge rather than levying additional withholding taxes. Accordingly, STTR tax would have to be primarily paid by the non-resident entity and by the resident entity only where the non-resident entity does not co-operate or discharge its STTR tax liability. To require the MNE group to compute STTR tax on its own may present a challenge in terms of non-availability of detailed information. The same will result in tax uncertainty and possible disputes.

Also, the STTR should be based on high value or highly material transactions only to reduced compliance burden on covered MNEs for each transaction, even if not material.



**Pillar One and Pillar Two Blueprints released by OECD on 12<sup>th</sup> October 2020  
Comments and suggestions by BCAS**

---

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

We have no comments on these aspects at this stage.

We trust that the above comments and suggestions will be duly considered.

Yours Faithfully,

**For Bombay Chartered Accountants' Society**

**Suhas Paranjpe**  
President – BCAS

+91 9869074643

Email: [president@bcasonline.org](mailto:president@bcasonline.org)

**Mayur Nayak**  
Chairman – International Tax Committee–  
BCAS

+91 9324271980

Email: [mayur@mayurnayak.com](mailto:mayur@mayurnayak.com)