

A top-down view of a business meeting on a wooden desk. A silver laptop is open in the upper right. In the center, two hands are shaking. To the left, a person's hands are writing on a document with a pen. Various papers, including one with 'INVOICE' and another with 'Contract', are scattered on the desk. The image has a dark overlay and is framed by orange and yellow diagonal shapes.

# Budget 2022 - Transfer Pricing Updates

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## Transfer Pricing Budget Updates

### Revision of consequential orders

- ❑ Due to the ambiguity with respect to jurisdiction to revise TP order which is prejudicial to the interest of revenue an amendment is proposed that, the Principal Chief Commissioner of the Chief Commissioner or the Principal Commissioner or Commissioner having jurisdiction over the taxpayer may revise the transfer pricing order.
- ❑ Further to the above amendment, a Fresh TP order relating to revised order by the ITAT u/s 263 of Income Tax Act 1961 , shall be issued within nine months from the end of the financial year in which the ITAT order is received or passed as per section 263 of Income Tax Act,1961.
- ❑ Also, the assessing officer should pass the assessing order within two months from the end of the month in which such consequential order passed by TP officer is received by the assessing officer.

## Transfer Pricing Budget Updates

### Litigation management system

- ❑ A new litigation management system will be introduced that will reduce repetitive tax appeals
- ❑ The appeals related to transfer pricing will be proposed to be deferred in cases where identical question of law is pending before the jurisdiction of high court or supreme court until the order/judgement is passed on the same.

## Transfer Pricing Budget Updates

### Faceless Assessment

- ❑ Amendment in the existing provisions (which were introduced originally on 1<sup>st</sup> November 2020) for faceless assessments, in order to streamline the faceless assessment process with a view to address various legal and procedural problems being faced in the implementation.
- ❑ The amended procedures were said to be notified by 31<sup>st</sup> March 2022 which is now proposed that such procedure shall be notified no later than 31 March 2024.

## Transfer Pricing Budget Updates

### Updated tax return

- ❑ Provision for filing 'Updated Income Tax returns' within 2 years from end of relevant AY for payment of additional tax on undisclosed income , which can be filed even if original tax return was not filed.
- ❑ The updated tax return can be filed for income arising on account of transfer pricing as well.
- ❑ Certain exceptions also proposed where an updated return cannot be filed, inter alia, resulting in increase of loss/decreasing tax/resulting in refund/increasing refund.

A top-down view of a business meeting on a wooden desk. Two people are shaking hands in the center. To the left, a person is writing on a document with a pen. In the background, a laptop is open, and a clipboard with a document is visible. The scene is overlaid with a semi-transparent dark grey layer. An orange triangle is in the top-left corner, and a yellow triangle is in the bottom-right corner.

## Road ahead for Transfer Pricing

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## Road ahead for Transfer Pricing

- ❑ MLI – The introduction of MLI has changed the way tax treaties have to be read and interpreted. Further, thrust has been laid on several aspects like Limitation of Benefits, Dispute Resolution and Permanent Establishment
- ❑ Pillar 1 - New Taxing rights, fixed baseline returns and tax certainty.
- ❑ Pillar 2 – Global Minimum Tax, rules laid out for implementation of Pillar and global consensus
- ❑ Equalization Levy will be withdrawn once BEPS global reforms are implemented
- ❑ Faceless assessments and appeals – what to expect?
- ❑ Usage of Three Tier documentation (mainly CbCR, Master File) by Revenue authorities – what lies ahead?



# Key changes in OECD TP Guidelines - 2022



## Key Changes in OECD

The key amendments to earlier version of the guidelines are as follows:

- ❑ The incorporation of Transfer Pricing Guidance on Financial Transactions;
- ❑ The revision of the Guidance on the Transactional Profit Split method;
- ❑ The incorporation of the Guidance for Tax Administrations on the application of the approach to Hard-to-value Intangibles.



# G20/OECD Inclusive Framework on BEPS: Report on P1 and P2 Blueprint

## OECD Evolution and work so far

2013

Action Plans on  
Base Erosion and  
Profit Shifting

2015

AP 1: FINAL REPORT  
Addressing the Tax  
Challenges of Digital  
Economy

2018

INTERIM REPORT  
OECD/G20 under  
inclusive framework;  
Tax Challenges  
arising from  
Digitalisation

2019

Public consultation  
document and  
Programme of work  
to develop  
consensus

Oct 2020

Reports on the  
Blueprints to Pillar 1  
and 2 and invitation  
of comments

Jan 21

Public Consultation  
meetings

June 21

G7 Communique

July 2021

Statement on a Two-  
Pillar Solution to  
Address the Tax  
Challenges Arising from  
the Digitalization of the  
Economy

## Background of P1 and P2

- ❑ OECD and G20 countries have adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along with three key pillars:
  - Introduce Coherence in domestic rules that affect cross-border activities
  - Reinforce substance requirements in existing International Standards
  - Improve transparency as well as certainty
- ❑ The 137 members of the Framework have worked on a global solution based on a Two-Pillar Approach. Pillar One is focused on new nexus and profit allocation rules and ensure that the allocation of taxing rights with respect to business profits is no longer exclusively circumscribed by reference to physical presence.
- ❑ Pillar Two addresses remaining BEPS challenges and it does so via a number of interlocking rules that seek to
  - (i) ensure minimum taxation while avoiding double taxation or taxation where there is no economic profit,
  - (ii) Cope with different tax system designs by jurisdictions as well as different operating models by businesses,
  - (iii) Ensure transparency and minimize administrative & compliance costs.

## Pillar 1 – Amount A

- ❑ **Amount A** is a new taxing right over a share of the residual profit of MNE groups that fall within its defined scope. The tax base is therefore determined on the basis of the profits of a group (rather than on a separate entity basis), and it is necessary to start with consolidated group financial accounts.
- ❑ A new taxing right for market jurisdictions over a share of residual profit calculated at an MNE group (or segment) level (**Amount A**)
- ❑ A fixed return for certain baseline marketing and distribution activities taking place physically in a market jurisdiction, in line with the ALP (**Amount B**)
- ❑ Processes to improve tax certainty through effective dispute prevention and resolution mechanisms.

## Scope of Amount A

### Global Threshold Limit:

MNE Groups with Global Turnover above €20 B

&

Profitability above 10% (PBT/Revenue)

### Automated Digital Services:

1. Advertisement Services
2. Sale/other Alienation of user data
3. Online Intermediation Platforms
4. Digital Content Services
5. Online Gaming

### Real-Time location of User –

#### Based on Indicators below:

- Geolocation
- IP Address
- Other Location Information

### Consumer Facing Businesses:

1. Consumer Facing goods
2. Consumer Facing Services
3. License or Franchise

Report by Licensee or Franchisee

Place of Final Delivery of the Product or use of service

**Exclusions:** Extractives (non-renewable resources) and regulated financial Services

### Revenue Sourcing rules –

**Note:** 1) **Hierarchy of Indicators** should be followed. If not, MNE should justify the reason for not availing.

2) MNE must retain the **Documentation** of

- Internal Control Framework related revenue sourcing.
- Indicators used for Present category.

## New Taxing Right

### Profit Allocation:

- 1) Isolate the Routine profits & Residual profits. Threshold Limit = 10% of Revenue.
- 2) 25% fixed reallocation is used to allot appropriate share of residual profits to market jurisdictions.
- 3) Finally, Amount A is distributed based on the rules on Scope, Nexus & Revenue Sourcing.

### Double Taxation Elimination:

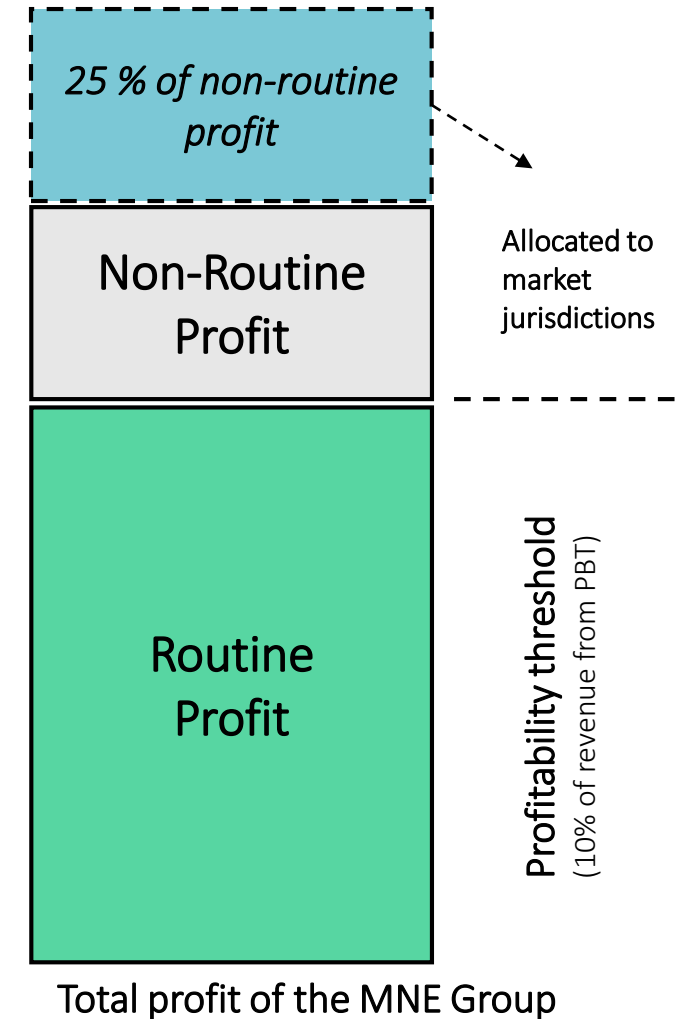
#### 1. Identify the paying entity

- I Activities Test
- II Profitability Test
- III Market connection priority test
- IV Pro-rata allocation

#### 2. Exemption or Credit Methods are used to eliminate double taxation.

### **Tax Base determination:**

1. Use PBT derived from Consolidated Financial Statements.
2. Segmentation framework Threshold is yet to decide.
3. In-regime Losses can be carry forward.
4. No cross segment blending of Profits & losses are allowed



## Case Study (modified as per Guidelines released by OECD in October 2021)

### Facts

Group A is a large MNE group providing exclusively in-scope ADS via an online platform. It is assumed that Group A is treated as one segment for Amount A purposes and that it has the following simplified income statement:

	in million EUR
Revenue (R)	25,000
Profit before tax (P)	6,500
PBT margin (P/R)	26%

in million EUR	Local revenue (S)	
Market 1	2,000	local subsidiary
Market 2	18,000	remote activity
Market 3	5,000	remote activity
Total	25,000	

### Applying Amount A formula

Step 1: Profitability Threshold	Step 2: Reallocation percentage
Determine Group A's <b>residual profit (W)</b> by subtracting 10% from the PBT margin (P/R).	Determine Group A's <b>allocable tax base (A)</b> by multiplying residual profit (W) by 25%.
$W = P - (R * 10\%)$	$A = 25\% * W$
$W = 6,500 - (25,000 * 10\%)$	$A = 25\% * 4,000$
<b>W = 4,000</b>	<b>A = 1000</b>

10% is a threshold agreed by the IF members

25% is a threshold agreed by the IF memberS



## Case Study (Contd.)

### Step 3: Allocation key

Allocation key based on the ratio of locally sourced revenue (S) to total revenue (R). This last step provides for the quantum of Amount A taxable in each eligible market jurisdiction (M), as described in the below table.

in million EUR	Local revenue (S)	Allocation Key (S/R)	Amount A (M)
Market 1	2,000	8%	$A * S/R = 80$
Market 2	18,000	72%	$A * S/R = 720$
Market 3	5,000	20%	$A * S/R = 200$
<b>Total</b>	<b>25,000</b>	<b>100%</b>	<b>1000</b>

**Amount B** – Introduced to simplify the TP Rules for tax administrations & Taxpayers - 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. This work will be completed by the end of 2022.

# Tax certainty and implementation

## Tax Certainty

### Dispute Prevention & Resolution:

1. New mechanism Using panels.
2. Amount A allocation to be improved by panels.
3. Encourages Multilateralism in tax matters.

### Dispute Resolution:

1. Mandatory binding dispute resolution mechanisms.
2. Foe countries with few MAP cases deferred from MAP peer review.

### Implementation & Administration:

Implementation of Pillar 1 require action

across –

1. Domestic law
2. Public International law
3. Guidance on Scope , Nexus & Revenue sourcing rules to Taxpayers & Tax Administrations.
4. Guidance could be revised & reviewed periodically

## Pillar 2 – Global Minimum Tax rule

### Applicability of Global Anti-Base Erosion (GloBE):

GloBE rules will apply to MNEs that meet the € 750 million threshold

### Pillar 2:

Two interlocking domestic rules of GloBE –

- (i) **Income Inclusion Rule (IIR):** Which imposes **top-up tax** on a parent entity in respect of the **low taxed income** of a constituent entity; if that income was subject to tax at an Effective Tax Rate (ETR) that is below a minimum rate
- (ii) **Undertaxed Payment Rule (UTPR):** **Denies deductions** or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR i.e., **withholding tax for a payment to a related party** if that payment was not subject to tax at or above a minimum rate.

## Carve Outs and Carry forward

### Carve-outs:

The GloBE rules will provide for a *formulaic substance carve-out* that will exclude an amount of income that is **5% of the carrying value of tangible assets and payroll**. In a transition period of 10 years, the amount of income excluded will be 8% of the carrying value of tangible assets and 10% of payroll.

Carve-out allows countries to continue to **offer tax incentives** to promote business activity with real substance, like building a hotel or investing in a factory.

The GloBE rules will also provide for a de minimis exclusion for those jurisdictions where the MNE's revenue is less than €10 million and profits of less than € 1 million.

# Carve Outs and Carry forward (contd.)

## Carry forward:

Excess Taxes	Losses
<p>If excess tax paid in previous year, create an <b>Income Inclusion Rule tax credit (IIR tax credit)</b> (Or)</p>	<p>Losses in jurisdiction carryforward and allowed as deduction in computation of GloBE tax base is subsequent year from profits arising in same country.</p>
<p><b>local tax carry- forward</b> is created, 7 year look back/Carry forward period.</p>	<p>Carry-forward allowed Indefinitely.</p>

## General points on P2

### **Entities not subject to GloBE rules:**

- Government entities,
- International organizations,
- NPOs,
- pension funds or investment funds that are Ultimate Parent Entities (UPE) of an MNE Group or any holding vehicles used by such entities, organizations or funds.

## General points on P2 (contd.)

### Switch-over rule (SOR):

Introduced into tax treaties that would permit a residence jurisdiction to **switch from an exemption to a credit** method where the profits attributable to a permanent establishment (PE) are subject to an effective rate below the minimum rate. |

### Subject to tax rule (STTR):

Treaty-based rule, that would complement the UTPR by subjecting a payment to withholding or other **taxes at source** and adjusting eligibility for **treaty benefits on certain items of income** where the **payment is not subject to tax at a minimum rate**. The STTR will be creditable as a covered tax under the GloBE rules. |



# UAE Introduces Corporate Tax & TP Regulations



# UAE – Tax Updates

A press release was issued by UAE Ministry of Finance on 31st January, regarding the introduction of the much-anticipated Corporate Taxes (CT) in the UAE which will be effective for financial years starting on or after 1st June 2023 which is summarized as below:

<b>Effective Tax Period</b>	<ul style="list-style-type: none"> <li>• 1 June 2023 - Companies which follow FY 1st July to 31st June.</li> <li>• 1 January 2024 - Companies which follow the calendar year as their FY.</li> </ul>
<b>Applicability of UAE CT</b>	<ul style="list-style-type: none"> <li>• UAE CT will be applicable for:             <ul style="list-style-type: none"> <li>○ All Emirates and will apply to all business and commercial activities.</li> <li>○ Foreign entities &amp; Individuals - trading or business on a regular basis in the UAE.</li> <li>○ Freelance Professionals – Holding freelance licenses/permits.</li> <li>○ Other Sectors - Banking, Real estate, Brokerage, Agency, and Construction sectors.</li> </ul> </li> </ul>
<b>Basic Exemption Limit</b>	<ul style="list-style-type: none"> <li>• The UAE CT rates are as follows:             <ul style="list-style-type: none"> <li>○ 0% for taxable income up to AED 375,000.</li> <li>○ 9% for taxable income above AED 375,000.</li> <li>○ For large Multinationals which are within the scope of criteria specified in “Pillar Two” (Euro 750 million / AED 3.15 billion) will be taxed at different rate on their global consolidated revenues.</li> </ul> </li> </ul>

# UAE – Tax Updates

<p><b>Computation of Taxable Income</b></p>	<ul style="list-style-type: none"> <li>• Taxable income will be the accounting net profit / income of a business, after adjusting certain items to be specified under the UAE CT law.</li> <li>• Further, the same amount of net profit/income should be reported in the financial statements prepared in accordance with internationally acceptable accounting standards.</li> </ul>
<p><b>Exemption from UAE CT</b></p>	<ul style="list-style-type: none"> <li>• Any individual whose income does not exceed AED 3,75,000</li> <li>• Income from bank deposits or savings schemes earned by an individual</li> <li>• Salary income earned by individuals either received from public or private sector</li> <li>• Dividends and capital gains and other income of individuals earned from owning shares or other securities in their personal capacity</li> <li>• Individuals earning from Income from real estate in their personal capacity</li> <li>• Dividends and capital gains earned by UAE Businesses from its qualified shareholdings</li> <li>• Dividends, Capital gains, interest, royalties and other investment returns earned by foreign investors</li> <li>• Businesses engaged in the extraction of natural resources</li> <li>• Intra group transaction and reorganisations</li> </ul>

## UAE – Tax Updates

<p><b>Withholding tax</b></p>	<ul style="list-style-type: none"> <li>• It is a tax collected at source by the payer on behalf of recipient of income</li> <li>• Withholding tax will not be applicable on domestic and cross border payments</li> </ul>
<p><b>Set off and carry forward of losses</b></p>	<ul style="list-style-type: none"> <li>• Excess tax losses may be carried forward and used to set off against the taxable income in future years</li> <li>• Inter group tax losses are also permitted but subject to some conditions</li> </ul>
<p><b>Transfer Pricing rules</b></p>	<ul style="list-style-type: none"> <li>• <b>Arm’s length principle to be implemented for related party / Intra group transactions.</b></li> <li>• <b>Compliance with Transfer pricing rules and documentation requirements as per OECD Transfer pricing guidelines.</b></li> </ul>
<p><b>Provisions relating to CT Returns</b></p>	<ul style="list-style-type: none"> <li>• Only One CT Return will be needed for a financial period</li> <li>• CT return should be filed electronically</li> <li>• UAE group companies can form a tax group and file a single tax return</li> <li>• Provisional or advance CT filings are not required</li> </ul>

# UAE – Tax Updates

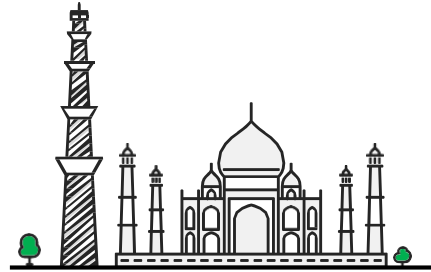
<p><b>Free zone entities</b></p>	<ul style="list-style-type: none"> <li>• CT incentives will be continued even under the new CT regime subject to compliance with all regulatory requirements and</li> <li>• They should not conduct their business with mainland UAE</li> <li>• Registration and CT return filing will be required</li> </ul>
<p><b>Role of Government and Tax Authorities</b></p>	<ul style="list-style-type: none"> <li>• Federal Tax Authority will be responsible for the administration, collection, and enforcement of UAE CT.</li> <li>• For bilateral/multilateral agreements and tax purposes, Ministry of finance acts as a competent authority.</li> </ul>
<p><b>Non-Compliance</b></p>	<ul style="list-style-type: none"> <li>• Penalties will be prescribed in the UAE CT law</li> </ul>

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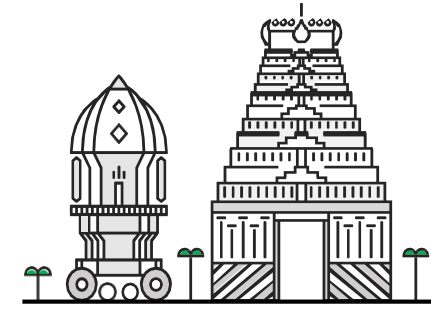
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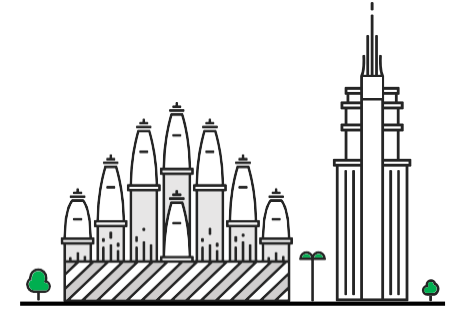
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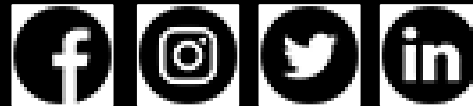


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# Thank You



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