



BASE EROSION AND PROFIT SHIFTING (BEPS): A UNIFIED APPROACH UNDER PILLAR ONE

Issued 12 November 2019

ICAEW welcomes the opportunity to comment on the Base erosion and profit shifting (BEPS): a unified approach under Pillar One published by OECD on 9 October 2019 a copy of which is available from this [link](#).

This response of 12 November 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2019

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: taxfac@icaew.com

OECD CONSULTATION DOCUMENT ON THE UNIFIED PILLAR 1 PROPOSAL

We welcome the opportunity to respond to this consultation. We also welcome the publication of the consultation on the Pillar Two proposals: we believe that each Pillar cannot be considered in isolation and that they should be part of a comprehensive solution. In this response, we would like to highlight some key points that need to be resolved.

We understand that some jurisdictions are concerned about whether they will have appropriate taxing rights over the value generated by their citizens and consumers and we support the OECD on trying to find a solution to this within the international corporate income tax framework.

The proposals in the consultation document highlight that the difficulties faced in reaching a broad consensus in these areas. Consensus will need to be reached not just on the detailed technical aspects of the proposals but also, and more importantly, a political consensus on the proposals. Given the need for the latter, this makes it difficult to comment meaningfully on the technical and/or practical implications of the proposed approach.

There is a real risk that it may not be possible to reach a consensus on the approach as proposed in this consultation. That being the case, we would also recommend that OCED continues to consider possible alternative approaches to resolving these problems which might command support.

We are concerned that the approach has resulted in a very complex proposal that incorporates elements of both a formulaic approach and the arm's length principle. However, there is concern that, by taking various elements of existing principles, the proposed approach does not articulate a clear principle around which agreement might be reached.

We are also concerned about certainty, both in respect of the operation of the rules and how any disputes will be resolved. There will need to be agreed multilateral arbitration procedures in place to address such disputes.

Consideration will also be needed to how such processes might interact with any unilateral measures that have been adopted. Although we support the need for an agreed multilateral response, there must be a risk that this is not achievable and some countries might instead adopt unilateral measures even if some consensus is agreed though the OECD proposals.

Finally, an important part of the design process should be that any solution adopted through the OCED process is both practical and capable of being operationalised by both taxpayers and the tax authorities. Similarly, any solution should avoiding both double non-taxation and double taxation.