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INSIGHT: Questions (and Answers) on the Status of the OECD's Work on Pillars 1 and 2

BY JEFFERSON VANDERWOLK

Q1: *Is the OECD continuing to work on Pillars 1 and 2, i.e. the program of work on tax and digitalization that would reallocate corporate profits in favor of market countries and also create a global minimum tax regime?*

A1: Yes. The OECD Centre for Tax Policy and Administration continues to organize meetings (by teleconference) and to prepare policy papers for relevant bodies such as the Steering Group of the Inclusive Framework on BEPS and the working parties that are discussing technical issues arising from the Pillar 1 and Pillar 2 proposals. The Steering Group met for five consecutive days from March 30 to April 3, for about four hours each day, and will meet again in late April and in late May.

It appears that the work is mainly being done by the OECD Secretariat rather than by the government delegates to the Steering Group and the OECD's working parties. Governments' tax policy officials are understandably preoccupied with pandemic-related measures, leaving little time for them to work on the many issues under Pillars 1 and 2 that remain unresolved.

Even before the outbreak of the Covid-19 pandemic, however, the OECD Secretariat was taking the lead on the program of work. For example, between June and October last year the Secretariat produced a "proposed unified approach" that has since become the conceptual blueprint of Pillar 1—namely, a proposed new nexus standard and proposed taxation of newly (and incompletely) defined amounts dubbed Amounts A, B, and C.

Q2: *Haven't some people been saying that this work should be put on hold while countries work on emergency measures related to the economic crisis resulting from Covid-19? How has the OECD responded to that comment?*

A2: Certain business organizations, such as the National Foreign Trade Council and the Federation of German Industries, and think tanks, such as the Tax Foundation, have indeed called on the OECD and the Inclusive Framework to hit the pause button on the project in the current extraordinary circumstances. The timetable agreed upon in late January this year requires delivery, by year end, of an agreed set of proposed rules for both Pillar 1 and Pillar 2. Given the large number of contentious issues that remain to be worked out, this timetable seemed overly ambitious even before the outbreak of Covid-19. Now it looks quixotic.

OECD officials have said that the work is being done at the behest of the G20 and therefore they do not have the option of delaying the work, unless the G20 changes the mandate.

Q3 *: What is the G20 saying about it?*

A3: The G20 finance ministers met on April 15, 2020, and issued a communiqué that included a mention of the G20's commitment to "addressing the tax challenges arising from the digitalization of the economy." This would appear to support the view that the mandate has not changed and thus the OECD is required to adhere to the commitment that it made to the G20 when the digitalization project began in 2018.

Two points are worth noting in this regard. First, the G20 finance ministers did not say anything about the timing of the tax policy work on digitalization, other than implying that the work was part of a broader plan to be followed both during and after the health crisis. Arguably that means that the OECD's work need not be done while the pandemic is ongoing.

Second, at their April 15 meeting, the G20 finance ministers received a paper from the OECD discussing

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tax policy considerations during and after the pandemic (''Tax and Fiscal Policy in Response to the Coronavirus Crisis''). In one of the concluding sections of that paper, the work on digitalization was described as follows:

''[The Inclusive Framework] has been mandated to address the tax challenges of the digitalisation of the economy. Work has progressed well, focussing on two pillars: Pillar 1 concerning a reallocation of taxing rights and increased tax certainty while Pillar 2 focuses on ensuring that the profits of MNEs are subject to a minimum level of tax. In spite of the disruption due to the health crisis, work has progressed. In a post-crisis environment, it is likely that addressing the tax challenges of the digitalisation of the economy and ensuring that MNEs pay a minimum level of tax will be of even higher importance.''

Thus the OECD was telling the G20 finance ministers that, not only is this work important, it is progressing ''in spite of the disruption due to the health crisis.'' Given this presentation of the state of affairs, it is not surprising that the ministers did not say anything about possibly needing to put the work on hold.

Q4: *What else did the OECD say in its paper about recommended tax policies in response to the crisis?*

A4: The paper discusses the need for stimulative fiscal policy to be given top priority in the aftermath of the pandemic, in order to help the global economy return to health. Once that has happened, the revenue-raising side of tax policy can be addressed, the paper says:

''Reforms of the prevailing tax landscape could be considered anew, such as base broadening measures and tackling inefficient tax expenditures which could be easier to address in the context of a broad reconsideration of the tax system. Governments may also consider new and under-used tax bases. Where governments need to expand tax revenues, *efforts can focus on raising revenues from tax bases that will be the least detrimental to growth, including recurrent taxes on immovable property and general consumption taxes.*'' (emphasis added)

Ironically, the paper immediately proceeds to focus on corporate income taxation, in terms that assume that it will be desirable to extract more income tax from profitable multinational businesses, using the new Pillar 1 and Pillar 2 regimes. This is in spite of the OECD's own view that corporate income taxation is the type of tax that is *most* detrimental to growth.

Q5: *When will the OECD issue its next paper on the Pillar 1 and Pillar 2 work?*

A5: No announcement has been made in this regard, but it is widely expected that no public consultation papers will be issued before the next plenary meeting of the Inclusive Framework on July 1, 2020. It is possible that a status report will be published in the wake of that meeting.

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