

Summary of Remarks by Anne Gordon during the OECD Public Consultation on
Amount A in Pillar One
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National Foreign Trade Council
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- Thank you to the OECD for inviting me to participate today on behalf of the National Foreign Trade Council (NFTC), the premier business association advancing trade and tax policies that support access to the global marketplace. Founded in 1914, NFTC promotes an open, rules-based global economy on behalf of a diverse membership of U.S.-based businesses.
- NFTC represents nearly 100 companies, and our membership spans the breadth of the national economy. It includes sectors such as energy products, capital goods, transportation, consumer goods, technology, healthcare products, services, e-commerce and retailing. NFTC members play an important role in ensuring a healthy national economy and promoting U.S. global leadership. NFTC therefore seeks to foster an environment in which U.S. businesses can be dynamic and effective competitors in the domestic and international business arena.
- We welcome the reiteration of the commitment in Overview to the Consultation Document to withdraw all existing Digital Services Taxes (“DSTs”) and relevant similar measures for all companies. Including a definitive list of those existing measures to which this applies would aid in providing certainty and we appreciate the inclusion of this in the Consultation Document. The beginning of work on a standard for such measures in the Overview is also welcome; however, the work on unilateral measures is far from complete.
- The objective of Pillar One is to replace problematic and overlapping tax systems with a coherent new system on which IF Members can genuinely reach consensus. Unless unilateral measures are removed from the policy agenda, this multilateral exercise may simply create a novel taxing right along with a myriad of unilateral measures.
- In determining which provisions are Relevant Similar Measures, we would like to stress that this should include any tax measures that are discriminatory by industry, act as trade barriers, or are targeted at predominately foreign multinational enterprises. While the overview notes that a measure must discriminate against foreign businesses, reliance on whether the statute only applies to foreign entities is misleading. For instance, some measures could be applied to all businesses in principle, but in reality, the threshold could be set such that only foreign businesses are subject to it. Thus, we would stress that any standard for relevant similar measures must apply both to the letter and spirit of an agreement on Pillar One.
- While we understand that withholding taxes treated as covered taxes under tax treaties will not be considered measures that must be withdrawn as part of Amount A, it is imperative that they are included in the Amount A calculation.

- The NFTC urges the participating jurisdictions to come to a principled agreement that withholding taxes imposed on deductible payments made by a member of a Covered Group represent the taxing jurisdiction's assertion of taxing rights on the profits of that Group, and therefore must be taken into account in the MDSH and, more generally, the calculation of Amount A.
- The failure to do this would permit a backdoor around the rules and objectives of Pillar One by allowing market jurisdictions to tax residual profits greater than permitted under Amount A. The failure to address this issue in a principled manner will result in a proliferation of withholding taxes, destabilizing the system and undermining the objectives of Pillar One. Direct taxes imposed on Covered Groups, such as gross-basis withholding taxes, should either be accounted for in the calculation of Amount A or should be withdrawn as part of the commitment to withdraw DSTs and relevant similar measures.
- We request more clarity for measures such as diverted profits taxes, which are noted only in the context of determining the Elimination Tax Base in Schedule I.
- With respect to compliance by MNEs, the rules put forth and resulting calculations must be easy to discern and readily determinable. As currently envisioned, calculating Amount A, taking into account the MDSH and elimination, is complex in practice. Therefore, we implore the OECD to take any and all efforts to mitigate the complexity entrenched in the current framework for Amount A and implement straightforward rules.
- We understand that limiting a state's sovereignty by preventing the imposition of new taxes is a challenge. However, this is a compromise that allows a new taxing nexus, and the OECD must ensure that the consequences outweigh the benefits of imposing a DST or other tax. Thus, there needs to be a mechanism that allows a company (or their government) to raise concerns about a unilateral measure along with an arbiter of these complaints. Furthermore, there needs to be repercussions, beyond simply a reduction in Amount A, for countries that fail to withdraw or impose new unilateral measures. Limiting consequences to a reduction in Amount A may not provide enough disincentive if a new DST or other measure provides more revenue than Amount A would provide.
- Separately, we understand that sub-national taxes are unlikely to be included as a unilateral measure or in the Amount A calculation. In the United States, federalism prevents the entanglement of the Federal government in matters retained by the States. So, when a state such as California or New York imposes a new tax, that is separate and apart from U.S. Congress and U.S. Department of the Treasury. To the extent that a federal government has control or influence in sub-national taxes, we would strongly urge that unilateral measures are not imposed at that level to circumvent Pillar One; however, we understand it is impractical to govern all sub-national actors.
- We look forward to reviewing additional details on what comprises a unilateral measure and the governance mechanisms that the OECD plans to employ to ensure all current DSTs are removed and no future measures are implemented.
- Thank you for the opportunity to provide comments today and we look forward to future engagement.