

MEMO# 32827

October 13, 2020

OECD Releases "Blueprints" for Addressing Tax Challenges of the Digitalizing Economy

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October 13, 2020 TO: ICI Members

ICI Global Members

ICI Global Tax Committee

Management Company Tax Subcommittee

Tax Committee SUBJECTS: International/Global

Tax RE: OECD Releases "Blueprints" for Addressing Tax Challenges of the Digitalizing Economy

The OECD^[1]/G20 Inclusive Framework on BEPS (Inclusive Framework), on October 12, released for public comment^[2] two "Blueprints" for addressing the tax challenges of the digitalizing economy.^[3] These Blueprints are part of the OECD's effort to develop a consensus approach for addressing nexus and profit allocation issues ([Pillar One](#)) and crafting a global minimum tax ([Pillar Two](#)). As explained in the OECD's related [public consultation document](#), "[t]hese Blueprints reflect the convergent views on many of the key policy features, principles and parameters of both Pillars, and identify remaining technical and administrative issues as well as policy issues where divergent views among Inclusive Framework members remain to be bridged."

Pillar One

Pillar One, among other things, would provide market jurisdictions with a new right to tax a portion of allocable residual profits (Amount A) regardless of whether the taxpayer is physically present in that jurisdiction. The Blueprint treats as within scope for Amount A purposes two types of businesses: those that (i) provide "automated digital services" or (ii) are "consumer-facing."

Comments submitted by ICI Global on the Pillar One public consultation document released in 2019^[4] urged that collective investment vehicles (CIVs) and their managers be exempted from Pillar One.^[5] Among the many arguments that we presented:

- CIVs exhibit none of the characteristics underlying the policy rationale for Pillar One. Equally importantly, CIVs are not "businesses" with "operations" from which "profits" (routine or non-routine) arise. Our submission also noted the substantial

implementation considerations that would need to be addressed were CIVs within Pillar One.

- Investment firms that manage CIVs likewise are not the type of business to which the proposal apparently is targeted. These asset managers are not highly digitalized and, to a large extent, are not “consumer-facing businesses.” They create value through the expertise of their investment professionals and not from user participation, marketing intangibles, or substantial economic presence. Our submission discussed in detail the significant implementation considerations that would need to be addressed were CIV managers within Pillar One.

The Blueprint states that all financial services should be exempt from Pillar One’s Amount A. First, the Blueprint notes that financial services firms generally do not engage in the types of activities that would cause them to be regarded as automated digital services business for purposes of the new taxing right.^[6] Second, the Blueprint states that the “central rationale” for not treating financial services firms as consumer-facing is that they are “highly regulated.”^[7] Each of the three financial services sectors (banking, insurance, and asset management) is discussed separately in the Blueprint.

The Blueprint’s discussion of the asset management sector discusses separately fund vehicles, financial intermediaries, and investment managers. This section of the Blueprint explains the supporting rationale why “most (but not all) jurisdictions believe that it is appropriate to exclude the sector from the scope of Amount A.”^[8]

The discussion of fund vehicles is short. The Blueprint describes the organization and operation of funds and states that they are out of scope because they are “not active businesses.”^[9]

The discussion of intermediaries focuses on the regulatory requirements relating to investor protection, suitability, and transparency and the resulting required local presence for retail investors.^[10]

Finally, regarding asset managers, the Blueprint notes that “investment management services raise more complex questions.”^[11] The Blueprint discusses first the policy considerations relating to the variations in which asset management services can be conducted and the interactions between investment managers and intermediaries. “On balance,” the Blueprint determines, “the investment manager’s services are properly seen as a component of the service the financial intermediary offers its clients.”^[12] In addition, as discussed in the ICI Global submission on the Pillar One consultation, the Blueprint notes the implementation complexities arising from intermediated distribution networks, constantly changing shareholder bases, and integration of asset management within broader financial services firms.

In concluding the asset management discussion, the Blueprint states that “For all these reasons, it is concluded that the activities of investment managers do, and should, fall outside the scope of CFB. However, those jurisdictions which do not support exclusion for asset management sector from the scope of Amount A, believe that the asset management sector is very lightly regulated, which (unlike retail banking) may not ensure that the major part of residual profit is captured in market jurisdictions.”^[13]

Pillar Two

Pillar Two’s Global Anti-Base Erosion (GloBE) proposal is designed to ensure that

multinational entity (MNE) profits are taxed at some minimum rate.

Comments submitted by ICI Global on the Pillar Two public consultation document released in 2019 urged that CIVs be exempted from Pillar Two.[\[14\]](#) Specifically, although the submission framed our request as a “carve-out” for CIVs, the submission stated that CIVs do not satisfy any of the requirements for the GloBE proposal’s application. Moreover, CIVs do not present the policy concerns underlying Pillar 2.

The Blueprint states that Investment Funds and certain other entities and arrangements (such as pension funds) that effectively do not incur tax under domestic law should be exempt from Pillar Two. In many cases, the Blueprint notes, these entities and arrangements would not fall within the general requirements for inclusion.

Investment Funds are defined under the Blueprint as follows:

Investment Fund means an entity or arrangement that meets all of the following criteria set out in paragraphs (a) to (f) below:

- a. it is designed to pool assets (which may be financial and non-financial) from an Excluded Entity or a number of investors (at least some of which are not connected);
- b. it invests in accordance with a defined investment policy and/or to reduce transaction costs and research and analytical costs and/or to spread risk collectively;
- c. it is primarily designed to generate investment income and/or gains or protection against a particular or general event or outcome;
- d. investors have a right to return from the assets of the fund, or income earned on those assets, based on the contributions made by those investors;
- e. the fund, or the management of the fund, is subject to the regulatory regime for investment funds in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation);
- f. and it is managed by fund management professionals on behalf of the investors.

The definition also includes any entity or arrangement that is wholly-owned or almost exclusively owned, directly or indirectly, by one or more Investment Funds or other Excluded Entity and that does not carry on a trade or business but is established and operated exclusively or almost exclusively to hold assets or invest funds for the benefit of such Investment Funds or other Excluded Entity.[\[15\]](#)

endnotes

[1] OECD is the acronym for the Organisation for Economic Co-operation and Development. The OECD consists of 37 member countries. The Inclusive Framework involves 137 members participating on an equal footing.

[2] Written comments must be submitted by 14 December 2020. A virtual public consultation will be held in January 2021.

[3] These “blueprints” are the work product of the Inclusive Framework’s efforts to implement their [January 2020](#) statement regarding these tax challenges. See Institute [Memorandum No. 32199](#), dated February 7, 2020.

[4] See Institute [Memorandum No. 32004](#), dated October 10, 2019.

[5] See Institute [Memorandum No. 32049](#), dated November 12, 2019.

[6] See [Pillar One Blueprint](#), at paragraph 123.

[7] See *Id.* at paragraph 124.

[8] See *Id.* at paragraph 135.

[9] See *Id.* at paragraph 136.

[10] See *Id.* at paragraph 137.

[11] See *Id.* at paragraph 138.

[12] See *Id.* at paragraph 139.

[13] See *Id.* at paragraph 140.

[14] See Institute [Memorandum No. 32072](#), dated December 2, 2019. .

[15] See [Pillar Two Blueprint](#), at page 32. Additional detail is provided in paragraphs 76 through 83 (on pages 34 and 35) regarding how this investment entity definition is to be applied.