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OECD Centre for Tax Policy and Administration

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Consultation on Pillar One – Amount A: Draft Multilateral Convention Provisions on Digital Services Taxes and other Relevant Similar Measures

Dear Sir/Madam

The Irish Tax Institute welcomes the opportunity to contribute to the OECD Inclusive Framework public consultation on the Pillar One - Amount A: Draft Multilateral Convention Provisions on Digital Services Taxes and other Relevant Similar Measures. We note that the consultation document does not reflect the final views of the member countries of the Inclusive Framework and that further changes may be made to the conceptual framework.

The standstill and withdrawal commitment for digital services taxes (DSTs) and other relevant similar measures is a core part of Pillar One and its objective to stabilise the international tax system. We note that the intention is to reflect this commitment in Article 37 and 38 of the draft Multilateral Convention (MLC) through which the new taxing right under Amount A will be implemented.

A fundamental aspect of the commitment will be to define what are DSTs and other relevant similar measures for the purpose of these Articles and to identify a definitive list of existing measures. However, it is clear from the extensive footnotes to the draft Articles of the MLC in the consultation document that significant technical detail of the two proposed Articles remains under consideration. It is therefore not possible to provide substantive feedback on the draft Articles outlined in the consultation document.

We note the proposed criteria for identifying a DST or relevant similar measure are set out in paragraph 2 of the draft Article 38 in the consultation document. The criteria include a requirement that the DST or relevant similar measure be a tax which applies solely to non-

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residents or foreign owned businesses. The operation of such a rule in an EU context is unclear.

Paragraph 3 of Article 38 outlines certain measures that will not be considered a DST or relevant similar measure, which includes *“a rule that addresses artificial structuring to avoid permanent establishment or similar domestic law nexus requirements that are based on physical presence”*. Whilst we recognise the purpose of such an exclusion, it would be important to ensure that a jurisdiction could not rely on this exclusion to justify the implementation of a new measure in the future which is in effect in its application a DST or relevant similar measure in circumstances where it can reasonably be demonstrated that an entity does not have a permanent establishment in a jurisdiction.

The Progress Report on Amount A of Pillar One¹ notes that the MLC will *“enter into force upon ratification by a critical mass of countries, which will include the residence jurisdictions of the ultimate parent entities of a substantial majority of the in-scope companies whose profits will be subject to the Amount A taxing right, as well as the key additional jurisdictions that will be allocated the obligation to eliminate double taxation otherwise arising as a result of the Amount A.”* We believe it is essential that clarity is given as to how Pillar One, including the withdrawal of DSTs, will apply in practice if only a proportion of those countries that joined the Two-Pillar Solution ratify the MLC.

Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation the above matters.

Yours sincerely



Colm Browne
Institute President

¹ OECD (2022), Progress Report on Amount A of Pillar One, Two-Pillar Solution to the Tax Challenges of the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf>.