The OECD’s request for public comments on the BEPS 2.0 proposals has met with great interest, with over 200 responses received. A multilateral solution is highly desirable, but securing agreement on Pillar One (linking profits and taxing rights to jurisdictions) will be particularly challenging. There is widespread agreement that the problem that Pillar One is trying to address is not clearly defined.

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Further reading & resources
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The challenge of complexity
— The OECD’s consensus-based approach is overwhelmingly welcomed, but there is also agreement that the current proposals are too complex. Unless simplified, respondents see a risk of onerous compliance burdens, poor public engagement, international tax disputes and double taxation.
— Businesses’ comments raise concerns regarding tracking, data availability, reliability and privacy. There are doubts over the availability of data from third parties within a Group’s supply chain (eg franchise arrangements), and the extent to which accounting systems can be restructured to manage the data.
— It is suggested that taxpayers with profits less than an agreed threshold, and local entities with minimal foreign transactions, should be automatically exempt to avoid substantial compliance activity for little tax impact.

Scope and dispute resolution
— Tax policy compromises have been made, and more are likely; the target categories of “Automated Digital Services” and “Consumer Facing Businesses”, although much debated, have been identified as potentially market-distorting and controversial at category margins. Further revisions to the scope of Pillar One may be necessary.
— In addition, respondents consider the €750 million threshold, although aligned with Country by Country Reporting (CbC), to be too low to sufficiently exclude low-risk Groups. Some respondents are sceptical about the effectiveness of the rules in supporting developing countries.
— The double taxation relief proposals are regarded as overly complex, not suitable for decentralised business models, and probably ineffective without mandatory binding dispute resolution.

Overcoming the challenge
— Naturally, with many stakeholders come many points of view, but this can mean focus on a clear objective is diminished: probably a significant source of the complexity. Substantial reworking may be required before agreement can be achieved.
— Finance ministers are strongly in favour of a multilateral approach to address public concerns over fairness, to avoid a web of inefficient unilateral measures, and to restore confidence in international co-operation.
— The early and sustained engagement of the new US Administration will be crucial in achieving the plan’s objectives.
— It will be a tough climb. The Inclusive Framework has welcomed the views of many diverse stakeholders and promised intensive action to reach agreement. There remains much to be resolved if the target date of summer 2021 can be met.
The global minimum taxation principles underlying Pillar Two are broadly supported but, as with Pillar One, the level of complexity poses difficulties for affected groups. Although agreement on Pillar Two remains closer than for Pillar One, addressing these challenges will be no easy task.

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Tax base and simplification
— The complexity and compliance burden of the Pillar Two proposals is again a concern.
— Respondents’ preference is for a straightforward assessment of the “GLoBE” tax base, requiring no further simplification measures. Regardless, pragmatism is clearly a critical requirement: the rules should not prescribe extensive calculations when the clear outcome would be no additional tax, or tax arising only from timing differences.
— There is widespread support for using consolidated financial accounts as the starting point for the tax base computation.
— Of the four simplification options proposed, tax authority administrative guidance is preferred, but businesses’ view is that multiple options should be available, and should be integrated with the tax base (rather than a “bolt-on” additional regime).
— The substance-based carve-out is also broadly welcomed.

Implementation and co-ordination
— Many respondents recognise that a balance will need to be struck between complexity, accuracy and ease of administration.
— A multilateral convention, which allows countries to implement the rules in a co-ordinated manner, is seen as essential.
— To streamline the compliance burden, processes could be harmonised with the existing compliance reporting obligations such as CbC and transfer pricing documentation – possibly by making use of the information systems already in place to generate the required data, or to set up an early “gateway” which would eliminate low risk groups.
— Some areas have seen contrasting views from developed and developing countries, with the latter particularly supportive of the Subject to Tax Rule.

The key?
— The Inclusive Framework has welcomed the diverse and extensive responses and much progress has been made. The proposals for integrating the US Global Intangible Low-Taxed Income (GILTI) rules with the Income Inclusion Rule are generally approved.
— There has been a clearly expressed and very strong preference for the use of deferred tax accounting to reduce double taxation or under-taxation.
— Deferred tax is based on international accounting standards, well understood, audited and transparent. Conversely, requiring a separate GLoBE tax base computation may result in unacceptable uncertainty and additional compliance costs. Although previously rejected in the proposals, this may need to be revisited.
— Many commentators have expressed great confidence in the Pillar Two negotiations, but some difficult questions remain.