



Managing through challenging times: The Future of Tax and Legal

Tax impacts arising from increased digitalization of business models

Keeping Connected Global Tax & Legal & Mobility Virtual Meeting Series — Part 7

—

May 2020

Topics for discussion

Agenda



1 **BEPS: Current landscape and where we're headed**

2 **Global Developments**

3 **Potential Risks: Not getting this right? — during and post COVID-19**

4 **Actions: What can tax leaders do?**

5 **Predictions: What might the future hold?**

6 **Q&A**

Administration

Polling questions

- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the certificate of attendance, we require participants to take part in at least five of the seven polling questions.
- If you qualify for the certificate of attendance, it will be sent to you following the webcast.



Attendee questions

- You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question during the webcast, someone from KPMG may reply via phone or email following the webcast.
- For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.



Your feedback

- When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.



Today's presenters



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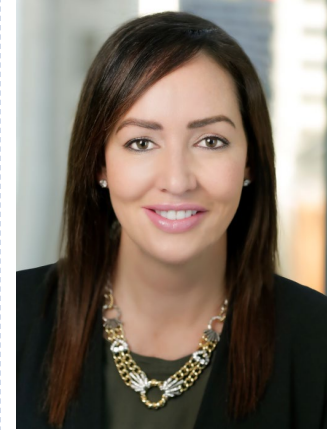
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Evolving Business Models Increase Challenges

Pre-2020 Actual

- Many organizations moving to digitalize own business operations, including centralization of IP activities for quality control purposes
- Digital component of products become a more valuable component of sales
- Increasing remote sales activity

2020 Acceleration

- Increased focus on remote delivery due to supply chain issues in first six months of year
- Anecdotes that businesses are reassessing supply chains, real estate needs in various countries, accelerating online direct selling activity to end users
- Some businesses using this time to reconsider number of entities in legal structure as a way to simplify and reduce cost
- Remote working means that valuable teams have been working from different countries: concerns about DEMPE
- Remote meetings raise questions about where decision making occurs for corporate residence and permanent establishment

Post-2020 Prediction of Institutionalization

- Many (not all) business changes in 2020 to become permanent as they realize cost savings and protect the business from a future supply or demand shock
- Looking back, 2020 may prove to be the impetus for further changes to business models, allowing for simpler legal global footprints

Clear implication is that the taxation of digitalized businesses is likely to remain on the agendas of countries who now have increased budget deficits to fund — DSTs, indirect taxes, allocations of income — and likely more important to businesses than ever as more of their earnings become attributable to digitalized activity



BEPS: Current landscape and where we're headed



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OECD Inclusive Framework Jan. 31, 2020 statement



Committed

- Affirms commitment to reach agreement on a consensus-based solution by end of 2020
- Agree on an outline of the architecture of a Unified Approach on Pillar 1 “as the basis for the negotiations of a consensus based solution to be agreed in 2020”



Acknowledges challenges

- Technical challenges
- Need for improved tax certainty including binding dispute prevention and resolution
- Need to minimize complexity
- Welcomes progress made on Pillar 2
- Outlines program of work

General Observations in January 2020 statement

Critical policy differences remain

- Many Inclusive Framework members express concerns that US approach could raise major difficulties, increase uncertainty, and fail to meet policy objectives of the overall process
- Final decision will be taken only after all the other elements of the consensus based solution have been agreed
- However, resolution of this issue is crucial to reaching consensus

Other areas of significant divergence

- Binding nature of dispute prevention and resolution mechanisms
- Scope of dispute resolution mechanisms under Amount C
- Digital differentiation: Weighting the quantum of Amount A to account for different degrees of digitalization between in scope business activities
- Regional segmentation: Account for regional factors in computing Amount A
- Continued application of DSTs

Impact of COVID-19 Disruption on OECD IF Efforts

OECD

March 17, 2020: Multilateral efforts to address the tax challenges arising from the digitalization of the economy continue. The OECD Secretariat team is working full steam on the project and meetings with delegates are being held remotely. The Steering Group, the Task Force on the Digital Economy and other Working Parties will continue holding virtual meetings in the coming weeks, on schedule. The working methods will be adapted to allow all countries to fully participate. All participants continue working towards reaching a political decision on the key components of a multilateral consensus-based solution at the G20/OECD Inclusive Framework on BEPS plenary meeting scheduled for 1–2 July 2020 in Berlin, Germany.

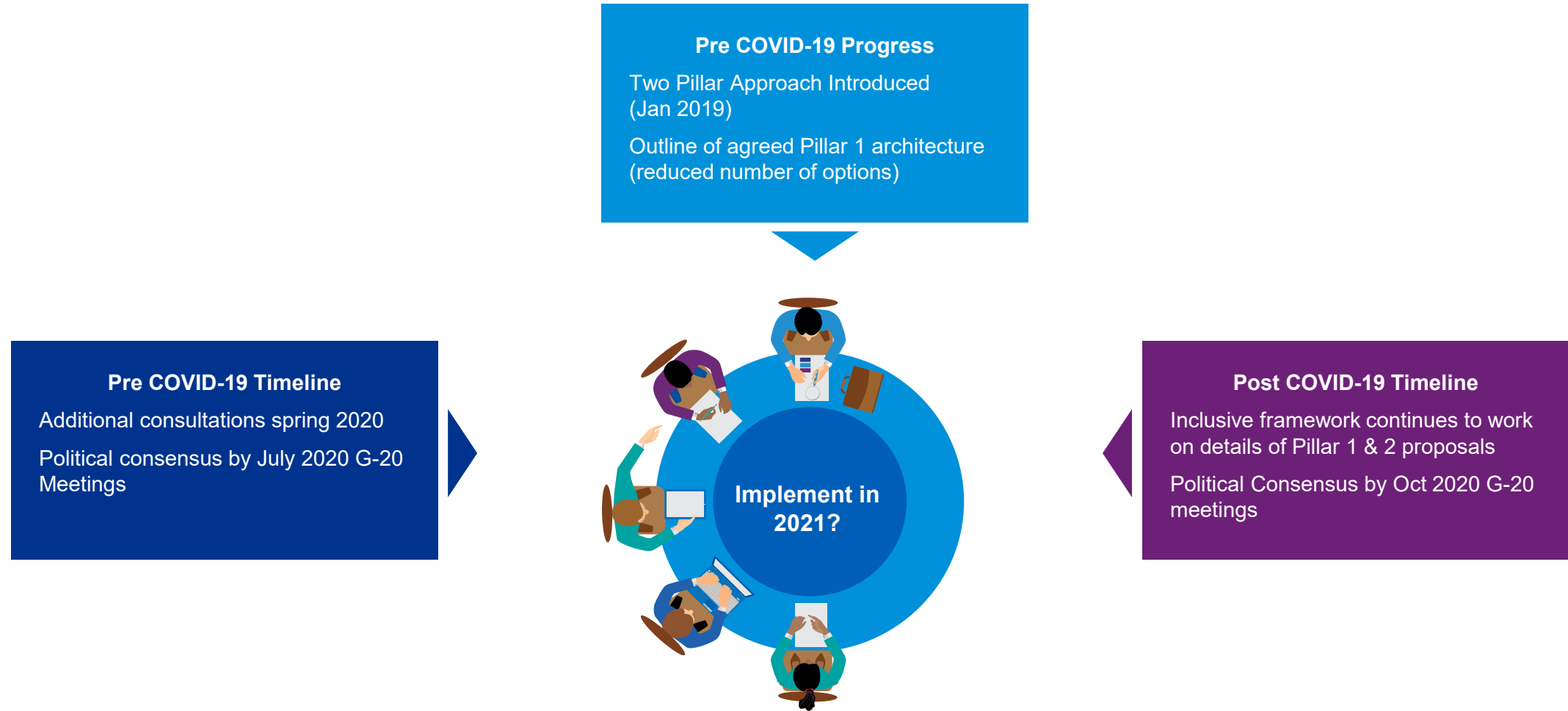
G-20 April Communique

We reiterate our commitment to use all available policy tools to safeguard against downside risks, ensure a swift recovery and achieve strong sustainable, balanced and inclusive growth, while continuing to tackle the global challenges, notably those related to the addressing the tax challenges arising from the digitalization of the economy and enhancing access to opportunity.

G-7 April Chair's Summary

Addressing the tax Challenges of the Digitalization of the economy remains a priority

Revised Timeline for BEPS 2.0 Work



Progress Report — Current State of Work



Drivers and Risks

Drivers

- Increased focus on DSTs in the light of COVID-19
- December 2020 deadline
- Concerns over proliferation of unilateral measures
- Protection of cross-border trade
- Dispute prevention and resolution
- Consistency of approach in the international tax landscape

Risks

- Permanency/enduring nature of unilateral measures
- Increasing protectionism
 - Retaliatory measures
 - E.g., US Section 301 investigation into the French DST
- Fragmentation of international tax policy
- Impact on cross-border trade
- Overlapping disputes
- Unresolved double (multiple?) taxation



Global Developments



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Developments in the UK and EU



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Developments in the UK and EU

UK and European focus on digital taxation

- Focus on 'responsible tax' in the light of the financial crisis
- BEPS and ATAD
- Unilateral DSTs
- Link to Pillar 1 and Pillar 2

Varying approaches across the EU

- Rates
- Carve-outs
- Sunset clauses

UK DST

French DST

Italian DST

Taxation of digitalization is a high profile topic

- Potentially increased focus in the light of COVID-19 disruption

Developments in the UK and EU

European Directive

- Various incarnations
- European Commission has recently indicated interest in reinvigorating the Directive
- Potentially significantly wider application even than unilateral DSTs

Compliance burden for affected businesses

- Tracking and reporting data in new ways
- Privacy considerations, including in relation to GDPR

Importance of engagement through relevant channels, including business and industry representative bodies



Developments in the Asia Pacific region



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Developments in the Asia Pacific region

Hong Kong

- Revised Practice Note on Digital Economy
- IRD committed to review approach next year

Indonesia

- Deemed PE where significant digital presence or if treaty conflicts an Electronic Transaction Tax
- 10 percent VAT on import of intangible services through e-commerce
- Commencement date uncertain — announcement 31 March

Australia

- Government waiting outcome of Inclusive Framework
- Have been calls for a Digital Services Tax in the press

South Korea

- Concessions for Korean businesses relocating operations back



Developments in India



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Developments in India: A snapshot

Active participation in multilateral initiatives

- Key player in the OECD BEPS initiatives on taxing the digitalised economy (Pillars One and Two)
- Proponent of expanded source based taxation

01

Expansive interpretation of existing source-based taxing rights

- Payments for several digital goods/services sought to be treated as royalty/FTS
- PE asserted based on websites/other digital activities

02

Domestic law changes

- Introduction of an 'Equalisation Levy' on online advertising/provision of digital advertising space (2016) and new nexus rule — 'Significant Economic Presence' ('SEP')(2018)
- Deferral of SEP and expansion of Source Rule (2020)
- Expansion of Equalisation levy (2020)

03

Developments in India: Recent changes to the SEP regime

New nexus rule based on 'significant economic presence' introduced in financial year 2018–2019. Taxable presence created by:

- Transactions in goods, services or property between a non-resident and a person in India (including provision of download of data or software in India), subject to a monetary threshold (not yet notified)
- Systematic and continuous soliciting of business activities or engaging in interaction with users in India (beyond a threshold to be notified)

SEP deferred to financial year 2021–2022, but general source rules expanded from financial year 2020–2021 to enable India to tax income of non-residents from:

- Advertisements that targets India customers
- Sale of data collected from India
- Sale of goods and services using such data collected from India

SEP forms part of income-tax framework-treaty provisions prevail over SEP

Developments in India: Expanded Equalization Levy

As originally introduced w.e.f. 1 June 2016

'Specified services' i.e.

- (i) Online advertisement;
- (ii) Any provision for digital advertising space; or
- (iii) Any other facility or service for the purpose of online advertisement

Rate — 6 percent

Additional Scope w.e.f. 1 April 2020

'E-commerce supply or services' i.e.

- (i) Online sale of goods owned by an e-commerce operator
- (ii) Online provision of services provided by an e-commerce operator
- (iii) Online sale of goods or provision of services or both, facilitated by an e-commerce operator; or
- (iv) Any combination of the above

E-commerce operator defined to mean a non-resident who owns, operates or manages a digital or electronic facility/platform for online sale of goods or online provision of services

Rate — 2 percent

Developments in India: Impact of the Expanded Equalization Levy

Wider in scope than digital taxes levied by many countries

- Applies to direct online sales of goods and services by non-residents as well as by online aggregators/marketplaces
- Low monetary threshold of approx. USD 250,000 per year (turnover from India) — No group turnover test

Not part of the income-tax framework-tax treaties intended to be excluded

Lack of clarity on several aspects:

- Meaning of 'online sales' — orders through emails and other digital means?
- Tax base in case of marketplaces/aggregators — does the levy apply on the entire amount collected or only the commission earned?
- Applicability to software transactions — impact of ongoing litigation
- Interplay with income-tax — exemption from income-tax provided for transactions covered by equalisation levy, but only from financial year 2021–2022
- Availability of foreign tax credits

Payment and compliance obligations on non-resident e-commerce operators



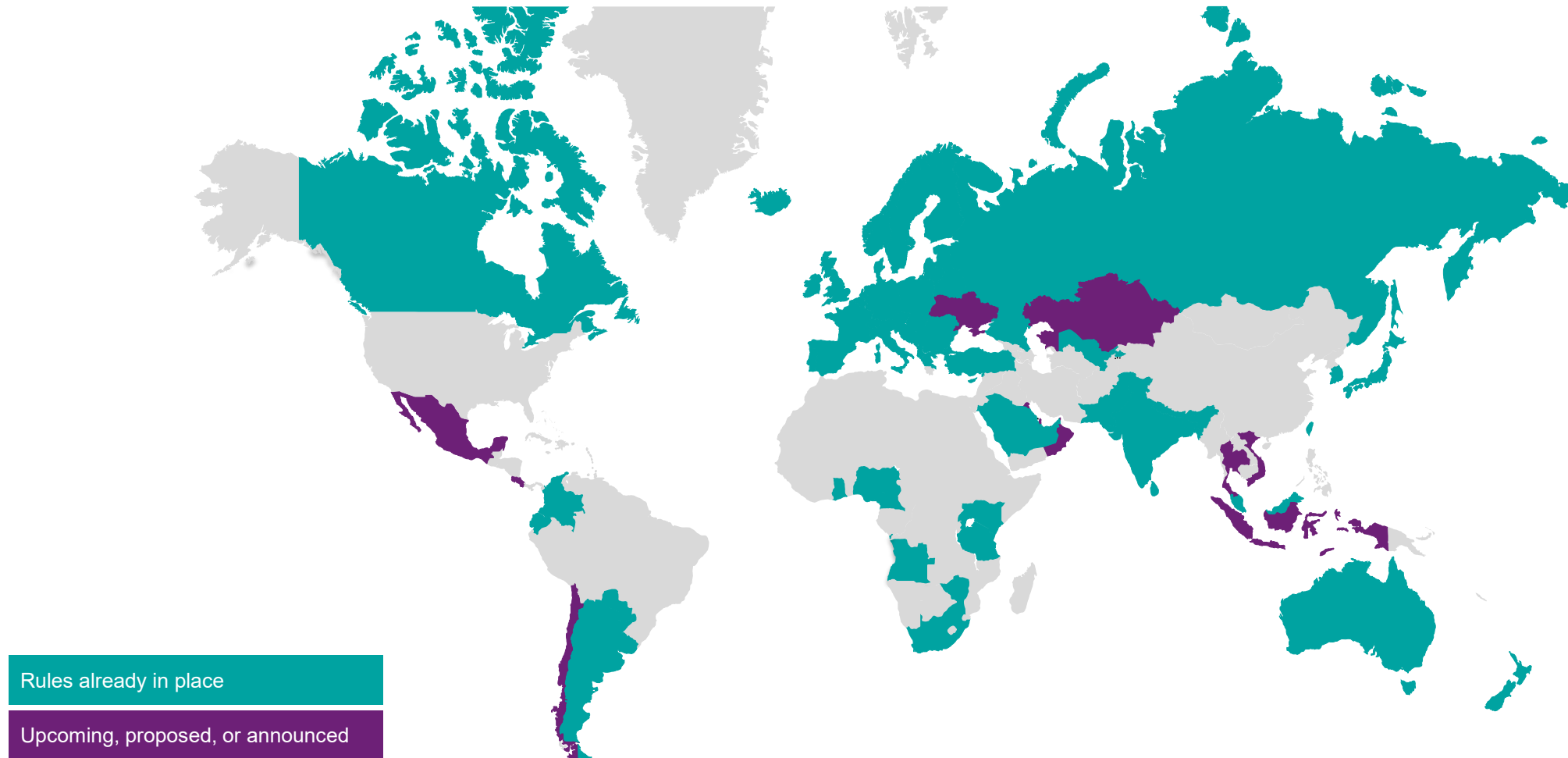
Developments in Global VAT/GST



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Developments in Global VAT/GST: Digital Services Rules



Developments in VAT/GST: Impact of Increased Digitalization

Marketplaces



Focus on e-commerce



New/expanding digital business models





Virtual Panel Discussions



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Risks: what are the potential issues with getting this wrong?



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Actions: what can tax leaders do now and in the future?



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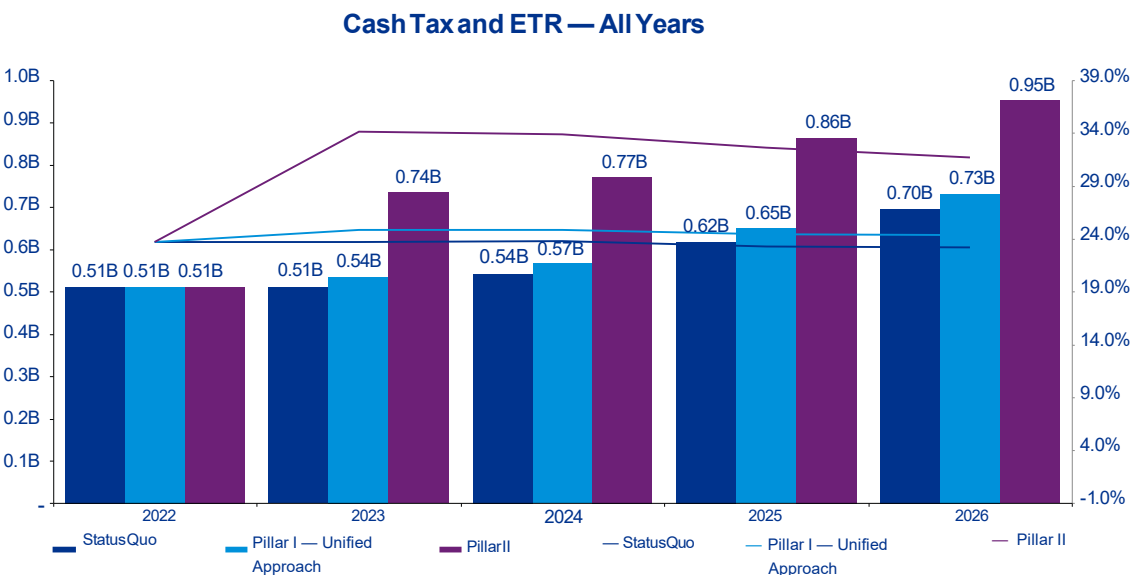


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Modelling tool — scenario comparison



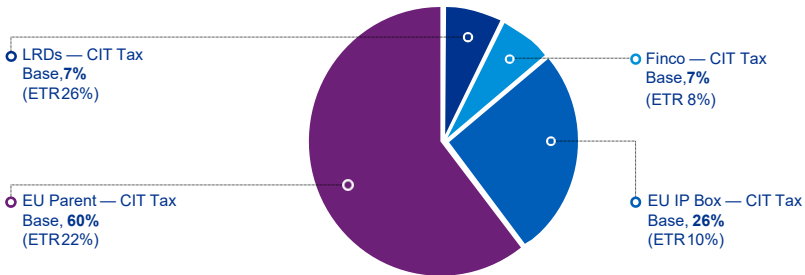
Tax base for specific year by jurisdiction

The pie charts opposite illustrate one sample company and how its current structure would be affected under Pillar One.

Source: KPMG BEPS 2.0 Model

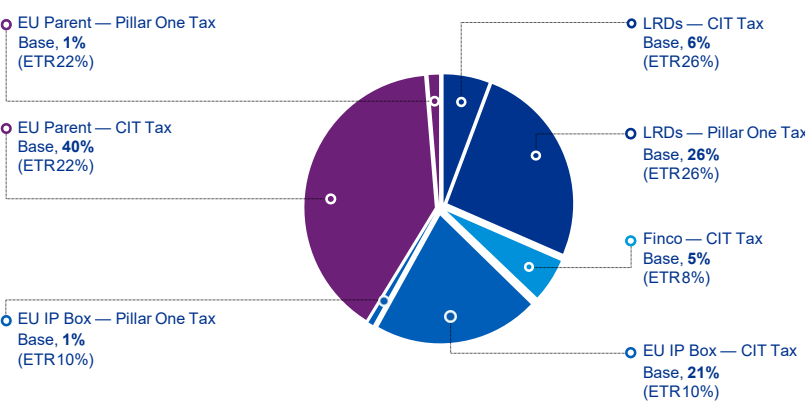
Scenario selected: status quo

Tax base for specific year by jurisdiction



Pillar One — Unified Approach

Tax base for specific year by jurisdiction





Predictions: what might the future hold?



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Questions?



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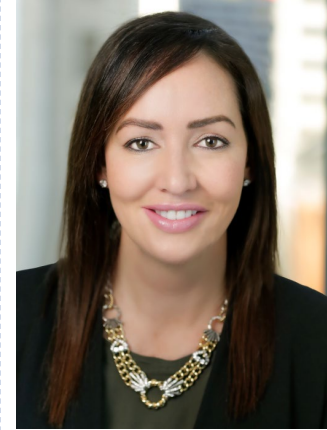
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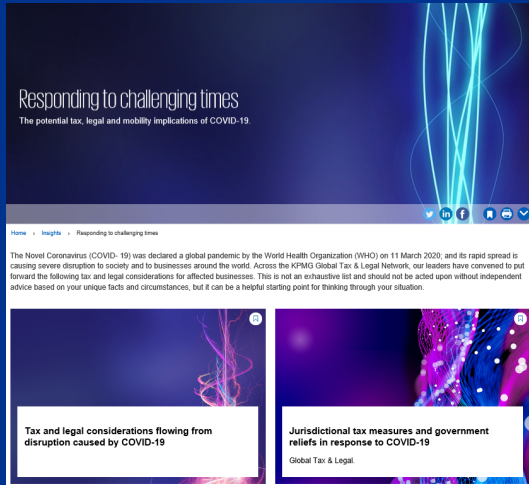


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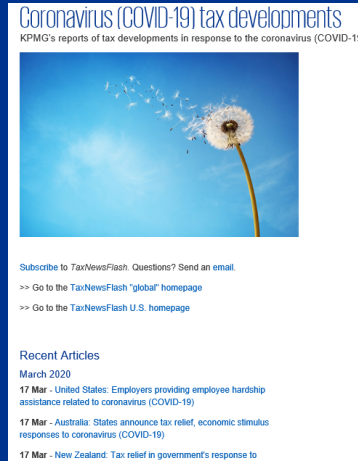
Resources



Responding to challenging times

KPMG site dedicated to business implications of COVID-19 on a global scale — tax, legal and mobility focus

<https://home.kpmg/xx/en/home/insights/2020/03/responding-in-a-crisis.html>



Tax News Flash — COVID-19

KPMG's ongoing roundup of COVID-19 measures taken around the world in response to the situation

<https://home.kpmg/us/en/home/insights/2020/04/taxnewsflash-coronavirus-covid-19-developments.html>





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