國際稅法新趨勢 –
集團公式分配方法及個別實體方法比較
及
雙支柱的發展進度探討

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經歷：

- 資誠全球稅務及移轉訂價服務主持會計師，主要專長為國際租稅及價值鏈轉型及規劃
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Separate Entity Approach vs. Group Approach

Definition: separate entity approach vs. Group approach

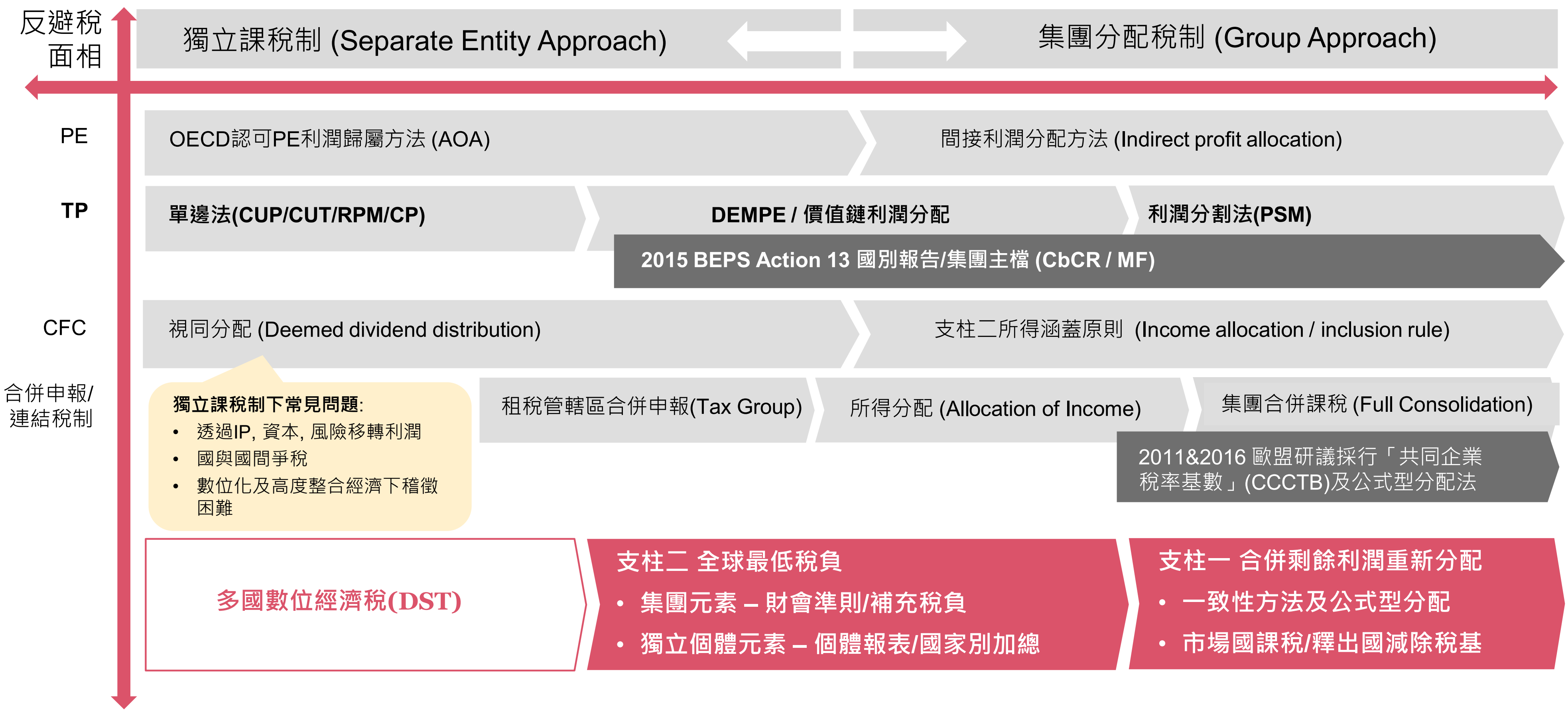
Separate entity approach ⟺	Group approach

Legal entity as the independent tax subject

„Piercing the legal veil“ = consolidated tax treatment of different legal entities

Special provisions related to qualified shareholding /control

國際反避稅環境的演變


反避稅面相
獨立課稅制 (Separate Entity Approach)
集團分配稅制 (Group Approach)
PE
OECD認可PE利潤歸屬方法 (AOA)
間接利潤分配方法 (Indirect profit allocation)
TP
單邊法(CUP/CUT/RPM/CP)
DEMPE / 價值鏈利潤分配
利潤分割法(PSM)
2015 BEPS Action 13 國別報告/集團主檔 (CbCR / MF)
CFC
視同分配 (Deemed dividend distribution)
支柱二所得涵蓋原則 (Income allocation / inclusion rule)
合併申報/連結稅制
獨立課稅制下常見問題:
• 透過IP, 資本, 風險移轉利潤
• 國與國間爭稅
• 數位化及高度整合經濟下稽徵困難
租稅管轄區合併申報(Tax Group)
所得分配 (Allocation of Income)
集團合併課稅 (Full Consolidation)
2011&2016 歐盟研議採行「共同企業稅率基數」(CCCTB)及公式型分配法
多國數位經濟稅(DST)
支柱二 全球最低稅負
• 集團元素 – 財會準則/補充稅負
• 獨立個體元素 – 個體報表/國家別加總
支柱一 合併剩餘利潤重新分配
• 一致性方法及公式型分配
• 市場國課稅/釋出國減除稅基

Example 1: Tax groups – different approaches

Separate entity approach

Group approach

Group contribution and group relief	Profit and loss attribution	Profit and loss attribution and elimination of inter-company results	Full consolidation regimes
no aggregation	aggregate income of a group	aggregate income of a group	consolidated income of a group

Key elements:

- Requirements to form a tax group
- Determination of the group profit, treatment of intra-group transactions
- Anti-avoidance rules
- Group tax liability
- Cross-border tax groups

Example 2: CFC Rules

Separate entity approach	Group approach
Legal consequences: Deemed dividend rule	Legal consequences: income allocation rule
Determination of CFC income on stand-alone basis	Determination of CFC income: income allocation under foreign group taxation principles is recognized
Offsetting of losses only allowed within the same CFC	Offsetting of foreign low-taxed losses against foreign low-taxed income possible
	Control requirement: shares held by associated companies considered

Example 3: Transfer pricing rules

Separate entity approach ⟺	Group approach
▪ Examples: ▪ Comparable Uncontrolled Price Method ▪ Resale Price Method ▪ Cost Plus Method ▪ Transactional Profit Split Method ▪ Determination of income on stand-alone basis ▪ First choice in almost all countries to determine transfer prices	▪ Examples: ▪ Comparable Profit Method ▪ Global Formulary Apportionment ▪ Profit Split Method ▪ Dividing the profit of the overall group between the group companies

- DEMPE (Action items 8-10 BEPS): elements of group taxation approach were transferred into the classical transfer pricing methods

Note:
Application of TP rules in some countries only in cross-border situations, in other countries also in domestic situations

Example 4: Interest barrier rules

- Different types: Debt-to-equity rules and EBITDA threshold rules
- Usually: Rules follow a strict separate entity approach
- Exceptions:
  - Application of the rules at the level of a tax group
  - Rules contain group-relevant elements
    - Art. 4 para. 5 let B) ATAD: deduction depends on groups‘s net interest/EBITDA ratio
    - Art. 4 para. 5 let A) ATAD: deduction depends on comparison of the taxpayer‘s equity over its total assets to the equivalent ratio of the group

Pillar One & Pillar Two

8 October 2021 Statement & Detailed Implementation Framework (Pillar 1)

- *For in-scope MNEs, 25% of residual profit defined as profit in excess of 10% of revenue will be allocated to market jurisdictions with nexus using a revenue-based allocation key…*

- *Amount A will be implemented through a Multilateral Convention (MLC), and where necessary by way of correlative changes to domestic law…*

- *Following its signature, jurisdictions will be expected to ratify the MLC as soon as possible, with the objective of enabling it to enter into force and effect in 2023 once a critical mass of jurisdictions as defined by the MLC have ratified it...*

- *The MLC will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future.*

Overview of Pillar One

Amount A

- **Scope**
  - Main Scope Provisons
  - Extractives exclusion
  - Exclusion - Regulated Financial Services
  - Segmentation
- **Nexus**
- **Revenue Sourcing**
- **Tax Base Determination**
- **Profit Allocation**
  - Formula
  - Marketing and Distribution Profits Safe Harbour
- **Tax Certainty**
  - For Amount A
  - For Issues Related to Amount A
- **Elimination of Double Taxation**
- **Administration**
- **Unilateral Measures**

Amount B

Key themes in public consultation comments
Previously released building blocks

- **Main scope provisions (Art. 1):** Requests for an additional exclusion for domestic oriented businesses
- **Extractives exclusions (Art. 1(3), Sch. B):** Support for transition phase with request for technical corrections
- **Regulated financial services exclusion (Art. 1(4), Sch. C):** Support for excluding reinsurance and asset management & request for additional simplification measures
- **Revenue sourcing (Art. 4):** Support for (longer) transition phase & request for more specific guidance
- **Tax base determination (Art. 5):** Requests for further alignment of the tax bases

Key themes in public consultation comments
Newly released building blocks

- **Segmentation (Art. 1, Sch. D):**
  Support for limiting segmentation to disclosed segments
- **Marketing and Distribution Profits Safe Harbour (Art. 6):**
  Questions about the RODP-based metric to differentiate routine and non-routine profit
  Concerns about the offset percentage (Y%) and questions about the relevance of a "de minimis" threshold
  Support for taking withholding taxes into account
- **Elimination of double taxation (Art. 9):**
  Questions on the appropriateness of the RODP metric for identifying jurisdictions in which multinationals earn residual profits
  Support for the concept of a de minimis rule
  Support for the exemption method to eliminate double taxation

Key themes in public consultation comments
Other building blocks

- Need for robust framework for withdrawal and standstill of unilateral measures
- Continued support for work on Amount B

Where next?

Pillar One

- Release of Administration and Tax Certainty Aspects as well as Unilateral Measures
- Stabilisation of Substantive Rule
- Completion of MLC and Signing Ceremony
- Amount B

Pillar 2

- **Group elements**
  - Starting point : financial consolidated accounts adjusted for tax purposes
  - Top-up tax calculated for the entire group
- **Separate entity elements**
  - ETR calculation at entity level, blending per jurisdiction

Pillar Two
Overview

GloBE rules

- Domestic law provision
- Common approach
- Effective tax rate test, applies on a jurisdictional basis (15%)
- Co-ordination rules

Subject to tax rule

- Treaty provision
- Can be requested by developing countries
- Adjusted nominal tax rate test, applies on a transactional basis (9%)
- Creditable for purposes of the GloBE rules

Pillar Two: GloBE Rules
Six basic building blocks

Scope of application
MNEs with revenues of more than EUR 750 million

Co-ordination & rule order
Interaction of the Income Inclusion Rule (IIR) and the Under Taxed Payment Rule (UTPR)

Common tax base
The consolidated financial statements in accordance with an acceptable financial accounting standard (e.g. IFRS or GAAP)

Jurisdictional blending
Determination of the relevant income and the effective tax rate on a jurisdictional basis

Substance carve-outs
Substance-based Income Exclusion on book value of tangible assets and payroll

Top-up Tax Concept
The top up tax is charged to bring the tax on the income in the jurisdiction up to the minimum rate

Current focus

- Work on the GloBE Implementation Framework across 4 dimensions

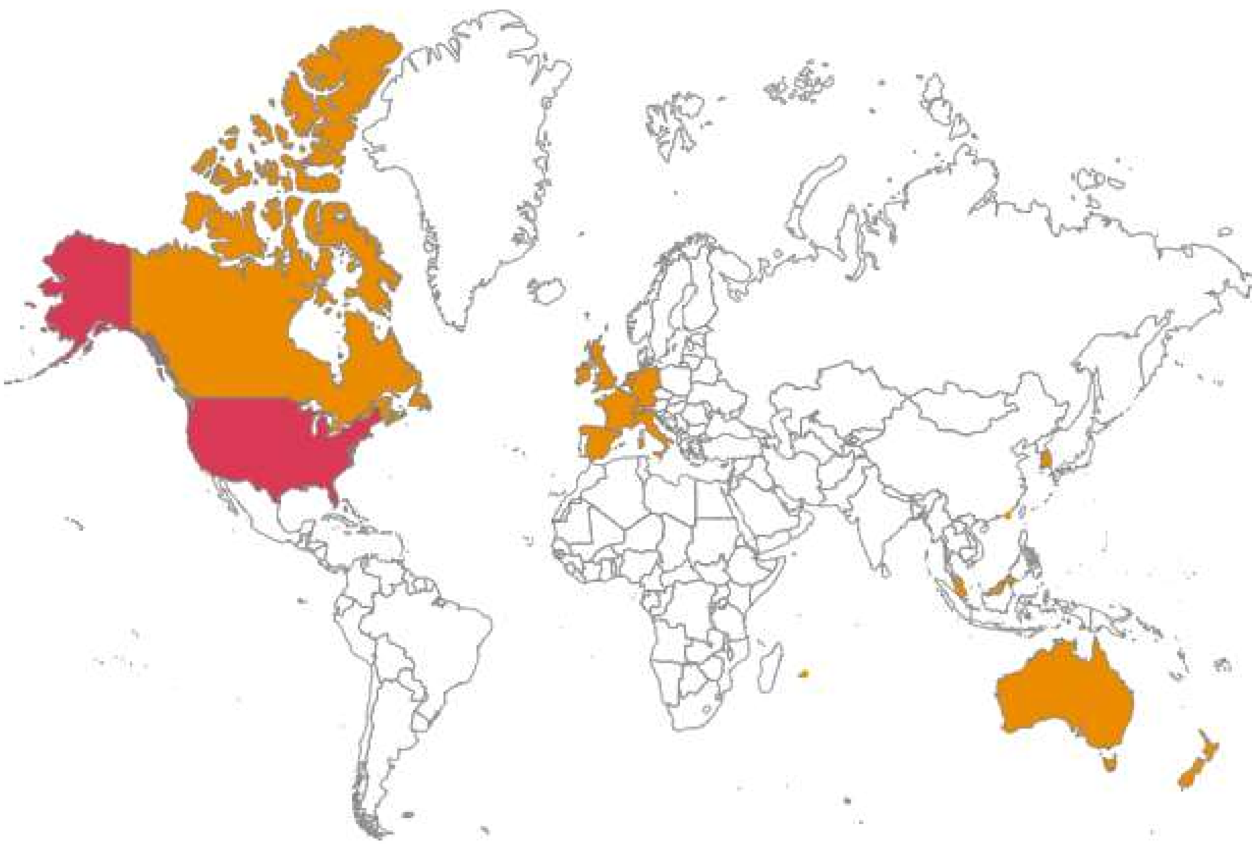
Additional clarifications	Administrative procedures, exchange of information, accounting systems, IT
Balance between tax policy objectives and implementation effort - simplifications including safe harbours	Rule co-ordination, dispute avoidance and dispute resolution

Where next?

Pillar Two

- GloBE Implementation Framework
- Subject to tax rule
- Implementation process: EU, Canada, Switzerland, UK, etc
- Stabilisation of the system - room to remove, revise measures that may no longer be needed?

Getting ready for Pillar Two – Global overview



February 2022	Statement to implement	**Singapore**
April 2022	Public consultation	**Canada**
May 2022	Public consultation	**Ireland**
May 2022	Public consultation	**New Zealand**
July 2022	Draft legislation	**UK**
July 2022	Draft legislation	**South Korea**
July 2022	Draft legislation	**Mauritius**
August 2022	Public consultation	**Switzerland**
August 2022	Statement to implement	**Hong Kong**
September 2022	Presidential statement to implement	**US (uncertain)**
September 2022	Joint statement to implement	**Germany, France, Spain, Italy, the Netherlands + Belgium**
October 2022	Draft legislation	**the Netherlands**
October 2022	Public consultation	**Australia**
October 2022	Statement to implement	**Malaysia**

What does the Group approach mean for FDI competition?

Non Tax Factors	• Market size access to raw materials e.g. natural resources, energy supplies • Availability and cost of skilled labour • Access to infrastructure • Transportation costs • Access to output markets e.g. high consumer demand in region, • Low export costs • Political stability • Macro-economic stability • Financing costs
Tax Factors	• Transparency • Stability and certainty in the application of the tax law and in tax administration • Tax rates • Tax incentives

MENA-OECD Investment Program, Tax Incentives for Investment – *A Global Perspective: experiences in MENA and non-MENA countries* (2007) page 4

Non tax incentive factors will become more important to attract FDI. With the imminent implementation of the pillar 2 minimum tax, jurisdictional promotional

authorities are looking to their business friendly eco-systems to attract MNE FDI

Qualified domestic minimum top-up tax

- Any country can introduce a domestic minimum tax to ensure that a company's effective rate is at least equal to the agreed-on minimum rate.
- A country that adopts a QDMTT has **priority** in taxing rights over the parent company jurisdiction, an intermediate holding company jurisdiction, or any country that wants to apply the UTPR.
    - Prevents other countries' applying the UTPR to profits generated in the parent's jurisdiction.

Effective rate = minimum rate

Ensures a company's **effective rate is at least equal to** the GloBE agreed-on minimum rate

Applies to excess profits

Determines domestic entities' excess profits under **calculations equivalent to** those in the **GloBE rules**

Increase domestic tax liability

Must operate to **increase domestic tax liability to the GloBE minimum rate**

Consistent implementation

Must be **implemented and administered consistently** with the GloBE rules

No Top-up Tax for a country

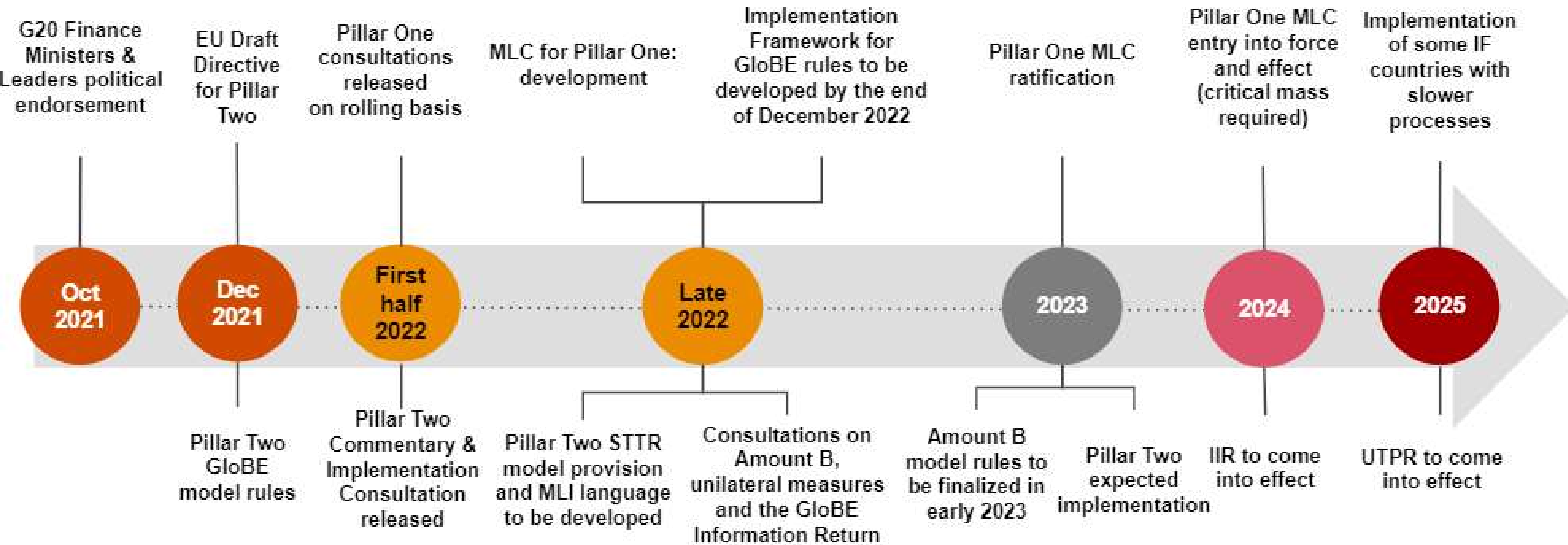
No Top-up Tax allocated under the UTPR for that jurisdiction

Pillar Two: Subject to tax rule (‘STTR’)

STTR minimum rate will be 9%

- Applies when the ‘adjusted nominal tax rate’ is below 9%
- Applies only to defined categories of payments between connected parties – Interest, Royalties, other payments (Franchise fees, Insurance premium, payment for intangibles etc.)
- Gross level taxation
- Treaty based rule which applies in priority to IIR and UTPR
- Awaited - Draft model provision and its commentary; and a public discussion draft on the development of a multilateral instrument

OECD – Official timeline



Interim period where signatory countries will not introduce any <u>newly enacted DSTs</u>


Group approach and separate entity approach
Fair
Certain
Efficient
SO what REALLY motivates your colleagues?
GETTING PAID
GETTING PAID
GETTING PAID
Country X
Country Y
Country Z
FRAN & ADAPTED
CartoonStock.com