



BEPS 1.0到2.0 的發展趨勢

資誠聯合會計師
事務所
曾博昇會計師

Index

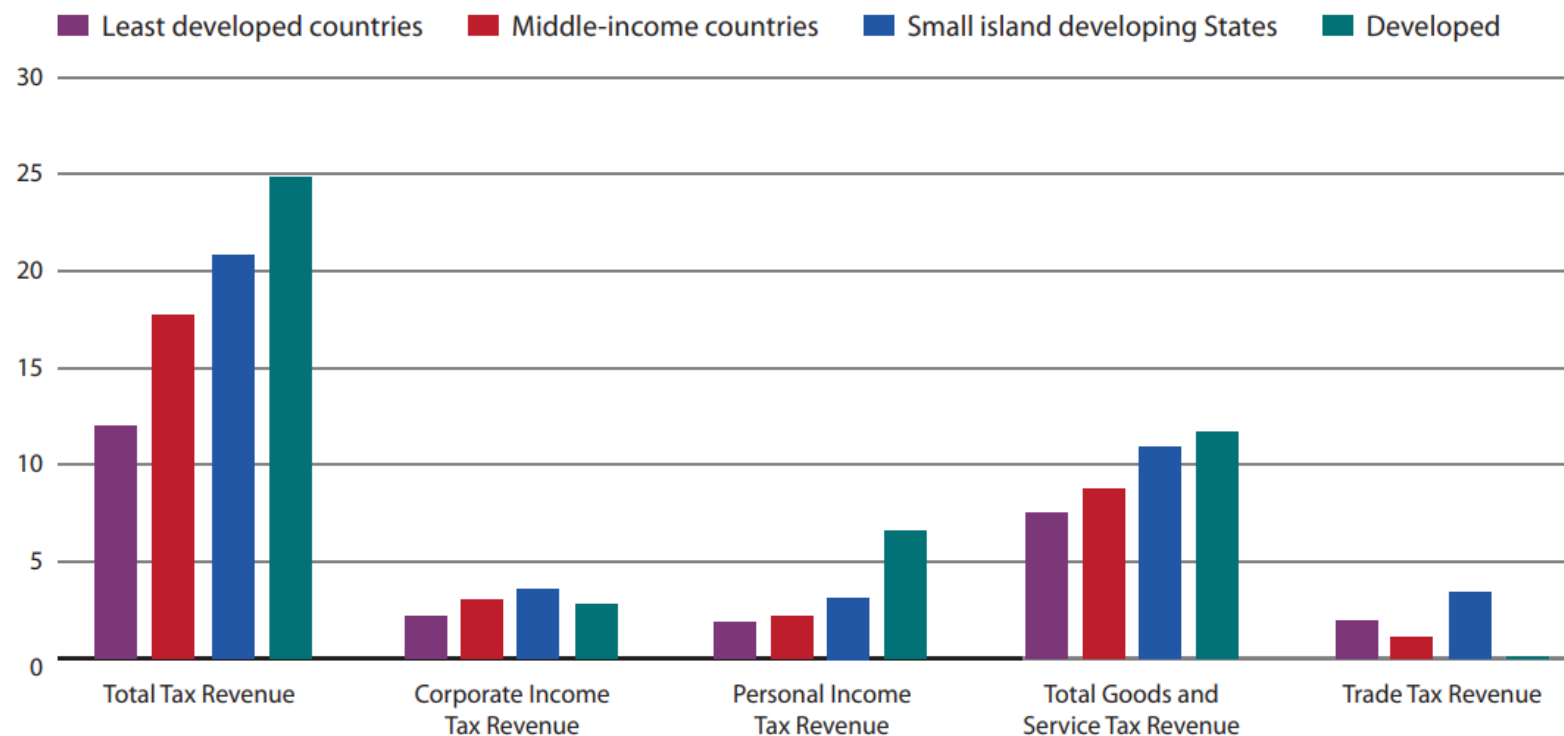


- 1. What have we done and where do we stand?**
- 2. Is the issue of BEPS resolved? If not why?**
- 3. How are developing countries dealing with BEPS? Do they stand a chance with the current rules?**
- 4. Complexity**

What have we done and where do we stand?

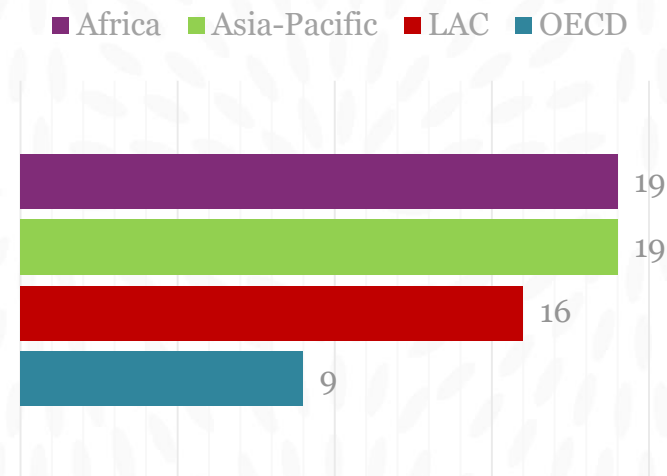
The context

Median tax revenue by type of tax, 2018
(Percentage of GDP)



Source: UN, IATF, Financing for Sustainable Development Report 2021.

CIT percentage of Total Tax Revenue, 2020
(Averages)



Source: OECD, The Global Revenue Statistics Database 2022.

The CIT Solution(s). BEPS 1.0 and BEPS 2.0

Profit shifting

Allocation of taxing rights

Action 2 – Hybrid mismatches

Australia, Costa Rica, New Zealand, US, UK, EU ATAD

Action 7 – PE avoidance

Over 45 have agent-PE, over 55 anti-fragmentation rules

Action 3 – CFC rules

51 jurisdictions

Actions 8 - 10 - Aligning transfer pricing outcomes with value creation

Action 4 – Interest deduction limitation

90 jurisdictions

Action 12 – Mandatory disclosure rules

EU DAC6, UK

Action 5 - Harmful tax practices

319 regimes reviewed, with 184 amended or abolished

Action 13 – CbCR

+100 countries have the legal framework

Action 6 – Treaty abuse

100 jurisdictions implementing and amending their treaties

Action 14 - Dispute resolution

82 jurisdiction in stage 2 peer review, many improved the efficiency

Tax Challenges Arising from the Digitalisation of the Economy

Pillar Two

GloBE Rules

56 jurisdictions taking steps towards implementation

STTR

Opened for signature on 2 October 2023

Pillar One

Amount A

The Effect of Pillar Two on the location of profits

% Change in location of profit due to reduced profit-shifting
(2017-2020 average, bounds)



Source: OECD

Note: Average changes in total profit by income group following the implementation of Pillar Two. Bounds are constructed around six scenarios with different assumptions regarding profit shifting reductions. Pre-Pillar Two profit assumes a profit distribution already impacted by Pillar One. Data includes non-IF member jurisdictions. Averages shown are weighted by profits.

Should we be concerned about divergent implementation and tax competition?

If aggressive tax planning is done, is BEPS done?

- **Mismatches and tax incentives** will always give rise to perceptions of BEPS – domestic minimum taxes have a role to play here
- Commitment to BEPS has reduced aggressive tax planning (reduced risk appetite, tax authority resourcing have also played a part)
- **Transparency** - critical to BEPS success for large public corporate groups (**non-public group tax planning** still alive and well?)
- Global BEPS (aggressive tax planning) versus **domestic BEPS (aggressive tax policy)** – the latter is harmful and still remains.
- ‘Aggressive’ tax planning – another term for international tax complexity
- Who is responsible for continuing to address/monitor BEPS?

Mobility, new technologies and the persistence of the ALS



- Not a new phenomenon.
- **Intangibles/ideas** by their nature are **mobile** and easily transferred/shared
- TP rules/DEMPE functions under the arms length principle - **theoretically pure but administratively difficult**
- **Developing country tax administrators struggle** to manage this challenge
- Addressing the challenges via intangibles guidance (OECD), building tax authority capability and sharing best practice – JITSIC, Forum of Tax administrators etc.

How are developing countries and emerging economies dealing with BEPS? Do they stand a chance with the current rules?

Benefits and challenges – are BEPS measures effective for those who have implemented them so far?



- Implementation of the [2015 OECD/G20 BEPS Package](#). Minimum standards (Actions 5, 6, 13, 14) and other Actions, amongst which, Action 1.
- Proliferation of (ineffective? ...BEPS 2.0) [anti-avoidance rules](#). Complexity and uncertainty (less is more!). No access to [information](#) (e.g. CbC data is not enough)... [Pillar 2](#).
- What about efficient (domestic and agreed) [nexus and profit allocation rules](#)? [Source-based taxation](#) in a globalised and digitalised economy... [Pillar 1](#)

Tax competition – if tax competition is a basic ingredient of BEPS, what can they do about incentives?



- Is the end of the “tax factor” for developing countries?
- Is tax competition between developed and developing countries condemnable? What level playing field?
- Are all tax incentives wasteful?
- Is the substance-based carve out sufficient? Is viable that developing countries grant refundable tax credits?
- Is the QDMTT an option?
- Will developing countries still be attractive for FDI after GloBE?

Complexity

How are government and companies handling the complexity?

- Compliance costs estimates are wildly optimistic.
- **'Thousand points of light'** - ESG, financial, public CBC, voluntary codes, public databases - all aimed at tax transparency, but risk confusing rather than enlightening
- **Compliance costs tolerated as a necessary evil (compensation for minimal revenue collected)** rather than a gross misallocation of resources
- Transparency - critical two-way street. **Tax authorities and governments also need to be transparent** as to the revenue risks they are seeing and where they are

What can we do to address residual BEPS?

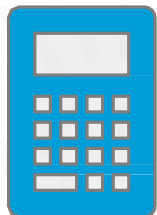
What can we do to address residual BEPS?



1. Keep enforcing current standards (including pillar 1&2)
2. Differentiate actions for developing and emerging economies
3. Tolerate residual BEPS as fighting it is too costly
4. Give up on complexity and adopt more radical solutions

OECD update

What OECD does



Tackling Tax Avoidance & Crimes

- Implementation & update of Base Erosion and Profit Shifting measures & Two Pillar deal
- Tackling tax crimes via the Oslo Dialogue and academies in 4 continents



Improving Tax Transparency

- Exchange of information, fighting tax evasion and illicit financial flows



Global Relations and Development: Support for developing countries

- Bilateral Capacity Building



Tax Policy Analysis and Statistics

- Revenue and tax administration statistics on over 120 economies



Improving the Efficiency and Effectiveness of Tax Administration

- Guidance and best practice on a wide range of tax policy and administration issues



Model Tax Convention: update and expansion of its use



Transfer Pricing Guidelines: update and extension



Carbon Pricing and Environment



Value Added Tax: implementation of the International VAT/GST Guidelines

The 168 members of the Global Forum on Tax Transparency



This map is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The 143 members of the Inclusive Framework



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Two Pillar solution - another milestone in the BEPS & international tax reform journey

BEPS MLI

- **101 jurisdictions** have signed the MLI, which covers **1900 bilateral treaties**

Harmful Tax Practice & Preventing Treaty Abuse

- Almost **50 000** exchanges of information have taken place on **23 000** tax rulings (Action 5)
- Over **2,400** of the **2,500 tax agreements** concluded between Inclusive Framework members now becoming compliant (Action 6)

Transparency & Country-by-Country Reporting

- **EUR 126 billion** in additional tax revenues have been identified since 2009
- **110 countries** are involved in exchange of CbCRs and more than **3 300 bilateral relationships** for CbC exchanges in place between 89 jurisdictions (Action 13)

Tax Policy and Statistics

- Revenue Statistics covers **122 economies** across Africa, Asia-Pacific, LAC & OECD

Indirect Tax

- **90 countries** implementing OECD International VAT/GST Guidelines
- Significant revenues raised by governments as a result

Capacity Building

- TIWB initiative has led to **USD 2.07 billion** in additional tax collected
- Over **2700 officials** from **170+** jurisdictions trained in the OECD Tax Crime Academy

Two-Pillar Solution



A global minimum tax at an effective rate of 15% (Pillar Two)

- The minimum tax puts a floor under harmful tax competition and protects country tax bases.
- Revenues are estimated at up to USD 200 billion per year.
- Around 55 countries and jurisdictions are now implementing or taking steps towards implementation; at least seven jurisdictions have introduced a corporate income tax regime for the first time.

Subject-to-Tax-Rule (Pillar Two)

- The STTR protects countries' tax bases where treaties tax MNE income at very low rates.
- Already agreed by the Inclusive Framework, the Multilateral Instrument to implement the STTR opened for signature on 2 October.
- Particularly important for developing countries; who significantly shaped the STTR during negotiations.

Final aspects of Pillar One nearing completion

- Work ongoing on Amount B.
- Text of a Multilateral Convention to implement Amount A, together with accompanying materials, released on 11 October.

Stakeholder perspectives

Tax and inequality



Improving fairness in the tax system
Reducing underlying societal inequities

Domestic resource mobilisation



CIT, PIT, wealth taxes, property taxes, consumption taxes, tax administration, trade-offs

Tax and ESG



Incorporating tax into Environmental Social Governance (ESG) frameworks
Measuring & understanding contributions

Tax Transparency



Improving tax transparency for taxpayers and for tax systems

Global Mobility



PIT; CIT
Wider implications, e.g. social security, pensions, competition

Decluttering CIT



Post-Pillars fitness check
Simplify, eliminate or modify existing rules addressing similar risks

PILLAR ONE OVERVIEW

Amount A – MLC release

2018

Interim Report on BEPS Action 1 – Tax Challenges Arising from Digitalisation

October 2021

139 Inclusive Framework members agreed on the **Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the digitalisation of the Economy**

October 2022

Public consultation: **Progress Report** on the Administration and Tax Certainty Aspects of Amount A

July 2023

Outcome Statement – Inclusive Framework delivered a **text of a Multilateral Convention (MLC)**

January 2019

Policy note proposing a two-pillar approach for a consensus-based solution

July 2022

Public consultation: **Progress Report** on Amount A substantive rules

December 2022

Public consultation: MLC provisions on **Digital Services Taxes** and Relevant Similar Measures

October 2023

Publication of the MLC, the Explanatory Statement, and the Understanding on the Application of Certainty of Amount A

Preamble to MLC – Amount A



- Recognising the need to address the tax challenges arising from the digitalisation of the economy;
- **Parties to this Convention to exercise a taxing right with respect to a defined portion of the residual profits of multinational enterprises that meet certain revenue and profitability thresholds and that have a defined nexus to the markets of these Parties;**
- Notwithstanding any provisions of tax agreements that would otherwise limit the application of such a taxing right;
- Recognising the need to establish **dispute prevention and resolution...**
- Noting the desire to withdraw existing **digital services taxes and relevant similar measures** with respect to all companies and their shared political commitment not to adopt new digital services taxes or relevant similar measures as of the beginning of the application of the new taxing right, including to use their best efforts, consistent with their constitutional order, to prevent such measures being adopted at the subnational level;

MLC – Amount A



Step 1. Determine if you are in scope

1.1. Group revenue and profitability test



1.2. Exceptional segmentation rule



1.3. Limited exclusions

Step 2. Identify eligible market jurisdictions

2.1. Revenue sourcing rules



2.2. Nexus test based on sourced revenue

Step 3. Calculate and allocate a portion of your excess profit

3.1. Determine relevant group profit



3.2. Allocate a portion of excess profit to markets



3.3. Adjust for double counting

Step 4. Eliminate double taxation

4.1. Determine relevant jurisdictional profit



4.2. Allocate obligation to relieve double taxation



4.3. Identify relief entities within a jurisdiction

Step 5. File, pay and access to tax certainty

5.1. File with Lead Tax Administration



5.2. Payment from single group entity



5.3. Claim relief for double taxation



5.4. Access to tax certainty

MLC – Tax certainty and DSTs

Tax Certainty

- “Amount A” – A **binding multilateral certainty process** over whether MNEs are in scope, and their application of MLC.
- “Related Issues” – Improved certainty process (**incl. mandatory and binding dispute resolution**) for disputes on existing tax rules, to the extent that they relate to Amount A (e.g. transfer pricing and PE).

DSTs and relevant similar measures

- A **list of existing measures** to be removed in Annex A.
- **Commitment not to impose digital service taxes (DSTs) and relevant similar measures on any company.**
- **Conference of the Parties will conduct reviews** to determine whether a measure is contrary to this commitment (in which case Amount A allocations will be denied).

MLC - Operation



Entry into force

- Requires ratification by 30 States accounting for at least 60% of the ultimate parent entities of MNEs initially expected to be in-scope for Amount A, and a decision by ratifying countries.

Interaction with existing tax treaties

- Existing bilateral tax treaties between Parties to the MLC will continue to apply, but will be superseded by the MLC to the extent needed to permit the application of Amount A.
- Tax treaties with Jurisdictions which are not Parties to the MLC will not be affected.

The Conference of the Parties

- MLC establishes a 'Conference of the Parties' (CoP) to make decisions or exercise functions required for the interpretation and implementation of the MLC.

7-year review

- Revenue threshold will be reduced from €20 billion to €10 billion seven years after entry into force, unless implementation is deemed not successful by the Parties following a review by the CoP (based on pre-determined criteria).
- In latter scenario, Parties will be required to address any identified implementation issues within two years to enable the lowering of the revenue threshold.

MLC – Layout



PART I – General

Article 1 – *Application and Personal Scope*

PART II – Definitions

Annex B, Annex C

Article 2 – *General Definitions*

Article 3 – *Covered Group*

PART III – Allocation and Taxation of Profits

Annex D

Article 4 – *Taxation of Profits of a Covered Group*

Article 5 – *Allocation of Profit Associated with Revenues in the Market*

Article 6 – *Sources of Adjusted Revenues*

Article 7 – *Sourcing Principles for Categories of Adjusted Revenues*

Article 8 – *Nexus*

PART IV – Elimination of Double Taxation

Article 9 – *Relief for Amount A Taxation*

Article 10 – *Identification of the Specified Jurisdiction for a Covered Group*

Article 11 – *Allocation of the Obligation to Eliminate Double Taxation with Respect to the Amount A Relief Amount*

Article 12 – *Provision of Relief for Amount A Taxation to Relief Entities*

Article 13 – *Identification of Relief Entities Entitled to Elimination of Double Taxation*

PART V – Administration and Certainty

Annex E, Annex F, Annex G

Section 1 – *Administration (Article 14 - 21)*

Section 2 – *Tax Certainty Framework for Parts II to IV (Amount A) (Articles 22 - 32)*

Section 3 – *Tax Certainty for Issues Related to Amount A (Articles 33 - 36)*

Section 4 – *Exchange of Information and International Cooperation (Article 37)*

PART VI – Treatment of Specific Measures Enacted by Parties

Annex A, Annex H

Article 38 – *Removal and Standstill of Digital Services Taxes and Relevant Similar Measures*

Article 39 – *Elimination of Amount A Allocations for Parties Imposing Digital Services Taxes and Relevant Similar Measures*

Article 40 – *Treatment of Specific Measures in Scope of Tax Treaties*

PART VII – Final Provision

Annex I

Article 41 – *Signature and Agreements*

Article 42 – *Ratification, Acceptance or Approval*

Article 43 – *Territorial Application*

Article 44 – *Review Process to Lower the Adjusted Revenues Threshold*

Article 45 – *Amendment*

Article 46 – *Reservations*

Article 47 – *Conference of the Parties*

Article 48 – *Entry into Force*

Article 49 – *Entry into Effect*

Article 50 – *Withdrawal*

Article 51 – *Termination*

Article 52 – *Relation with Protocols*

Article 53 – *Depository*

Article 54 – *Relationship between this Convention and Existing Tax*

MLC – Accompanying materials



Explanatory Statement (ES) to the MLC

- Clarifies how each MLC provision is intended to apply; and
- Reflects the agreed understanding of the negotiators (i.e. forms part of the context of the MLC for interpretation purposes under customary international law).

Understanding on the Application of Certainty for Amount A of Pillar One (UAC)

- Clarifies how the different elements of the Amount A multilateral tax certainty process will apply in practice.

Amount B – State of play

- Simplify and streamline the arm's length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of LCJs
- Ongoing work on
 - (1) the balance between a quantitative and qualitative approach, and
 - (2) the pricing framework, digital goods, country uplifts and local databases
- IF Amount B report, content from which into the OECD TPG by January 2024 with consideration of
 - (1) the needs of low-capacity jurisdictions, and
 - (2) the interdependence of Amount B and the signing and entry into force of the MLC.

Simplifying Transfer Pricing

Amount B - Highlights from public consultation



SCOPE

- Amount B needs to achieve simplification and provide tax certainty. Strong support for “Alternative A”
- Support for segmentation but concerns regarding the segmentation guardrail
- Support for expanding the scope of Amount B through future work

PRICING

- Support for the pricing matrix but concerns regarding transparency and access to underlying data
- Concerns regarding mechanisms to address geographic differences
- Support on the application of Berry Ratio cap and collar as a guardrail

IMPLEMENTATION

- Support for inclusion in TPG
- Support for a safe harbour approach
- Support for deferred implementation to allow time for businesses to prepare

PILLAR TWO OVERVIEW

Pillar Two in a nutshell



Subject to Tax Rule

9% nominal rate – applies on a transactional basis

Certain related party payments

All companies (subject to de minimis thresholds)

Treaty provision

Can be required by developing countries

GloBE rules and QDMTT

15% effective rate – applies on a jurisdictional basis

All income

Large MNEs – 750 million Euros

Domestic law provision

Common approach

The STTR multilateral instrument



Objective To facilitate the implementation of the STTR in bilateral tax treaties

When does it apply?

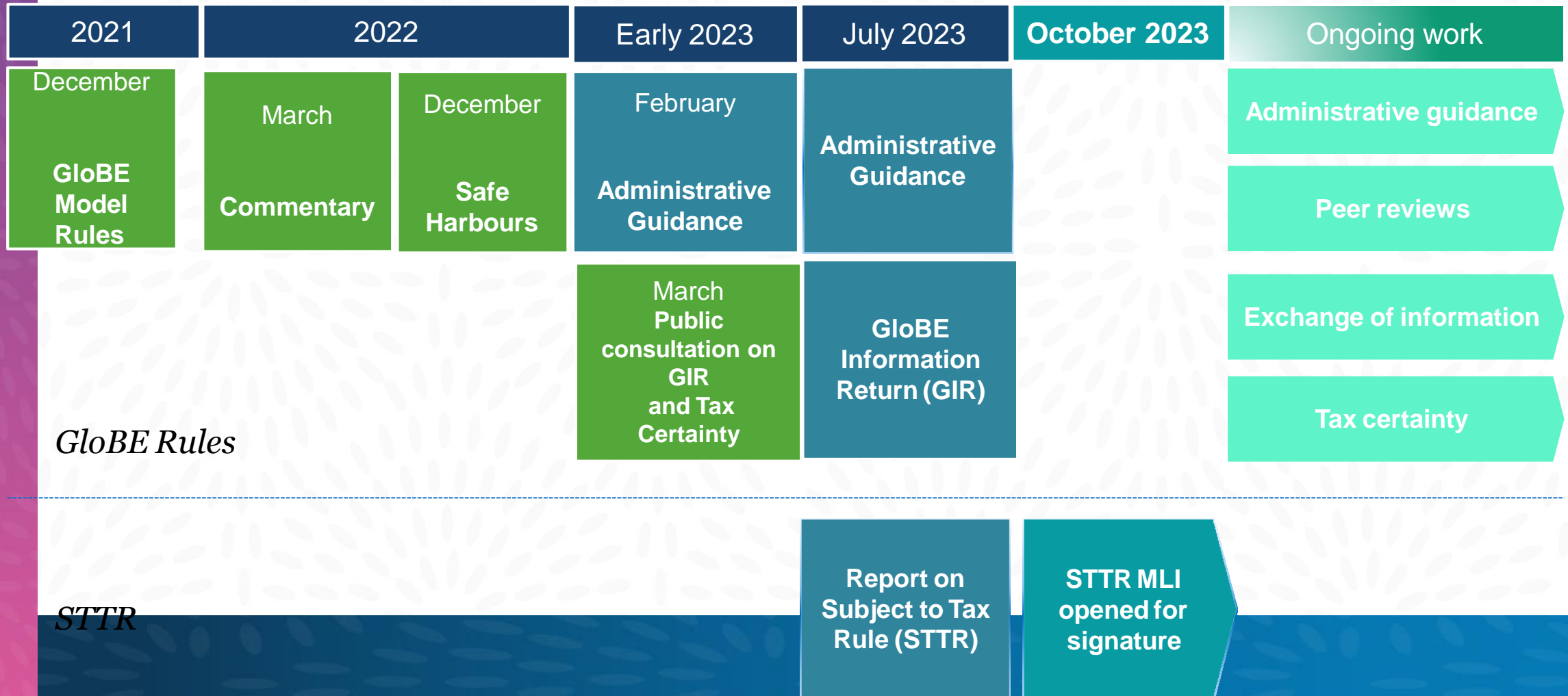
- Implementation either via bilateral amendments or the STTR MLI; the request of the developing country trigger the obligation to implement the STTR
- Bilateral route: developing country can request the Contracting Party for the inclusion of the STTR
 - No changes or negotiations
- MLI route: developing country can go to the MLI and identify the treaty
 - The MLI will effectively amend a treaty once its two treaty partners have signed it, and have "listed" their treaty as a treaty they wish to cover under the MLI

How does it apply? It amends covered treaties and includes the STTR and other accompanying provisions by “adding” annexes to the covered treaties

Is it a minimum standard?

- Yes: STTR as a rule; if a developing country requests, the Contracting Party should accept
- No: STTR MLI/or bilateral is optional

Where we are...and what is next?



Revenue Impact and Complexity



Revenue Impact

- New OECD estimates (based on 2020 data) show up to USD 200 Bn in revenue gains
- 1/3 of those gains come from reduced profit shifting
- Developing countries have high tax rate, but usually a relatively narrow tax base due to tax incentives
- Around 30% of profit in low-income, and middle-income jurisdictions is subject to an ETR below 15%
- Some of that profit is subject to the substance carve-out but much is not, with an estimated yield of up to around 7.5 % of CIT for low and middle-income jurisdictions

Complexity

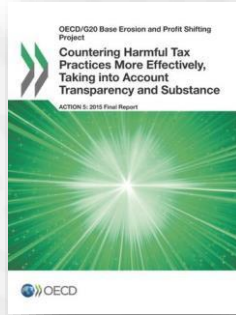
- Given the nature of the task it is complicated (despite simplifications)
- Phased in (transitional safe harbours, e.g. CbCR SH)
- Complexity to understand versus to operate
- Compliance approaches will be key both in domestic and international context
- Simplification potential beyond the Pillar

TAX TRANSPARENCY

Tax Transparency

Business

Inclusive Framework
143 members



Rulings

- Almost **54 000** exchanges of information took place by 31 December 2022.

CBCR

- Over 110 jurisdictions
- As of October 2023, over 3500 EOI relationships in place
- at the heart of other tax certainty programmes, including ICAP.



2009

2014

2015

2021

2023

EOIR

- **370 000** information requests since 2009



CRS

- Automatic exchange of financial information
- Game-changer in terms of deterring and detecting **tax evasion**
- Information covering total assets of above **EUR 12 trillion** exchanged automatically



PLATFORM OPERATORS

- Reporting rules and exchange of information on **income of sellers, services intermediated via platforms,**
- Optional extension to sale of goods



CARF and CRS 2.0

- Due diligence and reporting rules on **Crypto Assets Service Providers** (2022)
- Exchange of information framework (2023)

Real estate

- Interconnect ed registers

Individuals

Global Forum
168 members