

## Canada rejects OECD's one-year extension of digital services tax moratorium

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On July 11, 2023, the OECD/G20 Inclusive Framework on BEPS approved a four-part [Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy \[PDF\]](#) (the Statement) that provides updates on the two-pillar solution. A key takeaway of the Statement is the announcement that the moratorium on new digital services taxes (DST) will be extended by one year to December 31, 2024, if certain conditions are met.

### Lack of international consensus on DST moratorium extension

Part I notes that most members of the OECD/G20 Inclusive Framework have committed to the one-year extension of the moratorium on introducing new DSTs and similar measures. This commitment is conditional upon signature of a draft multilateral convention (MLC) on Amount A of Pillar One before the end of 2023 by at least 30 jurisdictions where at least 60% of the ultimate parent entities of the in-scope multinational enterprises (MNEs) are located.

The E.U. Tax Observatory has [noted \[PDF\]](#) that U.S. companies represent approximately 46% of the companies covered in Pillar One. As a result, it appears that the condition to the OECD/G20 Inclusive Framework's commitment to the one-year extension of the DST moratorium will not be satisfied without U.S. approval, and the U.S. Congress has so far indicated it is opposed to incorporating Pillar One into U.S. domestic law.

### Amount A

Part I of the Statement also addresses Amount A, which is a key element of Pillar One: it allocates a portion of profits of in-scope MNEs to market jurisdictions using a formulary approach and gives those market jurisdictions the right to tax such amounts.

The OECD announced that progress has been made in developing the Amount A MLC but acknowledged some discrepancies between the jurisdictions on certain aspects. It is expected that a compromise will be reached on those discrepancies in the near future so that the Amount A MLC will be ready for signature later in 2023. The OECD envisages that the Amount A MLC will be accompanied by an Explanatory Statement. The Statement also suggests that if sufficient progress is made in 2024, the OECD/G20 Inclusive Framework members may further extend the DST moratorium to the earlier of December 31, 2025, or the date when the Amount A MLC enters into force.

Few other jurisdictions have joined Canada in rejecting the one-year extension of the DST moratorium. Currently, in line with the 2023 Budget, Canada is expected to introduce its DST

effective January 1, 2024, with retroactive effect to taxable Canadian digital services revenue earned from January 1, 2022, onward.

## Amount B

Part II of the Statement discusses Amount B of Pillar One, which is aimed at streamlining and simplifying certain transfer pricing concepts. Although Amount B is designed in the context of Pillar One, it has a broader scope. The Statement notes the consensus reached on many aspects of Amount B and announces a public consultation to be launched later in July on the remaining Amount B issues, with a deadline of September 1, 2023, for stakeholders to submit comments.

The OECD/G20 Inclusive Framework expects to approve a final report on Amount B later in 2023. The OECD will then incorporate the report into the OECD Transfer Pricing Guidelines by December 31, 2023.

## Subject-to-tax rule

Part III is dedicated to the subject-to-tax rule (STTR), which is a treaty-based rule of Pillar Two. The STTR will enable source jurisdictions to tax cross-border intra-group interest, royalties and service fees at a rate of 9%, subject to certain exclusions and limitations. An STTR model provision and commentary have been developed.

Jurisdictions can implement the STTR into their tax treaties through bilateral treaty protocols or through an STTR multilateral instrument (STTR MLI), a draft of which has been developed by the OECD/G20 Inclusive Framework. The STTR MLI will be open for signature starting from October 2, 2023.

Part IV of the Statement provides instructions to the OECD Secretariat to prepare an action plan to facilitate and coordinate the implementation of Pillars One and Two by the members of the OECD/G20 Inclusive Framework.

## Further reading

For further details on Pillar One Amounts A and B and Canada's plans to introduce a DST, please see the Osler Updates on June 7, 2021, July 5, 2021 and October 12, 2021 (OECD/G20 Inclusive Framework agreement); December 21, 2021 (Canada's draft DST legislation); and March 28, 2023 (Budget 2023 update on the Pillars); as well as the Osler submission on the OECD Pillar One and Pillar Two Blueprints, dated December 14, 2020.