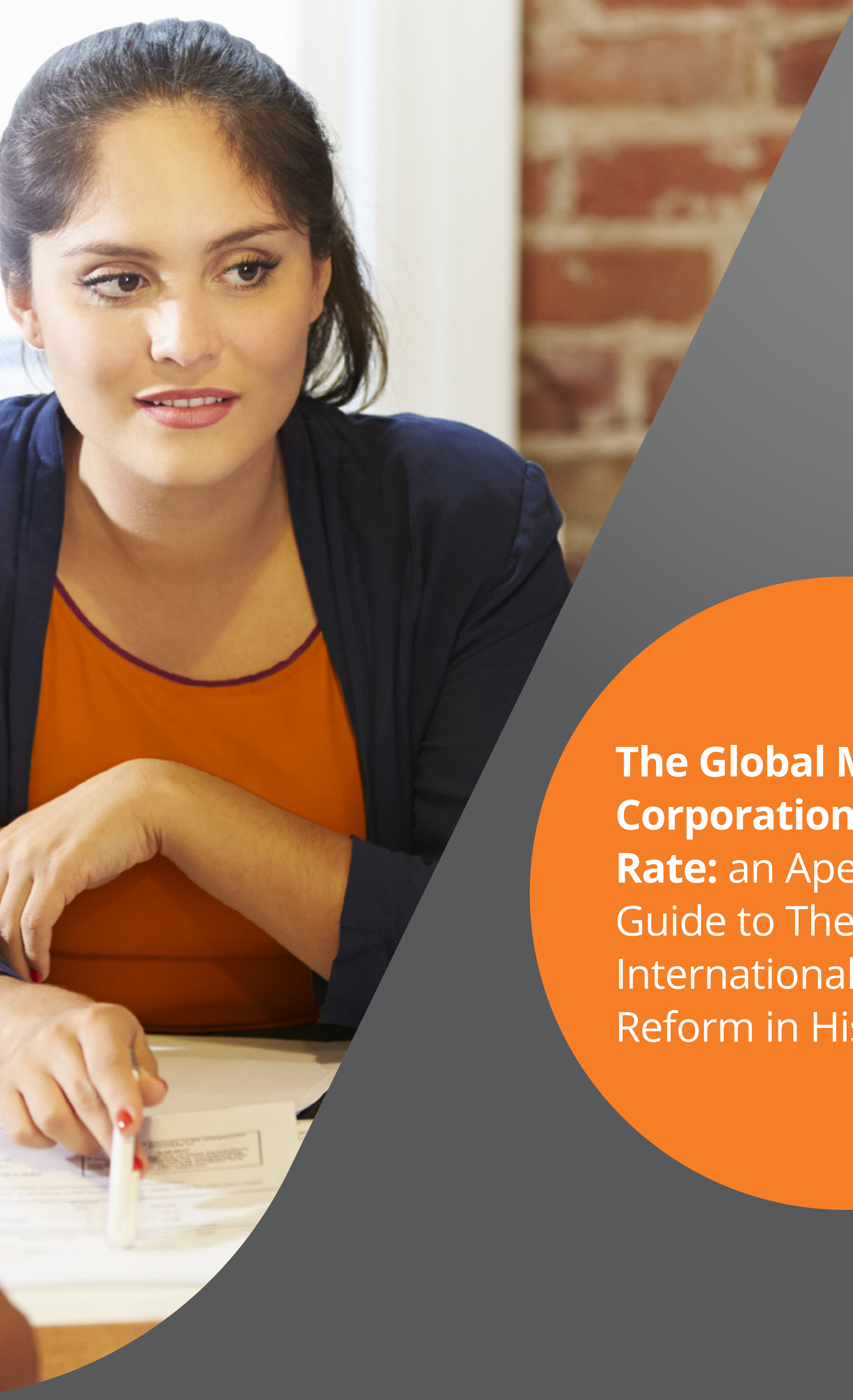

APEX

The Global Minimum Corporation Tax Rate: an Apex Group Guide to The Largest International Tax Reform in History

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Speaking at the World Economic Forum in Davos on May 29, 2022, OECD Director-General Mathias Cormann said there were "difficult discussions under way" and that the landmark agreement on a global minimum corporation tax rate would now come into effect from 2024 at the earliest.

Background

On October 12, 2020, the OECD published its Blueprint for the Inclusive Framework on Base Erosion Profit Shifting ("the Inclusive Framework"). A key part of the Inclusive Framework is the proposals for a global minimum rate of corporation tax. This subsequently gained mainstream media coverage following the meeting of the Group of Seven ("G7") Finance Ministers in London in June 2021.

By July 9, 2021, 132 countries and jurisdictions, representing more than 90% of global GDP had signed-up to the OECD's Inclusive Framework, with a target date for the proposals to be implemented by Member States with effect from January 1, 2023.

The comments quoted above from OECD Director-General Mathias Cormann put emphasis on the fact that the January 1, 2023 implementation date is no longer considered feasible. The key question, given the political momentum behind the proposals, is what has happened to result in the delayed timetable for implementation?

Below we review some of the reasons for the delays and the key political obstacles which still need to be addressed before the global minimum corporation tax rate is finally introduced.

> *"The complexity of what the G20/ OECD are attempting to accomplish by introducing the global minimum corporation tax rate cannot be underestimated. This is the largest global tax initiative in history."*

The summary below is not intended as a recap of the OECD's proposals. If you would like a recap of the proposals, please see our previous publication, "A Global Corporation Tax Rate: Understanding the OECD's proposal".

OECD Commentary on the Inclusive Framework

Despite originally committing to publishing a detailed Commentary on the Inclusive Framework by October 2021, it wasn't until March 14, 2022 that the detailed Commentary was finally published.

The delays to the publication of the Commentary were not unexpected. At 214 pages, the commentary is highly complex, and there remain significant questions which will need to be addressed through the implementation process.

The publication of the OECD's Commentary was the critical first step. This effectively served as the launch date for the OECD signatory Member States to start the public consultation process to evaluate how the Inclusive Framework can be harmonized into local laws.

> *"Although no formal announcement has been made on timing, it is clear that the original commencement date of 2023 is no longer feasible."*

The EU Law Angle

A key objective of the French Presidency of the European Council was reaching unanimity agreement among Member States for the implementation of the OECD's proposals on a global minimum corporate tax rate from January 1, 2023. Due to recent geopolitical developments and concerns from Member States about the complexities of harmonizing local laws to adopt the OECD's proposals, the implementation of the global minimum corporation tax rate in EU Member States has been deferred until January 1, 2024.

“Achieving unilateral agreement with the adoption of the Directive will be the most critical development for the global minimum corporation tax rate to materialise.”

Given the complexities of harmonizing the OECD’s Inclusive Framework into local law across all 27 European Union (“EU”) Member states, it is not surprising that the location where the most difficult implementation issues are being experienced is the EU.

Within the EU, the global minimum corporation tax rate proposals are to be legally enacted in the form of the EU Minimum Tax Directive (the “Directive”). This was discussed by the Economic and Financial Affairs Council (ECOFIN) on March 15, 2022. The meeting failed to reach agreement on the text for the Directive and a proposed implementation date of January 1, 2023. The four Member States objecting (Sweden, Poland, Malta and Estonia) all expressed concerns at the short timeline for the implementation of such local legislation to comply with the EU’s Directive.

The above situation escalated in the ECOFIN meeting of May 24, 2022 when Poland exercised its veto against the Directive. Although Poland subsequently removed its veto, at the next ECOFIN meeting of June 17, 2022, it was the turn of Hungary to exercise its veto.

French Finance Minister Bruno LeMaire, who had made adoption of the Directive a key part of France’s presidency of the EC, commented that “all technical issues have been long solved”. The expectation is that Hungary will also drop its veto to the adoption of the Directive, but the failure to reach unilateral agreement on adoption of the Directive during France’s presidency of the EC has made the January 1, 2023 commencement date impossible.

In the published notes of the ECOFIN meetings it is now proposed that the Directive will be adopted by EU Member States from January 1, 2024.

The United Kingdom (“UK”)

“The Government has listened to the suggestions and areas of concern raised during the consultation. One of the points raised most consistently and forcefully in consultation responses was the need for a sufficient lead-in time before the rules are implemented in the UK. That is in recognition of the complexity of the rules, the fact that there remain important policy and administrative issues being discussed within the OECD Implementation Framework, and the need for businesses to take steps and build systems to be able to ensure rule compliance” – Lucy Frazer, MP

Following the publication of the Commentary by the OECD in March 2022, the UK government opened a public consultation on the implementation of the OECD’s proposals ahead of a commencement date of March 31, 2023.

In a surprising and very low-key announcement made on June 14, 2022 in a response to ‘Respondents to the Pillar 2 Consultation’, it was announced the commencement date had been deferred until January 1, 2024.The key reasons for the deferral are the complexity of the legislation required and the short timeframe for implementation.

It is likely that the delayed implementation date was announced to align with the deferred implementation by EU Member States. There is no indication that further consultation will be undertaken or that the rules will not be implemented from January 1, 2024.

The United States (the "US")

The Biden Administration has faced difficulties getting measures through Congress. Draft legislation to comply with the OECD's global minimum tax rate proposals was included in the administrations $1.75trn 'Build Back Better' infrastructure bill, which has passed the House of Representatives but has not cleared the Senate.

Similar to the EU and the UK, the US had initially targeted implementing the OECD's Inclusive Framework from 2023.

Janet Yellen has been one of the leading advocates for the adoption of the Inclusive Framework and has been noted for liaising with the EU Finance Ministers in trying to unlock the vetoes from Poland and Hungary at ECOFIN.

Although the Biden administration continues to push for implementation, the failure of the bill to clear the Senate casts significant doubt over whether the measures will subsequently be enacted in the US. At the time of writing, the advice to readers is simply to watch this space. The geo-political climate remains uncertain and any progress is likely to be dependent on other political issues.

Although no formal announcement has been made on timing, it is clear that the original commencement date of 2023 is no longer feasible. If the bill were to successfully clear the Senate, a commencement date of January 1, 2024 is considered more likely. This will bring the US in line with the EU and UK.

15%

Corporate tax rate to now only apply to companies forming part of MNEs.

What About "Low Tax" Jurisdictions?

The most significant development for low tax rate jurisdictions is that the 15% global minimum corporation tax rate will only apply to companies forming part of a large Multi-National Enterprise (or "MNE", defined as business with consolidated revenues of >€750m). The majority of entities operating in low tax rate jurisdictions will not be within the scope of the global minimum corporation tax rate.

As expected, most low tax rate jurisdictions are simply adopting a watching brief before taking any actions to amend local tax laws to comply with the OECD's Inclusive Framework.

The myth that low tax rate jurisdictions would have to operate a de facto 15% corporation tax rate applying to all entities has now been dispelled following publication of the Commentary by the OECD in March 2022. Any introduction of a corporate tax rate by low/non-taxing jurisdictions is now expected to take the form of a targeted 15% tax rate only applying to companies forming part of large MNEs.

The OECD's guidance was also notable for the inclusion of large scale carve-outs for Pension Funds; Collective Investment Vehicles and Reinsurance Companies.

The above measures follow negative feedback that the Inclusive Framework could be penalising developing economies which often use lower corporation tax rates to attract foreign investment. The targeting of the global minimum corporation tax rate to focus specifically on large MNEs should go some way to relieving the socio-political concerns.

The watching brief by low tax rate jurisdictions is expected to continue throughout 2022 and 2023. Any introduction of corporation tax rates to comply with the Inclusive Framework is expected to mirror the implementation date adopted by the EU. As things currently stand, this means that January 1, 2024 is the critical date.

Key Milestones in the Development of the Global Minimum Corporation Tax Rate

- **2017 -2020** — OECD/G20 led discussion on the Inclusive Framework and how to address the digitalization of the global economy
- **Oct 2020** — The OECD publishes the Blueprint on the Inclusive Framework and proposals for a global minimum corporation tax rate
- **Jun 2021** — G7 outlines the intention for a global minimum corporation tax rate of 15%
- **Oct 2021** — 140 countries and jurisdictions sign-up to the Inclusive Framework
- **Mar 2022** — OECD publishes technical commentary and guidance on the Inclusive Framework
- **Mar 2022** — Draft text of the EU Minimum Tax Directive is debated by ECOFIN
- **Mar 2022** — Poland exercises its veto in the ECOFIN meeting on March 14, 2022
- **Jun 2022** — Hungary exercises its veto in the ECOFIN meeting on June 17, 2022
- **Jun 2022** — The EU and the UK formally defer implementation date to Jan 1, 2024
- **1 Jan 2024** — Proposed Implementation of the Inclusive Framework in the EU and the UK

Next Steps

The complexity of what the G20/OECD are attempting to accomplish by introducing the global minimum corporation tax rate cannot be underestimated. This is the largest global tax initiative in history.

The target implementation date of January 1, 2023 was widely considered to be aspirational. The delays are not unexpected and neither are the causes. Passing legislation of this scale in the EU and the US was always going to be incredibly difficult. Developments in the geo-political landscape over the last year have made this far more complex, and geo-political concerns present the biggest factor which could result in further delays to implementation.

However, for lower tax rate jurisdictions, the developments over the 12 months following the initial G7 meeting in London when the global minimum corporation tax rate proposals first obtained mainstream media coverage, should be seen as very positive. The socio-economic concerns about the proposals reducing investment in developing economies have been addressed solely to the measures targeting large MNEs. The concerns raised by the Investment Management Industry have also been addressed through the wide-ranging exemptions for Collective Investment Vehicles, pension funds and reinsurance companies.

> *"Developments over the next 18 months ahead of the proposed January 1, 2024 commencement date are likely to be fascinating as the measures play out on the political scene."*

Our advice to clients with operations which may potentially be impacted by the measures remains to adopt a watching brief. Although there has been significant progress over the last 12 months, there remains a very long way to go before we see the proposals become law.