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WHITE PAPER

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Dispute Resolution Under OECD's "Pillar Two" 15% Global Minimum Tax Remains Unclear

In October 2020, the Organization for Economic Co-operation and Development ("OECD") Secretariat released a report addressing its "Pillar Two" blueprint for an overhaul of the international tax system. Pillar Two provides for a minimum tax of at least 15% on the earnings of qualified multinationals in each of the jurisdictions where they operate. While the Pillar Two rules remain something of a work in progress, they are, given they have already been adopted in several jurisdictions, a business reality. It is clear that this regime, when fully enacted, will likely give rise to complex multijurisdictional disputes.

This White Paper thus sets out best practices multinationals should adopt both in anticipation of, and to avoid, such disputes.

INTRODUCTION

On October 12, 2020, the OECD Secretariat released a report on its "Pillar One" and "Pillar Two" blueprints for an overhaul of the international tax system. Pillar One seeks to reallocate taxation rights over multinationals with an annual global turnover exceeding €20 billion and a 10% profitability rate from their home States to markets where they have business activities and earn profits, regardless of whether they have a physical presence there. Pillar Two provides for a global minimum tax ("GloBE") of at least 15% on the earnings of multinationals with annual book revenue of at least €750 million (US$868 million) in at least two of the preceding four years and a presence in at least one country that has adopted the Pillar Two rules.

Although Pillar Two Model Rules became effective on January 1, 2024, individual States continue to consider how to incorporate Pillar Two's 15% global minimum tax into their domestic law. As the OECD continues to develop its international tax overhaul, it will be up to individual governments around the world to determine whether, and to what extent, they enact this new plan in 2024 and beyond.

This Jones Day *White Paper* provides an overview of the potential implications of the likely upcoming adoption of Pillar Two by an increasing number of States, discusses potential approaches to resolving the complex multijurisdictional disputes that are likely to arise under Pillar Two, and sets out several best practices multinationals should adopt in anticipation of such disputes.

FACTUAL BACKGROUND

On December 20, 2021, the OECD released its Pillar Two Model Rules and has since issued several tranches of detailed administrative guidance. The Model Rules allow governments to decide what local corporate tax rate to set, but if multinationals were to pay rates less than 15% in a particular jurisdiction, other countries in which the multinational operates could then extract a "top up" equal to the difference. This is generally intended to ensure that multinationals pay tax at a modified effective tax rate of at least 15% in every jurisdiction in which that enterprise operates.

There are two key rules, namely: (i) a domestic minimum tax that all countries are encouraged to adopt to ensure that the income generated by multinationals in that jurisdiction is taxed in accordance with the minimum GloBE rate; and (ii) two different top-up tax regimes pursuant to which countries can impose tax on multinationals to the extent that such multinationals: (a) generate income in countries that have not adopted qualifying domestic minimum taxes; and (b) pay tax in those countries below the minimum GloBE rate.

More than 40 jurisdictions have taken official action to implement this global minimum tax. In particular, on December 15, 2022, EU Member States collectively agreed to adopt GloBE. Certain EU minimum tax regulations became effective on January 1, 2024, with the remainder (primarily relating to a backstop enforcement-type regime) becoming effective on January 1, 2025. Several non-EU countries, including Canada, Australia, and New Zealand, are expected to adopt GloBE in the near future, while the United Kingdom, Japan, Switzerland, and South Korea have already done so. Governments that have announced target dates for implementing Pillar Two's Model Rules include the governments of Hong Kong, Norway, Singapore, Malaysia, and the United Arab Emirates. Yet further countries are in the process of consulting stakeholders on the best way to implement the global minimum tax. Although the United States is not expected to adopt GloBE-compliant rules any time soon, the rules will be relevant to any U.S. multinational that has a presence either in the European Union or in any other jurisdiction that has adopted, or is planning to adopt, GloBE.

On January 18, 2023, the OECD released new revenue estimates for the global minimum tax. It is now expected to result in annual global revenue gains of around US$220 billion, or 9% of global corporate income tax revenues. In addition, on February 1, March 14, and July 17, 2023, the OECD released technical guidance for implementation of GLoBE. Furthermore, on October 3, 2023, the OECD released for signature a new Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule ("STTR") enabling developing countries to tax certain intragroup payments when those payments are subject to a nominal tax rate below 9%. The Convention allows signatory States to swiftly implement the STTR in existing bilateral tax treaties without the need for further negotiations.[1]

KEY IMPLICATIONS FOR MULTINATIONALS

Even though the OECD issued its Model Rules with the intention that they would be used by various States when incorporating the Pillar Two and GloBE rules into their domestic legislation, it is expected that there will nevertheless still be discrepancies as to how precisely the rules are drafted, interpreted, and applied in practice. National tax systems and the existing network of double taxation treaties will have to be adapted to address this new multilateral tax scheme.

For the purposes of determining effective tax rates ("ETRs"), the GloBE rules distinguish (albeit imprecisely) between qualified refundable tax credits ("QRTCs") and other income tax credits. QRTCs are treated as *government subsidies* that can lead to an increase in pretax income or a reduction in pretax loss, while other income tax credits are treated as *reductions in tax liability*. Reductions in tax liability will have a much more dramatic impact on lowering ETRs in a given jurisdiction than government subsidies.

There is therefore a significant risk that States that provide tax credits (including the United States) will take the view that such credits constitute government subsidies and thus that their residents have not fallen below the 15% ETR, whereas other jurisdictions will adopt a different approach and impose top-up taxes that will undermine the purpose and intended benefit of any tax credits. The distinction between reductions in tax liability and government subsidies is important for both tax policymakers when designing tax incentives, and for multinationals when planning activities that they intend to be eligible for income tax subsidies.

On a similar note, the GloBE system is likely to move investment incentives away from reductions in tax toward other forms of subsidies, including government grants. These new subsidies will likely, in turn, raise a number of issues. As with tax credits, there is a risk that States may view investment incentives as a reduction in tax liability, thereby triggering the imposition of a top-up tax. Multinationals will need to be prepared to quickly take advantage of these new incentives as and when they become available. It is worth noting that some companies that currently qualify for tax incentives may not qualify for these new subsidies or may otherwise need to change their operations or negotiate with local governments to ensure that they will still qualify for any new incentives.

Moreover, under Pillar Two, there is no universal rule with respect to the applicable financial accounting standards. Although the GloBE rules treat certain accounting standards as *per se* acceptable, they do not prohibit the application of other accounting standards provided that: (i) they are sufficiently similar to the *per se* acceptable standards; and (ii) their application does not result in "material competitive distortions" under the GloBE rules. Although the OECD explained in its technical guidance of February 1, 2023, that the threshold for "material competitive distortions" should be €75 million in a fiscal year for the entire multinational enterprise's group, it remains unclear how exactly to apply this threshold and what authorities will be responsible for determining whether the application of a particular set of accounting standards could lead to such a distortion.

The GloBE rules also include provisions intended to assist companies that, for whatever reason, cannot locate the old accounting records necessary to fully perform the GloBE calculations. In such circumstances, different States may disagree as to whether the GloBE rules should apply, and, if they believe they should, what the appropriate remedy should be.

Application of the undertaxed payments rule ("UTPR") across multiple States is based on a formula that takes into account the number of employees and value of tangible assets a multinational has in every jurisdiction in which the multinational operates that has adopted a qualifying UTPR. Any differences between the jurisdictions' laws as to the calculation of employees or tangible asset value, or whether a given country's UTPR is in fact qualifying, could easily result in double taxation in circumstances where the UTPR is applicable.

Pillar Two's income inclusion rule will also likely increase the tax burden for cross-border investments and impact business decisions as to where to invest around the world, particularly with respect to activity in traditionally lower-tax jurisdiction. The possibility of resistance from countries with a corporate tax rate below 15% cannot be ruled out, as their economic models will be shaken by the adoption of such a rate. A global minimum tax could undermine investment incentives offered via lower tax rates in countries like Bermuda, the Cayman Islands, and the British Virgin Islands.[2] It could also affect countries not typically considered tax havens, like Thailand, the United Kingdom, Vietnam, Hong Kong, Singapore, Ireland, Switzerland, and Macao, where the corporate tax rate varies between 12%

and 21%, but the effective tax rate can be much lower after taking into consideration various incentives—meaning that the 15% global minimum tax may affect investment decisions in these jurisdictions.

Some States, in light of Pillar Two, have already started to develop alternative plans to attract foreign investment. For example, Switzerland—where many large multinationals are headquartered—plans to offer subsidies to companies to offset the new 15% minimum tax rate.[3]

The OECD is expected to continue issuing additional guidance to resolve all outstanding issues. This presumably will need to be adopted by national governments in order to take effect. It is not clear what will happen if national governments refuse to adopt specific measures contained in the new guidance, but we anticipate that would lead to more dissonance in the adoption and interpretation of the GloBE rules.

POSSIBLE APPROACHES TO RESOLVING COMPLEX MULTIJURISDICTIONAL DISPUTES

The OECD is currently working on the implementation of a robust and transparent peer review process that would determine whether a country's minimum tax measures are compliant with the Pillar Two regime. Michael Plowgian, the Deputy Assistant Secretary for International Tax Affairs at the U.S. Department of the Treasury, noted that such a system is necessary to ensure "that everybody knows in advance" which jurisdictions have the right to collect a top-up tax under the Pillar Two rules.[4] He also explained that, even though this process "is important [for] giving taxpayers certainty in terms of rule order" and in order to "help[] prevent disputes in the first place," it is "not going to solve everything, obviously," concluding that a Pillar Two dispute resolution mechanism is probably a "longer-term issue."[5]

We agree with Mr. Plowgian. Even though the peer review process might potentially conclude that any rules resulting in a conflict or double taxation are not compliant with the Pillar Two rules, the process of reviewing the GloBE taxes and non-GloBE tax incentives of every member of the inclusive framework will take a significant amount of time (likely years). It is thus critical to determine what other dispute resolution measures are readily available for multinationals.

On December 20, 2022, the OECD issued its Public Consultation Document on Pillar Two – Tax Certainty for the GloBE Rules ("OECD Consultation Document") to provide guidance on: (i) dispute *prevention* mechanisms aimed at avoiding disputes stemming from differing interpretations of the GloBE rules; and (ii) dispute resolution mechanisms allowing for the prompt settlement of any disagreements that may arise between interested parties.[6]

The OECD Consultation Document suggests that dispute prevention mechanisms should ensure consistent interpretation and application of the GloBE rules at an early stage in the compliance or assessment process. These dispute prevention mechanisms include: (i) reliance on the OECD Model Rules; (ii) commentary and guidance to support consistency in the application of the rules; (iii) a multilateral review process to determine whether a State has implemented a "qualified" income inclusion rule; (iv) undertaxed profits rules or a domestic minimum top-up tax; and (v) common risk assessment and coordinated compliance programs. Bilateral or multilateral advance pricing agreements ("APAs") and bilateral or multilateral advance tax rulings ("ATRs") could also potentially serve as dispute prevention mechanisms; however, some OECD States do not provide taxpayers with the option of concluding an APA or ATR, so this potential solution would not be available to all.

The fact that the Pillar Two rules must be implemented through domestic legislation in each participating jurisdiction will most likely lead to disputes concerning the inconsistent and uncoordinated application of the GloBE rules. One of the key differences between traditional tax disputes and potential disputes arising under GloBE is the multijurisdictional nature of the latter. If, for example, a U.S. multinational has subsidiaries in two countries, and one jurisdiction imposes GloBE taxes with respect to profits earned in the other, it is unclear whether and how multinationals might use existing bilateral dispute mechanisms to resolve such disputes.

The OECD Consultation Document references only the Mutual Agreement Procedure ("MAP") provision of Article 25 of the OECD Model Tax Convention as the basis for a GloBE dispute resolution mechanism. It further establishes only three parameters for the use of such a dispute resolution mechanism, as follows:

- Multinationals should be permitted to submit a request to a competent authority in a State whose actions could result in unintended taxation under the GloBE rules;
- Competent authorities, where justified, should be allowed to resolve the case with their counterparts in the other impacted jurisdiction; and
- States should implement agreements reached by competent domestic authorities notwithstanding any domestic time limits.

The OECD Consultation Document further posits that dispute resolution mechanisms could be implemented through various existing and new legal instruments. However, while the OECD Consultation Document points to existing mechanisms including the Convention on Mutual Administrative Assistance in Tax Matters ("MAAC") and bilateral double taxation treaties, it is unlikely that the MAAC would constitute an effective dispute resolution mechanism because it does not entitle taxpayers to request that a competent authority review the tax policy that they claim is harming their investment. Rather, it is primarily intended to facilitate the exchange of information between States' respective competent authorities.

Nor does the option of using the MAP provisions to resolve GloBE disputes in existing double taxation treaties sound particularly promising. Not all jurisdictions that implement the GloBE rules will have treaties in force with each other. In addition, many double taxation treaties contain limitations allowing taxpayers to initiate a MAP case only where there is "taxation not in accordance with" a tax treaty, and as of now, it is not clear if disputes concerning the GloBE rules will necessarily involve "taxation not in accordance with" a tax treaty.

New alternative dispute resolution mechanisms could include the incorporation of dispute resolution provisions into domestic law and the potential adoption of a multilateral convention addressing the international resolution of GloBE tax disputes.[7] The OECD Consultation Document suggests that States that implement the GloBE rules could:

- Allow multinationals to file a request before the competent authority of a State whose actions have led to unintended tax consequences;
- Authorize their competent authorities to accept such requests where justified and, where the competent authority cannot resolve the issue itself, initiate discussions with other impacted competent authorities to find a common solution;
- Authorize their competent authorities to enter into discussions where a similar request is filed before another jurisdiction in order to find a common solution; and
- Implement the agreed common solution notwithstanding any domestic time limits.

The obvious downside of any such dispute resolution mechanism is that many States could potentially oppose its incorporation into their domestic law, thereby preventing the adoption of a duly harmonized dispute resolution mechanism for the Pillar Two and GloBE rules.

Multinationals negatively impacted by the adoption of a global minimum tax could also potentially mitigate evolving regulatory risks by relying on certain rights and substantive protections guaranteed to them through a specialized body of legal rules and standards that apply between sovereign States and foreign investors. Such guarantees are contained in bilateral and multilateral investment treaties ("BITs" and "MITs"). The ability to access these guarantees is determined by the nationality of the investor and the location of the investment. If, for example, the investor is incorporated in State X, and the investment is located in State Y, the international protections afforded to the investor and investment would derive from a treaty in force between State X and State Y. These treaties provide recourse to arbitration for foreign investors to vindicate their investment rights and recover damages, including lost profits. Currently, there are more than 2,500 investment treaties offering varying degrees of protection.

International investment treaties generally include certain basic provisions, such as protection against unlawful expropriation without compensation; the right to fair and equitable treatment; and guarantees of full protection and security, national treatment, and most-favored-nation treatment under international law. Beyond these basic provisions, investment treaties vary in the level of protection they provide. Multinationals should review their corporate structures to ensure that their investments are protected by one or more favorable treaties in the event of a dispute with the host State. When evaluating investment treaties, multinationals need to consider carefully which treaty provides the optimal range of protections for their specific circumstances.

Investment treaties sometimes specifically preclude or limit some matters from being subject to any dispute resolution mechanism, including arbitration under a treaty. One such matter is taxation. Many investment treaties are drafted so as to exclude or carve out taxation measures either totally or partially from the ambit of the investment treaty (e.g., the Energy Charter Treaty, U.S.–Jordan BIT, U.S.–Peru FTA, etc.). There are also conditional (or partial) limitations where certain standards of protection, such as expropriation, apply to tax measures, while the remaining scope of the treaty generally excludes tax measures (e.g., Article 10(2)(c) of the U.S.–Ecuador BIT). Some investment treaties provide carve-outs only for certain types of tax measure, such as income or capital gains tax.

Each treaty might also contain unique procedural requirements, such as temporal limitations for bringing an investor-state arbitration claim. Some treaties also contain so-called "fork-in-the-road" provisions requiring an investor to choose between bringing a domestic proceeding or an international arbitration with respect to the same dispute. In some cases, fork-in-the-road provisions are so stringent that investors could be foreclosed from all international fora under the applicable treaty if they initiate any type of action with respect to the dispute in local courts. But even where the applicable treaty does not contain a "fork-in-the-road" provision, multinationals should still remember that everything they plead and submit in local courts might be used as evidence in any later international arbitral proceedings.

In sum, as of now, the following specific mechanisms might potentially be employed by multinationals to resolve disputes arising under Pillar Two and the GloBE rules:

- Reliance on the provisions of the MAAC to facilitate the exchange of information between States' respective competent authorities with respect to interpretations of the GloBE rules; and/or
- Initiation of a MAP request under an applicable double taxation treaty, with the competent authority of the place of a multinational's incorporation, with the aim of removing any double taxation through negotiations with the competent authority of the State that implemented the impugned taxation measure; and/or
- Initiation of an investment dispute based on an applicable investment treaty against the State that implemented the impugned taxation measure.

ILLUSTRATIVE FACT PATTERN

It is helpful, here, given the complexities and in order to help illustrate how disputes might work in practice, to review a model fact pattern that could well arise between an investor and the host State of its investment, and analyze any claims that could potentially be brought under the above-mentioned dispute resolution instruments.

Consider a U.S. multinational that has subsidiaries in the Cayman Islands, Australia, and Germany, and significant business activities in the United States. The multinational benefits from transferrable green energy tax credits and accordingly pays a low rate of tax in the United States. Its Cayman subsidiary likewise pays no income tax. However, the U.S. multinational does not pay U.S. tax with respect to the Cayman subsidiary's income because it claims credit for the German and Australian taxes paid by its German and Australian subsidiaries, thereby eliminating any U.S. tax that otherwise would have been owed on its Cayman subsidiary's low-tax income. Both Germany and Australia impose tax on the U.S. income of the U.S. multinational, as well as the income of the Cayman subsidiary.

The tax imposed by Germany and Australia results in total jurisdictional ETR above 15% in each jurisdiction for two key reasons: (i) notwithstanding that the multinational believes that its transferrable green energy credits are QRTCs under the GloBE guidance, one or both of the Australian and German governments disagree; and (ii) for purposes of allocating UTPR between Germany and Australia, the two countries disagree on the total number of employees in each jurisdiction. The following would apply under the various dispute resolution mechanisms discussed above.

MAAC

The United States, the Cayman Islands, Australia, and Germany are all members of the MAAC[8] but, as noted, this would not entitle either the U.S. multinational or its Cayman subsidiary to request that a competent authority review the disputed Australian or German tax policies. The only way the MAAC could be used in this hypothetical would be as a means to initiate discussions between the U.S. or Cayman governments to determine whether they might agree to consult with Germany and Australia with respect to their interpretations of the GloBE rules. This would not seem worthwhile from the investor's standpoint.

Double Taxation Treaties

The United States has double taxation treaties with both Australia and Germany. The Cayman Islands, however, do not have double taxation treaties in force with Australia and Germany. Thus, only the U.S. multinational, in theory, could rely on the U.S.–Germany (1990) and U.S.–Australia (1983) treaties. Both treaties contain MAP provisions allowing the U.S. multinational to file a MAP request, with its respective competent authority, to negotiate with the competent authorities of Australia or Germany, as applicable, with the aim of doing away with any double taxation. In theory, the adjusting jurisdiction could agree to fully or partially withdraw its tax, or the other jurisdiction might alternatively agree to provide correlative relief (viz. a downward adjustment of taxable income). However, the MAPs in the double taxation treaties in question allow taxpayers to initiate a MAP case only where there is "taxation not in accordance with" a tax treaty, and there is therefore a risk that the GloBE rules will not be deemed caught by the existing tax treaties. As such, it is not clear whether these remedies will be available where disputes arise in relation to the GloBE rules.

Alternatively, the U.S. multinational could try to rely on a MAP provision of the U.S.–Germany double taxation treaty that allows competent authorities to "consult together for the elimination of double taxation in cases not provided for" in the treaties.[9] Such provision, however, is discretionary and cannot be directly accessed by foreign investors, such that the relevant competent authorities would have full discretion to determine whether to address this issue, with impacted multinationals having no right to submit direct requests for the revision of any impugned tax measures.

If we change the fact pattern such that Australia imposes additional tax on the Australian subsidiary, it is unclear whether the U.S. multinational would be able to rely on the U.S.–Australia double taxation treaty to bring a claim on behalf of its Australian subsidiary. This is because, even though the OECD is adopting the position that GloBE taxes are imposed by a jurisdiction on its domestic taxpayers (and not on the residents of the low-tax jurisdictions), savings clauses in tax treaties generally provide that the treaty does not prevent a country from imposing whatever taxes it wants on its own residents.

Incorporation of Pillar Two Dispute Resolution Provisions into Domestic Law

If Germany and Australia incorporate a Pillar Two dispute resolution mechanism into their domestic law, both the U.S. multinational and its Cayman subsidiary would be able to file a request before the German or Australian competent authorities to resolve the double taxation issue. According to the OECD Consultation Document, the German and Australian competent authorities would also be able to consult with each other to find a common solution. As of now, however, it is not clear whether these jurisdictions will adopt mechanisms allowing the U.S. multinational and its Cayman subsidiary to file complaints directly with their competent authorities.

Investor–State Dispute Resolution

There are no investment treaties with arbitration provisions concluded between the United States and Germany and the Cayman Islands and Germany, as well as the United States and Australia and the Cayman Islands and Australia. So the only option for the U.S. multinational and its Cayman subsidiary to bring a claim against Germany and/or Australia would be to restructure their investments to maximize protections under existing BITs or MITs. The act of restructuring an investment to gain treaty protection is not prohibited as such, but several arbitral tribunals have held that investors cannot restructure to gain treaty protection after a dispute has become foreseeable. Thus, restructuring has the best chance of being recognized as legitimate if it takes place before any alleged breach occurs or becomes foreseeable.

It is also important to see whether the parties have concluded an investment agreement with a stabilization clause (containing specific undertakings by the host state to "freeze" the applicable law at the time of investment), which could offer a separate, stand-alone route for the U.S. multinational and/or its Cayman subsidiary to make a contractual, commercial arbitration claim against Germany and/or Australia.

BEST PRACTICES FOR MULTINATIONALS IN ANTICIPATION OF COMPLEX MULTIJURISDICTIONAL PILLAR TWO DISPUTES

Foreign investors should take concrete steps to ensure that their investments are protected. Since it is not yet clear what kinds of dispute resolution mechanism will (if ever) be available after the GloBE rules are incorporated into domestic legislation of various States (i.e., whether there will be a multilateral convention or a novel dispute resolution provision incorporated into States' domestic law to address GloBE disputes), multinationals should at least ensure that the States in which they invest have a double taxation treaty in force with the places of their incorporation.

Multinationals should also ensure that the host State is a member of the MAAC. Moreover, multinationals should analyze their investment's existing corporate structure to determine whether it is already protected by an applicable investment treaty and if not, restructure an investment to ensure that one of the corporate vehicles in the chain of ownership provides favorable protections. None of these mechanisms seems to be ideal, but there would be no other options available for the affected multinationals until the (potential) adoption of a multilateral convention or the introduction of a Pillar Two dispute resolution provision into States' domestic law.

CONCLUSION

Given the relative uncertainty surrounding the pending implementation of the 15% global minimum tax, foreign investors should take all possible precautions to prepare for potential disputes, and consider all available avenues to safeguard their assets early on. Foreign investors would benefit from consulting with international law counsel who can assist with strategic investment planning and the assessment of potential international law remedies should investments be negatively impacted by States' implementation of the Pillar Two and GloBE rules.

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ENDNOTES

1 Changes will only be made once both signatories to a specific bilateral tax treaty have taken the required steps to ratify the Convention.

2 Note that Bermuda has just recently announced its intention to impose a 15% corporate income tax applicable to Bermuda businesses that are part of multinational enterprise groups with annual revenue of €750 million which would be effective beginning in 2025. See *Bermuda Considers Introducing a Corporate Income Tax*, Government of Bermuda, 8 August 2023.

3 See *Switzerland plans subsidies to offset G7 corporate tax plan*, Swissinfo.ch; *Low-tax Switzerland votes on global minimum corporate tax rate*, Reuters.

4 *OECD To Issue Pillar 2 Peer Review Direction, US Official Says*, Law360, Tax Advisory, 29 November 2023.

5 *Id*.

6 Public Consultation Document, Pillar Two – Tax Certainty for the GloBE Rules, OECD.

7 This would, however, require States to agree on common concepts and universal language to address them, a major undertaking unlikely to be completed in the near future. If States are able to agree on the text of a multilateral convention, then that could well become an effective dispute resolution mechanism for Pillar Two and the GloBE rules. This would, ideally, provide full legal protection in the form of an enforceable procedure and grant taxpayers the possibility of forcing States' competent authorities to negotiate, and potentially even oblige them to enter into binding arbitration. The idea outlined in the OECD Consultation Document is to provide multinationals with direct access to a MAP-type procedure which would be binding on States' competent authorities.

8 The United States has signed but not yet ratified the Protocol amending the MAAC dated May 27, 2010. The Cayman Islands' adherence to the MAAC has occurred by virtue of the United Kingdom submitting a declaration requesting to extend its application to the Cayman Islands under Article 29 of the MAAC ("Any State may … by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration.").

9 The U.S.–Australia double taxation treaty does not contain such a provision.