Before the
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
Paris, France

In re:
Public Consultation on the Reports on the Pillar One and Pillar Two Blueprints

COMMENTS OF INTERNET ASSOCIATION

Internet Association (IA),[1] which represents over 40 of the world's leading internet companies, respectfully submits comments to the Organisation for Economic Co-operation and Development (OECD) Centre for Tax Policy and Administration on the Public Consultation on the Reports on the Pillar One and Pillar Two Blueprints.[2] The global economy has become increasingly digitized and the global tax rules should be updated for the digital age. The final OECD plan must be a long-term global solution that levels the playing field for all sectors, is clear to administer, and avoids the double taxation of digital industries.

IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA supports policies that promote and enable internet innovation, ensuring that information flows freely and safely across national borders, uninhibited by restrictions that are fundamentally inconsistent with the open and decentralized nature of the internet.

The digital industry believes that it is positive that 137 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed to a road map for resolving these tax challenges and committed to working toward a consensus-based long-term solution. The final solution should align the interests of governments and companies in generating economic prosperity by reducing economic distortions and avoiding adverse incentives. IA appreciates this work being undertaken to find a global solution and combat the discriminatory, go-it-alone, uncoordinated, and unilateral taxes targeted against U.S. firms that countries around the world have proposed or implemented.

It is critical that any solution be agreed upon among governments and should be contingent on the removal of unilateral measures. Consistent with the principles of all tax treaties and similar agreements these proposals should seek to both prevent fiscal evasion concerning taxes on income and ensure the avoidance of double taxation. Double taxation is a significant impediment to the growth of global trade that can be facilitated by internet commerce, and as such should be given equal or greater weight in the determination of the final policy being developed by the OECD.

The current global pandemic has only underlined how important digital policy is as businesses in all industries and of all sizes continue to function and keep us connected while remaining socially distant. Small businesses and entrepreneurs in every country and every community now use the internet to sell and export across the globe. Today, agriculture, manufacturing, and transportation companies are digital companies. It is because of this that the tax system should not favor certain sectors or technologies over others and should treat domestic and foreign firms equivalently.

[1] https://www.internetassociation.org/our-members/
[2] https://www.oecd.org/tax/beps/public-consultation-document-reports-on-pillar-one-and-pillar-two-blueprints-october-2020.pdf

The OECD must ensure that the final agreement is neutral in its sectoral focus, is grounded in principle, creates greater certainty for all businesses, and can be effectively administered by all participating countries. To the last goal, countries' rights to tax allocation should be delineated and not excessively subjective, to avoid costly disputes. The digital industry encourages the OECD to do deeper impact assessments based on the proposals, as it's important that any new system must not impose unreasonable compliance burdens on taxpayers. The goal should be to establish a predictable tax regime for the long-term that allows companies to make long-term investments, including addressing the treatment of losses in an economically rational way.

The broad nature of the negotiations with 137 participants is reflected in the complexity of the suggested reforms. In trying to marry interests from vastly different economic perspectives, the approaches to both pillars are quite subjective and stand to undermine a key objective – global taxation certainty. Simplicity must override detailed technical and subjective rules in the policy design. For example, the sourcing rules found in Pillar 1 suggest a hierarchy of sourcing rules that will undoubtedly lead to confusion and seek to require companies to try to obtain commercially sensitive information from customers. Most of the implementation appears to be driven by sales in a jurisdiction regardless of the level of taxable presence. IP address based on user location is unreliable due to the prevalence of VPNs (e.g. for corporate networks), and storage of such voluminous data is disproportionate and creates privacy and legal risks for companies. The nexus rules need to be clear and not overreach to draw in profits merely because a resident of a jurisdiction is using a technology. It is not clear what would have to be shown to prove out that one approach is unreliable and another should be used instead. As a result, different countries may have different views during panel review. The mandatory segmentation component is also problematic. This approach involving "segmentation hallmarks" is also based on rules that raise subjective judgments, and thus uncertainty.

In settling on any new taxing rights under Pillar 1 and/or Pillar 2, there must be clarity regarding the entitlement of the taxed entities to ensure there is no double taxation. While we appreciate that this is a difficult issue, failure to provide a simple and complete solution to double taxation merely increases the overall burden of tax on affected companies.

While the digital industry supports the plan to create a robust dispute resolution framework to provide certainty to companies, the proposed panel mechanism is problematic. This raises questions of resourcing and whether this complex system will overload the panel process. The panels and dispute resolution are essential for creating certainty, so under-resourced panels could undermine the success of the Pillar 1 framework from both the jurisdictional and taxpaying perspectives. The OECD must contemplate and advise how this body will be composed and financed. It is also imperative to determine what timeline will there be for settled decisions that require a panel process. The digital industry believes that it would be best to have a set window within a year for decisions. Lastly, there remains a question about what happens in cases where multiple parties are contesting the same funds. The system must be designed in a way for tax administrations to be able to agree and conclude on any contested funds. It is important that no businesses get caught between the two countries. These details are essential to the health of the proposed system and must be further developed.

The digital industry believes that moving forward the negotiations should strengthen areas that provide certainty. The complexity of the current proposals demands the OECD focus on areas that provide taxpayer certainty. Two key design aspects of Pillar 1 that work to achieve this goal are Amount B and the marketing safe harbor that caps the amount paid under Amounts A and B. A fixed amount B that is targeted to arm's length principle is critical to address the growing issues companies face with aggressive audits, however, Amount B must be tied to overall profitability to ensure low-margin and loss-making companies are not excessively taxed. It also is important in avoiding double-counting (two bites at the apple on Amount A). Amount A stands to provide the additional taxing authority countries are pursuing through an aggressive audit. Any OECD outcome must provide these essential backstops.

The digital industry insists that subnational jurisdictions conform to the Amount A rules and cannot impose gross receipts-based taxes. The industry supports the unlimited carryforward of (i) pre-regime losses into the new Pillar 1 regime and (ii) post-regime losses within the new regime. It supports the carryforward of "profit shortfalls", as the blueprint mentions as a possible rule.

Conclusion

The digital industry appreciates the prioritization by the OECD of working towards a global solution to taxation in the digital age. To fully stem the tide of new discriminatory taxes around the world, the OECD must continue to push forward with a new set of long-term tax rules that are clear, bring economic certainty, and do not favor certain sectors or technologies over others. The final plan must treat domestic and foreign firms equivalently and must not subject the same profit to taxation by multiple jurisdictions.