The OECD Secretariat Proposal for a “Unified Approach” under Pillar One: Strengths and Weaknesses of the New and Revised Nexus and Profit Allocation Rules

The OECD’s efforts towards addressing the tax challenges arising from digitalization recently reached a new significant phase of work. Indeed, the three-tier profit allocation mechanism embedded in the Secretariat Proposal for a “Unified Approach” under Pillar One (published in October 2019) represents a remarkable and potentially disruptive step forward in the discussion surrounding the taxation of the digital economy. The aim of this article is to contribute to such discussion by analysing the three-tier profit allocation mechanism, evaluating its potential impacts and highlighting its strengths and weaknesses.

1. The OECD’s Most Recent Efforts towards Addressing the Tax Challenges Arising from Digitalization: The Secretariat Proposal for a “Unified Approach” under Pillar One

The main challenge of the taxation of the digital economy is represented by the necessity to introduce new nexus and profit allocation rules in order to allow the fair taxation of profits generated by businesses without a physical presence in the relevant market jurisdictions.

The OECD report “Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report” (BEPS Action 1) was the first official document to introduce the concept of “significant economic presence” as an alternative solution (rectius, nexus) in order to address the above-mentioned challenges. This new nexus rule was aimed at “create a taxable presence in a country when a non-resident enterprise has a significant economic presence in a country on the basis of factors that evidence a purposeful and sustained interaction with the economy of that country via technology and other automated tools.”

The concept of “significant economic presence” was intended to exclusively ring-fence highly digitalized businesses. However, this new nexus rule, as set out under BEPS Action 1, raised difficulties with regard to properly defining the scope of the “digital economy”.

With this in mind, the OECD Policy Note approved on 23 January 2019 and the Public Consultation Document “Addressing the Tax Challenges of the Digitalisation of the Economy” dated 13 February 2019 (hereinafter “OECD Consultation Document”) developed some proposals grouped into two pillars: (i) Pillar One, focused exclusively on the allocation of taxing rights, seeking for a review of the profit allocation and nexus rules, and (ii) Pillar Two, focused on the remaining base erosion and profit shifting (BEPS) issues.

Under Pillar One three different approaches have been developed, which present clear differences relating to their scope, considering that:

- the “user participation” proposal essentially relates to digitalized business models which create value mostly through the active participation of users;
- the “marketing intangibles” proposal focuses both on (i) highly digitalized business models and to (ii) non-digitalized business models; and
- the “significant economic presence” proposal is based on the concept of “significant economic presence” as the nexus aimed at allocating profits.

In order to reach a consensus-based, long-term solution with reference to Pillar One, the OECD recently published a Public Consultation Document titled “Secretariat Proposal for a ‘Unified Approach’ under Pillar One”, dated 9 October 2019 (hereinafter Secretariat Proposal).

Such “Unified Approach” (UA) is built on the commonalities of the three above-mentioned approaches.

As described in the Secretariat Proposal, the UA has a scope which goes beyond the “mere” digital businesses, considering that it is now aimed at covering “large consumer facing businesses”. The essential feature of these businesses is the interaction with individuals that acquire goods/services for personal purposes.

Therefore, the UA includes in its scope both (i) highly digitalized businesses providing digital services and (ii) non-digitalized businesses that interact with consumers.
More in detail, the UA essentially suggests a three-tier profit allocation scheme – referred to as Amount A, Amount B and Amount C – that is aimed at addressing different situations:

(1) **Amount A** implies the creation of a new taxing right for the market jurisdiction over a portion of MNE groups’ residual profit, by proposing new nexus and profit allocation rules.

The new nexus rules would depart from the existing permanent establishment concept that depends on physical presence, and be based on the “sustained and significant involvement” in a market jurisdiction. The proposal suggests setting a revenue threshold (to be adapted to the size of the specific market) as a primary indicator for determining sustained and significant involvement.

Once the nexus is established, the allocation of profits would follow a four-step approach: (i) identification of the MNE group’s profits, possibly starting with the consolidated financial statements; (ii) a carve-out of the remuneration corresponding to routine activities based on an agreed level of profitability (possibly determined based on a fixed percentage and with variances by industries); (iii) split of the residual profit attributable to the market jurisdictions and the profits that refer to other factors (such as trade intangibles, capital and risk, etc.); and (iv) allocation of the relevant portion of (residual) non-routine profit to each jurisdiction, based on a previously agreed allocation key. The proposal does not define the relevant variables (only sales are mentioned), but they would aim to “approximate the appropriate profit due to the new taxing right”.

(2) **Amount B** is aimed at simplifying the allocation of profits for “baseline” or routine marketing and distribution activities in the market jurisdiction by establishing a fixed return (potentially varying between industries or regions). The proposal acknowledges that a definition of the specific activities that would qualify for this fixed return would be required.

(3) **Amount C** aims to adjust the profit allocation outcome that could be derived from Amount B. In particular, it allows taxpayers and tax administrations to argue that, under the arm’s length principle, the remuneration of the activities performed in the market jurisdiction (not only marketing and distribution activities but also other business activities) should be higher than the fixed return calculated under Amount B. However, profits corresponding to those activities should not overlap with profit allocated under Amount A. The proposal stresses the need for effective and binding dispute prevention and resolution mechanism to avoid double taxation.

The Secretariat Proposal acknowledges that there are several other issues that require further thinking, such as taking into account possible differentiations among business models, possible variations in the design of Amount A, or the need to address any risk of double counting due to the interaction of Amounts A, B and C. It also recognizes the challenges surrounding the implementation of the UA and the need to amend tax treaties to allow for the creation of a new taxable nexus and the allocation of taxing rights on the profits of non-resident companies in the absence of physical presence and in deviation of the arm’s length principle.

### 2. **Strengths and Weaknesses of the New and Revised Nexus and Profit Allocation Rules**

As pointed out above in section 1., the UA is based on the commonalities between the three proposals contained in the OECD Consultation Document and tries to reach a viable solution that avoids complexities.

Notwithstanding the fact that one of the Secretariat Proposal’s main aims is “simplicity, stabilisation of the tax system, and increased tax certainty in implementation”, it is worth underlining that any serious deviation from consolidated international tax principles (related to both nexus and income allocation) warrants careful consideration of all possible drawbacks involved in its concrete implementation before proceeding.

Indeed, the introduction of new international standards (completely unrelated to the permanent establishment concept or to the arm’s length principle) will inevitably increase complexity not only in the transitory period but also as follows: (i) MNEs will be placed in the position to review the transfer pricing policy that has already been amended to reflect the BEPS Action 1 recommendations, and (ii) MNEs will be required to bear extra compliance burdens due to the implementation of the UA.

Furthermore, the introduction of a holistic and simplified approach should in any case take into consideration the ever-greater complexity of business models. Indeed, businesses are increasingly operating under matrix organizational structures in which the geographical and product scope are interlinked and the global functions of the headquarters perform relevant activities (and, thus, bear the related costs).

The proposed UA – for the reasons better explained in the sections below – may therefore: (i) lead to disputes with and among tax authorities, (ii) increase the tax burden for taxpayers, and (iii) increase the commitment of tax authorities.

In light of this, it is worth highlighting that, despite the changes presented in the Secretariat Proposal (i.e. the new and revised nexus and profit allocation rules developed by the OECD after the OECD Consultation Document), in the author’s view any amendment to the current international tax standards should:

- cover both physical and non-physical presence;
- confirm the arm’s length principle as the cornerstone for allocating income among jurisdictions (especially in complex transactions such as those concerning the exploitation of intangibles); and

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INTERNATIONAL TRANSFER PRICING JOURNAL

Alessandro Samari

– identify a solution that avoids any potential drawback in terms of double taxation.

More in detail, the UA appears to be affected by the following weaknesses that in the author’s opinion must be taken into account and analysed by the OECD in order to shape and reach a consistent consensus-based long-term solution aimed at effectively tackling the tax issues arising from the increasing level of digitalization of the economy.

2.1. New nexus

As stated above, the Secretariat Proposal suggests that situations in which a physical presence does not exist must be analysed and covered for tax purposes through the development of a “new nexus”. In this respect, the Secretariat Proposal introduces a new nexus based on sales.

In the author’s view, such proposed new nexus appears to be affected by a significant weakness. Indeed, sales are not a proxy for a sustained and significant involvement in the economy of a specific market but could instead be a useful indicator for allocating taxable income to a relevant market (i.e., only subsequent to identification of the nexus).

In such circumstances, the identification of a new nexus should be based on functions/costs rather than local sales, in particular by emphasizing the marketing efforts within a specific market (i.e., “functional nexus” based on marketing expenses).

Indeed, a local marketing effort (activities or expenses) may occur also if no physical presence exists (e.g., an MNE providing a streaming service, in order to sell its services through advertising, regardless of whether it has a physical presence). Prescriptive rules and lists on expenses covered in the definition of marketing expenses should therefore be set out.

Moreover, it is worth highlighting that a nexus based on sales takes no account of the issues involved in business start-up phases or of the effects of economic cycles. Therefore, in case the sales approach on the new nexus should in any case be envisaged, in the author’s opinion it would be advisable to apply at least a multi-year approach so that not only the sales made in a given year but also the sales made over a reasonable time frame are taken into account (3–5 years, depending on the business sector).

This approach may be applied also to account for the difficulties that an MNE may experience in smaller jurisdictions (in this respect, adjustments to sales should be carried out, such as considering the sales in relation to GDP per capita). A further factor to take into account is that it is not a given that sales directly relate to high margins in a specific country – and even when they do, the margins may be linked to some specific market conditions (e.g., a difference in wealth in the domestic market or an appreciation for the products in question that is due to the products being marketed by a well-known global brand).

2.2. New profit allocation rules going beyond the arm’s length principle: The three-tier mechanism

According to the Secretariat Proposal, the new profit allocation rules “taken together with existing transfer pricing rules, will need to deliver the agreed quantum of profit to market jurisdictions and do so in a way that is simple, avoids double taxation, and significantly improves tax certainty relative to the current position”.

To ensure compatibility between the two sets of international standards for profit allocation, the Secretariat Proposal suggests the aforesaid “three-tier mechanism” for which the starting point is assessing a portion of deemed residual profit attributable to the market jurisdiction (i.e. Amount A).

2.2.1. Amount A

A preliminary remark in this respect concerns the envisaged interaction between a residual profit split method (RPS) and a fractional apportionment method, given the current strict requirements under chapter 2 of the OECD Guidelines for Multination Enterprises and Tax Administrations (hereinafter OECD Guidelines) to proceed with selecting an RPS (the role of which appears to have become increasingly limited in both theory and practice).

Moreover, the measure-of-profits approach appears to be based on an oversimplification, to the extent that the Secretariat Proposal recommends relying on consolidated financial statements.

Indeed, in the author’s view, although the information provided to create consolidated financial statements (i.e., managerial accounting) can be the starting point for applying a two-/multi-sided approach (like the UA), the following concerns outlined by the OECD in the 2008 Discussion Draft on Transactional Profit Methods (2008 Draft) are valid also for the UA:

176. There is wide recognition, among countries and business commentators who responded to the questionnaire on profit methods, of the significance of the issues posed by the lack of harmonised accounting standards when determining the combined profit to be split in a transactional profit split method. In order to determine the combined profit, the accounts of the parties need to be put on a common basis as to accounting practice and currency, and then combined. Several commentators note that the determination of the combined profit is one of the most important and difficult issues when applying a profit split method. [Emphasis added.]

182. The use of cost accounting should be permitted where such accounts exist, are reliable, auditable, and sufficiently transactional. In this context, product-line income statements or divisional accounts may prove to be the most useful accounting records. Experience shows however that the use of multiple allocation keys to arrive at the expenses and/or income attributed to the product-line or division may lessen the reliability of the data for these purposes. Care should be exercised in evaluating whether this cost accounting data is sufficiently reliable to be of use in the application of the arm’s length principle. See also Section B of the Issues note “Access to the information needed to apply

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7. See Secretariat Proposal, supra n. 3, at para. 52.
In this respect, the following should be carefully considered:

- MNEs’ businesses are not limited to one business unit, nor do they operate in only one specific geographic market. Indeed, those businesses tend to be very structured and diversified to properly manage entrepreneurial risks throughout the different product lines/regions where MNEs operate. Looking at the main US listed companies, the publicly available data filed with the SEC envisages: (i) the presence of several heterogeneous businesses (e.g., the same group may sell physical goods, online services, software and videogames); and (ii) a split of revenues only by product, without any split of profits by product or market.

- MNEs’ consolidated financial statements do not provide the level of detail needed to apply the UA. Indeed, the segmentation is generally by either product or area/region. The possibility of obtaining a segmentation (at the level of the profit) by both product and market is remote.

- Any combined base for applying the UA must – in light of the above – be determined with further elaboration of the consolidated financial statements. This will increase the subjectivity of the profit base and lessen the reliability of the data for the purpose of the UA.

- Accounting management is often centralized. This means that at local level (in cases in which a physical presence exists) the only available information is that provided in the statutory accounts. However, that information is not useful for the UA when a consolidation is needed of revenues from and costs of markets/products/users at local level, and these details are provided only by managerial accounting data (and thus not auditable at local level). Therefore, to apply the UA in a reliable manner, either the headquarter tax authorities will take the lead/burden to assess the reliability of accounting data or the MNE will be obliged to incur further compliance costs (and prepare, for instance, to enter into an agreed-on procedure on the accounting base for applying the UA).

- The outlined complexity would further increase if the MNE has no local physical presence, but the “new nexus” is met. In that case, the local tax authority would not have the statutory accounts and would therefore have to rely solely on the information provided by the headquarter tax authority or MNE (with very limited possibility to verify and audit the information).

Therefore, in the author’s opinion, the above will constitute the main obstacle to the application of the UA (regardless of any concern regarding its appropriateness). Indeed, there is no way of easily finding the data necessary to apply a two-/multi-sided approach. At the same time, given the possibility to easily obtain and check data regarding revenues per market, it is worth pointing out that revenues should – in the author’s view – constitute the basis for remuneration (instead of the basis for allocation within the two-/multi-sided approach) and that markets should therefore be remunerated based on a return on sales (ROS).

### 2.2.2. Amount B

According to the underlying logic under Amount B and the potential benefits embedded in a pre-determined fixed remuneration for marketing and distribution activities, such approach would grant certainty by defining intercompany prices, reducing compliance costs and preventing tax disputes.

However, in the author’s opinion, the suggested approach should be carefully evaluated as it would be extremely complex to: (i) identify all possible situations in which fixed remuneration should be applied; (ii) set the fixed return percentage; and (iii) provide guidance that can be accepted by taxpayers and tax administrations in jurisdictions worldwide.

In this respect, it is worth underlining that the mechanism to calculate Amount B would work similarly to the simplified approach adopted for the low-value-adding services.9 However, in the case under examination, the marketing and distribution functions performed by a related entity are core activities and not “ancillary” as for low-value-adding services.

More in detail, the provision of fixed remuneration seems to be exposed to the risk of defining distributors’ profitability in the absence of an adequate comparability analysis. It would therefore not be possible to attribute different remuneration depending on the functional profiles of the entity involved in the marketing and distribution activity. This aspect will be particularly significant in cases in which controlled entities are involved in non-routine distribution activities, as fixed remuneration may not be appropriate for the functions they perform. Indeed, although the three-step approach of the Secretariat Proposal suggests Amount C to cover non-routine functions, it seems that this split of the remuneration of the local distribution presence could jeopardize the purpose of finding a simplified approach and, thus, could trigger several disputes/different interpretations among the relevant stakeholders.

In light of the above, evaluating the application of the simplified approach would be possible only in cases involving low-risk distributors.

Furthermore, in the author’s view, relying on the assumption that the simplified approach for identifying Amount B should be based on a fixed return could be highly risky. One option for low-risk distributors could be to apply the simplified approach based on a range of results, stipulating that if the low-risk distributor’s margin is within the

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range, the remuneration should be considered appropriate.

However, identifying the range of results would be very complex. Given that the aim would be to identify the proper remuneration for core business activities (even if for a low-risk entity), the simplified approach would need to identify: (i) the correct range of results for the industry; and (ii) the correct range of results for the jurisdiction or region. Furthermore, the different ranges of results would need to be regularly updated within a proper time frame.

Finally, as the simplified approach is aimed at decreasing the number of tax disputes relating to distribution functions, the different ranges of results and the positioning in each point of the range should be accepted by all taxpayers and tax authorities in the different jurisdictions; otherwise, the proposed approach would automatically trigger double taxation.

2.2.3. Amount C

In light of the above, if Amount B is correctly determined, Amount C would overlap with it and could be adopted to attribute a higher (and inappropriate) remuneration to the distributor in a specific country (with a high risk of double taxation).

Hence, in the author’s view, Amount C should be eliminated as it reintroduces wide margins of discretion and the risk of jeopardizing the structure of the UA.

Moreover, given that tax authorities lack resources, the feasibility of them managing all the APAs and MAPs that would arise from the significant changes implemented through the UA appears, in the author’s opinion, low.

Additionally, as the ICAP project is still in a pilot phase involving very few taxpayers and countries, the real risk is a misalignment between the implementation of the UA and the time when tax authorities will be able to examine dispute resolutions.

3. Conclusions

In light of the weaknesses described above, in the author’s view, the remuneration granted to the market should not consist in the deemed residual profit (i.e. Amount A) identified by the proposed UA for the following reasons:

- Residual profit should generally be attributed only to high-value-adding contributions identified based on an appropriate value chain analysis. In this regard, the value embedded in a market is a bundle of economic and regulatory features that affect all the players acting locally (both independent parties and associated enterprises). Consequently, the sole factor that should be properly taken into account to determine the fair part of profits attributable to a specific market are the profits deriving from locations savings, because it could be argued that these profits should stay where they are generated (e.g., if the products are sold at higher prices due to customers being particularly wealthy). This is the issue concerning the entitlement to the attribution of the market premium, which differs from the assumption that the market should, in any case, share part of the residual profit (or loss) generated by the overall business.

- The attribution of profits to the market must, in any case, account for further factors such as: (i) the development stage of the MNE business in that specific market (i.e., start-up phase, which differs from business to business); (ii) the time for returning the investments made to achieve the amount of sales in that market; and (iii) the presence of specific regulations that could trigger entry barriers and, consequently, distort competition.

Based on the above, the author suggests the following two steps to reach an outcome aligned with value creation.

1. First step: this is performed once the new nexus is met, to attribute a standard routine remuneration to the market regardless of whether a physical presence exists. This remuneration should be based on a return on the local sales (ROS) determined either by conducting a benchmarking analysis based on local comparables involved in distribution activities10 and that have a limited risk profile or by applying a pre-defined return (i.e., safe harbour). The first solution is preferable as it is consistent with the arm’s length principle and should be applied by selecting the lower point in the interquartile range. Conversely, determining a safe harbour would reduce complexities and lessen the tax burden for both taxpayers and tax administrations to the extent that the OECD selects it as a simplified approach (likewise what is envisaged for intercompany services under chapter VII of the OECD Guidelines). Assuming the market has specific local features that could justify an extra profit attributable to it, specific market comparability adjustments should be introduced to account for these elements.

2. Second step: This step should be performed if the MNE has a physical presence. It is aimed at remunerating all functions performed locally in accordance with the arm’s length principle. If also distribution functions are performed, the return under point (1) should not be granted as it is already included under the arm’s length return envisaged in this step (otherwise, a risk of double counting arises). Additionally, if non-routine activities are performed, the principles of paragraph 6.78 of the OECD Guidelines should be applied to reach an outcome aligned with value creation.

If only step (1) is performed (i.e., the MNE has no physical presence), the application of a sanity check (if the MNE so decides) could be considered to properly take into account the MNE’s consolidated profits/losses. The check would be based on the profit split to ensure that the method pro-
posed does not lead to an improbable profit attribution. (See paragraphs 2.12 and 2.122 of the OECD Guidelines.)

Clearly, to set the remuneration under point (1), amendments to articles 5, 7 and 9 of the OECD Model will be needed.

Finally, the approach envisaged in the Secretariat Proposal on Amount A would create complexity.

Indeed, considering that the residual profit would arise from several heterogeneous contributions (e.g., R&D functions, managerial functions and, based on the UA, markets), it is very difficult to identify an appropriate allocation (or set of allocation) key(s) to split the residual profits.

For example:
- by considering costs, any non-physical presence will not be entitled to remuneration;
- by considering revenues, the R&D function will not be entitled to remuneration; and
- by considering headcounts or salaries, any non-physical presence will not be entitled to remuneration.

A final remark should be made on the system envisaged for implementing the UA. According to the Secretariat Proposal, OECD member countries should enter into simplifying conventions. These conventions, supposedly, would be implemented based on the experience gained in relation to the multilateral instrument. Further details should be provided in relation to the possible interaction between the simplifying conventions and existing MLIs (also considering that the scope of the simplifying conventions will be limited to the new nexus and profit allocation rules).

It is pretty clear that one of the concerns of the OECD’s Programme of Work and Task Force on the Digital Economy is to ensure that the calculation of Amount A does not trigger double taxation.

In the author’s view, any new framework (or amendment to the existing framework) should be regulated through amendments to articles 5, 7 and 9 of the OECD Model.

This should result in Amount A being addressed as either: (i) an attribution of profits to a permanent establishment; or (ii) an intra-group transaction between the local entity (physical presence) and the regional hub or the global headquarter. This would lead to the income under Amount A being classified as business income for treaty purposes.

In this regard, it is worth pointing out that as Amount A (or any other form of remuneration to be given to the market once the nexus is met) is classified by the OECD Model as business income, any solution regarding the determination of Amount A to avoid double taxation should not depart from the consolidated international principles set out in articles 7 and 9 of the OECD Model.

Additionally, the impact of amendments to other existing dispute resolution tools (e.g., Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union) to ensure double taxation should also be carefully addressed.

Moreover, to avoid double taxation, in the author’s opinion the existing double tax relief mechanisms envisaged by article 23 of the OECD Model have to be considered indubitably appropriate and, therefore, any new provisions should not depart from the current set of rules.

It is worth remembering also the weaknesses stemming from the withholding tax collection mechanism. Indeed, withholding tax (also if covered by article 2 of the OECD Model) could trigger double taxation, particularly because where levied on gross revenues: (i) it would not take into account the material expenses borne (particularly for R&D); and (ii) foreign tax credit is generally granted by the resident country within the limits of the resident taxation on net profit (known as limited foreign tax credit). The combination of points (i) and (ii) could lead to an excess of foreign tax credit that will never be recovered.

In the author’s opinion, the following principle laid down by the OECD is particularly correct and suitable for properly addressing the tax challenges stemming from the digitalization of the economy. “Because the digital economy is increasingly becoming the economy itself, it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes.”

Indeed, based on such statement, any proposal to amend the current international tax principles should apply broadly to all businesses and not be limited to the digital economy – also to avoid inequalities among different businesses.

The broad definition adopted by the UA goes in this direction, as it will result in all businesses dealing with consumers being included in this new rule. Nevertheless, the broad expression “consumer-facing businesses” might trigger applicability issues when it comes to concretely identifying the categories of businesses covered by the UA.

For instance, in the author’s view, distinction should be made between B2C and B2B businesses. Indeed, generally no interaction with consumers occurs in B2B businesses, as the products are supplied from one enterprise to another. Consequently, in principle, these businesses should not follow the UA. Further guidelines should be provided to understand the extent to which B2B businesses might fall under the UA.

As to B2C businesses, some groups may operate through different channels (i.e., wholesale and retail channels), and it should be verified whether the UA should also take this distinction into account. This point could be particularly pivotal when intermediaries are involved in the business model (because in those cases it might be difficult to understand which entity creates the value in a specific market).

Furthermore, cases could occur in which taxpayers operate both “traditional” and digital businesses that are not necessarily always related only to consumers but also to customers. In this case, in light of the mechanics of the UA proposed by the Secretariat Proposal, taxpayers could be obliged to prepare ad-hoc segmented accounts, which could lead to significant complexities and burdensome activities. This would not create any simplification as envisaged by paragraph 53 of the Secretariat Proposal (i.e., use of consolidated financial statements). Indeed, the majority of consolidated financial statements do not provide the level of detail needed for the application of the UA.

To conclude, in relation to the possible threshold set by the Secretariat Proposal, in the author’s opinion, introducing a threshold to identify cases falling within the UA could lead to significant practical issues to the detriment of the sought-after simplification. Specifically, one example of the practical issues that could arise is that taxpayers might fall within the threshold only in certain years depending on their economic results, resulting in foreseeable significant drawbacks (e.g., keeping specific segmented accounts or not). This outcome would be manifestly contrary to the need to apply the same approach to all businesses in order to avoid inequalities.

16. As defined by the Secretariat Proposal: “[I]ndividuals who acquire or use goods or services for personal purposes (i.e. outside the scope of a professional or business activity).”
17. As defined by the Secretariat Proposal: “[A]ll recipients of a good or service (including business customers that are not end-users)”.

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