BUSINESS at OECD

10 February 2025

To: Platform for Collaboration on Tax (PCT)
Submitted by email: taxcollaborationplatform@worldbank.org, cc: arajca@worldbank.org.

Re: *Business at OECD* (BIAC) comments to the PCT's Public Consultation Document "Tax Incentives Principles"

Dear Secretariat Team,

Thank you for the opportunity to comment on the public consultation document "Tax Incentives Principles" released by the Platform for Collaboration on Tax (PCT) on 10 December 2024.

The Tax Incentives Principles document serves an important purpose of helping policy makers navigate complex decisions in light of ongoing and fundamental changes in the international tax landscape, including the introduction of the global minimum tax under the Global Anti-Base Erosion Rules (GloBE) as well as exploring the role of tax incentives in addressing climate targets and green transition with a particular emphasis on the needs of developing countries. We understand that the principles are aspirational and not meant to have binding or regulatory effect.

We believe that tax incentives play a key role in promoting innovation and industry growth for all countries (not only developing countries but also developed countries) with varying priorities, economic circumstances, and developmental needs. We believe it is unduly restrictive to state that tax incentives are only warranted if they provide a net "social" benefit, as there may be other benefits that may not be directly linked to "social" benefits or immediately quantifiable, such as job creation, workforce development, increase in capital investment, etc. We also believe that jurisdictions should maintain their autonomy to design tax incentives because each sovereign jurisdiction is the best judge of how to weigh fiscal costs against fiscal benefits in the context of its national priorities. While we do not believe an exhaustive list of permissible reasons for tax incentives is any more appropriate than the limited criterion of providing a net "social" benefit, if a list of potential reasons why tax incentives could be considered is to be included, it should be broad enough to capture the objectives of a diverse range of countries and economic scenarios, and capture the objective of seeking favorable positive economic effects on growth and investment.

We also note that international businesses contribute significantly to the global economy and pay a substantial amount of tax comprising not only corporation tax (which – for large multinational businesses – is subject to the global minimum tax under Pillar 2), but also labour taxes, social contributions and other taxes such as environmental levies, excise taxes and VAT. Tax is a business expense which needs to be managed, and therefore businesses should be able to respond to tax incentives that are not deemed harmful (by other countries or international organisations) and statutory alternatives offered by governments. Thus, continued engagement with business is crucial to better understand the opportunities and challenges associated with an activity a government is trying to promote and ensure that incentives considered are appropriate and effective in their aims.

We also believe that the principles are a missed opportunity to provide information and guidance to countries on the impacts of Pillar 2 (and other international standards, such as BEPS Action 5) on tax incentives they may seek to offer. Both are relatively new international standards with significant complexity. We believe that it would be beneficial to provide high-level guidance of the factors that

countries should consider when designing incentives that would be likely to result in a top-up tax under Pillar 2 in multinationals subject to the rules.

Please see our responses below to the specific questions raised as part of this public consultation:

1. **Do you find the principles and remarks presented in the document appropriate and well-balanced in terms of content and coverage? If so, please explain why. If not, please provide any suggestions you may have for refining the document.**

The document introduces six principles for designing effective tax incentive policies, namely: Justification, Design, International Considerations, Legislation, Implementation, and Assessment. Overall, these principles comprehensively cover the process of developing tax incentive policies - from establishing foundational principles to policy implementation and evaluation. *Business at OECD* members would like to raise some concerns as well as request for clarification, as detailed below.

The **preamble** states: "While these principles are intended to be applicable to all countries, they are framed with a particular focus on the circumstances of developing countries". Values underpinning these principles are unlikely to be universally shared across all jurisdictions and it may be worth noting and accounting for how structural differences in each jurisdiction's legal and fiscal landscape could lead to varying perspectives. Each jurisdiction has its own set of desired social outcomes and political interests which are not shared by other jurisdictions (particularly those at a different stage of economic development).

Moreover, the reality is that tax incentives are used by countries both developed and developing, large and small, with varying economic circumstances and developmental needs. For instance, an advanced economy's developmental needs may be better served with tax incentives on research and development such as the CHIPS Act whereas incentives to attract labor intensive manufacturing such as tax holidays in Special Economic Zones may suit an emerging economy better. If the principles are to apply to all countries, they should cater to the developmental needs of countries of varying circumstances and not just focus on the circumstances of developing countries.

Principle 1: Justification

Principle 1 is arguably the most critical step in this document as it establishes the foundational basis for formulating tax incentive policies. This principle considers that incentives may only be warranted if "net social benefit" can reasonably be expected.

We have significant concerns about the way these criteria are worded. In our view, this distinction is unclear and subject to interpretation. While it emphasizes net social benefits as a criterion for tax incentives, guidance is needed for scenarios where a country's tax incentive goals are not directly linked to social benefits or where such benefits cannot be clearly identified or quantified. Each jurisdiction has its own set of desired social outcomes and political interests which are not shared by other jurisdictions (particularly those at a different stage of economic development). In particular, the social benefits and outcome of a developing or emerging jurisdiction are vastly different from social benefits and outcome of a developed or advanced jurisdiction. Therefore, we suggest that this principle be reworded in a way that acknowledges and respects that there may be varying objectives and different matrices for which jurisdictions can justifiably choose to pursue through the use of incentives, rather than limit the formulation to matters that produce a "net social benefit".

The social costs of tax incentives (e.g., decrease in tax revenues) may be effectively offset through a mix of social benefits derived from tax incentives (e.g., creation of employment opportunities especially

for high-skilled jobs, attracting significant foreign capital and investment, increasing the sophistication of domestic products and services, expansion of domestic supply, and reduction of import dependence) and from separate legislative and policy measures (e.g. targeted tax collection and enforcement efforts in specified sectors; expanding tax collection measures for certain less regulated industries or activities, such as novel tobacco products, single-use plastics, and online sellers / social media influencers). Such benefits include job creation, development of new skills not yet present in a jurisdiction, unique creation of intellectual property, collaboration with higher education institutions, technology transfers and substantial investments in infrastructure. However, the net effect is difficult to quantify, and would rarely be determined and articulated ex ante due to varying stages of legislative and policy development and prioritization. Hence, jurisdictions should be given a wide latitude to design tax incentives in the context of a menu of other fiscal policies, precisely because each sovereign jurisdiction is the best judge of how to weigh fiscal costs against fiscal benefits.

Even where a specific and quantifiable 'social benefit' is the sole reason for the introduction of an incentive, social benefits that are significant to developing or emerging jurisdictions are not necessarily aligned to social benefits in developed jurisdictions, and the breadth of externalities involved will be quite case-specific. Wages funded by tax incentives to a worker surviving on the poverty line in a developing country are not easily comparable from a "social benefit" perspective to those that are made to a worker in a developed country with a developed social infrastructure. Further, the principle introduces concepts which are abstract and broad such as "social benefits," "social costs," "benefits to society," and "private benefits," which require detailed explanations and examples for accurate interpretation.

Moreover, market intervention in the form of tax incentives is clearly set out to be generally undesirable in the document except for reasons such as to address environmental harm. For nascent and emerging businesses - at the cutting edge of fundamental transitions (such as greener energy, etc) market conditions need to be created that allow them to compete with often cheaper, well established but undesirable previous solutions. This is broadly recognized in the principles but what is missing is that there may be a time-sensitive or urgent need to speed up the transition (for example to meet Paris Agreement), and in such cases market intervention/creation may need to be more ambitious. Including a reference here appropriate to the scale and pace of change to align with shared global goals would be helpful.

It should also be noted that incentivising investment in R&D by businesses ranks high on the innovation policy agenda of many jurisdictions as such investments drive employment and global economic growth. Innovation provides the foundation for new businesses and new jobs and helps address pressing social and global challenges. Whatever the stage of a country's development, a key principle for the design of effective tax incentives is therefore to ensure that they are closely linked to what drives innovation and growth. This may vary across different industries. For example, innovation is fundamental characteristic of the Life Sciences industry as it is required to discover and develop medicines which save and improve lives and meet unmet medical needs. To drive innovation, Life Sciences companies make significant high-risk investments over many years. On average it costs approximately $2.3bn over 10-15 years to develop one medicine. There is often only a short exclusivity window to recover this investment and earn profits which can then be invested in the development of new medicines. Tax incentives therefore play a role in fostering innovation and industry growth as they encourage companies to continue to invest in a particular industry despite, in this case, the timing difference between significant expenses being incurred and income (if any) being generated for a medicine.

Sub-principle 1.2 it is important to assess the impact of incentives on tax revenue on the basis of the total lifecycle of the given project considering required investment profile. For example, tax incentives

in a form of accelerated depreciation for capital intensive industries may have significant impact on tax revenues in early stages of the project but the impact will balance off throughout project lifecycle resulting in a net revenue benefit (compared to a scenario of no investment).

Sub-principle 1.3 On quantification, we agree with the points on transparency and the accountability. Use of economic impact assessments should be considered and creation and design should be evidence-based. However, some benefits are difficult to quantify and policymakers face competing objectives. For example, society must transition to a low-carbon energy system to manage the risks of climate change, while still providing a secure and affordable supply of energy - society faces a dual and competing challenge. To provide policymakers with much needed guidance on this, incentives should form part of a wider coordinated framework or pathway for change that is responsive to changing market conditions. Currently, incentives are often short term in nature, underpowered and at risk of being immediately overturned by another party. This makes them ineffective in their original policy objectives.

Sub-principle 1.4 – Tax incentives are some of the instruments that policymakers have at their disposal to achieve the desired economic objective. Where other tax or non-tax instruments may be available to support the same objective, it is important that the use of tax incentives is aligned with and complementary to any such other instruments as part of the broader holistic policy design. For example, R&D incentives to support development of clean technologies may work with non-incentive instruments such as carbon price and emission standards all contributing to a reduction of CO_2 emissions. This requires well-coordinated policies and various government departments working together to achieve desired policy objectives.

We do not support the principle that "Tax incentives should not be used if more appropriate policy instruments serving the same policy objectives are available". If this wording is to be maintained, it should follow and be stated that tax incentives should always be used if they are deemed more appropriate than other available alternatives. In our view, however, countries are and should remain free to choose the form of incentive that they use in order to support the development of an activity. We do not consider that tax incentives would be considered as less efficient or desirable than grants or other forms of support. Indeed, with the limited financial resources often available to developing countries, the provision of direct grants, for example, can be challenging, potentially widening the economic gap with developed countries that have greater capacity in this respect. In fact, tax incentives may often be more transparent than other forms of support, as they are most of the time reviewed and controlled by the Parliaments.

It may make more sense to focus on the policy considerations in determining whether to choose tax incentives or other options. This discussion may be reframed to identify some factors. If the goal is to incentivize an entire industry, rather than targeted companies (which has its own risks of corruption or misunderstanding by government evaluators of industry-specific value drivers), tax incentives for certain activities may be more effective than specific grants. Non-refundable tax incentives may be chosen because they incentivize certain activities, but with less risk taking than grants or refundable credits, since they only are applicable with some level of financial success. On the other hand, certain subsidies may be more susceptible to fraud than non-refundable tax credits. Policy makers may want market conditions to act as a filter, rather than directing all the incentives toward government selected activities, in circumstances where private companies have more expertise in how to effectively invest resources than non-expert government administrators.

Principle 2: Design

Principle 2 provides for the design of the incentive, in which the incentive should be designed to promote the favored activity while avoiding unnecessary distortions to other activities and limiting the revenue cost. This principle is largely already adopted by most governments in their offering of substance-based incentives, where incentives are granted based on genuine business activities and tied to investments in property, plant, equipment, local payroll costs, physical presence, or other tangible economic contributions, in the targeted economic activity.

Sub-principle 2.1 We do not agree with the principle that "Incentives should be targeted as closely as possible on the expected source of social benefit—which, in the investment context, commonly rules out profit-based incentives". A country should be free to use all kinds of tools in terms of design, as long as it fosters the desired investment and growth, and profit-based incentives can also be helpful for that purpose. Profit-based incentives can also be highly attractive in terms of investment based on our experience; different industries, investors, investments and projects may each be best incentivized in different ways, and in order to maximize efficiency and effectiveness, incentives should be tailored accordingly.

We also have trouble understanding the comment that profit-based incentives, for instance, may create opportunities for shifting profits through domestic transfer pricing or other methods, which can be addressed only if appropriate legislation is in place. This point should be clarified.

Companies reinvest profit and they return a share of profit to those risking capital to fund the business. Both of these have broader socio-economic impacts. There may be some imperfections in the design but the overall assessment may decide to accept this to avoid a worse outcome. There are examples where the design has tried to be so targeted as to become uneconomical even by those whose intent is fully aligned with the policy objective. This creates a problem of scale, where the full impact of the incentive is undermined by the complexity of the design.

In our view, it is also important to encourage both income- and expenditure-based tax incentives for R&D and we suggest that you amend the conclusion to rule out profit-based incentives, as proposed in Principle 2. The BEPS project has been successful in limiting the possibilities for income shifting and in ensuring that taxpayers benefiting from R&D incentives, including income-based incentives, have engaged in the R&D activities, for example through the nexus approach in BEPS Action 5. It is thus possible to design well-functioning non-harmful IP regimes to promote innovation.

Sub-principle 2.3 We agree that carefully considering incentive timelines and designing appropriate sunset provisions is important. Such provisions should take into account the lifecycle profile of a given project and industry specifics to ensure that they provide required investment certainty and therefore overall effective. It is critical that once designed, the incentive regime timelines are stable and honored through appropriate legislation and not subject to change, for example, with each new government.

Principle 3: International Considerations

Principle 3 rightly emphasizes consideration of international commitments and circumstances in incentive design, which we believe is consistent with most governments' support for a multilateral consensus-based approach that promotes global cooperation. Common international consensus is particularly important to reduce the scope for disputes and mitigating challenges to the incentive regime in question. The conversation on this topic would however be better balanced by acknowledging the concept of tax sovereignty and that each jurisdiction should have autonomy to balance their economic development objectives and fiscal sustainability needs.

There should also be more regard for national sovereignty over taxation and tax policy. It is axiomatic in international law that taxation is a sovereign right. However, this fundamental principle is not articulated in statements such as "P3.3 Incentive design should pay due regard to the impact on other countries" and "P3.4 Through international cooperation, opportunities should be sought to limit the risks and mutual damage that incentives can create".

To be more balanced, the framing of such principles should be prefaced with a priori due regard for the sovereign right of each jurisdiction to determine their national taxation policies according to their developmental needs. Further, if international cooperation is to form part of the principles, the commitments should be mutual and double standards should be called out as inconsistent with such principles.

Moreover, we do not feel comfortable with many of the criteria listed in principle 3: in particular we believe that, if fair, competition between countries is perfectly acceptable and can actually foster innovation and growth. In reality, the OECD Forum on Harmful Tax Practices ("FHTP") and Pillar 2 rules have placed clear and internationally recognized boundaries around the forms that incentives can take and the impact that they can have on cross-border activity and investment, with those deemed harmful and those that result in low or no tax for a taxpayer in any country, becoming ineffective. We believe that this section of the Principles would be a good place to articulate these internationally agreed standards, for example by reiterating what incentives are likely to be deemed "harmful" by the FHTP and which might be more sensitive to the mechanics of Pillar 2 top up calculations.

Sub-principle 3.3 states that incentive design should take into account the impact on other countries. We consider this requirement to be much too broad as it requires that countries do more than merely consider the effects of their tax incentives on other nations and make decisions that recognise the corresponding impacts. Compliance with express international commitments should be the primary, if not sole, directive under this Principle; beyond this, the policy decision to grant incentives in order to strengthen priority industries and activities, and even to create/sustain comparative advantage, should not be curbed by unintended negative effects to other countries.

Sub-principle 3.4 This and sub-principle 3.3 focus only on potential detriments. Discussion could be more balanced by reflecting that some incentives also have positive externalities, for example if they lead to technological breakthroughs, more productive agricultural methods, managing negative impacts of climate change or other advances that will have positive spillover effects. So countries or regions may coordinate not simply to curb incentives, but encourage certain types of incentive policies that have these positive effects.

Principle 4: Legislation / Principle 5: Implementation

Principles 4 and 5 correctly prescribe clear incentive legislation, integration of incentives into the national tax law, and effective oversight and administration of the incentives.

Sub-principles 4.1 and 5.1, which prescribes that tax incentives should be under the sole authority and control of the ministry of finance / revenue administration, may for some jurisdictions be considered to be too restrictive and may unnecessarily overlook or undermine functioning structures in other jurisdictions, e.g. where an inter-agency body or localized investment promotion agencies have been designated to grant and administer tax incentives. As correctly acknowledged in Principle 5.4, the design of incentives would also require the expertise and active participation of other agencies (e.g., Trade and Industry).

Moreover, in our view there are some points that are underemphasized in the document with respect to implementation. First, any tax incentive needs to be able to be monitored effectively in order to be successful. Second, there needs to be consideration around the costs of compliance for taxpayers associated with tax incentives.

Principle 6: Assessment

Countries should retain flexibility to determine the timing and manner of policy evaluation based on their unique economic development trajectories. For example, a jurisdiction could evaluate its tax incentives after 10 years of implementation but adjust the frequency of such evaluations—either shortening or extending the interval—depending on its economic context, such as periods of stable growth or rapid economic expansion. Mandatory assessments may increase administrative burdens, costs, and procedural complexities that may not be aligned with a jurisdiction's priorities.

Incentives for supply-side may also need demand-side incentives to reduce the investment risk that can otherwise stall progress. 'Assessment' principles should deal with how to ween off thriving business once market conditions have normalized. Co-ordinated incentives that consider all aspects of the economic impact from supply to demand and through the relevant business cycle would improve the efficiency and targeted nature of the incentives. The principles may benefit from considering whether supply or demand or a phased combination of both may be most effective for nascent business areas. This is often hampered by limitations in cross-party agreement and changes in policy from one government to another. A national policy framework that has cross-party support may aid the ability of policies to have their intended full impact, whilst retaining the ability of different governments to adjust and fine tune depending on the economic realities of their tenure.

Sub-principle 6.1 Apart from respecting the norm of taxpayer privacy where all nations have strong statutory protection of taxpayer information confidentiality or national security interests (see feedback to question 4 below), publication of the largest beneficiaries of tax incentives or statistics on total incentive spends or tax foregone could have unintended consequences.

Such disclosures can lead to erroneous comparison, judgment and critique of the policies of countries with different economic circumstances and developmental needs. For instance, in casting natural resources exploitation subsidies as generally wasteful, it ignores the fact such incentives may be economically more efficacious for a developing country rich in energy resources than say tax incentives for adopting wind power.

Sub-principle 6.2. Certain large capital investment projects (for example, construction of a gas processing plant or a large infrastructure project) may be unique for the country. If such project is subject to an incentive regime, it may mean that only the investor or consortium of investors in the project benefit from these incentives. In such circumstances, the fact that there is only one or few beneficiaries should not in itself be seen a red flag, provided the incentive regime has been appropriately considered and designed for the given project.

It is important that countries consider these challenges, and how they can best articulate the costs and benefits of the tax incentives that they introduce clearly so that they can garner support from a wide range of stakeholders and be held to account on their delivery.

2. **The document references additional material to help apply the principles. Given this, are there areas where you feel more guidance is needed?**

The additional materials provide a good range of resources for jurisdictions to further their understanding of the principles. Nevertheless, guidance and examples on the application of the principles would be helpful.

- The principles provided are naturally theoretical and the document refers to many documents that might assist countries applying the principles. A synopsis of these materials with those most helpful for design would be welcome. Countries will need to measure the potential economic and social impact of the tax incentive proposals in their country such as the potential future economic benefit and the impact on the mobile workforce. Practical guidance as to how to measure the impact would be helpful.

- Given the complexities of designing an appropriate incentives system, it would be helpful to point to some real-world examples where the principles have been applied successfully as this would help countries design an effective tax incentive regime. This could also include analysis of specific industry characteristics.

- As a practical guide, it may be useful to reference case studies of tax incentives implemented in jurisdictions that are considered to be well-designed and consistent with these principles. The reference of well-designed tax incentives can serve as a benchmark and practical guidance for jurisdictions in their adoption of incentives. We believe that as countries implement Pillar 2, providing detailed guidance on impact of Pillar 2 on tax incentives would be very useful along with suggestions of alternative policy instruments countries could consider to achieve their desired policy objective, where certain tax incentives may no longer be effective in the Pillar 2 contexts.

- Principle 4 highlights the importance of anti-abuse provisions. In the remarks under Sub-principle 4.2, the document references the 2024 World Bank Tax Expenditure Manual. However, the examples and guidance provided on anti-abuse provisions in this manual are limited. It would be beneficial to supplement the document with additional materials offering detailed examples of anti-abuse provisions that countries can reference.

- Guidance that considers applying scale and ambition to areas of greatest need, designing incentives through the economic cycle and balancing urgent and long-lasting considerations.

- Further safeguards in case of abuse of law/adverse effects are recommendable. For this purpose, international guidelines for good cooperation may be a welcoming first step.

- Any additional guidance or materials should address the issues that have not been adequately dealt with, as set out in our responses to Questions 1, 3 and 4.

3. **What kind of support might countries require to effectively apply the principles?**

Countries may benefit from institutional support to apply these principles when designing tax incentives, through capacity building at the tax administration-level and technical assistance through consultative feedback programs. In particular, understanding how to perform cost-benefit analyses that apply across a large number of factors and stakeholders and potentially long investment cycles, is

particularly important to ensure that the desired objective and impacts of incentives are well understood and communicated before decisions are made.

In addition to the remarks that provide guidance and analysis for the principles, the document could include an appendix with examples illustrating the application of each sub-principle. Many principles introduce broad and complex concepts that would benefit from practical examples to facilitate understanding and implementation. More guidance at international level would also be helpful including examples for best practices.

Support from countries that have already successfully implemented a tax incentives regime would be helpful including providing training on value creation and specific industry characteristics so that a country can assess the economic benefit of incentives across different industry sectors.

Further guidance or materials ought to be solicited from experts in industry, academia, and other neutral stakeholders, particularly given the revenue collection imperative of governments.

Business is open to engage with governments seeking to understand how incentives impact business decision making, the commercial principles and effects, including where relevant economic impact assessments.

4. **Do you have any recommendations to refine the principles and remarks, given your experiences with tax incentives (either positive or negative)?**

Principles 1, 2 and 3 should be significantly reviewed and modified as they are too restrictive and many of these principles go against the ability of a sovereign state to establish a broad range of measures to attract growth and investment, which in turn will have a positive effect for all stakeholders involved.

Principle 1 on Justification, the term "net social benefits" should be clearer. The principle may be strengthened by including sector-specific guidelines for justifying tax incentives. This is to help provide more uniform and tailored guidelines. For example, social benefits for the tourism sector may focus more on job creation and foreign exchange earnings, while the technology sector may emphasize innovation and productivity. In addition, there should be a periodic review of these justifications and an adjustment to ensure that the criteria and requirements remain relevant and effective. Temporal elements should also be considered in the determination of "social benefit" since the benefits from the grant of incentives are expected to be realized over a medium to long-term period, whereas the social costs of tax incentives (e.g., foregone revenues) would be more pronounced in the short-term.

Principle 2 on Design may include a recommendation for a periodic review of the incentivized activities in the context of a broader development plan. Additional case studies and evidence-based examples of the unintended impacts of incentivizing certain industries, as prescribed in Principle 2.2, would also be beneficial in the identification of priority projects and activities.

It is further important to emphasize that, in line with BEPS Action 5, the design principles should be focused on promoting substance-based tax incentives/regimes to drive R&D activities and economic growth and that harmful tax practices should be discouraged.

We recommend adding a section on mechanisms, safeguards, or safe harbors to limit tax leakage in instances of abuse of tax policy. Consideration may be given to including such a section, recognizing the need to balance this against the compliance burden for taxpayers from an administrative perspective.

We also recommend including public consultation in the design process. Public consultation in the tax policy design and draft legislation has been useful in tax policy setting from a local perspective in minimizing the risk of abuse and optimizing design.

Principle 3. More guidance regarding international considerations would be useful, particularly: relationship between international and EU hard tax law; more detailed information regarding the role of the soft law; finding more balanced mechanisms between small and large economies; international measures to mitigate the risk of abuse of law and mobility of tax incentives; balance between direct and indirect tax incentives; the role of AI on tax incentives, as well as possible application of tax disincentives. Principle 3 would also be a valuable place to discuss the international standards that directly or indirectly govern the limitations on tax incentives, specifically where the OECD FHTP may deem incentives to be harmful, and what features of incentives may lead to ineffective outcomes due to other countries' adoption of Pillar 2 rules.

Sub-principle 3.3. As discussed above, this sub-principle should be reconsidered, as taxation is a sovereign matter for each country. Different countries have varying development needs at different stages. For instance, developing countries may have a far greater need to attract investment than developed nations. Standardizing policies across all countries could disadvantage certain groups. International considerations should primarily focus on respecting legal international commitments and treaties, as these are binding agreements between nations.

Principle 4 on Legislation correctly states that incentive legislation should be clear, integrated into tax law, and subject to effective oversight.

Sub-principle 4.2 could emphasize that tax incentives should be designed to be clear and self-executable without requiring prior approvals (avoiding a "grant-approval" mechanism). Instead, the framework should promote a "self-apply and self-accountable" mechanism, underpinned by transparent and well-defined laws.

The standards under **Principles 4 and 5**, with respect to the grant and administration of incentives, should also acknowledge working practices in some jurisdictions where centralization of responsibilities would be practically impossible (i.e., due to the oversaturation of statutory responsibilities of the Finance department). Thus, the Principles should include additional guidelines for such alternative structures where the grant and administration of incentives has been decentralized and localized.

Principle 6 on Assessment emphasizes transparency and public accountability in tax incentive design and evaluation. While these may be important aspects of good governance, public disclosure of these benefits may invite excessive scrutiny and criticism as not all incentive decisions may be justified through an economic or quantifiable measure (e.g., strategic importance of certain sectors to the economy, etc.) or attract political pressure from the public (e.g., to revoke tax incentives from companies involved in international conflict, etc.) without balancing the relevant considerations at a holistic level.

We believe that any public disclosure should not go beyond globally accepted standards of transparency. The current state of transparency as articulated by the Forum on Tax Administration and by the G20-OECD BEPS Action 13 - each country needs to explicitly consent to the exchange of information either via a bilateral agreement or multilateral instrument (as in the case of Country-by-Country Reports) - with the confidentiality of information so exchanged safe-guarded.

The public disclosure of information espoused in "P6.1 Tax expenditures associated with all incentives should be estimated and published regularly", "P6.2 Tax expenditure reports should indicate the largest beneficiaries from each provision" and "P6.3 Incentive legislation should include a program for periodic,

credible and public evaluation" goes beyond current global standards for transparency unnecessarily and should be realigned to conform to these global standards.

Moreover, there may be geo-strategic or geo-political reasons why countries may legitimately prefer not to disclose amount of tax incentives deployed, the beneficiaries of the incentives or subject sensitive programs for public scrutiny. In such instances, the principles should articulate that public interest for greater transparency should be weighed against legitimate national security concerns and disclosure calibrated appropriately.

In relation to **sub-principle 6.1**, quantitatively assessing the causal relationship between tax incentive expenditures and societal benefits is challenging. For example, corporate income tax incentives for a key industry may attract new investors, but the societal benefits (e.g., increased employment, higher tax revenues post-incentive, workforce development) are not immediately quantifiable. As such, assessments should acknowledge the difficulties in precise quantitative evaluation, while seeking to provide guidance on how these difficulties may be overcome.

Further, **sub-principle 6.2**, which states the need to publicly disclose beneficiaries of tax incentives, is unnecessary. When policies are designed transparently and fairly, taxpayers benefiting from these incentives are merely exercising their rights. Public disclosure could lead to misinterpretation by the media, hostile entities, or uninformed individuals, potentially fueling societal discontent or discrimination.

Lastly, **sub-principle 6.3** requires consideration of both qualitative and quantitative factors. In practice, direct causal relationships between benefits and costs are difficult to establish. For instance, while corporate income tax reductions may result in revenue losses (e.g., $1 trillion), the broader impacts could include:

- Increased employment (e.g., what percentage of job growth is directly attributable to the incentive?).

- Future tax revenue growth and reducing strain on government assistance schemes through increasing number of taxpayers (which may not be immediately apparent). For example, tax incentives targeting substantive business activities generally create employment, which may enlarge the pool of individual taxpayers. Similarly, in jurisdictions which provide government assistance to individuals in poverty (e.g., cash grants), reducing unemployment and underemployment of such individuals would reduce government expenditure on such assistance schemes. Therefore, through increasing the number of taxpayers and reducing government expenditure, tax incentives may result in long-term revenue growth, rather than merely short-term revenue loss.

- Economic development in specific regions (which is easier to measure), by anchoring key industry players and building a robust ecosystem that will encourage more foreign investment (e.g., in local infrastructure). There are also other downstream economic benefits through technology transfer from foreign investors to local businesses, and R&D investments in local industries leading to development of IP.

Finally, it would be helpful to have periodic evaluation of the tax incentives' application due to the dynamic landscape of business models.

5. **Do you have any other comments or suggestions?**

Rapid technological innovation should be embraced, and energy supply must be secure and affordable for consumers and businesses. In general, policies should remain technologically neutral, not artificially promoting a specific technological choice above others without articulated reasons based on broader national development strategies and clear economic analyses on anticipated costs and benefits.

We believe the jurisdictions should have the right to retain their own sovereignty and autonomy in the design of their incentives taking into account national priorities and investment policies which may be unique to them. So long as there is rationale behind incentives, then such rationale should be respected and acknowledged.

Finally, as noted in our opening comments, we believe that the principles should provide information and guidance to countries on the impacts of Pillar 2 (and other international standards, such as BEPS Action 5) on tax incentives they may seek to offer. We believe that it would be beneficial to provide high-level guidance of the factors that countries should consider when designing incentives that would be likely to result in a top-up tax under Pillar 2 in multinationals subject to the rules.

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We thank you for the opportunity to comment. We would be pleased to respond to any questions arising from both our general and specific comments, and to offer further support as revised document is developed.

Sincerely,

Alan McLean
Chair, *Business at OECD* (BIAC) Tax Committee

Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)