



경제정의실천시민연합
Citizens' Coalition for Economic Justice



[T.] +82-2-765-9731 [F.] +82-2-741-8564 [E.] ccej@ccej.or.kr [H.] www.ccej.or.kr
[A.] 26-9 Dongsung 3-gil, Jongno-gu, Seoul 03085, Republic of Korea

COMMENTS BY KOREAN CIVIL SOCIETY

before

OECD / G20

Review of the OECD's proposed "Unified Approach"

under Pillar One

Citizens' Coalition for Economic Justice*

Republic of Korea

November 12, 2019

Korean civil society registers a strong protest with OECD [TFDE@oecd.org] over the proposed "Unified Approach" to inflating this scope of digital taxation out of the IT business into the other businesses based in the manufacturing supply chain, in the same scope as this large consumer-facing business; on the grounds that tangible assets of the manufacturer's own are appreciably different from intangible assets of the IT enterpriser's transferability and erosivities with non-physical presence. Hence, we make a review of *the Secretariat Proposal for a "Unified Approach" under Pillar One* with our comments.

* This statement was contributed by our true activist, Hochul Jung (hcjung@ccej.or.kr) and our peer reviewers, Prof. Hyochang Pang (hcpang@doowon.ac.kr) and Prof. Hoon Park (phn@uos.ac.kr) in order to give our comments to the Task Force on the Digital Economy at OECD (TFDE@oecd.org), to facilitate the G20 BEPS Project; and in the new order to take their BEPS Actions for the digital taxation of Information Technology Multinational Enterprises in the name of the "Google Tax."

If you need more information about us.

■ Please, visit us: <http://ccej.or.kr/eng/who-we-are/about-us/>;

■ Refer to our Achievements (RLA, 2003): <http://www.rightlivelivelihoodaward.org/laureates/citizens-coalition-for-economic-justice-ccej/>

“ The CCEJ, the Korea's first fully-fledged NGO, operates on the basis of principles of PUBLIC GOOD and NONPROFIT and NONPARTISAN 1

■ Writing Summaries

1. Of particular interest to a new digital tax, actual and fair taxation to be required for multinational IT companies (“IT-MNEs”) in a concentration of digital-economic powers with their non-physical presence to fall under the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), is the international society so having reached a meeting of our minds on the basic purpose of setting the OECD/G20 BEPS Actions. And we were going to do so. We already knew the global market was more and more integrating between digital economy and international trade, the fact that the early report by OECD (2015) estimated indicating about 4–5% losses of the global corporate income tax revenue, (*i.e.*), annually 100–240 billion dollar, due to these IT companies, (*e.g.*), Google, Apple, Facebook, Amazon, et al. They did. Those lions’ share hadn’t got to be above our suspicion at their tax evasion through transfer pricing. We were supposed to do our fair share, would be fixed to take their unfair share into our taxable income, and now we’re opening the door of possibility to set the new nexus and profit allocation rules into the OECD’s proposed “*Unified Approach*.”

2. But, unlike this basic pledge by the international society, then G1 recently gave OECD a bum steer to fizzle it out—outdoor of IT, then now they have been meaning to overturn our agreement out of the blue by inflating its scope outside of IT. It’s wrong with its scope. It’s against our common sense, agreement to set this new rule into the other scopes. In fact, that meant these scopes not only could deal with consumer-facing businesses, but also might include such manufacturing businesses—(*e.g.*), automotive industry, consumer electronics industry, smartphone industry, semiconductor industry, or even cosmetic industry—(*i.e.*), over the whole industry based in the global supply chain. It’s wrong in the digital taxability to expand one scope into the other sectors as if this scope would integrate every consumer business provider or manufacturer into the consumer-facing business at all. That scope is so wrong; it’s too widely distorted by someone else. Ho, Uncle Sam! Did you do that? As a matter of fact, unless we’ll exclude these manufacturing businesses from this “*Unified Approach*,” that shall overturn the multilateral trade system as well as the international tax system on one’s own ways. In this regard, Korean civil society is now seriously concerned about the world war of the digital taxation that can beat both the system and join to pillage others’ tax revenue.

3. Hence, we the citizens register a strong protest with OECD over the one’s distorted “*Unified Approach*” to inflating this scope of digital taxation out of the IT business into the other businesses based in the manufacturing supply chain, in the same scope as this large consumer-facing business; on the grounds that tangible assets of the manufacturer’s own are appreciably different from intangible assets of the IT enterpriser’s transferability and erosivities with non-physical presence. So we make a review of [the Secretariat Proposal for a “Unified Approach” under Pillar One](#), as the following comments:

■ Scope and Taxability

4. Before all, the “manufacturing” business will have to be excluded from this scope. Out of the digital taxability! Because this taxability is supposed to be limited to IT-MNEs, a taxpayer that has engrossingly focused on intangible assets. So far as the international community takes keynote of taxing the Digital Economy, every country would have to acquire taxability to levy on intangible assets of IT-MNEs own in better accord with the international tax system even if there is no any fixed place of business in the established market jurisdiction, where there are some “taxable” profits they owned in their remote marketplace, in non-physical presence, and in significant presence of digital economy, such as big data, information, or any services: these things are consumed, traded and sold through their cloud service or their virtual platform, thanks to their own intangible assets that may go across borders freely and thanks to their fixed return that can be freely transferred to the tax heaven they permanently resided in for BEPS. They’re so easily exploiting it. Therefore, we arrived at our agreement for the BEPS Actions.

5. Unlike the IT business that engrosses on intangible assets, whereas in the case of tangible assets on which the manufacturing consumer goods business focuses in physical presence—in fact, there is no reason for the base erosion; because the operating income as to final goods and sales as belonging from local factory to overseas subsidiaries must have been already subject to local taxation in substance in full accordance with the current international tax system. Also, there is no reason for the profit shifting; because the business profit by the international trading local products, a bit of transfer pricing from such daughter companies to a parent company, must have been already subject to local tariffs in full accordance with the international trade system. Nonetheless, the digital taxability were willing to be regarded as the same as a modality between “the one’s own intangible assets that are subject to the engrossment of the global market” and “the other’s tangible assets that are subject to a cost-saving measure of the global value chain, (*viz.*), the manufacture, the division of labor and the division of profits.” As a result, that distortion would be going to trigger off double taxations and retaliatory tariffs. In this context, Korean civil society was seriously concerned about the global warfare of the digital taxability that can beat these international economic systems and join to plunder others’ tax revenue as well as ours.

6. Thus, we call on OECD/G20 NOT to inflate the scope into the other businesses, a distortion that is targeting at the digital technology manufacturers and their final products and sales to be squashing a consumer base. That meant, technically it is supposed to separate this consumer-facing business, such as consumer goods and manufacturing businesses—for example, automotive industry, consumer electronics industry, smartphone industry, or semiconductor industry—from that kind of this scope; the one’s own cost-effective intangible assets are totally different from such tangible assets of this business for the other’s own efforts-to-be-cost-saving.

■ **New nexus and Taxable services & sales and the Neutrality**

7. We acknowledge the new nexus rule that can make another technical progress and that may give a new right of the market jurisdiction to non-physical things on the grounds that there is no marketplace but in digital interactions and in economic concentrations. Good job! As a result, this new nexus will be effective to countries, those of us, who are of affected monopoly in their engrossed market by IT-MNEs like Facebook, Apple, Amazon, Netflix, Google and YouTube.

8. Meanwhile, I let you know that Korea recently was effective in the sales tax (VAT 10%) to them since July 2019, a B2C that would increase certainty in good taxation to IT-MNEs. We made it! That meant, this way can put account straight together with taxable incomes from consumer services and sales; on the basis of some taxation information, that could be allowed to estimate their business profits in order to impose a fair corporate tax upon them.

9. Furthermore; if we would set some regulations on the neutrality between the Internet and platforms and among each of them, it's clear that we'll gonna set a better precedent to be fair competitions in the lawless world of the ICT ecosystem. Of course; for unless it should be effective at all the countries at all, some called it a "bad" precedent-to-set. However, I believe that all we're going to come over to it as our fair share in the digital economy era someday. To leave it any longer is in unfairness.

■ **New profit allocation rules going beyond the arm's length in order to increase tax certainty with Three tiers mechanism**

10. In respect to an untouchable share and the other rest of the formula-based calculations and the profit allocation rules and the fixed return, another alternative will have to be proposed to improve greater transparency of the consolidated financial statement, fixed fairness of the profit allocation rules, and better effectiveness of securing tax revenues. As referring to these calculations and rules (Amount A) from a viewpoint that IT-MNEs make unclarity to consolidated financial information, the formula-based calculations could be a skeptical efficacy in classifying global gross sales, its general income and its excessive profits. As you know the Google's matters, if we *coulda* too easily distinguished global business profits and *shoulda* so simply calculated its global excessive profits from its consolidated financial statements, we *woulda* not concerned about BEPS yet, like that. Therefore, unless we could improve greater transparency of the consolidated financial statement, we'll still have a hard time to

secure tax revenue through this formula-based calculation—to reform their bad habits and to do our business in the light of day. In particular, from the IT business, thanks to its efficiency of intangible assets by themselves or due to its shorted arm’s length, its operating profit margins are much more profitable than other businesses; through that formula-based calculation, thus we can’t help having another hard time to give balanced consideration to the manufacturing consumer goods and global supply chain and tangible assets at all. In the same vein, it’s is a matter of course that America in absolute advantage of that kind of the IT business will be fixing to have got to break even with this formula and must have recouped its global excessive profits by taking away our own untouched share, global minimum tax rates and excessive profits on one’s own ways. Moreover, as referring to that fixed returns (Amount B), Uncle Sam in comparative disadvantage of the manufacturing business must have taken fixed returns away from our baseline activities, marketing and distribution on his own ways. So we are concerned about his double taxations as well as his retaliatory tariffs. Consequently, it is too hard to find any authenticity out of the international agreement and to make sure of any guarantee out of fair distribution and proper tax revenue. Nevertheless, it’s nonsense to require one’s untouchable share from the will of the international society; it’s necessary to set profit sharing-ratios into clarity.

■ **Comments and Recommendations**

- **We urge OECD/G20 **NOT** to inflate the digital taxability into the manufacturing businesses, a distort that targets at ICT manufacturers and their final products and sales to abuse our consumer base;**
- **We would like to give a strategic advice to those of us which countries are in the small open economy or are of affected monopoly due to IT-MNEs, then you have to hold us together if your mother country is willing to invest in or focus on some innovation manufacturing businesses like ICT, AI, robotics, etc. based all in semiconductor engineering;**
- **We call on OECD enough to inform all the world and to ask for our entrepreneurs and our citizens fully understanding economic merit of the digital taxability about our untouched share (*i.e.*, “global profit-sharing ratios”) from their general profits and their fixed returns and their minimum tax rates against IT-MNEs.**