

The background features a person's hands typing on a laptop. Overlaid on this is a network diagram with a central circle containing the word "TAXES". This central circle is connected to various icons: a clock, a Wi-Fi symbol, a globe, a bar chart, a Wi-Fi symbol, a gear, a play button, a plus sign, a camera, a circular refresh icon, an envelope, a speech bubble, a smartphone, a laptop, a Wi-Fi symbol, and a keyhole. The overall theme is digital technology and taxation.

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Tax

WEBINAR

Gewinner und Verlierer im Zeitalter von BEPS 2.0

19. Mai 2020, 17:30 - 18:30 Uhr

Referenten Tax WEBINAR



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OECD/G20 Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy

19. Mai 2020

Ronny Rosenblatt



Disclaimer

Please note that some information provided at the occasion of this presentation contains personal views and opinions gained from the recent discussions and meetings that have taken place. However, these do not necessarily correspond to the views of the SIF. In general, since nothing has yet been definitively decided, the parameters of the solutions could still change.



Table of Contents

- I. Developments
- II. Residual Profit
- III. Overview of the Unified Approach to Pillar One
- IV. Overview of the GloBE Proposal (Pillar Two)
- V. Different views on the taxation of the digitalised economy
- VI. Key Features Pillar One that need to be agreed
- VII. Key Features Pillar Two that need to be agreed
- VIII. Impact Assessment
- IX. Conclusion
- X. Impact of COVID-19
- XI. Next steps



I. Developments

- The **tax challenges of the digitalisation of the economy** were identified as one of the main areas of focus of the OECD/G20 Base Erosion and Profit Shifting (**BEPS**) **Project**, leading to the 2015 BEPS Action 1 Report. The **Action 1 Report** found that the whole economy was digitalising and, as a result, it would be **difficult, if not impossible, to ring-fence the digital economy**.
- For direct taxes, the Action 1 Report observed that while **digitalisation could exacerbate BEPS issues**, it also raises a series of **broader tax challenges**. The latter challenges, however, were acknowledged as going beyond BEPS, and were described as chiefly relating to the **question of how taxing rights** on income generated from cross-border activities in the digital age should be **allocated among jurisdictions**. A number of potential options to address these concerns were discussed, but none were ultimately recommended. Instead, the Action 1 Report called for continued work in this area.
- In March 2018, the Inclusive Framework on BEPS (IF), working through its Task Force on the Digital Economy (TFDE), issued Tax Challenges Arising from Digitalisation – Interim Report 2018. The **Interim Report** provided an in-depth analysis of new and changing business models that enabled the identification of **three characteristics** frequently observed in certain highly digitalised business models, namely **scale without mass, heavy reliance on intangible assets**, and the **importance of data, user participation** and their synergies with intangible assets.



I. Developments (2)

- While members of the IF did not converge on the conclusions to be drawn from this analysis, they committed to **continue working together to deliver a final report in 2020 aimed at providing a consensus-based long-term solution**, with an update in 2019. Some members made suggestions on how the work could be taken forward to achieve progress towards a consensus-based solution. Some proposals focused on the allocation of taxing rights by suggesting modifications to the rules on profit allocation and nexus, other proposals focused more on unresolved BEPS issues.
- In the Policy Note Addressing the Tax Challenges of the Digitalisation of the Economy, approved in **January 2019**, the **IF agreed to examine and develop these proposals** on a “without prejudice” basis. These proposals were **grouped into two pillars** which could form the basis for consensus:
 - **Pillar One focuses on the allocation of taxing rights**, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules;
 - **Pillar Two focuses on the remaining BEPS issues** and seeks to develop rules that would provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation.



I. Developments (3)

- **In May 2019, the IF delivered a detailed Programme of Work.** This was endorsed by the G20 Finance Ministers and Leaders in June 2019.
- At the meeting of the **IF at the end of January 2020**, the **outline of the architecture of a unified approach for Pillar One** as a basis for the negotiation of a consensus-based solution was agreed and a **progress report on Pillar Two** was adopted.
- Since the last meeting of the IF, **various meetings of technical working groups of the IF have taken place.** At these meetings, the OECD/G20's two-pillar approach to address the tax challenges arising from the digitalisation of the economy was further specified.



II. Residual Profit

Residual profit...

...may have different definitions depending on its context..

...but it is mostly understood as the difference between operating profit
and routine profit

...represents profit from intangible property

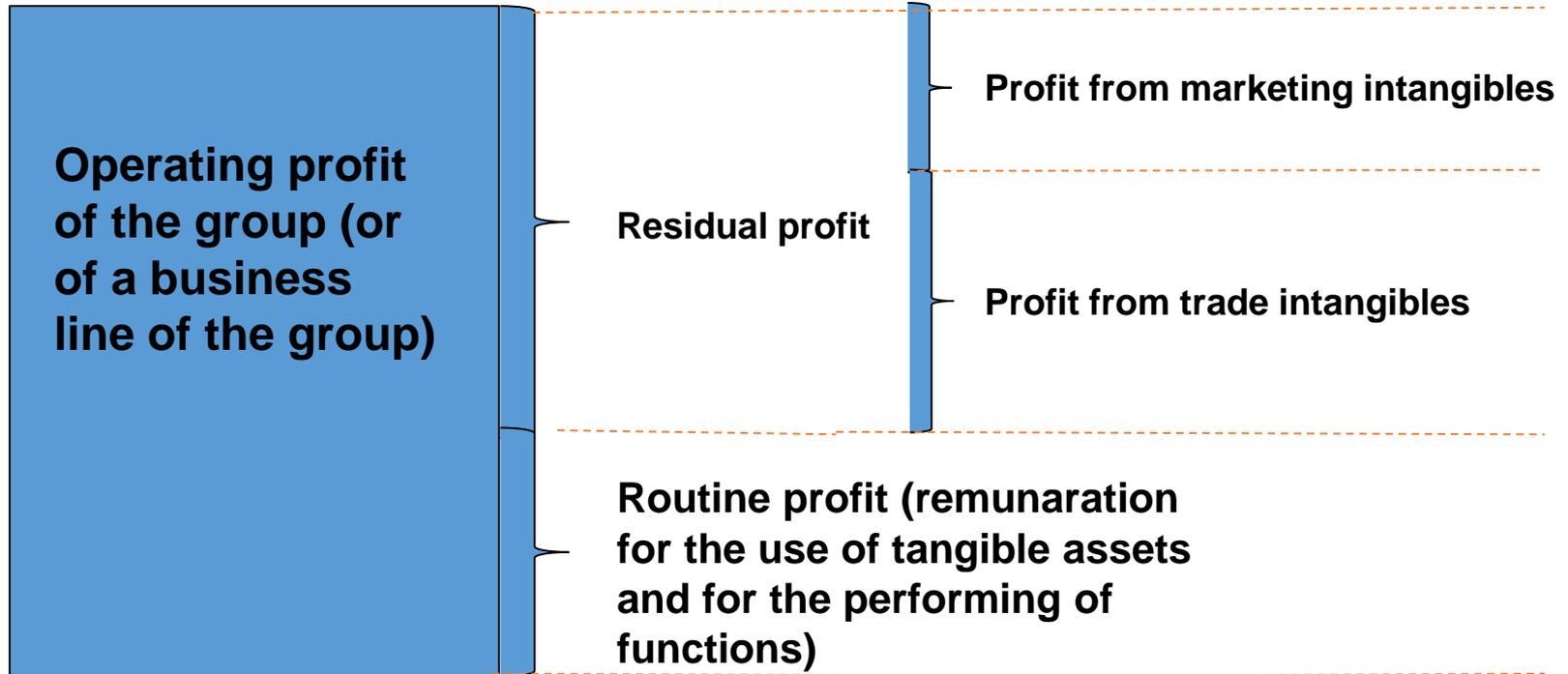
...is tending to increase (in particular residual profits of highly digitalized MNE and
MNE in the luxury goods sector)

...is to some extent mobile

...may give rise to international tax planning (despite BEPS Actions 8 to 10)



II. Residual Profit (2)





III. Overview of the Unified Approach to Pillar One

- Model based on a three-tier mechanism with three separate returns to market or user jurisdictions:
 - Amount A: a share of deemed residual profit allocated to market jurisdictions (irrespective of the existence of physical presence) using a formulaic approach
 - Amount B: a fixed remuneration for baseline marketing and distribution functions that take place in the market jurisdiction
 - Amount C: additional return for activities exceeding those covered in Amount B based on TP analysis
- Leads to the co-existence of two systems:
 - New profit allocation and new nexus rules (Amount A)
 - Existing tax rules (Amount B and Amount C)
- Both supplemented by robust and effective dispute prevention and resolution mechanisms



IV. Overview of the GloBE Proposal (Pillar Two)

- Taxation of income not subject to tax at a minimum rate through:
 - Income inclusion rule
 - Switch-over rule
 - Undertaxed payments rule
 - Subject to tax rule
- Focus of the GloBE Proposal:
 - Provides jurisdictions with a right to “tax back” profit (residual profit) of large MNE where other jurisdictions have not exercised their primary taxation rights or the profit is otherwise subject to low level of taxation



V. Different views on the taxation of the digitalized economy

More pro	More contra
The market jurisdictions should get more tax revenues	If the market jurisdictions need more tax revenues, they just have to introduce a VAT or a sales tax system taxing consumption instead of value creation.
Corporate income taxes are an important source of revenues for most states. Taxing (foreign) corporations is popular with the electorate.	Corporate income taxes have distortive effects on saving and investment decisions. Taxation of the worldwide income of corporations by their residence states is arbitrary.
Consumers and users contribute to value creation of an MNE. Digitalization allows MNEs to be heavily involved in the economic life of a jurisdiction without any physical presence	The benefits for such jurisdictions from getting a part of the MNEs' profits for taxation does not justify the additional administrative burden for those MNEs
BEPS Actions 8 to 10 have not solved the issue that MNEs may still allocate their residual profits to low tax jurisdictions	It is too early to judge on the impact of the measures decided under BEPS



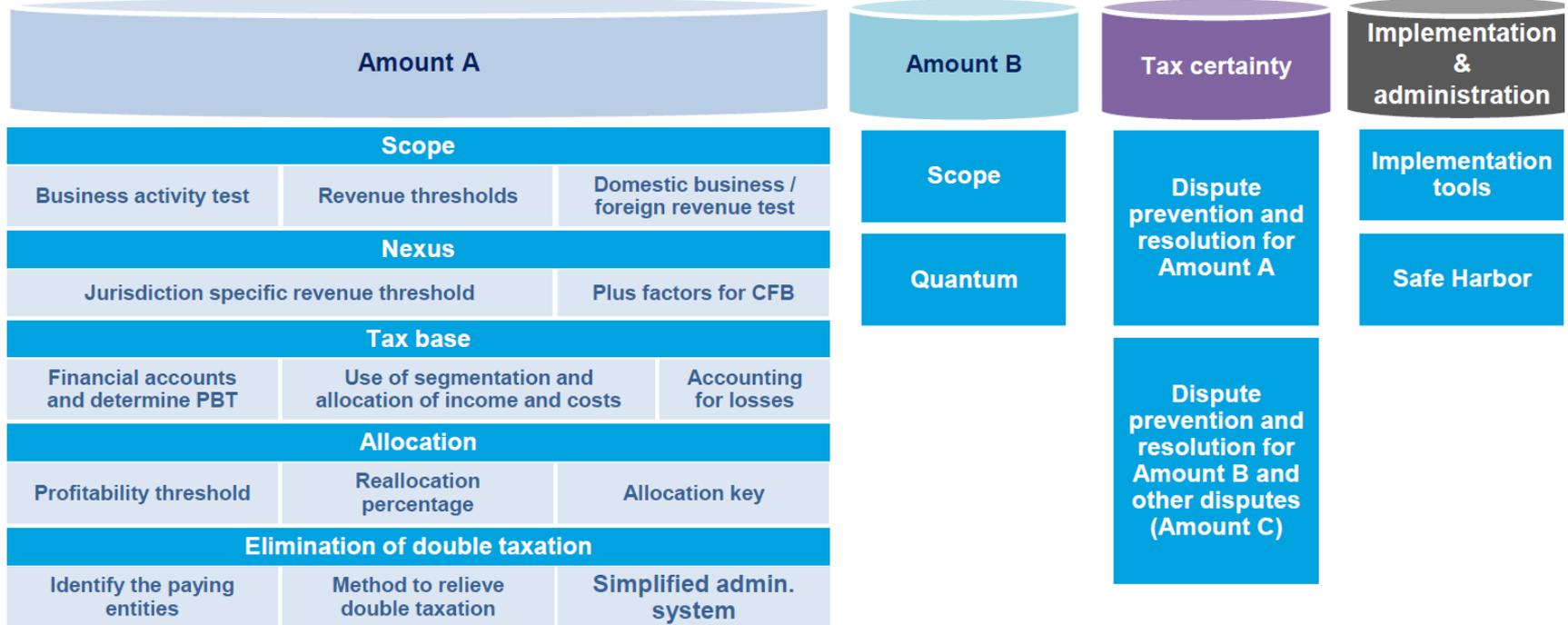
V. Different views on the taxation of the digitalized economy (2)

More pro	More contra
<p>Formulaic apportionment in respect of the whole profit of the MNEs is needed, or the replacement of the traditional corporate tax by a destination based tax</p>	<p>The arm's-length principle leads to appropriate results even though in some situations the arm's-length principle may be too complicated, in particular for developing countries. If the current tax system is adjusted by introducing a formulaic apportionment in respect of a small part of the profit of big MNEs, that is still better than a more fundamental change of the current tax system</p>
<p>The focus of BEPS was on tax avoidance. Further measures are necessary to tackle tax competition. The harmful race to the bottom on corporate taxes must stop.</p>	<p>Tax competition is not per se harmful. On the contrary, tax competition limits excessive public spending</p>
<p>Without a multilateral solution, unilateral measures are taken</p>	<p>...</p>



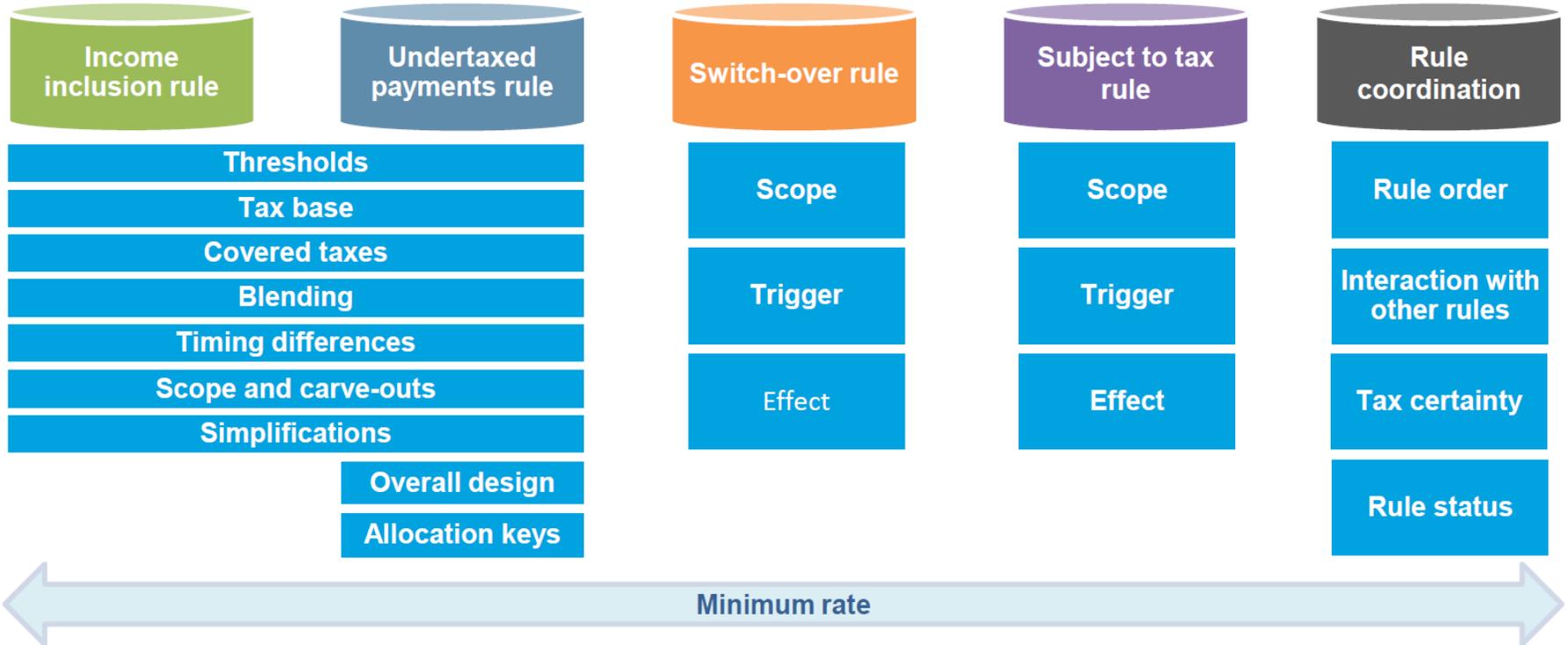
VI. Pillar One (Slide by the OECD)

Key features that need to be agreed





VII. Pillar Two (Slide by the OECD) Key features that need to be agreed





VIII. Impact Assessment

- Preliminary estimations by the OECD:
 - Estimated global net revenue gain up to 4% of global CIT revenue or USD 100 billion annually, depending on reform design.
 - The revenue gains are broadly similar across high, middle and low-income economies, as a share of corporate tax revenues.
 - Investment hubs would experience some loss in tax revenues.
- Preliminary estimation for Switzerland:
 - A first very rough estimation by the Federal Department of Finance during the first half of 2019 concluded that Switzerland might lose between 0.5 and 5 billion CHF in tax revenue.
 - During the second half of 2019 the OECD performed its own calculations and estimated the potential loss for Switzerland significantly below one billion CHF.



IX. Conclusion

- The rules under both pillars are very complex increasing the administrative burden for tax administrations and MNE:
 - Pillar One: Leads to the co-existence of two completely different profit allocation systems (formulary apportionment vs. at-arm's-length method)
 - Pillar Two: Very difficult to determine the effective tax rate for each jurisdiction
- Impact of both pillars heavily depends on the parameters:
 - Pillar One: Which portion of the residual profit is allocated to the market states and which proxy is used in order to determine the deemed residual profit?
 - Pillar Two: What will be the minimum tax rate?



IX. Conclusion (2)

- Corporate tax features of countries that will be particularly affected by Pillar Two:
 - No corporate income tax or very low tax rate
 - Territorial tax system (= foreign profits are generally tax exempt)
 - Granting of special tax regimes
 - Granting of tax incentives (“tax holidays”)
 - Distribution based tax system (= profits are only taxed once distributed)
- MNE groups may benefit if countries withdraw their unilateral measures and more tax certainty is granted through improved dispute resolution mechanisms



X. Impact of COVID-19

- General impact:
 - Reduced profitability for most MNEs
 - Accelerated digitalization (Pillar 1 even more relevant?)
 - Increased On-shoring of global supply chains (unrelated to tax reasons)
 - Need for increased tax revenues
- Impact on DET project:
 - The July Inclusive Framework meeting in Berlin has been canceled (virtual meeting only) and no decisions will be taken.
 - The proposed package is likely to be partial in nature, addressing only some of the many open issues under Pillars 1 and 2 as the first step in a “staged process”.
 - For example, Pillar 1 might be introduced for automated digital services only with consumer facing business added at a later stage (would the US agree to such a measure?)
 - Pressure to increase the minimum tax rate under Pillar 2?



XI. Next steps

- Objective is to deliver a consensus-based solution at the agreed end-of-year deadline
- Work is ongoing: Working Parties and the Steering Group have been meeting virtually
- Inclusive Framework plenary meeting has been rescheduled due to COVID-19

When?	What?
July 2020	Virtual Inclusive Framework Meeting only Updating members on progress made
October 2020	Inclusive Framework Meeting Agreement on key policy features
November 2020	G20 Leaders Summit Delivery of consensus-based solution

Any questions ?





Thank you

Eidgenössisches Finanzdepartement EFD

Staatssekretariat für Internationale Finanzfragen SIF



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COVID-19

Steuerliche Massnahmen / Implikationen

Dr. Julian Kläser

Massnahmen zur steuerlichen Entlastung in der Schweiz und in ausgewählten Kantonen

Bundessteuern

Kantonale Steuern (Zürich | Zug)

Steuerliche Implikationen

Änderung von Dividendenbeschlüssen

Wesentliche Ereignisse nach dem Bilanzstichtag

Home Office Tätigkeit



Kantonale Steuern (ZH | ZG)

- Einreichungsfrist für Steuererklärungen verlängert;
- Anpassung der provisorischen Steuerrechnungen;
- Erstreckung der Zahlungsfrist oder Ratenzahlungen;
- Befreiung von Verzugszinsen.

Bundessteuern

- Verzugszinsen ausgesetzt.



Änderung von Dividendenbeschlüssen - steuerliche Fallstricke

- Dividendenbeschluss durch GV > steuerlich unproblematisch;
- Abänderung Dividendenbeschluss nach GV > Verrechnungssteuer (VSt) und Emissionsabgabe (EA) Implikationen prüfen;
- **Fazit:** Vorausschauende und vorsichtige Beschlussfassung über die Dividende angezeigt.

Wesentliche Ereignisse nach dem Bilanzstichtag

- Grundsatz ordnungsmässiger Rechnungslegung nach schweizerischem Aktienrecht = Vorsichtsprinzip nach Art. 958c OR;
- Ursache für Corona Pandemie bereits vor dem 31.12.2019;
- Exkurs Zuger Verwaltungspraxis und steuerliche Effekte;
- **Fazit:** Es gibt gute Argumente für eine Rückstellung per **31.12.2019** im Zusammenhang mit der Corona-Krise.

Home Office - Steuerpflicht zufolge Betriebsstätte



- **Grundsatz:** Verfügen Unternehmen über sog. Betriebsstätten können sie an anderen Orten Nebensteuerdomizile begründen.
- **Im Besonderen zum Home Office:** Gemäss unilateralem als auch DBA-Recht sollte ein Home Office nur dann zu einer steuerlichen Betriebsstätte führen, wenn Arbeitnehmer:
 - **kein Arbeitsplatz** zur Verfügung gestellt wird (obwohl dieser für seine Tätigkeit für das Unternehmen auf einen angewiesen wäre);
 - für eine **unbestimmte längere Zeit** von seinem Home Office aus einen **wesentlichen und massgeblichen Beitrag zur unternehmerischen Leistung** beiträgt.
- **Home Office in Zeiten des Corona-Virus:** Home Office-Tätigkeit erfolgt aufgrund besonderer Notsituation und entsprechender staatlicher Vorgaben (nicht dem Arbeitgeber anzulasten).
- **Fazit:** Derzeitige Home Office-Tätigkeit sollte im Regelfall nicht zu einer ungewollten steuerlichen Betriebsstätte des Unternehmens für schweizerische Steuerzwecke führen (möglicherweise abweichende ausländische Verwaltungspraxis gilt es zu beachten!).

Home Office – Einkommensteuerfolgen international



- **Grundsatz:** Grenzgänger oder Personen mit Wochenaufenthaltsbewilligung ohne steuerrechtlichen Wohnsitz/Aufenthalt in der Schweiz unterliegen grundsätzlich der Quellensteuer auf ihrem Erwerbseinkommen aus schweizerischer Quelle.
- **Aktuelle Situation:** In der aktuellen Corona-Krise sind die Arbeitnehmer angewiesen worden, von ihrem Heimatland aus im Ausland zu arbeiten.
 - Fehlende Besteuerungsgrundlage gemäss internem Recht (vgl. Art. 5 Abs. 1 lit. a DBG iVm mit Art 91 f. DBG);
 - «Negativer Effekt» Doppelbesteuerungsabkommen (d.h. Zuteilung Besteuerungsrecht «verpufft»).
- **Fazit:** Individuelle Einkommenssteuerbelastung des ausländischen Arbeitnehmers könnte möglicherweise höher sein, je nach den geltenden gesetzlichen Vorschriften des Ansässigkeitsstaates. Vorausschauende Prüfung der individuellen Situation angezeigt.
- **Aktuelle Entwicklungen:**
 - Schweiz steht derzeit in Verhandlungen u.a. mit Deutschland, Italien und Österreich;
 - Konsultationsvereinbarung Frankreich/Schweiz wurde am 13. Mai 2020 unterzeichnet;
 - OECD hat Empfehlungen für Vertragsstaaten publiziert.

The background features a blurred image of a person's hands typing on a laptop. Overlaid on this is a network diagram with a central circle containing the word "TAXES". This central circle is connected to various icons: a clock, a Wi-Fi symbol, a globe, a bar chart, a Wi-Fi symbol, a gear, a play button, a plus sign, a camera, a speech bubble, an envelope, a smartphone, a laptop, a Wi-Fi symbol, and a hierarchical tree structure.

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Verrechnungssteuer-Reform

Thomas Nabholz

Heutige Hauptprobleme

Emissionen in CH

- Equities EA, VSt
- **Obligationen** EA 2012 aufgehoben, aber wegen VSt für ausl. Investoren unattraktiv
- Fonds Wegen VSt für ausl. Investoren unattraktiv

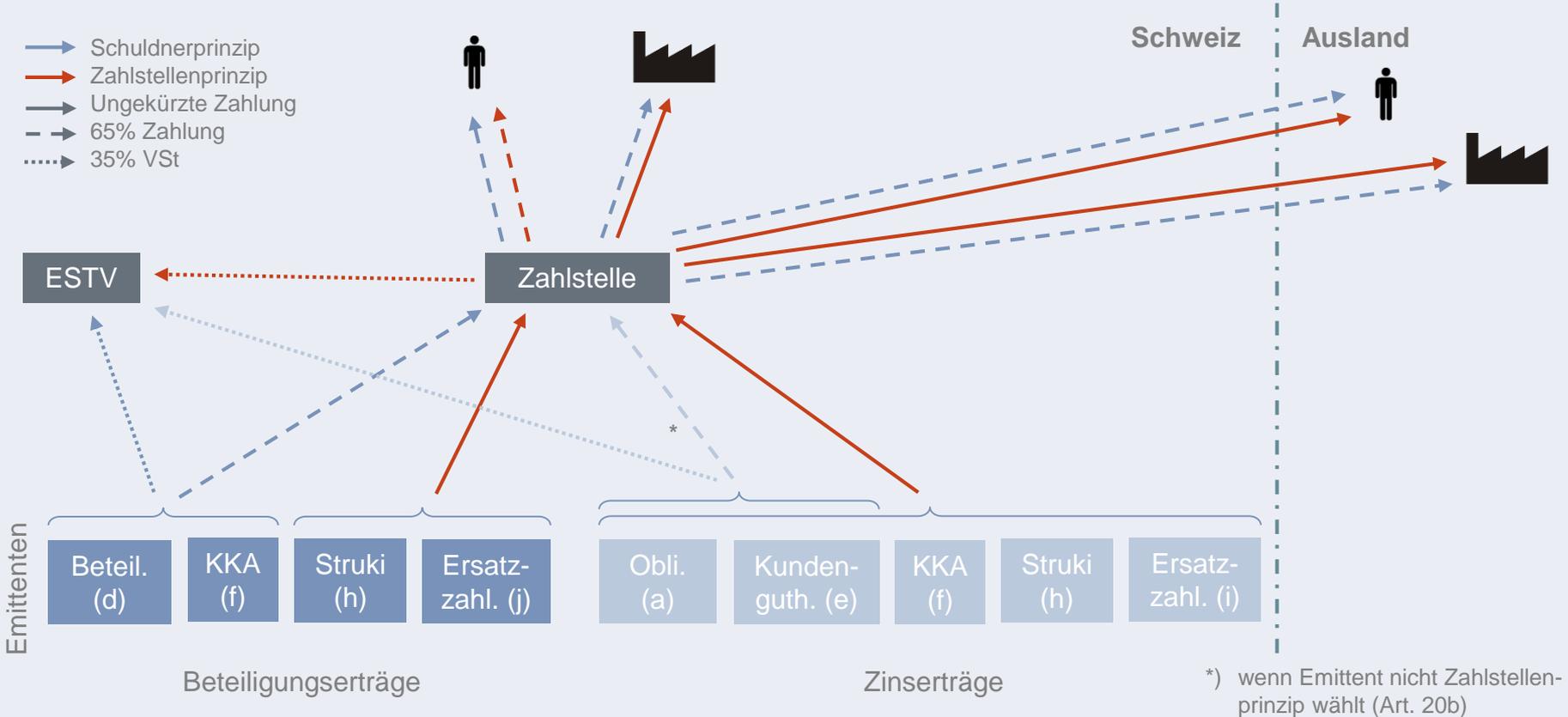
Emissionen im Ausland

- Equities
- Obligationen Sicherungslücke bei CH-Anlegern (CH-Depot; AIA bei meisten Ausland-Depots)
- Fonds Sicherungslücke bei CH-Anlegern; UA

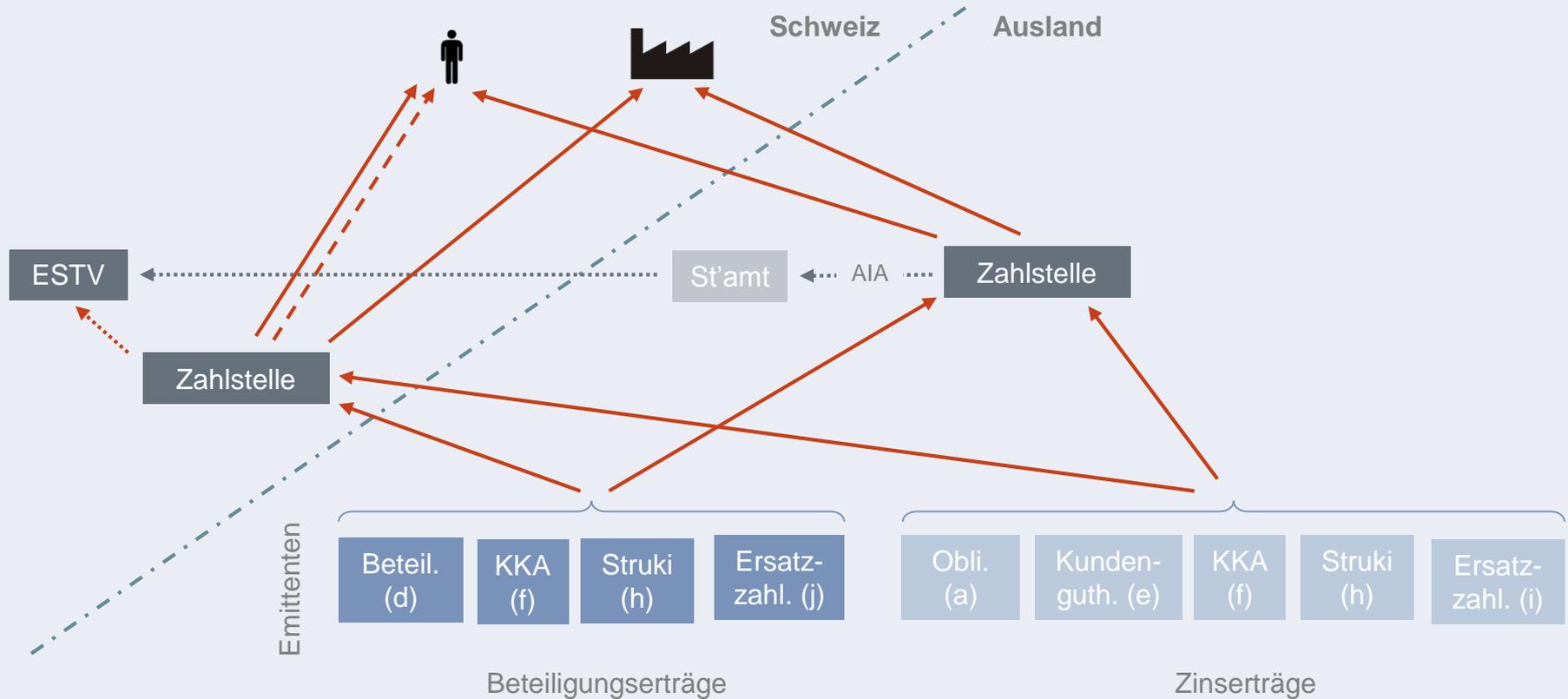
Handel in CH

- Equities UA
- **Obligationen** UA (→ Handel bei unterjährigen Restlaufzeiten praktisch inexistent)
- Fonds UA

Kapitalerträge aus schweizerischen Titeln – nach Reform



Kapitalerträge aus ausländischen Titeln – nach Reform



Umsatzabgabe



Entgeltliche Übertragung		UA bisher	UA neu
• Aktien	CH	1.5 ‰	1.5 ‰
	Ausland	3 ‰	3 ‰
• Obligationen	Laufzeit >12 Monate	CH	1.5 ‰ 0
		Ausland	3 ‰
	Laufzeit ≤12 Monate (Geldmarktpapiere)	CH	0
		Ausland	0
• Fondsanteile	CH	1.5 ‰	1.5 ‰
	Ausland	3 ‰	3 ‰

Lösungen durch VSt-Reform



Heutige Hauptprobleme	Lösung
<p>Emissionen in CH</p> <ul style="list-style-type: none"> Equities EA, VSt Obligationen EA 2012 aufgehoben, aber wegen VSt für ausl. Investoren unattraktiv Fonds Wegen VSt für ausl. Investoren unattraktiv 	<p>x</p> <p>✓</p> <p>Equities x Obli. ✓</p>
<p>Emissionen im Ausland</p> <ul style="list-style-type: none"> Equities Obligationen Sicherungslücke bei CH-Anlegern (CH-Depot; AIA bei meisten Ausland-Depots) Fonds Sicherungslücke bei CH-Anlegern; UA 	<p>✓</p> <p>(✓) impraktikabel</p>
<p>Handel in CH</p> <ul style="list-style-type: none"> Equities UA Obligationen UA (→ Handel bei unterjährigen Restlaufzeiten praktisch inexistent) Fonds UA 	<p>x</p> <p>CH ✓ ausländ. x</p> <p>x</p>

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Vielen Dank für Ihre Aufmerksamkeit und einen schönen Abend!