



11 November 2022

To: Tax Treaties, Transfer Pricing and Financial Transactions Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
2 rue André-Pascal
75775, Paris, Cedex 16, France
Submitted by email: tfde@oecd.org

Re: OECD's Public Consultation on the Progress Report on the Administration and Tax Certainty Aspects of Pillar One

Dear Secretariat Team,

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to share its views on the Progress Report on the Administration and Tax Certainty Aspects of Pillar One of the project Addressing Tax Challenges of the Digitalization of the Economy. In view of our understanding of the nature and urgency of the request, as well as the limited turnaround, we set out below our comments on several important design features of Amount A which we believe the Inclusive Framework (IF) should address as part of its program of work.

First, and in relation to the proposed administration framework, we are fully supportive of the idea of a centralised filing process for the Amount A Tax Return and Common Documentation Package. Notwithstanding the guidance on how the Amount A tax liability would be submitted, the report notes that the preferred approach for identifying the entity actually liable for tax under Amount A in market jurisdictions has yet to be decided. There are similar continuing discussions to determine which entities will be the relieving entities in relieving jurisdictions. We believe these are critical issues that will impact the administration rules and are of paramount importance to taxpayers and their advisers.

In relation to the tax certainty rules, we refer back to the points that we made in our 10 June 2022 submission on the earlier consultation on this topic¹. It seems that, in the light of the previous consultation responses, greater participation by groups will be allowed in the certainty process, although it is disappointing that a Determination Panel will not be able to accept a group's arguments unless they are supported by at least one tax administration.

Finally, we think it important to state that these rules are still enormously complex, and while we certainly acknowledge the work that the Secretariat as well as the Task Force have put into this, we still question whether this is – as currently drafted – a workable system.

Our comments below are categorised under the relevant headings:

¹<https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-comment-letter-pillar-1-tax-certainty-framework.pdf>



Administration of Amount A

Choice of liability model – single vs. multiple entity approach

The consultation document notes that IF members are still considering approaches with respect to the interaction of Amount A (which is calculated at the group level) with existing entity-based corporate tax regimes. While the report lays out the basic principle that Amount A income is to be included in the income tax base of market jurisdictions, it highlights the lack of agreement among IF members on the process for identifying the taxpayer(s) in market jurisdictions and relief entities in jurisdictions that are required to eliminate double taxation ('relieving jurisdictions').

The single entity approach seems to be preferred. The single entity approach appears to offer many advantages when combined with the rules on elimination of double taxation and those on selection of relief entities within relieving jurisdictions. This approach also appears to be more consistent with the overall construct of Amount A as a form of unitary taxation (especially if the UPE is selected as the taxpayer, but Covered Groups should have the ability to choose which of its members will serve as the taxpayer). If adopted, a single entity approach will require guardrails to ensure that double tax will be fully eliminated.

We think it is difficult to see benefits of a multiple entity approach in terms of administrability and simplicity. This is especially so when the multiple entity approach would most likely require the use of an agent.

Local registration requirements

The political commitment reached in October 2021 states that “tax compliance will be streamlined (including filing obligations) and allow in-scope MNEs to manage the process through a single entity.” As noted above, we are very supportive of a centralised filing process for the Amount A Tax Return and Common Documentation Package. However, we have some concerns with the proposed filing process outlined in the report. In particular, requiring Covered Groups to register in all market jurisdictions and obtain local tax identification numbers (including the potential requirement for resident representatives and local bank accounts) will impose disproportionate compliance burdens. These concerns are compounded if Covered Groups use proposed allocation keys to source revenue (especially during the initial transition phase). The use of allocation keys will likely result in registration requirements in jurisdictions where a Covered Group does not offer services or products. We encourage further consideration of these concerns in the hope that a more simplified registration process can be agreed.

Safeguards on corporate income tax and penalty rates

The report highlights several outstanding issues that will be the subject of further discussion as part of the development of the multilateral convention (MLC), the finalisation of the Model Rules and the 'Pillar One Implementation Framework.' An important issue identified is the development of guardrails in the MLC related to the rate of taxation of Amount A or ensuring penalties related to Amount A are non-discriminatory compared to penalties applied to other types of income. We strongly support the development of restrictions to



prevent the discriminatory treatment of Amount A allocations and believe that they should be codified in the MLC.

Confidentiality & Exchange of Information

The report provides that an entity liable to tax on Amount A or eligible for double taxation relief will be required to submit an ‘Amount A Tax Return and Common Documentation Package’ to each Affected Party. We note that the term ‘Affected Party’ is defined broadly and includes a jurisdiction whose tax administration is the Lead Tax Administration (LTA); a jurisdiction in which the Group has revenues that meet the Nexus threshold test or that is required to provide relief for the elimination of double taxation; a jurisdiction that has notified the LTA, asserting that it considers itself to be an Affected Party (supported by relevant documentation); or where a jurisdiction is determined to be an Affected Party under an agreed Comprehensive Certainty Outcome.

Confidentiality and the scope of using exchange of information in the administration and tax certainty frameworks for Amount A is another identified outstanding issue. As part of this debate, we encourage further consideration of the extent to which the Amount A Tax Return and Common Documentation Package is shared with Affected Parties. It is envisioned that these documents will include highly sensitive operational, commercial and contractual information. As such, we recommend that only portions of these documents that are relevant to the local jurisdictions be shared with Affected Parties to better protect the confidentiality of commercially sensitive information. We also believe that information contained in the Amount A Tax Return should only be used to review the calculation of a group’s Amount A tax liability and not as part of other unrelated tax audits (the type of “ring-fencing” that some countries have used, for example, in relation to Action 13 Country-by-Country reporting data).

Non-harmonized system of double tax relief

The report notes the mismatch between the timing of when Amount A liability may be calculated for the relieving jurisdiction versus when it can actually be paid in the market jurisdiction. In this case, there is a recognition of the potential for double taxation and the fact that the relief entities may not have enough taxable income for the relevant tax years to be fully refunded for Amount A liabilities in market jurisdictions. The report concedes that the system of relief from double taxation in relation to Amount A will be “non-harmonized” – with the specific mechanism/form of relief (e.g., exemption, credit, including whether these will be based on existing law or new mechanisms) to be determined by each individual jurisdiction. This will likely introduce significant uncertainty and potential hardship for Covered Groups, especially when combined with the rules on elimination of double taxation (based on tiers) which have a built-in “cliff effect.”

With respect to the identification of “relief entities” and allocation of relief among those entities, we believe that the Elimination Profit metric (under a simple pro-rata approach) is likely preferable to the alternatives considered in the report (e.g., RoDP, waterfall/pro-rata with tiers, etc.) for a number of reasons (e.g., complexity, avoiding distortions and consistency with the jurisdiction-level rules on elimination of double taxation).



We also believe it is critically important that any timing gaps between the payment of Amount A tax liabilities in market jurisdictions and the receipt of double tax relief in relieving jurisdictions be eliminated (or at least minimised to the greatest extent possible), which will help mitigate potential cash flow issues. In this respect, we think it makes sense to suspend payment of Amount A until completion of the comprehensive tax certainty process. This in turn will incentivise tax administrations to act expeditiously. Alternatively, payment on the basis of the filed position could be considered; without penalties on any excess should the comprehensive certainty review lead to adjustments (unless in case of gross negligence or willful intent).

Tax Certainty

1. Tax Certainty Framework for Amount A

Many of our comments on the Tax Certainty Framework for Amount A are summarised in our previous submission dated [10 June 2022](#). Importantly, we welcome the IF's consideration of "soft landing" rules and the formalisation of transition rules. Below are our comments on several key areas of the tax certainty framework that we believe can be improved to ensure the goal of a streamlined approach can be achieved:

- Regarding the advance certainty review process, we believe that the current scope, which focuses on revenue sourcing and excluded revenue, is too restrictive. We suggest that the scope be expanded to cover all issues for which methodological agreement is possible, including the marketing and distribution safe harbour and the elimination of double tax mechanism.
- We welcome the inclusion of mandatory time limits throughout the various tax certainty processes. We have concerns, however, that there is still scope for Affected Parties to unreasonably delay conclusion of the processes. We suggest, where possible, shortening deadlines, conducting aspects of the processes concurrently, and limiting opportunities for Affected Parties to disagree with findings of a Review Panel.
- The utilisation of an Expert Advisory Group to review a taxpayer's existing business systems and financial controls may be inefficient, ineffective and overly intrusive. Additionally, the scope of how the Expert Advisory Group would operate and what would be reviewed still remains unclear. Moreover, this review seems to be an unnecessary duplication of existing regulatory processes. Such reviews are already conducted by expert regulatory authorities for non-tax purposes, further bolstering their reliability. For tax functions controls, to the extent that these are specific to Amount A, the certainty process should only require review if this framework is not subject to audit. Instead, the letter of attestation from a taxpayer's current independent auditor that also evaluates the taxpayer's control systems should be sufficient to satisfy this aspect of the Amount A Advance Certainty Review.
- Moreover, the allowance contained in section 2.2 of paragraph 9 for local audit activity would frustrate the tax certainty framework, even if it would temporarily suspend the review. The whole point of this process is certainty, and if multinationals



have to fear local audits taking place while they are already subject to what would already be a complex review process, there will be anything but certainty for both taxpayers and tax administrations.

- These potential duplications and frustrations of the overall process are compounded by the potential for a drawn out process with unresolved issues that could take at least two years, and likely more given the interim steps. The IF has not provided any stated goals or indication of how they will measure their success in providing certainty. Certainly, streamlined and swift resolution is the stated intention, but at this juncture there is no reasonably foreseeable way for the results to provide data to substantiate these assertions.
- Finally, we encourage broader taxpayer participation throughout the various tax certainty processes. For example, taxpayers should be allowed, with the permission of the arbitrators, to present their position orally during the dispute resolution panel proceedings. This would be consistent with Article 11 of the [OECD's Sample Mutual Agreement on Arbitration](#).

2. Tax Certainty Framework for Issues Related to Amount A

- With respect to the tax certainty framework for Related Issues, we support a broad definition of Related Issues to provide maximum certainty for taxpayers and tax administrations. There should also be no limit based on quantitative materiality, or based on scope.
- Article [X] (Mutual Agreement Procedure – Existing Tax Agreement) appears to be based on Article 25(1) of the OECD Model Tax Convention (MAP) and is drafted in a bilateral way. Although we see the rationale for this, we note that a transfer pricing or profit allocation correction related to amount A will usually affect more than one country. We therefore recommend drafting this provision in a multilateral way as to allow more easily so-called ‘triangular’ cases (for example, see work done by the EU Joint Transfer Pricing Forum on non-EU triangular cases). This comment applies equally to Article [Y] (Mutual Agreement Procedure – No Existing Tax Agreement).

With this letter we would ask you to take our observations into consideration during further development of the Pillar One rules. We stand ready to discuss the issues raised in this letter in more detail, if that would be helpful at any point - please do not hesitate to contact me or one of the individuals set out below.

Yours sincerely,

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