



10 June 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 Public Consultation Document on Pillar One - A Tax Certainty Framework for Amount A**

Dear Secretariat,

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to share its observations on the above referenced public consultation document (and, under separate cover, its companion paper - *Tax certainty for issues related to Amount A* - released at the same time). In view of our understanding of the nature and urgency of the request, as well as the limited two-week turnaround, we set out below a brief summary of the issues on which we believe the Task Force on the Digital Economy (TFDE) and OECD could focus. We would be happy to elaborate on these further or to discuss other matters in the public consultation document.

We agree that a comprehensive solution to provide certainty to a Group over all aspects of Amount A, including whether it is in-scope, is essential to make the new regime effective, efficient and administrable both for the Groups themselves and for tax administrations. We also believe that this is an essential element in getting acceptance for the overall package from both Groups and tax administrations, and is a necessary part of the balance that is needed to make Pillar One a success. In that light, we offer several comments to your invitation for feedback on the proposed approach to tax certainty for Amount A, outlined below:

Transition period / “soft landing”

There have been extensive calls for guidance and help in transitional years in addition to the “soft landing” approach. The consultation document provides some indications (e.g., in part one, paragraph 12) that these have been heard and that engagement, feedback and other support will be encouraged with Groups as well as between tax administrations. The document indicates that a “soft landing” approach could result in a Group’s filing being accepted with the comfort that no changes will be required provided the Group made reasonable efforts to reflect a correct application of the revenue sourcing rules. We support this approach, though we encourage broadening its scope during the transition phase to all facets of Amount A.

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Scope of Advance Certainty

The Advance Certainty framework outlined in the consultation document leaves open the coverage of Advance Certainty to a Group's approach beyond revenue sourcing and segment reporting (although the latter is surprisingly under contention). We believe Advance Certainty is crucial for Groups as they develop new systems and methodologies for collecting information. It would also reduce the level of effort arising from the Comprehensive Certainty process. We believe that Advance Certainty should apply to all methodology-based elements of computing Amount A, and applied on a case-by-case basis depending on each Group's particular facts and circumstances.

For example, Advance Certainty could be expanded to handle scope carve-outs, including the approach to creating bespoke segments, factoring mergers and demergers in the tax base calculations, and any other methodological elements - which could include the MDSH, identification of relieving jurisdictions, treatment of withholding taxes, etc. We recommend that technical work on those elements should include consideration of how advance certainty can be provided.

Internal control review

The consultation document provides that Review Panels will be supported by an Expert Advisory Group of systems specialists that will provide advice as to the reliability of the Group's internal control framework. It also states that a review of a Group's internal control framework will require an analysis of the Group's controls, its business and financial management systems and its enterprise resource planning software.

It is not clear from the consultation document how this review will take place, what information and systems will be accessed, how confidentiality will be protected, and how governments will have oversight to ensure accountability. We encourage the TFDE to further consider these issues and establish guardrails both on the process and to what information experts can request/review. Consideration should also be given to whether tax administrations have people with the skills needed to do this work. As an alternative, consideration should be given to whether existing processes and audit reports could be relied upon. For example, a Group's financial account auditor could issue a statement confirming that they have audited the relevant internal controls and systems as part of the year-end audit that countries could rely on for purposes of this review. From a human capital perspective this would also make sense given that there are a limited number of tax professionals that will have the expertise to perform the necessary checks, at least in the very early stages of implementation.

Role of Covered Groups in the certainty process

We believe that to have a successful process, the tax certainty framework should allow the Coordinating Entity observation and participation rights throughout the certainty process. Because a Group's input is critical to the process, the Coordinating Entity should, for example, have the right to present its views to the review and determination panels.

Composition of Determination Panels

As described in Section 6, the composition of a Determination Panel is not yet agreed. There are clearly considerable concerns across Inclusive Framework members about independent experts both being on a Determination Panel or producing a solution, hence the different options suggested in the consultation document.



There is also not complete unanimity within the business community on composition. If using third parties, we encourage further consideration regarding the process for identifying them, how they would be selected, how they would be accountable, and how this will work in a multilateral setting.

Confidentiality

We believe that confidentiality and proper use of information is critical for all the certainty processes described in the consultation document. We encourage further emphasis needs to be placed in this area, including accountability measures arising from the release of confidential information by tax administrations and panel members (consistent with confidentiality rules that most tax administrations work under). We also support the development of materiality/relevance thresholds relating to participation and sharing of documents.

Similar to the confidentiality provisions in Article 26 of the OECD Model Convention, TFDE members should agree that any party that receives information (e.g., the Common Documentation Package, Panel and Expert findings, etc) must keep the information confidential and only use it for the administration of the agreed Amount A certainty process and not for other tax administration purposes.

Telescoping

The consultation document notes that Inclusive Framework members hold differing views on the approach that should be taken where a Related Issue is resolved after a Comprehensive Certainty Outcome is agreed for the Period to which the Related Issue relates. Some members hold the view that any adjustment to the allocation of profits between jurisdictions as a result of the Related Issue being resolved should be treated as arising in the Period in which the issue is resolved and should not affect the Comprehensive Certainty Outcome provided for the earlier Period (i.e., full telescoping). Other members hold the view that any adjustment should be taken into account in the Period to which the Related Issue relates, in particular if the Parties granting or the Group Entities claiming relief for the elimination of double tax have changed since that Period or if the Group is no longer a Covered Group.

While full telescoping could administratively be the simplest solution, we understand that there are also differing views from the business community. We believe that broadening the scope of advance certainty and the transition period (discussed above) would help to minimize the issue of telescoping. We would also support the use of materiality thresholds that take into account the particular facts and circumstances (e.g., only significant adjustments that would change the identity of relieving jurisdictions can electively be taken back to the year in question).

Mandatory deadlines

We believe that mandatory deadlines for each of the panels to deliver a final conclusion are necessary to avoid excessive use of time and resources of all Affected Parties and Groups (peer review would not be effective here).

Holistic review is necessary

The consultation document acknowledges that “this public consultation document cannot on its own provide a full picture on the topics for which certainty will be provided.” We believe that the application of the tax certainty framework to the key building blocks that have not yet been subject to



a public consultation (e.g., revised revenue sourcing rules, segmentation, elimination, and the MDSH) is crucial to the design and administration of Amount A. Several topics within the consultation draft do not reflect the final or consensus views of the Inclusive Framework.

This lack of agreement and complete picture make it difficult to comment on the entire Tax Certainty process. Accordingly, we believe that it is particularly important for stakeholders to have the opportunity to comment on all the draft Model Rules related to Pillar One once a consensus has been reached on all main features of the system.

With this letter we kindly invite you to take our observations into consideration during further development of the Amount A tax certainty framework. 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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