

Tax Challenges Arising from the Digitalisation of the Economy – Amount B (Pillar One)

INCLUSIVE FRAMEWORK ON BEPS

This document is released by the OECD Secretariat to assist understanding of Amount B. It has not been agreed by the OECD/G20 Inclusive Framework on BEPS and is not to be used to interpret the Amount B consultation document of July 2023.

Pillar One Amount B in a Nutshell

Overview

Amount B is a critical component of Pillar One. While the work on Amount A updates the international taxation framework with respect to large and very profitable multinational enterprises (MNE), Amount B simplifies the existing transfer pricing rules for all taxpayers. It is focused on the application of transfer pricing rules to so called baseline marketing and distribution activities, likely the most frequent fact pattern that MNEs encounter in the jurisdictions where they operate. Reports from some low-capacity jurisdictions estimate that transfer pricing disputes relating to distribution activities represent between 30% and 70% of all of their transfer pricing disputes. Amount B is intended to increase tax certainty, reduce compliance and administrative costs and in particular assist low-capacity jurisdictions that often suffer from the absence of local market comparables.

Scope

While *de minimis* retail sales are allowed, the primary focus of Amount B is on the wholesale distribution of goods, including commissionaires and sales agents. These arrangements need to be “baseline” in order to fall in scope of Amount B. The consultation document describes common features of baseline distribution such as the absence of unique and valuable intangibles or certain economically significant risks. However, the precise definition of “baseline” distribution is subject to further consideration to achieve an appropriate balance between quantitative and qualitative metrics.

Furthermore, Amount B acknowledges that MNEs may engage in different activities within the same legal entity and permits the segmentation of the financial accounts to apply Amount B specifically to the distribution functions, with an administrative guardrail in place.

The scoping framework explicitly excludes the performance of services and distribution of commodities from scope.

Pricing Framework

Transactions in scope are priced by reference to a pricing matrix, except for situations where internal comparable uncontrolled prices (CUPs) are available.

The pricing matrix provides a grid of arm's length returns expressed as returns on sales. The applicable arm's length return will depend on the distributor's specific features such as the level of operating assets, operating expense or the industry.

In addition, the pricing framework includes features to address geographical differences and data availability gaps and it incorporates a corroborative mechanism to address extreme outcomes in low and high functionality cases.

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Next steps

To ensure the appropriateness of the scope and pricing framework, further work will be undertaken on the following aspects:

- I. Ensuring an appropriate balance between a quantitative and qualitative approach in identifying baseline distribution activities.
- II. The appropriateness of:
 - a. the pricing framework, including in light of the final agreement on scope,
 - b. the application of the framework to the wholesale distribution of digital goods;
 - c. country uplifts within geographic markets; and
 - d. the criteria to apply Amount B utilising a local database in certain jurisdictions.

We invite input from stakeholders on the elements identified above through 1 September 2023 with the work on those elements to be completed by year end.