



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](mailto:tfde@oecd.org)

Re: **OECD Public Consultation Document on Pillar One - Tax certainty for issues related to 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 its companion paper - *A Tax Certainty Framework for 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 all issues related to Amount A, 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 issues related to Amount A, outlined below:

### **Scope of “Related Issues”**

The consultation document notes that members of the Inclusive Framework have different views on issues connected with the scope definition. These issues include: whether other types of disputes should be considered “Related Issues”; whether the definition should require a direct or indirect connection with Amount A; whether the definition should include a quantitative materiality threshold; whether reservations with respect to scope should be permitted; and whether the mechanism should apply in circumstances where there is not a bilateral tax treaty between the relevant jurisdictions.

We believe that the scope of Related Issues should be broad. If the foundation on which Amount A is calculated (i.e., transfer pricing and the attribution of profit to permanent establishments) is not stable, then Amount A would equally not be stable. For the same reason, there should be no ability for

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*PricewaterhouseCoopers International  
Limited 1 Embankment Place  
London WC2N 6RH  
T: +44 (0)20 7583 5000 / F: +44 (0)20 7822 4652*

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Registered Office: 1 Embankment Place, London WC2N 6RH.

Inclusive Framework members to narrow the scope of the issues related to Amount A on which certainty will be given (e.g., no scope reservations). Conflict of law issues should be further explored and addressed in the final agreement. In the same vein, we believe that the tax certainty mechanism should apply in circumstances where there is not an existing bilateral tax treaty. Mechanisms for accountability should also be considered.

We do not support a materiality filter to access the tax certainty mechanism for issues related to Amount A. A quantitative materiality threshold would be impractical and unworkable for several reasons. First, it is hard to imagine that Inclusive Framework members could ever agree on a threshold - a small amount for one country could be a large amount for another. It is also important to note that taxpayers in scope of Amount A do not, in the ordinary course of their tax affairs, make Mutual Agreement Procedure (MAP) requests lightly. Typically, these taxpayers have their own internal materiality threshold for what they take to MAP.

### **Role of Covered Groups in the certainty process**

The consultation document notes that Inclusive Framework members have divergent views as regards the usefulness of a presentation of the Covered Group's analysis and views of the case to the dispute resolution panel process. Some jurisdictions are of the view that such a presentation would provide a dispute resolution panel with a more informed basis to choose between the Competent Authorities' proposed resolutions and that the operative text should directly provide this possibility to Covered Groups. Other jurisdictions oppose such a presentation of a Covered Group's position, which they consider to be inappropriate in the context of a government-to-government dispute resolution mechanism that uses last-best offer decision-making.

We believe that Covered Groups should be afforded the opportunity to present their position and facts to the panel in order to better inform the process. Covered Groups will undoubtedly have the most accurate and complete views of the facts involved. It would be in the interest of due process that taxpayers are afforded the opportunity to present their position to the final arbiters - which would give them a full picture from all stakeholders and facilitate their decision making. In addition, Covered Groups should be afforded the opportunity to submit a position paper with substantiating analysis.

### **Roll forward of dispute resolution outcomes**

The consultation document notes that some Inclusive Framework members are of the view that roll-forward would facilitate the resolution of recurring issues and that it should be expressly authorised in the operative text. Other jurisdictions are opposed to the roll-forward of dispute resolution panel outcomes, which they consider inconsistent with a mechanism that is not intended to establish precedents for other cases. For suitable cases, we believe that roll-forward is practical, logical, and would result in time and cost-savings for all involved parties.

### **Composition of Dispute Resolution Panel**

A panel comprising independent experts and government officials is already used, for example, under the EU Arbitration Convention. This may also be more closely connected with the tax certainty framework for Amount A, helping to streamline the two approaches.

### **Costs of Panel**

While some jurisdictions apparently consider that it is appropriate for a Covered Group to bear the costs in light of the potential resource demands, others argue that this compromises the voluntary



nature of the Panel process. There is a reasonable view that the costs should be borne by the contracting jurisdictions between which the dispute arises, and for which the Panel has been formed because they could not reach agreement, with the Covered Group an affected bystander. There would be a greater case for the Covered Group to bear part of the cost were it to be given a role in the Panel proceedings.

**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.

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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,

Stef van Weeghel  
 Global Tax Policy Leader  
 stef.van.weeghel@pwc.com  
 T: +31 (0) 887 926 763

PwC Contacts

Name	Email Address
Will Morris	william.h.morris@pwc.com
Edwin Visser	edwin.visser@pwc.com
Diane Hay	diane.hay@pwc.com
Phil Greenfield	philip.greenfield@pwc.com



Chloe O' Hara	chloe.ohara@pwc.com
Stewart Brant	stewart.brant@pwc.com