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OECD Pillar One – additional Amount B guidance published

On 17 June 2024, the OECD/G20 Inclusive Framework on BEPS (the 'OECD Inclusive Framework') published two additional guidance documents on **Amount B**. Amount B is a new approach for **pricing baseline marketing and distribution activities** that seeks to **streamline and simplify** the application of the arm's length principle from 1 January 2025. All businesses, regardless of size, are potentially in the scope of Amount B if they carry out suitable distribution activities.

The OECD Inclusive Framework's Report of February 2024 (the 'February 2024 Report') set out the core rules for Amount B. This additional guidance completes work on three unfinalised elements in the February 2024 Report concerning: the low- and middle-income countries ('**covered jurisdictions**') that will **benefit from a political commitment** from other countries to respect Amount B pricing outcomes; the definition of **qualifying jurisdictions** for a modified Amount B **operating expense cross-check**; and a separate definition of **qualifying jurisdictions** for the **data availability mechanism** adjustment rules.

The OECD Inclusive Framework has been developing a 'two-pillar' approach to international tax reform. Amount B forms part of the Pillar One package on profit allocation.

Deloitte comments

The OECD has updated the Amount B approach for considerations around countries (particularly developing countries) that qualify for adjusted treatment. These adjustments are designed to counter challenges of limited local data combined with high sovereign risk in countries, and/or situations where there may be reasons why local operating expenses are low compared with sales relative to other countries. The OECD Inclusive Framework has also agreed which countries can benefit from the political commitment to respect Amount B outcomes where the distributor is in a low- or middle-income country, regardless of the position taken by the country of the principal on Amount B.

The question now turns to implementation by countries, and whether this will be mandatory or continue to be optional as proposed in the February 2024 paper. Businesses will want to understand this landscape soon in order to set prices once the Amount B rules are introduced (via an update to the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*) from 1 January 2025.

Further work is to be undertaken on the interdependence of Amount B and Amount A under Pillar One prior to the signing and entry into force of the Amount A multilateral convention.

The OECD Inclusive Framework has developed the Amount B approach, which aims to simplify and streamline the application of the arm's length principle to in scope **baseline marketing and distribution activities**. The approach sets out the scoping criteria, pricing methodology, documentation and tax certainty considerations relating to Amount B.

Covered jurisdictions

In general, pricing outcomes under the Amount B approach are non-binding on the tax authority of the counterparty country unless it has also adopted the approach. However, the February 2024 report set out an **agreed political commitment** that, subject to their domestic legislation and administrative practices, all Inclusive Framework members would **respect an Amount B outcome where it is applied by a 'low capacity jurisdiction'** and would take all reasonable steps to relieve potential double taxation where there is a bilateral tax treaty in place.

A definition of 'low capacity jurisdiction' was not included in the February 2024 Report, and the first additional guidance document now addresses this point. The term 'low capacity jurisdiction' has been replaced with the term **'covered jurisdiction'**, reflecting an extension of the commitment to low- and middle-income countries that may not necessarily be low capacity. The agreed criteria for a 'covered jurisdiction' includes:

(a) **Low- and middle-income Inclusive Framework jurisdictions**, based on World Bank Group classifications, but excluding EU, OECD, and G20 member countries; or

(b) **Low- and middle-income OECD or G20 Inclusive Framework jurisdictions** that expressed to the Inclusive Framework, by March 2024, **a willingness to apply Amount B**; or

(c) **Any low- and middle-income jurisdiction, not in the Inclusive Framework**, but otherwise meeting the first criterion, that express **a willingness to apply Amount B**.

The list of covered jurisdictions will be **published on the OECD's website**, and the list will be **reviewed every five years**. Countries can also extend their political commitment to any other countries on a bilateral basis.

The guidance document includes a list of **66 countries which meet the criteria**. Five low- or middle-income OECD or G20 members countries (Argentina, Brazil, Costa Rica, Mexico and South Africa) that have expressed a willingness to apply Amount B have been included due to criterion (b). The political commitment to respect Amount B pricing outcomes will therefore be extended to these countries.

The first five year period runs from 1 January 2025 to 31 December 2029. Some jurisdictions have indicated **they may review their political commitments in 2029** as it relates to the extension to OECD or G20 countries under (b) (i.e. the five countries above), particularly if any such countries are not signatories to the Amount A multilateral convention by the end of 2025.

Qualifying jurisdictions for operating expense cross-check and data availability mechanism

Operating expense cross-check

The February 2024 report sets out an **'operating expense cross-check' rule**, that acts as a **corroborative guardrail** to test whether the return on sales provided using the Amount B global pricing matrix is appropriate, or whether additional adjustments are required. Where the return on sales determined under the pricing matrix, converted into a ratio of earnings before interest and taxes to operating expenses, is outside the applicable operating expense 'cap and collar range', the return on sales will be adjusted to the nearest edge of the range. The February 2024 report agreed that **(higher) alternative cap rates should apply** for certain to-be-defined '**qualifying jurisdictions**'.

The second additional guidance document now confirms that, for a country to be a 'qualifying jurisdiction' for these purposes, it must be classed as **'low income', 'lower-middle income' or 'upper-middle income' under World Bank classifications**. The list of countries will be fixed prospectively, and **published and updated every five years on the OECD website**. A list of 132 qualifying countries is contained in the document and notable countries listed include Argentina, Brazil, China, Egypt, India, Mexico, Nigeria and South Africa.

Data availability mechanism

Similarly, the February 2024 report provided that a **'data availability mechanism'** should be used in circumstances where there is **no or insufficient data in the global dataset** underpinning the pricing matrix, to assess the appropriateness of the pricing matrix for a particular distributor in a 'higher risk' country, measured **by reference to the sovereign credit rating**. The data availability mechanism will result in an upward adjustment to the returns derived from the pricing matrix for such qualifying countries.

The second guidance document also sets out the agreed criteria that have been applied to determine whether a country is a 'qualifying jurisdiction' for these purposes: a country is qualifying where it has a **sovereign credit rating of BBB+ or lower and fewer than five comparables in the Amount B global dataset**.

The list of qualifying countries for these purposes will also be fixed prospectively and **updated every five years**. The document contains an initial list of 135 qualifying jurisdictions, including Argentina, Brazil, Egypt, Malaysia, Mexico, Nigeria, the Philippines and South Africa.

Next steps

Further work on the Pillar One package, including the **finalised text of the multilateral convention for Amount A** (to reallocate taxing rights of large profitable groups to market countries), and **a 'framework' for Amount B**, is ongoing. The co-chairs of the OECD Inclusive Framework stated in May 2024 that negotiations were nearing completion with the goal of reaching a final agreement in time to open the Amount A multilateral convention for signature **by the end of June 2024**.

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