

Pillar One Update from the Co-Chairs of the Inclusive Framework on BEPS

1. Following our [update in May 2024](#), we want to report on the progress made by the Inclusive Framework on BEPS (IF) in the development of a final package for Pillar One of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy [agreed in October 2021](#). This package includes two components: a text of the Multilateral Convention (MLC) to implement Amount A and a framework for Amount B.

Amount A

2. Amount A introduces a system for a coordinated allocation of taxing rights to market jurisdictions with respect to a defined portion of the residual profits of the largest and most profitable MNEs. It is designed to be a sustainable, coordinated reform of the international tax system that responds to the tax challenges arising from the digitalisation of the economy, reinforces stability and certainty for taxpayers, and provides for the withdrawal and standstill of Digital Services Taxes (DSTs) and Relevant Similar Measures (RSM) with respect to all companies.

3. After several years of negotiations within an Inclusive Framework consisting of more than 140 members, as well as numerous consultations with stakeholders, we were able to release in October 2023 a [text of the MLC](#), along with the accompanying [Explanatory Statement \(ES\)](#) and the [Understanding on the Application of Certainty for Amount A of Pillar One \(UAC\)](#), which reflected the significant progress achieved at that time and indicated in footnotes the handful of specific issues where different views remained between members.

4. Further negotiations in the first half of 2024, informed by feedback from domestic consultations following the release of the text, led to the successful resolution of the issues standing in the way of adoption of the text.¹ Specifically, the MLC text was revised to:

- Clarify the definition of DSTs and RSMs, including with respect to the application of the de facto ring-fencing criteria;
- Provide an election for common application of the MLC to a non-State jurisdiction and the State responsible for its international relations, subject to certain guardrails and measures to limit the additional elimination of double tax obligations that might fall on other States as a result of such an election; and
- Provide further modifications within the Marketing and Distribution Profit Safe Harbour (MDSH) when calculating the excess profit of a Multinational Enterprise in a market jurisdiction with lower income levels, including a higher return on revenue (ROR) metric and higher deductions (so-called “reduction factors”) within the withholding tax upward adjustment mechanism.

5. In June, the revised MLC text was submitted to the Inclusive Framework for adoption. Members were informed that, in line with international law, agreement to adopt the final text does not create an obligation to sign it, with the decision to sign the text being a separate decision for jurisdictions and one that might follow specific domestic procedures. Only one member objected to the text's adoption, citing the absence of consensus having been reached on the Amount B Framework, as set out below, and citing the fact that another member's agreement to the adoption of the text was accompanied by a reservation on whether or not it would sign as a result of it not being in a position to support certain aspects. The text has remained stable since that point with the negotiations having been focused on resolving the outstanding issues with the Amount B Framework.

¹ Adoption is the formal act through which the form and content of a treaty is established.

Amount B

6. Amount B is a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries.

7. In February 2024, an optional Amount B was incorporated into the OECD Transfer Pricing Guidelines ("TPG") allowing jurisdictions, including non-IF members, to elect to implement the simplified and streamlined approach to baseline marketing and distribution activities in their jurisdiction. Members of the IF also made a commitment to respect outcomes determined under that approach where the approach is applied by "covered jurisdictions", in recognition of their particular needs and challenges - in some covered jurisdictions, Amount B is expected to address between 30-70% of all current transfer pricing disputes.

8. Building on that optional model, discussions have continued on a framework under which jurisdictions that become parties to the MLC would, from the point the MLC enters into effect, be required to apply Amount B to local taxpayers performing in-country baseline marketing and distribution activities where the transaction is covered by an income tax treaty in force with another IF member jurisdiction that is also a Party to the MLC. Jurisdictions would also be required to respect outcomes determined under Amount B when applied by other parties to the MLC with which an income tax treaty is in force (the "Amount B Framework").

9. While acknowledging the significant tax certainty benefits already provided to in-scope groups through the MLC - including the availability of robust binding dispute resolution for a broad range of related transfer pricing and profit attribution disputes and a framework for the withdrawal and standstill of DSTs and RSMs - some members have taken the position that the Amount B Framework is an essential part of the overall Pillar 1 package.

10. Significant work has been undertaken on the detailed parameters of the Amount B Framework with only a few outstanding issues remaining amongst certain jurisdictions, as follows:

- a. How to appropriately reflect the interdependence between the MLC and Amount B;
- b. The detailed terms of an agreed filter designed to screen out jurisdictions that account for a low number of disputes relating to transactions of the type that Amount B is intended to address;
- c. The terms of an Optional Qualitative Test that certain jurisdictions have argued is needed, in addition to the existing filters, to ensure that above-baseline transactions expected to generate benefits that significantly exceed those typically derived from core distribution functions do not fall within scope; and
- d. How to address the concerns of certain jurisdictions that consider that the pricing matrix delivers inappropriate outcomes for taxpayers performing baseline marketing and distribution activities in their respective jurisdictions.

11. Discussions on the first three items are generally well advanced, with the focus of those discussions now being on procedural questions and/or the contours of tests and their precise drafting. With respect to the fourth item, various solutions have been put forward to bridge the different positions of IF members, including a solution that would allow the concerned IF members to limit the application of Amount B to distributors generating revenues below a threshold, with an alternative fast-track early certainty mechanism made available for distributors generating revenues above it.² Despite constructive discussions on these solutions, we have yet to find a path forward that has the support of all members, and our focus remains on how outstanding concerns can be addressed as a part of a solution that is able to achieve consensus.

² This solution would also allow for bilateral framework agreements to be entered into between jurisdictions as an alternative.

12. We would like to commend all IF members for their continued dedication and willingness to compromise in progressing Pillar One to this stage. We remain committed to do our utmost to help bridge the last few remaining issues relating to the Amount B Framework in order to secure IF agreement on the Pillar One package and remain committed to ensuring that the IF is prepared to support swift implementation once that agreement is reached.