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Organisation for Economic Co-operation and Development  
Centre for Tax Policy and Administration  
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Subject: Comments on OECD Public Consultation Document – *Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One*

Ladies and Gentlemen:

We appreciate the opportunity to submit these comments on behalf of EY on the OECD's public consultation document, *Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One* (the Consultation Document), and to engage with the OECD on this important topic.

As an initial matter, we would note that there is substantial interaction between the administration and certainty matters covered in the Consultation Document and the computational matters addressed in the July consultation document *Progress Report on Amount A of Pillar One*. The outcomes of the ongoing work on key elements of those computational matters, including revenue sourcing, the marketing and distribution profits safe harbor and the elimination of double taxation, will greatly impact the operation of the administration and certainty proposals in the Consultation Document. We have significant concerns about the tremendous pressure that could be put on the administration and certainty processes if the approach for computing Amount A is not refined substantially. Therefore, we believe that it is essential that another opportunity be provided for stakeholder comment on a complete set of Model Rules and Commentary that reflects both the fleshing out of those aspects of the computational mechanics that have not been included in the documents released to date and any further modifications that are made to the mechanics as discussions in the Inclusive Framework continue following the consultations to date. A full assessment of the effectiveness of the proposed administration and certainty processes must be based on the complete picture of the Amount A computation to which those processes will apply.

## Administration of Amount A

The policy intent and design of Pillar One is a coordinated global reallocation of taxing rights, with a globally consistent tax base and calculation methodology and a global approach to dispute prevention and resolution. However, the approach reflected in the Consultation Document with respect to the administration of Amount A focuses on the use of existing procedures and processes, including, in particular, existing domestic procedures for obtaining relief from double taxation. Such double taxation procedures are inherently jurisdiction specific (i.e., they are local, not global), are already under significant pressure and involve significant costs to companies (in obtaining double tax relief ultimately or due to the double taxation that results from not being able to obtain such relief as a practical matter).

The proposals on tax certainty reflected in the Consultation Document present a framework that aspires to be global, innovative and highly centralized. In our June comment submission on the consultation document on *Pillar One – A Tax Certainty Framework for Amount A*, we expressed appreciation for the recognition of the need for a sweeping certainty solution and the development of a proposed certainty framework that reflects an appropriately bold vision. The proposals on administration in contrast are firmly grounded in the wide range of domestic procedures that exist today. We are concerned about this fundamental ideological disconnect in the approach to processes that are inherently intertwined. We believe that the proposed administration approach is a missed opportunity: introduction of a new global tax concept like Amount A would deserve an equally global approach for administration and elimination of double taxation. Indeed, we believe that introduction of an appropriately innovative global process for administration, rather than relying on disparate existing local procedures and processes, would streamline the application of Amount A and reduce resource costs for both companies and tax administrations.

The Consultation Document describes the development of the proposed administration framework as based on the following design principles:

- Streamlined and coordinated administration and compliance should minimize impact on tax administrations and taxpayers, including removing any unnecessary duplication.
- Where possible, tax administrations should be allowed to deal with Amount A without significant modification to their current tax administration and systems infrastructure.
- The approach should ensure that Amount A liabilities can be enforced, and that effective and timely relief of double taxation is provided.

Under the administration approach reflected in the Consultation Document, companies would be required to pay the tax on the Amount A allocation to each market jurisdiction before making a claim under the existing local mechanism for relief of double taxation, either exemption or credit, in each jurisdiction that has an obligation to eliminate double taxation with respect to Amount A. This means that achieving the outcome intended by Amount A would be entirely dependent on how, when and whether the jurisdictions that are obligated to eliminate double taxation satisfy that new global obligation through their existing local rules and processes. We are not confident that this approach would deliver the results that are intended by Amount A.

We believe that the design principles underlying the administration approach for Amount A must be fundamentally re-thought. In our view, the administration approach should reflect key design principles that include the following:

- Amount A is effectively a new global group-wide tax that should be administered on a global basis.
- An appropriately streamlined and coordinated global administration approach should be implemented through the Multilateral Convention (MLC) rather than relying on the varied existing domestic procedures of jurisdictions.
- The elimination of double taxation that is a fundamental element of Amount A requires a system to *prevent* double taxation rather than only allowing *subsequent relief* from double taxation.
- A new double taxation prevention mechanism should be provided through the MLC that redistributes tax payments among jurisdictions' tax administrations consistent with the allocation of Amount A and the obligations to eliminate double taxation.
- Payments with respect to Amount A should be suspended during a Comprehensive Certainty Review.
- Additional tax paid by companies because of Amount A should be limited to the excess of the tax on Amount A in the market jurisdictions over the tax relief that is obligated to be provided by the relieving jurisdictions under Amount A.

Based on these principles, an administration approach could be developed reflecting the following elements:

- Companies file the information on Amount A in a single jurisdiction, which shares it with relevant jurisdictions.
- Relieving jurisdictions determined based on the MLC satisfy their obligations to eliminate double taxation with respect to Amount A through a transfer of funds to market jurisdictions, either directly or through a clearing house mechanism.
- Through such transfers, double taxation is prevented, which would eliminate any need for subsequent relief from double taxation processes.
- To the extent that the introduction of Amount A results in a company needing to shift funds internally among jurisdictions in order to pay the tax on Amount A, such transfers do not create any additional tax liability (through the imposition of withholding taxes or otherwise).

We believe that an approach along these lines would avoid imposing inappropriate and substantial new burdens on companies and at the same time would minimize the burden on jurisdictions by eliminating the need for separate return and refund processes to be applied in each jurisdiction.

The collection by market jurisdictions of the tax on the Amount A allocated to them could be structured through direct payments from relieving jurisdictions' tax administrations or through the use of one tax administration as a central clearing house. The company's obligation to make payments to market

jurisdictions with respect to Amount A would be limited to the difference between the amount of tax owed in the market jurisdictions and the amount of tax required to be relieved by the relieving jurisdictions, and such payments could be made through the central clearing house if that structure is used. If there are insurmountable barriers to an approach that would involve payments among tax jurisdictions, a fallback approach could have the company make initial payments to market jurisdictions with respect to Amount A equal to any excess of the amount of tax owed in the market jurisdictions over the amount of tax required to be relieved by the relieving jurisdictions followed by supplemental payments to the market jurisdictions to get to the full Amount A tax liability as the company receives the relief required to be provided by the relieving jurisdictions.

In addition, use of new technology could be explored as a way to further simplify and streamline the administration approach for Amount A. For example, blockchain technology could be used to facilitate the administration of Amount A, including any clearing house mechanism.

Finally, with the advancement of implementation of the 15% global minimum tax agreement in jurisdictions globally, the Inclusive Framework could consider modifying the Amount A design in the future to incorporate the global minimum tax rate as the agreed rate to be applicable to Amount A. In combination with a direct payment or clearing house mechanism, this would further simplify the administration of Amount A because no additional payments should be required from the company: all taxes payable on Amount A allocations to market jurisdictions should be covered by the relief obligations of relieving jurisdictions. The Consultation Document provides a starting point for future discussion of such an adjustment of the approach with the reference in paragraph 104 to the development of guardrails for the rate of taxation of Amount A.

### ***Tax Certainty Framework for Amount A***

In our June comment submission on the consultation document on *Pillar One – A Tax Certainty Framework for Amount A*, we made several suggestions to significantly streamline the proposed tax certainty process in a way that, in our view, would still achieve its important objectives. Those comments reflected an appreciation for the overall vision regarding certainty, but they identified and addressed some weaknesses in the proposed approach, including:

- Too many cumbersome layers of review and interaction, and more participants than necessary to achieve the overall objective of tax certainty.
- Too small a role for the Lead Tax Administration, which could serve a key role in streamlining the process.
- Too small a role for the company, which should have the opportunity to make presentations in all phases of the process.
- The use of a formal Expert Advisory Group of systems specialists, rather than relying on internal and regulatory controls commonly used by companies.

Our suggested streamlined approach covers both the Advance Certainty Review and the Comprehensive Certainty Review and includes four steps:

- Step 1: Company elects to participate and submits the Amount A Common Documentation Package to the Lead Tax Administration.
- Step 2: The Lead Tax Administration makes all determinations relating to Advance Certainty and Comprehensive Certainty issues. Expert Advisory Groups of system specialists are replaced with independent certification.
- Step 3: Any disagreements that arise from any affected tax administrations are submitted to the Determination Panel, which is itself vested with authority to resolve all issues with a determination that binds all affected jurisdictions.
- Step 4: Company accepts the determination or rejects the determination with the option of pursuing alternative approaches for certainty.

As part of this streamlined approach, we believe that the company (typically, the Ultimate Parent Entity) should be given a more significant role in the tax certainty process. This would further contribute to the streamlining of the process, as it would provide a single member of the group to make representations in all phases of the process and would help facilitate the collection and evaluation of any relevant factual information.

Even though this process is significantly streamlined, we are confident that it will ensure an appropriate outcome because the process itself ensures discipline in the Lead Tax Administration. The ultimate authority of the Determination Panel to accept the Lead Tax Administration's determination or reject it in favor of an alternative approach would provide a compelling incentive for the Lead Tax Administration to ensure that its initial determination is reasonable.

The streamlined process also would provide at least two additional benefits. First, the additional capacity that would be available would allow *all* aspects of Amount A to be covered under the Advance Certainty process. Second, the streamlined approach (even with expanded scope) would significantly reduce the timeframe under which the objectives of the process – including the timely relief of double taxation – could be achieved.

Finally, we continue to think that it is important for tax administrations to undertake a review of a Group's Amount A Common Documentation Package on a coordinated basis in situations in which the company has not applied for certainty in advance or rejects the outcome of the process. The company should not be penalized for not having applied for certainty in advance. Accordingly, we believe that the company should have the right to apply for the review process even where it did not apply for certainty in advance, and tax administrations should be required to participate and be bound by the ultimate outcome.

We are repeating these suggestions here because we continue to be concerned that the certainty process as proposed is likely to be unworkable in practice and we believe that a workable certainty process is fundamental to achieving the intended objectives of Amount A.

***Tax Certainty on Issues Related to Amount A***

In our June comment submission on *Pillar One – Tax Certainty for Issues Related to Amount A*, we raised several concerns about the proposed certainty procedures and made proposals for improvements to such procedures. We are reiterating and elaborating on key points we made previously because we continue to believe these matters are fundamental to the effective operation of these important certainty procedures.

We appreciate the inclusion in the Consultation Document of a definition of Related Issue. Our June submission stressed the need for a clear definition. However, we believe that the definition must go beyond Articles 5, 7 and 9 of the OECD Model Tax Convention and, as noted previously, must include issues such as limitations on deductions that are formally or de facto applied only to payments to related parties and withholding taxes, to give two examples.

On the latter, we note the indication in footnote 117 that the matter of the impact of withholding taxes on Amount A has not been agreed and that when it is agreed the Inclusive Framework will discuss whether withholding taxes should be included in the definition. In this regard, as discussed in our August comment submission on the Progress Report on Amount A of Pillar One, we believe that if Amount A is intended to address a concern that market jurisdictions do not have “enough” taxing rights under existing international tax rules, the determination of Amount A must take into account all income taxes imposed by the jurisdiction, whether it chooses to exercise its taxing rights through a gross-basis withholding tax on deductible payments or through a tax on net income. Moreover, the administration approach for Amount A must properly reflect withholding taxes that have been paid. Relief for such taxes typically is provided under bilateral tax treaties, so that the interaction between such relief and the relief provided for Amount A must be made clear. This further reinforces how essential it is that withholding tax constitutes a Related Issue to Amount A that is clearly and fully covered by the proposed tax certainty process.

Given the importance of access to the proposed tax certainty process, we continue to urge that an independent review process regarding access to MAP and the new dispute resolution procedures be available. This independent review should also apply to the matter of whether or not a particular issue constitutes a Related Issue. While the proposed procedure provides for review through a dispute resolution panel mechanism, the company will not have access to this mechanism if the jurisdictions jointly, or one jurisdiction unilaterally, blocks access to MAP. In order to ensure that access to MAP or the new certainty procedures is not improperly denied or indirectly circumvented, there must be effective access to an independent review that will ensure access to the mandatory and binding dispute resolution procedure if the review determines that there is a case to consider. As we noted in our June submission, the Dispute Resolution Directive of the European Union provides for this kind of independent review of access to MAP.

Regarding the interaction between tax certainty on Amount A and dispute prevention and resolution on issues related to Amount A, certainty on the related issues will be extremely important for full certainty on Amount A. Early and accelerated tax certainty procedures on issues related to Amount A would greatly contribute to tax certainty regarding Amount A. We encourage further focus on ensuring that the new procedures operate in a way that reflects this necessary interconnection between issues related to Amount A and Amount A itself.

Another important area for additional work is enhancing the role of companies in the certainty and dispute resolution processes. We believe that direct involvement of the company is essential. Ensuring an accurate reflection of the facts is necessary for the correct resolution of a case and the company is in the best position to validate the relevant facts and circumstances. The company also should have a role in any agreement by the competent authorities to extend the timeframe for entering into the mandatory binding dispute resolution phase or on the resolution of the case, at a minimum by being able to provide its views.

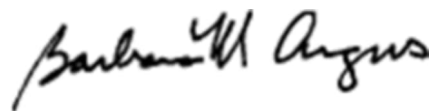
Finally, we welcome the statement in footnote 111 of the Consultation Document that work is ongoing on clarifying the relationship between regular MAP and the new procedures applicable to issues related to Amount A. We agree that it is important that a case initiated under one of the procedures will be ensured access to the other procedure should it be determined that the other procedure is the one properly applicable to such case. The fact that there are two separate procedures must not be allowed to interfere with the resolution of a case under the procedure that is properly applicable to it.

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The global EY team that prepared this submission welcomes the opportunity to discuss these comments in greater detail and to continue to participate in the dialogue as the Inclusive Framework advances the work on this important project.

If there are questions regarding this submission or if further information would be useful, please contact Ronald van den Brekel ([ronald.van.den.brekel@nl.ey.com](mailto:ronald.van.den.brekel@nl.ey.com)), Mike McDonald ([michael.mcdonald4@ey.com](mailto:michael.mcdonald4@ey.com)), Marlies de Ruyter ([marlies.de.ruyter@nl.ey.com](mailto:marlies.de.ruyter@nl.ey.com)), Joel Cooper ([joel.cooper@uk.ey.com](mailto:joel.cooper@uk.ey.com)) or me ([barbara.angus@ey.com](mailto:barbara.angus@ey.com)).

Yours sincerely, on behalf of EY,

A handwritten signature in black ink that reads "Barbara M. Angus". The signature is written in a cursive, flowing style.

Barbara M. Angus  
EY Global Tax Policy Leader