OECD releases report on Amount B of Pillar One

19 February 2024

In brief

The OECD/G20 Inclusive Framework on BEPS (IF) released, on 19 February, the report on Amount B of Pillar One, which introduces two options for jurisdictions to elect the simplified and streamlined approach for the transfer pricing of certain baseline wholesale marketing and distribution activities. The report follows the OECD's July 2023 public consultation on Amount B (July Consultation Document) (See PwC's Tax Policy Alert for further information).

The content from the report has been incorporated into the OECD Transfer Pricing Guidelines (TPG). The IF is developing additional guidance on Amount B and has committed to concluding this work by 31 March 2024, with any additions to be incorporated into the TPG at that time. The list of jurisdictions that opt into Amount B within their jurisdictions will be made available on the OECD website.

This Alert provides a short summary of the report and will be followed by an additional Alert containing more in-depth analysis and observations.

The takeaway

It will take time to analyse the full implications of today's release in light of specific fact patterns and business models. Based on an initial review, the IF has adopted an optional methodology to price certain baseline wholesale marketing and distribution activities that will likely not provide the tax certainty that companies were hoping for. It remains to be seen which countries will adopt Amount B. However, the list of concerns raised by India (in footnotes) may signal a certain level of disagreement still present among IF countries. The design choices made appear to have responded to at least some of the concerns raised during the consultation process. But the approach still falls significantly short of addressing these in a way that can be expected to deliver on Amount B's primary objectives -- administrative simplification and tax certainty. Taxpayers with distributors that may fall within scope of Amount B should start to work through these new rules and model their outcomes so they can be prepared when/if countries adopt these rules.

In detail

Jurisdictions can choose to apply the simplified and streamlined approach for in-scope transactions to qualifying transactions of eligible baseline distributors in their jurisdictions for fiscal years commencing on or after 1 January 2025. The report sets out the characteristics of in-scope distributors, which cannot, for example, assume certain economically significant risks or own unique and valuable intangibles. Moreover, certain activities may exclude a distributor from the scope, such as the distribution of commodities or digital goods. The scope of the guidance is still limited to wholesale distribution of tangible goods and does not include services (including digital services). The simplified and streamlined approach provides a pricing framework whereby a 3-step process determines a return on sales for in-scope distributors. Finally, the report provides guidance on documentation, transitional issues, and tax certainty considerations.

Provided below are immediate observations on the report:

- Not all IF countries need to adopt the simplified and streamlined approach, since it is elective. If a country does adopt the simplified and streamlined approach it has two options: (i) make it binding on all taxpayers, or (ii) make it a taxpayer-elected safe harbour;

- Notably, a transfer pricing outcome under Amount B in an adopting jurisdiction *will not* be binding on a non-adopting counterparty jurisdiction. However, the report describes a commitment from the IF to respect the outcome determined under Amount B if the adopting jurisdiction is a 'low-capacity jurisdiction.' Nevertheless, this commitment is subject to several conditions/exceptions which may undercut its significance. (It should also be noted India has not agreed to be bound by this commitment.)

- The scoping criteria (Section 3) for qualifying transactions appears to follow the quantitative approach of 'Alternative A' instead of the qualitative approach of 'Alternative B' as set forth in the July Consultation Document. However, the report states that the IF is working on an additional optional qualitative scoping criterion that jurisdictions may choose to apply as an additional step to identify distributors performing non-baseline activities (work to be completed by 31 March 2024);

- The 'pricing matrix' (Table 5.1), which sets out agreed returns for certain baseline wholesale marketing and distribution activities, appears to be consistent with the July Consultation Document with the return on sales as the net profit indicator (NPI) mapped across two dimensions – industry grouping and factor intensity. The pricing matrix still has a total of 15 distinct target returns – and some have increased/decreased – but the overall range of return on sales remains from 1.5% to 5.5%. While the current report no longer includes any 'modified pricing matrices' which would supersede the basic/default pricing matrix as previously proposed, an adjustment based on sovereign credit rating has been retained for 'qualifying jurisdictions', as yet undetermined, that are underrepresented in the global dataset used in the default pricing matrix; and

- There is more detail on the 'cap and collar' approach intended as a 'cross check' on the return on sales net profit indicator in the pricing matrix.

Let's talk

For a deeper discussion of how Amount B of Pillar One might affect your business, please contact:

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