KPMG

Memo

To Tax Treaties, Transfer Pricing and Financial Transactions Division, OECD/CTPA

From KPMG International

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Ref KPMG Comments to the Progress Report on Administration and Tax Certainty Aspects of Amount A of Pillar One

Professionals in the member firms of KPMG International[1] ("KPMG") welcome the opportunity to comment on the Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One, released on October 6, 2022 (the "Progress Report").

We commend the decision by the OECD/G20 Inclusive Framework on BEPS (the "Inclusive Framework") to seek input from stakeholders, and specifically the business community, on the design of the administration and tax certainty aspects of Amount A. Amount A represents a significant departure from the existing international tax system, adopting a formulaic group-based calculation that makes a centralized and harmonized administration and tax certainty framework essential to the administrability of Amount A for taxpayers and tax administrations.

The Progress Report includes encouraging developments to the proposed approach to tax certainty for issues related to Amount A and some improvements to the tax certainty process for Amount A. However, we are concerned by the complexity of the proposed Administrative Framework, which seems likely to prevent the full and efficient elimination of double taxation arising from Amount A. The Administrative Framework outlined in the Progress Report includes some key building blocks of a streamlined administration process, but we consider revisions are required to deliver the streamlined process that is necessary to make Amount A administrable.

The following comments respond to various issues raised in respect of the Administration of Amount A, Tax Certainty for Amount A and Tax Certainty for Issues Related to Amount A. There are interactions between

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these three components and other aspects of Amount A – as well as Pillar Two, BEPS Action 13 compliance, and existing domestic tax regimes – and thus we encourage the Inclusive Framework to seek input on these issues again once further progress has been made on other Amount A building blocks, notably the mechanism to eliminate double taxation and the exchange of information framework.

Administration of Amount A

The issues addressed in the Administration Framework for Amount A are more important than just those of administration and compliance. The design issues raised – most notably the question around the identity of the taxpayer (i.e., the single vs. multiple taxpayer approaches) – shape the design of other aspects of Amount A, in particular the mechanism to eliminate double taxation. These issues need to be considered holistically and the primary objective must be to ensure that double taxation is fully eliminated in a timely and effective manner in all circumstances. The decision by the Inclusive Framework to rely on domestic law to relieve double taxation and the limited appetite Inclusive Framework members have to revise their existing approaches to relieve double taxation make this design issue particularly complex and will likely imperil effective relief without robust guardrails.

The second objective for the Administration Framework should be to simplify the administration of Amount A, with consideration given to both taxpayers and tax administrations. In this regard, we are concerned by the stated objective that "the Administration Framework should allow for tax administrations to deal with Amount A without significant modification to their current tax administration and systems infrastructure."[2] Amount A represents a significant change to the international tax system and if tax administrations are unwilling or unable to adjust their administrative approaches and systems in response, taxpayers are likely to face very significant compliance costs and the prospect of multiple taxation.

Single or multiple taxpayer approach

The Progress Report outlines the advantages and disadvantages of the single and multiple taxpayer approaches, without concluding whether either approach is preferable.

At first glance, the single taxpayer approach appears to be simpler. It would make it easier for market jurisdictions to establish which entity in the group is liable for tax on Amount A income and would reduce the compliance that would be created if, under the multiple taxpayer approach, each taxpayer was required to register for tax in each market jurisdiction. The single taxpayer approach also seems conceptually more consistent with the overall design of Amount A, which applies and is calculated on a group basis.

The Progress Report identifies a number of challenges with the single taxpayer approach, including questions of funding and the corporate law implications of an entity bearing a liability on behalf of a group. These are important issues, but the biggest challenge with the single taxpayer approach is the operation of existing foreign tax credit systems. As discussed in more detail below, the Inclusive Framework's decision to rely on existing domestic income tax rules to relieve double taxation gives rise to a real risk that the double taxation arising from Amount A will not be effectively eliminated. This risk would likely be increased if the single taxpayer approach were adopted, due to the limitations some jurisdictions impose on the use of tax credits,

[2] Progress Report at 8, ¶ 2.

where the entity seeking to claim the credits is not the entity that is liable for the underlying tax. It is vital that, in addition to potential challenges with withholding taxes, the Pillar Two minimum tax rules, other Controlled Foreign Company ("CFC) regimes, the Global Intangible Low-Taxed Income ("GILTI") rules, and the Corporate Alternative Minimum Tax ("CAMT"), these issues are considered when assessing the single taxpayer approach. This is not to say that the multiple taxpayer approach is preferable, but rather that the way jurisdictions choose to eliminate double taxation is relevant when assessing the benefits of the single taxpayer approach. Without strong guardrails and explicit recognition from Inclusive Framework members that the single taxpayer approach will not prevent the elimination of double taxation under domestic foreign tax credit regimes, the single taxpayer approach is not workable.

The multiple taxpayer approach would seem to address the challenges associated with the misalignment of the Amount A tax liability and relief entitlement but poses significant administrability concerns. A practical example is the suggestion that each taxpayer would be required to register for a Tax Identification Number ("TIN") in every market jurisdiction, despite the fact the entity liable for tax could change year-over-year. Concerns about administrability would be further exacerbated if multiple entities in each relieving jurisdiction are identified as the taxpayers.

The Progress Report recognizes that further work is required to decide whether to adopt the single or multiple taxpayer approach. It is important that, in this assessment, consideration is given to other aspects of Amount A, particularly if jurisdictions retain the option to relieve double taxation using their existing foreign tax credit systems.

Method to eliminate double taxation

We are concerned that allowing "jurisdictions to give effect to double taxation relief through their current double taxation relief mechanisms"[3] will result in ineffective relief from double taxation. As the Progress Report recognizes, many jurisdictions' existing foreign tax credit and exemption regimes are complicated and already do not relieve double taxation in all circumstances, due to issues such as credit limitations or expense allocations.

Amount A is likely to exacerbate these existing problems because of: the misalignment between the entity that pays the tax in the market jurisdictions and the entity (or entities) entitled to relief from double taxation; the potential misalignment between the period when tax due under Amount A is paid and when relief is claimed; or the difficulty in proving that tax has been paid. There is significant concern amongst businesses that even if double taxation is ultimately relieved, the delay between when tax on Amount A is paid and when relief is provided could create significant cash-flow challenges for affected groups. This could occur in a variety of scenarios, but most obviously if a taxpayer lacks sufficient taxable income to use foreign tax credits in the year when it faces additional tax on profits subject to reallocation under Amount A.

The potential complexity of applying the credit method – or, to put it more accurately, a multitude of divergent credit methods across jurisdictions – is significant. As outlined in the Progress Report, in a simple example with 10 market jurisdictions and five relieving jurisdictions, each with two relief entities, there would be 100

[3] Progress Report at 16, ¶ 24.

contract points and hence 100 foreign tax credit calculations.[4] In a more realistic scenario with 100 market jurisdictions, the number of contact points and foreign tax credit calculations would rise to 1000.

For this reason, we continue to believe that the Inclusive Framework should develop a harmonized system for relieving double taxation, relying exclusively on the exemption method. This reflects the much greater simplicity of the exemption method, which will make it significantly easier for both taxpayers and tax administrations to operate. It is also more conceptually consistent with the overall design of Amount A.

If the Inclusive Framework does not develop a harmonized system, then the back-stop provisions included in Article 19 become even more critical. Any back-stop mechanism should be designed to ensure that double taxation is fully eliminated in the same periods when profits are taxed under Amount A. Where this cannot be achieved through foreign tax credits, then tax administrations should be required to provide refunds. It is essential that this provision is included not only in the Model Rules and Commentary, but also the Multilateral Convention ("MLC") so that it binds jurisdictions in the way intended. We remain concerned that proposed formulaic approach to the elimination of double taxation could require jurisdictions that have little or no taxing rights over a group under existing tax rules (for example due to the carry-forward of domestic losses, or amortisation expenses) to relieve double taxation arising from Amount A. The back-stop provisions should be designed with these scenarios in mind and ensure that in all circumstances, double taxation is fully eliminated in the relevant period, not in future periods.

To date, the Inclusive Framework has developed a framework to eliminate double taxation that identifies the jurisdiction that will be required to relieve double taxation, the "relieving jurisdiction," but not the entity or entities that will be eligible for relief. The Progress Report envisages a formulaic process whereby the relief entities could be identified based on their return on depreciation and payroll ("RoDP"), their accounting profits, their taxable profits, or their Elimination Profit. There would then be a further formulaic calculation to determine the amount of double taxation relief that each relief entity would be eligible for, with consideration given to the "waterfall" and "pro-rata" approach. These proposals are unlikely to result in effective relief: RoDP determined on the basis of financial accounts, for example, has at best a tenuous connection to an entity's local tax liability and thus its ability to benefit from relief in the period in question.

A simpler and more effective approach would be for the group to elect which entity or entities in a jurisdiction should be identified as "relief entities," with these entities then eligible for relief from double taxation. A taxpayer would elect an entity (or entities) that had income against which double tax relief could be applied, thus, reducing the likelihood of unrelieved double taxation. We recognize that there will be cases where an entity is subject to different rates of tax for different income streams (e.g., where a portion of its income is eligible for a preferential tax regime), or where multiple Group Entities in a jurisdiction are subject to different tax rates. This is an issue that the MLC should address: in the interest of simplification and administrability, relief could be available based on the weighted average tax rate of an entity (or of the Group Entities in the relieving jurisdiction, as the case may be).

[4] Progress Report at 22, ¶ 48.

Streamlined compliance

As the Inclusive Framework recognizes, Amount A will only be successful if it is accompanied by a streamlined compliance process. For taxpayers, this is critical to ease the filing of tax returns in multiple jurisdictions where they are currently not required to file a return, have limited or no physical presence, and will be entirely unfamiliar with local legal and tax requirements. But this process is also critical for tax administrations, as it will support the effective operation of the tax certainty framework and will minimize the administrative costs that they incur due to the introduction of Amount A.

The process outlined in the Progress Report contains some core elements necessary for a truly streamlined compliance process, but ultimately fails to deliver on this objective. In our view, this is in part an issue of communication. The Progress Report is difficult to follow because it presents the single and multiple taxpayer approaches in a combined section, but we also consider that there are some policy issues that need to be revisited and revised.

First, it should be made clear that where a taxpayer files an Amount A Tax Return and Common Documentation Package with its Lead Tax Administration, this filing satisfies all local filing obligations in all jurisdictions. In addition, it is not appropriate to impose on Covered Groups the traditional obligations that come with registering as a taxpayer, such as appointing a local representative, establishing, and funding a local bank account, or obtaining a local tax identification number. Though these obligations may seem trivial, they impose material compliance costs on businesses, particularly given that they may apply in over 100 market jurisdictions (potentially including jurisdictions where the business does not even derive revenues, in cases where an allocation key is applied for the purpose of revenue sourcing). For this reason, the MLC should specifically prohibit market jurisdictions from imposing these obligations in respect of taxing rights due under Amount A.

Second, where jurisdictions choose to integrate Amount A into their existing income tax system and, for example, allow this income to be offset against other losses, they should provide an option for the taxpayer to rely on the streamlined compliance process and not utilize these domestic tax attributes. Though it may be beneficial for the taxpayer to utilize these attributes and we support jurisdictions providing this as an option to taxpayers, in some instances the compliance costs of utilizing such attributes may outweigh the benefits the additional local filing requirements create.

Third, for the streamlined process to be effective, it will be necessary for the Inclusive Framework to establish an exchange of information framework governing exchanges between all Affected Parties. The Progress Report acknowledges that this issue must be addressed as a matter of priority.[5] We agree with this assessment and emphasize that such a framework must be in place before Amount A comes into effect. It is important that the agreement that is put in place uphold the standards agreed by the Global Forum on Transparency and Exchange of Information for Tax Purposes, particularly in relation to confidentiality and data safeguarding. This is particularly important given the sensitive nature of the information that groups are required to include in their Amount A Tax Return. The MLC and Model Rules should excuse businesses from local filing obligations (and place a bar on penalties for late or missing filings) in the event that a jurisdiction

[5] Progress Report at 32, ¶ 107.

cannot receive the business's Amount A Tax Return and Common Documentation Package via information exchange because the jurisdiction does not satisfy the applicable exchange standards.

Fourth, the filings due in relieving jurisdictions should be simplified to the greatest extent possible. We recognize that this may be more complex, given that there will inevitably be some interaction with existing domestic tax systems, but it is important that such interactions are minimized. An important issue to consider is the timing of returns. If the Amount A Tax Return is due 12 months after the end of a financial period, which we support, it is likely that a group will already have been required to file tax returns in some, if not most, relieving jurisdictions. It is important that this is accounted for in the design of the mechanism to relieve double taxation.

Confidentiality

Though the Progress Report highlights that the Inclusive Framework is still considering how to ensure all information included in the Amount A Tax Return and Common Documentation Package remains confidential, we want to reiterate how critical confidentiality is both for taxpayers but also for the broader integrity and acceptance of Amount A. The Amount A Tax Return and Common Documentation Package will contain commercially sensitive information (e.g., detail on where groups generate revenues, where they realize profits, and potentially on how their underlying systems operate). It is vital that the confidentiality of this information is protected, particularly in light of the fact that many in-scope businesses compete with state-owned enterprises.

The most effective way to maintain confidentiality is to limit the Affected Parties with which information is shared. We still see no justification for providing an Affected Party with more information than it requires to assess the accuracy of the Amount A tax liability due in its jurisdiction, or the amount of double tax relief it is required to provide. This could be delivered by developing a core documentation package that will be shared with all Affected Parties and jurisdiction specific schedules that the LTA will share with each Affected Party individually.

In addition to undermining confidentiality and increasing the risk of data breaches and inappropriate use of data, we believe that sharing information on the Amount A allocations and relief obligations for all Affected Parties with all Affected Parties will impede the functioning of the tax certainty process. A tax administration's focus should be on reviewing the accuracy of the Amount A computations as they affect its own jurisdiction.

Payment

For a streamlined process to be effective, it is important to consider not only how to simplify compliance, but also the payment process. The payment process should align when tax is paid in a market jurisdiction and when double taxation is relieved by a relieving jurisdiction, thereby ensuring that Covered Groups do not face an adverse cash flow position as a consequence of Amount A. This could be achieved most easily through a harmonized system to relieve double taxation based on the exemption method, whereby relieving jurisdictions would exempt income from tax or, where tax has already been paid, provide refunds on the date when tax is paid on the income allocated under Amount A.

This harmonized system would be most easily constructed if payment of a Covered Group's Amount A tax liability were suspended until the Amount A tax certainty process was complete, as it is only at this stage that

the tax due in market jurisdictions and relief due in relieving jurisdictions would be finalized. Suspending payment would also have the additional benefit of incentivising tax administrations to complete the certainty process in a timely manner.

We note that the Progress Report argues that if there is a delay in payment to market jurisdictions, then Covered Groups would be subject to interest on their tax liability. We strongly disagree with this proposal and note that to the extent any interest is due, it should be borne by relieving jurisdictions that have collected tax on income that is ultimately subject to tax in another jurisdiction. That said, for simplicity, and to prevent tax administrations and taxpayers from having to navigate a maze of offsetting interest payments, we suggest that no interest should accrue on a Covered Group's Amount A tax liability until the tax certainty process has been completed and a group's final Amount A tax liability has been finalized.

For taxpayers, paying tax due in local currency (particularly currencies that a group may not use for other commercial purposes) creates an additional compliance cost. The simplest way to minimize this cost would be to allow groups to make Amount A tax payments in their functional financial reporting currency, which is the currency they will use to complete their Amount A Tax Return.

In addition, we believe the Inclusive Framework should develop a list of large reputable financial institutions that could act as a clearing bank for facilitation and settlement payment of tax due under Amount A, at the Covered Group's option. The use of such a clearing bank would enable taxpayers to compute their tax liability in their functional financial reporting currency and make payments in said currency and would provide tax administrations a simple means of converting those payments to their local currency, at their option.

If the multiple taxpayer approach is adopted, we strongly support the proposal to include an agency payment model. Covered Groups should have the option to select any entity as the paying agent and there should be no general requirement that this entity should be the Ultimate Parent Entity ("UPE"). It is not necessary to impose any additional requirements on the entity that a Covered Group can select as the agent, as the identity of this entity should have no bearing on other aspects of the Amount A framework.[6]

Other issues

The Progress Report notes that the MLC will include guardrails covering the rate of taxation of Amount A and possible penalties. We agree that these guardrails are important and that they should prohibit jurisdictions for adopting a tax rate or penalties that exceed the headline rates applied in a jurisdiction.

Tax Certainty Framework for Amount A

We commend the Inclusive Framework for the improvements made to the Tax Certainty Framework for Amount A based on the comments received on the earlier public consultation document. The framework is vital for both tax administrations, many of whom will lack the capacity and resources to review the calculation of Amount A for all Covered Groups, but also for taxpayers, who could otherwise face audits on their Amount A calculations in more than 100 jurisdictions.

[6] Progress Report at 22, ¶ 51.

We remain concerned that the process outlined in the Progress Report will take too long and will impose excessive burdens and delays on taxpayers and tax administrations alike. For this reason and to provide certainty more quickly, we encourage the Inclusive Framework to continue to consider ways that the Tax Certainty Framework for Amount A could be streamlined and simplified.

Length of the certainty process

The revised Tax Certainty Framework for Amount A includes clear deadlines for the completion of most phases of the certainty process, though there are still some steps that do not have clear deadlines (e.g., the time available for the Review Panel to review an MNE's amended Amount A filing). Without clear deadlines for the remaining steps, there is still a significant risk that delays in achieving a final certainty outcome could render the tax certainty process ineffective.

The deadlines included in the Progress Report highlight the extended length of time that the tax certainty process will take. Appendix 1 includes a table setting out the maximum and minimum length of time the certainty process could take to conclude.[7] This table shows that, in a worst-case scenario, a taxpayer with a financial year ending on 31 December 2024 may not achieve full tax certainty until mid-2030. Even in a more optimistic scenario, the current process would be unlikely to conclude until late-2027, three years after the end of the period. The length of time needed to achieve certainty creates a number of challenges: it may make it more difficult for jurisdictions to relieve double taxation without significant amendments to their existing methods for relieving double taxation; it increases the resources and costs that taxpayers and tax administrations will occur as a result of the review process; and it increases uncertainty faced by both taxpayers and tax administrations.

The Progress Report envisages that the time taken for the certainty process to conclude can be reduced over time, both through shorter deadlines and by reducing the reliance placed on the Review Panel and increasing the role of the LTA. These are sensible simplifications that we consider necessary to make the tax certainty process more efficient and hence more effective. However, we continue to believe that further consideration should be given to streamlining the certainty process.

There are some simple steps that could be taken, such as shortening the time available for Affected or Listed Parties to submit their interest to serve on a Review Panel or running more steps concurrently. The Inclusive Framework could also eliminate some steps entirely, such as removing the option for Affected Parties that have not participated in the Review Panel to disagree with its finding or moving such disagreements immediately to a Determination Panel. As explored below, we also continue to believe that expanding the scope of Advance Certainty Review would be of significant benefit to both taxpayers and tax administrations.

In the first year that Amount A applies or when an MNE becomes a Covered Group, opportunities to limit the burdens imposed by the tax certainty process will be more limited. For taxpayers, introducing and operating

[7] Note that this table is based on a number of assumptions. For instance, the minimum timeframes are constructed around the assumption that each necessary step of the process will take the full time allotted to that process (but not any permitted extensions), while steps that will not form part of the process in every instance (e.g., the remediation of information missing from a Covered Group's Common Documentation Package) are not taken into account. The table does not illustrate the effect of a delay caused by a Covered Group's need to restate its financials, as this is expected to arise only in unusual cases.

the relevant systems and completing the relevant returns will be time-consuming, just as reviewing such returns will be for tax administrations. The transitional rules included in the certainty process are a sensible way to reduce these burdens, and hence we support the formalization of the transition rules. To ensure that the benefits of these transitional rules are achieved, it will be important that the Inclusive Framework agrees a sensible definition of "Reasonable Steps," which was not clearly defined in the earlier Progress Report on Amount A of Pillar One. To ensure that Covered Groups' reasonable efforts are respected, a supermajority of Affected Parties should be required to concur in any suggestion that the steps taken by a Covered Group were not reasonable.

Streamlining the process

One way to streamline the Comprehensive Certainty Process is to limit the number of times this process is undertaken. Moving from an annual review process to a review every five years would be a significant efficiency saving. The Progress Report seeks to achieve this streamlining by allowing an LTA to undertake a review for up to four Periods following the completion of a Comprehensive Certainty Review by a Review Panel. The rationale for this approach appears to be that if a Review Panel (or Determination Panel) has reached agreement on a given outcome for a given period, the taxpayer will be expected to roll this outcome forward in subsequent periods, and hence a review by the LTA is sufficient. This is not dissimilar to the approaches that many tax administrations already adopt for Advance Pricing Agreements ("APAs") and Mutual Agreement Procedures ("MAPs"), when a tax administration either unilaterally, bilaterally, or multilaterally will agree to a given transfer pricing methodology for past, current, and subsequent periods at the same time.

Though we support the objectives of this approach, we consider that it would be more effective if it were formalized and covered as part of an Advance Certainty Review. The current scope of the Advance Certainty Review is limited to issues of revenue sourcing and excluded revenues. We consider that the scope should be extended to all methodological aspects of the Amount A calculation. Though we recognize that it is not possible to make a final determination of a Covered Group's Amount A tax liability until the end of a Period, it is possible to establish a set of agreed methodologies for calculating that liability. These methodologies could cover issues such as adjustments to the Amount A tax base, adjustments to Elimination Profit, and the definition of depreciation and payroll expenses, as well as others. If these items were covered as part of an Advance Certainty Process, it would make the subsequent review significantly simpler and quicker.

The Amount A calculation relies more heavily on financial accounting and the associated systems than most existing corporate tax systems. The Amount A revenue sourcing rules will also require Covered Groups to implement new systems to source their revenues in ways that are not required under existing tax rules and are not consistent with the Group's commercial operations. For this reason, it is understandable that tax administrations will want to better understand a taxpayer's financial reporting systems and controls. However, we are concerned by the suggestion in the Progress Report that as part of the Advance Certainty Review an Expert Advisory Group would be established to review a Covered Group's internal control framework. We are particularly concerned by the suggestion that the Expert Advisory Group (and the other tax certainty review panels) would not be bound by an opinion provided by a Group's auditors, given the much greater experience and knowledge an auditor will have of a Group's internal control framework. For this reason, at a minimum, the Expert Advisory Group (and all other tax certainty panels) should be specifically prohibited from reviewing any

aspect of a Group's financial control framework used to prepare audited financial statements and from requesting amendments to financial information taken from such statements.

In the interests of streamlining and simplification, we think the Inclusive Framework should go further and remove the Expert Advisory Group entirely. The primary role of this group appears to be to review a group's controls framework in respect of the Amount A revenue sourcing rules. We are concerned that tax administrations lack the systems specialists and a deep understanding of the controls systems used by large MNEs that would be required to undertake such a review. Instead, we consider that a taxpayer should have the option of relying on a Letter of Attestation from an independent auditor opining on the reliability and effectiveness of their internal controls. When such a letter has been provided, no further review of the tax control framework should be conducted as part of any tax certainty process. It is important to highlight that the standards and content of this Letter of Attestation would be determined by the Inclusive Framework and would need to be sufficient to give the relevant tax administrations confidence in the internal control framework of a Covered Group. This could mean that this process could only apply after the approach to revenue sourcing adopted by the Covered Group had been approved through a relevant certainty process.

Dispute prevention and resolution

The Inclusive Framework's October 8, 2021 "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy" committed to provide both dispute prevention and dispute resolution mechanisms for Amount A and for Related Issues – i.e., four processes (dispute prevention for Amount A, dispute resolution for Amount A, dispute prevention for Related Issues, and dispute resolution for Related Issues). While we recognize the extent of the technical work that has been carried out in the area of tax certainty, we note that two of the four processes – dispute resolution for Amount A and dispute prevention for Related Issues – remain to be addressed.

	Amount A	Related Issues
Dispute Prevention	Scope Certainty, Advance Certainty, and Comprehensive Certainty Reviews	Not yet addressed
Dispute Resolution	Not yet addressed	Articles [X], [Y], [Z], and 19

Other issues

The key benefit of the Tax Certainty Framework for Amount A, for both taxpayers and tax administrations, is that it is an alternative to local audits. It is essential that the MLC specifically prohibits tax administrations from undertaking local audits before, during and after the successful conclusion of all tax certainty processes, including a Scope Certainty and Advance Certainty Review. In particular, we are concerned that tax administrations may request additional information or clarification from a liable entity following the conclusion

of a Comprehensive Tax Certainty Review.[8] At the end of a Comprehensive Tax Certainty Review, it is essential that a taxpayer not only has certainty over both how much tax is due in market jurisdictions, but also how the corresponding double taxation will be relieved by relieving jurisdictions.

Finally, further work should be undertaken to ensure that, in cases where a Covered Group does not request a certainty process as part of its Amount A Tax Return and Common Documentation Package filing and is subsequently subject to adjustments in connection with Amount A in one or more jurisdictions, the Covered Group should have the benefit of a certainty review or similar process to eliminate multiple taxation. For example, it could be envisaged that, having completed a Comprehensive Certainty Review, a taxpayer chooses to roll-forward that methodology for a future period, without requesting another Comprehensive Certainty Review. Where the taxpayer then faces an enquiry on its Amount A tax liability (and potential adjustments) in one or more countries, it should retain the option to request Comprehensive Certainty at this stage. This would align with the Scope Certainty Review, where a taxpayer retains the option of requesting certainty during the period when the tax administrations of a Party can open an enquiry.[9] While this example illustrates a situation in which we believe Covered Groups might forego dispute prevention via the certainty process, access to dispute resolution should be available regardless of whether a Group has previously sought to avail itself of the certainty process.

Tax Certainty for Issues Related to Amount A

We strongly support the proposed expansion of tax certainty for issues related to Amount A to transfer pricing and other disputes that are not covered by an existing tax agreement. Ensuring that Covered Groups have certainty with respect to issues related to Amount A is a necessary precondition for certainty with respect to Amount A, and for the viability of the Amount A framework in general. Extending tax certainty to disputes that are not covered by an existing tax agreement is particularly important for ensuring that certainty is provided in respect of jurisdictions with more limited treaty networks. The extension of tax certainty for related issues is a welcome improvement on the prior public consultation and one on which we hope the Inclusive Framework can achieve consensus.

Advance certainty

The framework for Tax Certainty for Issues Related to Amount A is focused on resolving, rather than preventing disputes. It achieves this by establishing a mandatory and binding mechanism to resolve disputes that tax administrations cannot resolve in MAP. Past experience has shown that the introduction of similar mandatory binding dispute resolution mechanisms increases the effectiveness of MAP by providing a backstop that incentivises competent authorities to reach a resolution.

Though the Inclusive Framework's efforts to make dispute resolution more effective are welcome, we also believe that further consideration should be given to dispute prevention. At present, APAs are the most effective method for preventing transfer pricing disputes. As part of its work on Tax Certainty for Issues Related to Amount A, we would encourage the Inclusive Framework to explore methods to increase the effectiveness of existing APA programmes. This could include simple steps, for example, building on the best

[8] Progress Report at 14, ¶ 9.
[9] Progress Report at 63, ¶ 1.

practice recommendations included in the Bilateral Advance Pricing Arrangement Manual published by the OECD in September 2022. Alternatively, the Inclusive Framework could explore building on the successes of International Compliance Assurance Programme ("ICAP"), by creating a firmer legal basis and administrative framework for multilateral APAs.

As the Progress Report acknowledges, making transfer pricing adjustments for prior periods creates significant complexity for taxpayers and tax administrations; complexity that the introduction of Amount A is likely to increase. The best way to address this issue is to limit the frequency with which such adjustments are made, rather than simply establishing a framework to provide after the fact tax certainty and thereby avoid the double taxation these adjustments would otherwise give rise to.

As noted above, the October 8, 2021 statement committed to provide dispute prevention as well as dispute resolution for Related Issues. This could be accomplished by requiring jurisdictions that are not eligible for Article 20 to adopt APA programs, and by extending the Article 19 process to provide mandatory and binding prevention via APAs, if the APA is not agreed within a set timeframe. Expanding APA programs is consistent with the recommendations made by the OECD in its 2020 consultation on BEPS Action 14,[10] and existing bilateral treaties with mandatory and binding dispute resolution provisions often extend those provisions to dispute prevention via APAs. Because of their prospective nature, APAs may in some cases require a longer negotiation period than MAP cases. Consistent with the initial best practice recommendation of the OECD's Bilateral Advance Pricing Arrangement Manual,[11] we believe that triggering the Article 19 process after 30 months from the receipt of a complete APA application would be appropriate.

Telescoping

We would like to take this opportunity to reiterate our support for telescoping as the best way to make transfer pricing adjustments for prior periods. MAP and the Article 19 process will not resolve Related Issues for several years after the period to which the Related Issue relates. Requiring a taxpayer to go back and amend domestic tax returns for the years at issue (and very possibly also for intervening years) and requiring the relevant Coordinating Entity to amend Amount A returns for all affected years, would lead to administrative chaos, including administrative issues associated with granting and obtaining refunds. In line with the aim of Pillar One to provide simplifications where possible, it would be preferable to take into account adjustments with respect to Related Issues via telescoping – i.e., by reporting the amount of the income adjustment(s) for the year(s) at issue on the income tax and Amount A returns for the current year.[12] Telescoping is a well-established administrative practice commonly employed by competent authorities in MAP and APA cases, and it offers the only workable solution to the problem of taking adjustments to Related Issues into account for Amount A purposes.

[10] OECD, "BEPS Action 14: Making Dispute Resolution Mechanisms More Effective – 2020 Review" (2020) at 7 (proposing to "Introduce the obligation to establish a bilateral APA programme except for jurisdictions with a low volume of transfer pricing MAP cases").
[11] OECD, "Bilateral Advance Pricing Arrangement Manual" (2022), Best Practice 5.
[12] Coordination rules will also need to address Related Issues that are resolved outside of MAP and the Article 19 process.

Expanding access to tax certainty

The Inclusive Framework has only committed to providing tax certainty for issues related to Amount A to Covered Groups and hence the scope of Articles [X] and [Y] is limited to said groups. We continue to believe that tax certainty is beneficial for both taxpayers and tax administrations. Indeed, we have never heard anyone argue that there is too much tax certainty or that tax uncertainty is preferable. For this reason, we think there would be considerable benefit in extending the tax certainty mechanism provided for by Articles [X] and [Y] to all transfer pricing disputes that are not resolved through MAP. This might be realistically accomplished through an elective mechanism, similar to the mechanism under the BEPS Action 15 Multilateral Instrument.

If it is not possible to achieve consensus on this extension of the scope of Articles [X] and [Y] prior to the conclusion of the Amount A MLC, then we suggest the Inclusive Framework explicitly commit to revisiting this issue in the agreed review of Amount A, 7 years after implementation, with the objective of extending the scope of tax certainty more broadly.

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Appendix 1: Timeline for Tax Certainty for Amount A

Comprehensive Certainty Process in Year 1 (incl. Review Panel and Determination Panel)

Step	Responsible Party	Days (Min)	Days (Max)	Date (Min)	Date (Max)	Citation
Period end				12/31/2024	12/31/2024	N/A
Filing of Amount A Tax Return / Common Documentation Package	MNE			12/31/2025	12/31/2025	Art. 12(3), p.34
Notification of missing info	LTA	0	30	12/31/2025	1/30/2026	2.3.1.3, p.83
Remediation of missing info	MNE	0	60	12/31/2025	3/31/2026	2.3.1.3, p.83
Extension of time for remediation	MNE	0	90	12/31/2025	6/29/2026	2.3.1.3, p.83
Exchange of package	LTA	30	30	1/30/2026	7/29/2026	2.3.1.5, p. 83
Review Panel						
Request for review panel (not applicable for initial CCR)	APs	0	30			2.3.1.6(b)(ii), p. 84; 2.3.2.1(d)(ii), p. 87
Solicitation of review panel members	LTA, APs	60	60	3/31/2026	9/27/2026	2.3.2.4, p. 88
Extension of solicitation	LTA, APs	0	30	3/31/2026	10/27/2026	2.3.2.6, p. 88
Establishment of review panel	RP	30	30	4/30/2026	11/26/2026	2.3.2.6, p. 88
Extension of period for panel to commence	MNE	0	180			2.3.2.9, p. 91
Review panel considers case	RP	480	480	8/23/2027	3/20/2028	2.3.2.31, p. 98
LTA exchanges outcomes with APs	LTA	30	30	9/22/2027	4/19/2028	2.3.2.32, p. 98
APs comment on recommendations	APs	90	90	12/21/2027	7/18/2028	2.3.2.35, p. 99
Review panel considers comments	RP	0	60	12/21/2027	9/16/2028	2.3.2.38, p. 102
Review panel issues revised recommendation OR tries to convince AP to withdraw comment	RP	0	30	12/21/2027	10/16/2028	2.3.2.38(a)/(b), p. 102
APs comment on revised recommendation	APs	0	90	12/21/2027	1/14/2029	2.3.2.38(a), p. 102; 2.3.2.35, p.100
Determination Panel						
Exchange of information on unagreed items	LTA	30	30	1/20/2028	2/13/2029	2.4.1.3, p. 114
APs submit written comments on unagreed items	APs	90	90	4/19/2028	5/14/2029	2.4.1.6, p. 115

APs express interest in panel participation; or if there are no relieving jurisdictions other than LTA, parties that are not affected parties are invited	APs	30	30			2.4.2.2 (Opt. B), p. 135; 2.4.2.8(d) (Opt. B), p. 136
Tax Certainty Secretariat selects panellists and informs them	TCS	?	?			2.4.2.6 (Opt. B), p. 135
Panellists confirm participation	APs	15	15			2.4.2.7 (Opt. B), p. 135
Panellists select chair	DP	15	15			2.4.2.3 (Opt. B), p. 135
LTA exchanges comments received and shares info with determination panel	LTA	30	30	5/19/2028	6/13/2029	2.4.1.6, p. 115
Determination panel resolves issues	DP	90	90	8/17/2028	9/11/2029	2.4.1.10, p. 126
If process resulted in changes, MNE amends return	MNE	90	90	11/15/2028	12/10/2029	2.4.1.17, p. 127
LTA exchanges amended filing	LTA	30	30	12/15/2028	1/9/2030	2.4.1.20, p. 128
APs submit comments on implementation	APs	30	30	1/14/2029	2/8/2030	2.4.1.20, p. 128
LTA exchanges comments	LTA	0	?			2.4.1.20, p. 128
Discussion for resolution of comments	LTA	0	?			2.4.1.20, p. 128
Determination panel resolves disagreement	DP	0	?			2.4.1.20, p. 128

Key

— Affected Parties (“AP”)
— Comprehensive Certainty Review (“CCR”)
— Determination Panel (“DP”)
— Lead Tax Administration (“LTA”)
— Multinational Enterprise (“MNE”)
— Review Panel (“RP”)
— Tax Certainty Secretariat (“TCS”)