



# TaxNewsFlash

United States

No. 2024-483  
December 19, 2024

## KPMG report: Proposed adoption of Amount B in the United States

The U.S. Department of the Treasury and IRS (collectively, “Treasury”) on December 18, 2024, published a [Notice](#) that would allow the U.S. application of Amount B—an OECD-initiative to simplify transfer pricing for baseline marketing and distribution activities.

The notice permits in-scope U.S. taxpayers to apply the Amount B framework (referred to as the simplified and streamlined approach (SSA)) for tax years beginning on or after January 1, 2025, as an elective safe harbor and announces Treasury’s intention to issue regulations allowing its application.

### What is Amount B?

Amount B is an OECD-led initiative to simplify and streamline the application of the arm’s length principle (ALP) to baseline marketing and distribution activities.

A final report on an optional Amount B (i.e., an optional framework that jurisdictions could choose but were not obligated to implement) was published by the OECD / G20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework) in February 2024, with the contents of that report incorporated into the OECD Transfer Pricing Guidelines as an Annex to Chapter IV (Administrative approaches to avoiding and resolving transfer pricing disputes). This report sets out the key parameters of optional Amount B, including the scoping rules and pricing methodology. Read a [KPMG summary](#). In June 2024, the Inclusive Framework published additional guidance on key definitions related to Amount B. Read a [KPMG summary](#).

### Key features of the Notice

The Amount B approach in the Notice issued by Treasury does not diverge substantively from the final report and additional guidance published by the OECD (collectively, the “OECD Report”).

The Notice makes (1) a number of design decisions that were left open by the original report and (2) some clarifications for ambiguities in OECD reports:

- The SSA would apply as an elective safe harbor for taxpayers, i.e., taxpayers could elect to apply it but could not be mandated to apply it by the IRS.

- The SSA can be applied to transactions between U.S. Distributors and Foreign Related Party Suppliers, or U.S. Related Party Suppliers and Foreign Distributors.<sup>1</sup> In both circumstances, the application of the SSA may not be respected in the foreign jurisdiction if the foreign jurisdiction has not also adopted the SSA.
- Taxpayers can elect to apply the SSA to any qualifying, in-scope transaction. Qualification is established based on the criteria outlined in the OECD report on Amount B and the operating expense to net revenue ratio (see below). This means that taxpayers have significant flexibility in the transactions to which they do or do not choose to apply the SSA. The SSA is an annual election; so there is no requirement to apply the SSA consistently from year to year.
- The SSA would apply to transactions where a distributor's operating expense to net revenue are between 3% and 30% for U.S. Distributors or Distributors in foreign jurisdictions that have not adopted the SSA. In foreign jurisdictions that have adopted the SSA, then the upper bound operating expense to net revenue ratio is established by that jurisdiction's domestic legislation. The OECD report set the upper bound of this threshold at between 20% and 30%, and hence as a default Treasury has selected the highest possible threshold.
- Taxpayers must elect to apply the SSA by making a statement in their original tax return identifying the transactions to which they intend to apply the SSA. This must include a basic description of the transaction, identify the counterparties to the transaction and the jurisdiction where the entities are incorporated (or tax resident, if different from incorporation).
- Taxpayers are required to maintain certain documentation relating to the application of the SSA, both to enable the IRS to verify that it has been applied properly and to avoid penalties under Treasury regulations section 1.6662-6. The Notice also amends the documentation requirements that will apply to transactions covered by the SSA. These amendments relax some requirements, for example around method selection, but also impose new requirements, such as maintaining copies of intercompany agreements between the Distributor and its Related Supplier.

The Notice also requests comments on the following specific issues below. The deadline for comments is March 7, 2025:

- Whether the SSA should be solely elective for taxpayers, or whether the IRS should have the ability to apply the SSA in the absence of a taxpayer election.
- Whether the availability of the SSA should be limited to transactions with counterparty jurisdictions that have adopted the SSA to ensure symmetry of tax treatment.
- Whether the option to elect to apply the SSA to specific transactions should be more limited, such as by requiring the SSA to be applied to all in-scope transactions, categories of in-scope transactions, single in-scope transactions across multiple tax years.
- The selection of 30% as the upper bound of the operating expense to net revenue ratio as the upper bound of the scoping criteria.

## Can taxpayers rely on the Notice?

The Notice states that Treasury intends to issue proposed regulations on the application of the SSA and requests feedback on certain aspects of the SSA. The Notice also states that, subject to the rules set out in the Notice, taxpayers may rely on the SSA for tax years beginning on or after January 1, 2025, and before proposed regulations are published in the Federal Register. Taxpayers that are considering applying the SSA should closely follow developments under the incoming administration.

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<sup>1</sup> Capitalized terms not defined herein are defined in the Treasury Notice, OECD Report, or both.

It is unclear whether the new administration will continue to support this policy and what actions they may take from issuing temporary regulations to revoking this Notice.

## Who will be impacted?

This simplification of marketing and distribution activities will primarily be relevant for multinationals with baseline marketing and distribution activities, i.e., limited risk distributors (LRDs) in the U.S. The Notice provides an elective safe harbor for taxpayers, who by complying with the SSA will be able to limit their risk of transfer pricing dispute in the U.S. in respect of these activities from tax years starting January 1, 2025. It may also provide a framework that taxpayers could seek greater certainty through the bilateral advance pricing agreement (BAPA) process.

## Why has the U.S. implemented Amount B now?

Amount B was a key component of the OECD's broader Pillar One initiative, which was intended to deliver broader changes to how taxing rights were allocated between jurisdictions. These negotiations remain ongoing with the potential mandatory implementation of Amount B by all jurisdictions both a key feature and core sticking point in those negotiations.

Treasury has been a major advocate for Amount B, believing it has the potential to significantly reduce the disputes that U.S. multinationals face in other jurisdictions over the pricing of baseline marketing and distribution activities. It has also argued that Amount B will enable the IRS to focus their resources on more complex transfer pricing issues.

The approach in the Notice of allowing taxpayers to apply the SSA on an elective basis—even if other jurisdictions do not agree to implement the SSA/Amount B—is consistent with the argument that the SSA will save the IRS resources and reduce transfer pricing disputes. Of course, that view could change under the incoming administration, so feedback provided by stakeholders on this Notice has the potential to be very impactful.

## How could businesses respond?

The SSA represents both a risk to manage and an opportunity to benefit.

On the risk side, while the SSA scoping and pricing methodology may appear at first glance to be straightforward, there are a series of potential traps for the unwary, such as data gathering, segmentation, and narrow permitted ranges. Those issues are summarized in more detail in a [KPMG report](#). Businesses that are potentially in scope of the SSA may need to review whether they have the information required to apply the framework and what the framework looks like in comparison to their current transfer pricing policies.

The SSA also represents an opportunity for businesses to get greater certainty on the transfer pricing of their U.S. marketing and distribution activities, at pricing levels that in many instances will be comparable to their current policies (and in some instances may be lower). It may even reduce some of the compliance burden associated with preparing and updating benchmarking analyses, although it will come with other compliance requirements.

For both these reasons, reviewing the SSA scoping rules—to assess its potential relevance and where it is relevant carrying out an initial impact assessment—are the key steps that businesses may need to consider.

## What about the rest of Pillar One and the adoption of Amount B in other jurisdictions?

The future of Pillar One, Amount A, a mandatory Amount B, and the removal of digital services taxes (DSTs) remains highly uncertain. The next administration will undoubtedly play a major role in where Pillar One goes next. However, other jurisdictions, including Australia, India, and many developing countries, have criticized the direction of Pillar One, so it is far from true that the future of Pillar One is simply a U.S. decision.

The U.S. is the first jurisdiction to adopt optional Amount B (the SSA) for all in-scope inbound marketing and distribution activities. Its implementation of Amount B is a strong signal that it believes this framework has benefits for both taxpayers and tax authorities and so could presage the implementation of optional Amount B in other jurisdictions.

## Further reading

- [KPMG UK insights: Agree the B](#), October 2024
- [KPMG report: OECD unveil further details on Amount B simplified approach](#), June 2024
- [KPMG report: Assessing the impact of Amount B](#), June 2024
- [KPMG UK insights: Amount B: more sticky situation than honey sweet](#), February 2024
- [KPMG report: Pillar One – Amount B: Overview and initial observations](#), February 2024

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