

Pillar One - Amount B

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We are taking the opportunity to respond to the public consultation on *Pillar One - Amount B* published in December 2022 and recognise the significant ongoing work that is being undertaken by the OECD/G20 Inclusive Framework on BEPS. We support the principles and the intentions around Amount B: of simplifying and streamlining the transfer pricing of baseline marketing and distribution activities in accordance with the arm's length principle. We understand that the aim is also to increase tax certainty and reduce resource-intensive disputes between taxpayers and tax administrations in respect of these transactions. Unfortunately, the current proposal falls significantly short of meeting these principles or achieving the aim, but rather will increase the compliance burden.
- 1.3 We note that the consultation document is at a relatively early stage and that there are several options that remain open and subject to further debate within the Inclusive Framework before final design decisions are made. In taking this work forward, we would strongly encourage the Inclusive Framework to take the opportunity to provide real simplification (as discussed below) in order to ensure that Amount B provides businesses and tax administrations with a tangible benefit and achieve its objectives.
- 1.4 We have long advocated a multilateral solution to the tax challenges arising from the digitalisation of the economy in light of the increasing unilateral measures (and retaliatory actions) being taken by countries. Against the alternative, we have supported the work towards a multilateral solution and the two-pillar solution. However, we are concerned that the desire to reach an agreement is overtaking the ability to achieve an outcome that will result in a reformed, stable international tax system. As things stand, Pillar One is in danger causing a considerable upheaval of the international tax system, without achieving the initial policy objectives of re-allocation, but resulting in double taxation and a compliance burden similar to (or worse than)

that which exists as a result of the unilateral measures. Within this, Amount B, as currently presented, will not provide any counter-balancing simplification for multinational enterprises (MNEs), or tax administrations.

- 1.5 In addition to the significant compliance burden that will be placed on MNEs, we remain concerned about the resourcing burden that will be placed on tax authorities at a time when those resources are already stretched as a result of various recent events (for example, the Covid pandemic) and more generally as a result of the world becoming an increasingly more complex place (for example, with a growing number of transactions etc taking place in crypto currencies and related assets). The Pillars introduce a whole new level of complication over and above the various measures that have already been introduced or adopted in recent years as a result of the BEPS project. It is not practical to continue to place increased administrative burdens on tax authorities when many are already struggling to maintain service levels as a result of administering their own jurisdictions' tax rules.
- 1.6 The further work required on Amount B should focus on meaningful simplification to ensure that the rules achieve the intended policy objectives. Amount B was intended to be of benefit to MNEs because it would remove a significant amount of activity from transfer pricing disputes, with a corresponding benefit on tax administration resources. It was also meant to be an advantage to low capacity jurisdictions because it would guarantee a certain amount of income from baseline activities. However, with the current lack of agreement around issues such as electivity, the availability of comparables it is difficult to see how Amount B will meet these hopes and expectations.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Amount B - policy objectives

- 3.1 We have considered the proposal of Amount B in the light of the CIOT's objectives for the international tax system. These objectives are that a tax system should comprise rules which translate policy intentions into law accurately and effectively, without unintended consequences. The tax system should aim to provide simplicity (so far as possible) and clarity, so businesses can understand how much tax they should be paying

and why, and also to provide certainty so that businesses can plan ahead with confidence. It is also important that there is responsive and competent tax administration, with a minimum of bureaucracy.

- 3.2 We note that these proposed rules represent the work of the OECD Secretariat; the Inclusive Framework has not reached consensus on them. Therefore, they remain subject to change and the consultation document identifies numerous open issues that the Inclusive Framework has yet to agree. The consultation document also notes that completion of the work will be challenging, given the links between the different design elements (for example, the influence of scoping on the pricing methodologies applied). A further aspect on which agreement remains outstanding is in relation to how Amount B will be implemented; whether this will be through inclusion in the Transfer Pricing Guidelines or through other mechanisms, and whether Amount B should be mandatory or elective. Amount B could be designed as a safe harbour or be prescribed as the interpretation of how the arm's length principle applies to baseline marketing and distribution activities within its scope.
- 3.3 These significant questions remain outstanding within the overall principles and intentions for Amount B (of providing a simplification and a streamlined measure for applying the arm's length principle to baseline marketing and distribution activities). As noted above, in our view, the proposals do not currently provide any simplification; rather the rules suggested for Amount B will add an additional administrative burden. MNEs will have to provide more documentation to prove whether or not they are within the regime and then documentation around the rate that will be used. The proposals do not provide any additional tax certainty as they continue to rely on the existing mechanisms around determining transfer pricing outcomes.
- 3.4 Without the benefit of meaningful simplification, it is difficult to see how Amount B would meet its policy objectives, nor what it adds to Pillar One more generally. Amount B will allocate an amount to market states according to a formula that is intended to be part of (and akin to) the arm's length principle. That will reduce Amount A. Amount A is already reduced by amounts allocated to the market state under the traditional transfer pricing rules (also using the arm's length principle) to avoid double charging. Amount B can never contribute more to the market states than the traditional transfer pricing rules - only less. Therefore, it seems to us that Amount B would make sense if Pillar One was the only taxing rule. However, since Pillar One and the traditional transfer pricing rules will co-exist, in terms of tax re-allocation and tax paid, Amount B seems to be redundant. We understood that its rationale was to provide a more straightforward and simple set of rules that would benefit MNEs and tax administrations. This opportunity has been missed; instead in its current form Amount B will merely create an additional compliance burden for both taxpayers and tax administrators.

4 Key points

- 4.1 In light of the relatively short consultation period and the fact that we are aware that many other stakeholders (including the Big 4 accounting firms and the MNEs that will be within the scope of the rules) are engaged with the OECD and the consultation process, and will be feeding in points of detail, we have limited our comments to more high-level points around underlying principles. However, a number of key concerns with the proposals have been raised with us.
- 4.2 Simplification: in order to provide genuine simplification, it will be necessary to reach agreement around a matrix/safe harbour that specifies a schedule of defined returns for specific, defined transactions, that require only a small amount of functional analysis to categorise and identify. Without this, Amount B merely results in increased data collection, analysis, and documentation burdens. Such a safe harbour may still reflect arm's length pricing to a reasonable degree.

- 4.3 Scope: Amount B is too narrow in scope. Currently, the scope is limited to buy-sell, and sales agency and commissionaire arrangements, and arrangements that meet an extensive, complex and restrictive set of scoping criteria. This will materially limit the usefulness of the measure and reduce its ability to meet its stated goals. Extending the measure to include sales and marketing support providers would enhance its usefulness materially, since this is often an area of dispute with tax authorities, and one where finding comparables is often difficult and less easy, for example, than for distributors.
- 4.4 Qualifying criteria: an extensive and complex set of scoping criteria is also applied. These criteria include detailed quantitative and qualitative measures, which would require significant functional and data analyses to be performed by both taxpayers and tax authorities, and the drafting of written contracts by taxpayers that reflect the level of complexity of the scoping criteria. These requirements would need to be simplified significantly if the policy goals for Amount B are to be achieved. Currently, they will likely add to the burden on both taxpayers and tax authorities. It would be helpful in this respect if the measure could be fashioned as a relatively simple safe harbour.
- 4.5 Pricing: the consultation document appears to contemplate pricing methodologies that may be complex. An element of simplicity, especially in application, will again be required of the policy goals for Amount B are to be met. One helpful option might be for a simple safe harbour to be available in addition to the other methodologies.
- 4.6 Pricing floor: the consultation document appears to suggest that there will be a floor set for the price. We suggest that this should be a rebuttable presumption.
- 4.7 Transparency: the necessary transparency regarding the statistics and econometrics (where the data used is coming from and what has been done with it to get to the position taken) is lacking.

5 Acknowledgement of submission

- 5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation
25 January 2023