

OECD

Public Consultation Questionnaire

Amount B under Pillar One relating to the simplification of transfer pricing rules

*For ICC Members completion*


# **Amount B - Pillar One**

OECD Public Consultation

18 July - 1 September 2023

Members of the Inclusive Framework invite input from stakeholders on the relevant aspects of the design of the scope and pricing methodology, through 1st September 2023 with the work on those elements to be completed by year end.

**Stakeholder information**

1. Are you commenting in your capacity as a (highlight the selected answer):
* Small or medium-sized enterprise
* Multinational group
* Business organisation
* University
* Concerned individual
* Non-governmental organisation
* Advisor/agent
* Other:
1. Introduce yourself:

*The International Chamber of Commerce (ICC) is the institutional representative of more than
45 million companies in over 170 countries. Our members include many of the world’s leading companies, SMEs, business associations and local chambers of commerce. ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment. ICC is also an established arbitral institution through its International Court of Arbitration and provides other dispute resolution mechanisms through its International Centre for Alternative Dispute Resolution.*

1. Executive Summary (500 words maximum)

*ICC members appreciate the work undertaken to improve the main design features of Amount B.*

*We are encouraged by the more practical rules that broaden the scope of Amount B. We appreciate the use of well established tools, such as segmentation, to resolve scoping issues for mixed function entities. However, the current design of Amount B’s scoping and pricing is considerably complex and more likely to shift tax controversies as opposed to reducing those involving marketing and distribution. Thus, in its current version, Amount B will unlikely meet the objective of simplification and reduction of tax controversies.*

*ICC members do not consider that the objectives of Amount B, to bring more stability, by promoting simplification and certainty, and to help reduce the number of transfer pricing disputes, are served by the qualitative review of Alternative B, which will necessarily be highly subjective and will serve only to exchange disputes over scope for disputes over comparability. Alternative A serves as a more effective simplification and streamlining of the pricing approach.*

*Furthermore, additional clarity should be provided on whether Amount B will operate as a Safe Harbour into which MNEs may opt, in the absence of which election general Transfer Pricing rules will apply, independent of and unaffected by any Amount B benchmark data.*

*ICC members remain concerned that, despite the submission by stakeholders of substantial data supporting the expansion of scope to services during the previous public consultation process, services still remain excluded. We thus strongly recommend reconsidering the inclusion of services within the scope of Amount B, or at least a commitment to review this exclusion. Digital goods and services are an increasingly essential aspect of the global economy and we strongly recommend their inclusion in the scope of Amount B, again urging recognition of the benefit of treating Amount B as an* elective safe harbour.

*ICC members also continue to have concerns in relation to the potential exclusion of regulatory services, which are routine in certain industries (e.g., a local marketing and distribution entity is likely to carry out administrative activities in relation to the application for the registration of a medicine).*

*Additionally, it remains unclear the reason why low-value-added services providers would not be in scope under Amount B, since benchmarks would be available also in this case. Moreover, while the commodities exclusion has been broadened, there are still commodities that are not included, even though there is no reason for them to be omitted. Thus, we encourage further expansion of this exclusion.*

*Of concers also is the lack of a specific binding dispute resolution process besides existing MAP and APA mechanisms, which does not guarantee a sufficient and appropriate level of tax certainty.* *ICC members would recommend having an advance scoping agreement to determine whether the taxpayer is within the scope of the simplified approach.*

*If properly defined,with broad scope and anchored in objective data, Amount B can be a powerful tool to promote certainty, administrative simplification, and transparency, helping avoid wasting important resources for the benefit of tax administrations and businesses alike. However, to achieve such a goal, it is necessary to have scoping criteria that are objective and as quantitative as possible to ensure that disputes do not simply shift from current controversies to scoping controversies.*

**Section 1 Definitions and Introduction (p.2)**

1. **Definitions (p.4)**

*In the public consultation document, it appears that end consumer sales made by a Wholesale Distributor are intended to be B2C and that anything B2B is within the meaning of wholesale but this is not made explicit. However, a business can often be the end user of the goods but it is assumed that this would not be the case under this definition. Hence, ICC members wouldwelcome more clarity on the scope of this definition.*

*Similarly further clarity should be provided in relation to the circumstances in which post-sale services are considered to be included in scope of current rules. In the public consultation document, the definition of Core distribution functions includes “certain after-sales services” and para. 27 gives the example of certain technical or specialized support activities (i.e. services) that are considered baseline. However, such a definition would be inconsistent with the outright exclusion from scope of distribution of services at para. 9.b. For this reason, clarifying the circumstances in which post-sale services are considered to be included in scope would be very much needed.*

*Furthermore, operating assets and/or operating expenses are not well defined. For example, it is unclear whether stock-option expenses, pension mark-to-market costs, lease assets, etc. – would be those uniformly operating. Since it is operating assets/expenses that drive the pricing matrix and define whether the company is subject to a routine return of 1.0 percent or 6.0 percent, they should better quantified and defined.*

*Moreover, applicable accounting standards that are to be used to compute return on sales or other ratios are not well defined. ICC members would like to point out that a mix of accounting standards can produce very different outcomes and results. Thus, there should be a clear definition of accounting standards and we would recommend the establishment of a dedicated workstream ensuring:*

*- clear and detailed definitions taking into account the likely coexistence of different local accounting standards; and*

*- clear rules to prevent and solve potential diverging interpretations.*

*In relation to net revenues, these are currently defined as excluding sales returns and discounts. However, this current definition seems overly complicated, as sales returns and discounts can often be included in accounting revenue. Since it is assumed that the benchmark data set is using accounting revenue, Net Revenues would be expected to follow suit, i.e. simply accounting revenue.*

*In its current draft, under Amount B, net operating assets do not include any element of cash or overdraft. The reasons for this exclusion are unclear. Further clarity should be provided specifically as net operating assets is not a defined accounting term.*

*ICC members would also recommend improving the sovereign credit rating definition, as well as the definition of an independent credit rating agency. It is currently unclear what would be the consequence of more than one conflicting rating or the result of a change in rate during the year as well as in the case where an agency ceases coverage.*

*ICC members welcome the inclusion of the Berry ratio cap and collar to work as guardrails for economically principled results. However, they would like to underscore that defining the “Berry ratio cap” in relation to a Berry ratio result of 1.50 is much too high.*

*In relation to the definition of “industry groupings” (p. 5 of the public consultation document), the adopted descriptive approach can lead to equivocal results. A more objective classification could be easily adopted by publishing the activity codes corresponding to the qualitative descriptions.*

1. **General comments**

*As a general remark, from the text of the public consultation document it is unclear whether Amount B will operate as a Safe Harbour from which MNEs will be able to opt out. ICC members strongly recommend that Amount B should act as a Safe Harbour. This approach would allow companies that do not elect for Amount B to have the possibility to rely on standard Transfer Pricing principles based on the arm’s length principle.*

*If a taxpayer does not want to use the simplification, it should be able to carry on with the current pricing approach without negative implications. However, ICC members have experience that this is not the case with reference to the existing low-value services safe harbour (cost plus 5%). We would thus encourage clarification that if a taxpayer does not use the simplification no inference of any kind can be made from the Amount B return on sales. Furthermore, an out-of-scope entity should not be subject to unnecessary scrutiny just because its return on sales is lower than the Amount B value.*

*ICC members also believe it is important that the Inclusive Framework clearly conveys to tax administrations that Amount B will only be applied to in-scope transactions, and that it should not be used as a floor or minimum return for other transactions outside the scope of Amount B.  Transactions outside the scope of Amount B should continue to be analyzed under the guidance and methods in the OECD Transfer Pricing Guidelines (“TPG”)."*

*Where Amount B does not apply, there should be no inference that non-baseline activities and out-of-scope transactions are non-routine activities in nature and therefore generate unique intangibles or otherwise warrant higher returns.*

*Secondly, since no detail has been disclosed on the underlying data, it is as a result difficult to provide an economic review and in-depth comments. We do observe, however, that ROS amongst standard distributors do not vary significantly across geographies and industries. We expect that the industry groupings are unnecessary and that pricing could be consistent across industries (including digital goods and services).*

**Section 2 Transactions in scope (p.7)**

1. **General comments**

*As previously stated, the current scoping is an improvement over the last consultation. However, the current version omits services that we believe should be covered, and the current draft still restricts the scope of marketing and distribution activities that can benefit from Amount B. For example, the current design may lead to fragmented treatment of the distribution of digital goods and the distribution of digital services, that generally entail identical functions, assets and risks, and are priced in the same manner as under current transfer pricing rules. The distribution of services, both digital and non-digital, are increasingly essential elements of the global economy that should be afforded the benefits from simplification and streamlining under Amount B. ICC members believe that extending Amount B to services, within appropriate criteria, is consistent with the economic foundation of Amount B. ICC members support the inclusion of digital and non-digital services.*

*We also note that the OECD has included distribution of digital goods but only when it is a sale; however, when the distribution is in the manner of a rental, royalty-bearing licence or subscription, the OECD has excluded such distribution activities. We strongly disagree with such exclusion as it is not aligned with predominant industry practices with respect to software. Whether the payment is made upfront in lump sum or through a subscription or as pay-as-you-go, the product and the support provided is generally similar. Furthermore, there are not significant pricing differences amongst these options on a NPV basis.  Additionally, the activities performed by the local distribution entity are also not significantly different across the payment options. Therefore, we believe distribution of digital goods regardless of payment type should be included.*

*Lastly, it will be very difficult to find comparables that only offer one payment option (i.e. outright sale). This type of information is not generally available in the public space.*

1. **[2.1] Qualifying transactions (p.7)**

*The guidance states (para.7) that, while it does not attempt to provide an exhaustive list of baseline marketing and distribution activities, it recognises that distributors should perform a set of core distribution functions in relation to in-scope transactions. “Core distribution functions” per the Definitions may include certain after-sales services. However, any transaction involving the distribution of services is altogether excluded from scope at para.9.b. This is inconsistent and, unless the contradiction is resolved in favour of inclusion of after-sales services, will serve to render the guidance unworkable for a large proportion of natural distributors.*

1. **[2.2] Scoping criteria (p.8)**

*Alternative A “recognizes that operating margins for baseline distributors can vary based on certain factors, and appropriately adjusts returns for differences in operating assets, operating expenses [and] industry”. ICC members strongly support Alternative A for scoping. Alternative A is a better representation of a simplified and streamlined pricing approach especially since the qualitative review of Alternative B will be highly subjective. Alternative A appears to provide*  rough justice considering the need for reducing disputes. However, we believe since the scoping criteria are not entirely quantitative, controversy is likely to follow regardless of Alternative A or B. We believe 9a is already embedded in 8a since 8a calls for accurate delineation of the transaction. The review of all activities undertaken under the transaction and their characterisation will need to be performed as part of 8a anyway. Having clarification in the form of examples under 9a is not going to diminish the issue of subjectivity under 8a.*The objectives of Amount B have always been rooted in bringing more stability, by promoting simplification and certainty, and by helping reducing the number of transfer pricing disputes. The more qualitative factors are added, the more subjective interpretation increases, leading to an increase in the number of disputes. Only objective, quantitative measures can accomplish the aforementioned goals. However, the very open-ended approach under Alternative B would simply trade disputes related to methodologies and calculations for disputes over scoping. For this reason, ICC members believe that only Alternative A will provide the security that was intended as part of the design of Amount B.*

*In relation to point 8), there has been an introduction of a minimum and maximum ratio for the comparison of operating expenses of the tested party (excluding COGS) to its annual sales. However, the intent of such floor and cap as part of the scoping approach is unclear.*

*For the mandatory range of 3% to [30%/50%], ICC members would like to express their concern in relation to entities that are new entrants into a market. New entities could have very routine functions (identical to other distributor entities), but have a higher costs to sales ratio for a limited time period. Thus, we invite the OECD Secretariat and Inclusive Framework to consider the potential introduction of a limited time exemption from this rule for new entities.*

*Among the 30% to 50% options, given the fluctuations businesses experience, we would suggest use of the 50% boundary.*

*Furthermore, the consultation document suggests that, if Alternative B is chosen, technical or specialised support functions could de-scope an entity from Amount B. As some level of support functions are already seen in comparables and given the goal of achieving arm’s length results, ICC members believe that this exclusion would be inappropriate. Moreover, to the extent that these services are in excess of what is normally seen in third parties, this issue could also be solved with segmentation. According to ICC members, this would not be a reasonable distinction and would reinforce why Alternative A should be preferred over Alternative B.*

1. **[2.3.1] Scoping criterion 8.a (p.13)**

*8.a will involve a robust qualitative review of the transactions and therefore is inherently subjective. If 8.a is kept as is we request that clarificaitons be provided with respect to contributions that may be considered as unique and valuable since there are certain intangibles that are regularly present in distribution activities e.g. customer list, goodwill, know-how with respect to local market and distribution, technical know-hjow with respect to products being distributed.*

1. **[2.3.2] Scoping criterion 8.b – Quantitative filter (p.14)**

*When utilizing the quantitative criterion (operating expenses to sales ratio), taxpayers should be able to exclude expenses and costs that do not represent value-additing distribution functions, such as passthrough costs. ICC members agree with what indicated in footnote n. 18, namely with the principle that passthrough costs should be excluded, e.g., costs incurred by the local distribution entity at the direction of the principal.*

*More transperency should be provided with respect to the threholds mentioned under 8.b e.g., how is 3% aligned with inclusion of commissionaires and sales agents, both generally have lower costs.*

1. **[2.3.3] Scoping criterion 9.a – Non-baseline contributions (p.16)**

*The vagueness of the definition of non-baseline contributions at para.24 makes it virtually unworkable to determine what support functions may be left in scope. As indicated in the paragraph, “Where the distributor makes contributions of certain technical or specialized support functions, including with respect to customisation or modification of products, for third party customers in conjunction with – and related to – the distribution of goods to those customers, those contributions* ***may be*** *non-baseline contributions.” Thus, questions arise for circumstances where there is no modification or customization of products but support is provided for a standard product.*

*The example given at para. 27 describes the holding and communication of a technical or specialised understanding of capital equipment as baseline, as distinct from the example at para. 25, where the equipment is customized to customer designs. But, the two examples do not compare like with like, for in para. 25 the technical support provided is described as highly customized and requiring knowledge of the customers’ processes, designs, etc., whereas in para.27, the provision of non-customised technical support is outsourced, i.e. there are two variables: the level of customization and the provider. It is therefore left indeterminate whether the provision of standard, non-customised technical support may be considered in scope or out.*

*Para. 24 makes reference to non-baseline activities, including technical assistance to use the equipment properly, where these are not “routine services easily available from independent suppliers”. It is a fairly common scenario, however, that an independent supplier is trained or certified in the specialist capabilities of how to install or use the equipment supplied by the distributor. In such circumstances, it is unclear whether the distributor still automatically fail to be considered within scope of the simplified approach if it provides the matching service.*

*Concerns have been raised by ICC members also in relation to para. 25 and whether it would be commercially realistic. In particular, when services are provided at a basic level by the distributor but escalated to regional and HQ technical teams in case of complexity or where the local engineers rely on data from HQ in order to do anything, questions arise on how this impacts their inclusion within the scope of para. 27.*

1. **[2.3.4] Scoping criterion 9.b – Services exclusion and commodities exclusion (p.19)**

*The logic to exclude services is very weak. “Services” is not defined and a comprehensive exclusion is undermined by the recognition within scope of certain after-sales services in Definitions and certain technical or specialised support activities in para. 27. ICC members continue to believe strongly that there are no objective, data-driven reasons to exclude services from Amount B. The consultation document suggests that there could be significant differences in the functions, assets and risks of distributors of services. These concerns have not been explained or demonstrated in the data. Thus, we would highly appreciate it if further detail could be provided on the specific concerns. The inclusion of goods is on the basis that there is consistency in the supply chain and functional analysis. However, it is unclear whether a similar review has been done for services. Similar functions are required in the distribution of services, and the business community has provided data that relevant comparables are within similar ranges. If concerns arise from the absence of inventory risk, reasonable adjustments could be made. It is also worth noting that the risk profile may be more similar to commissionaires, which remain in scope. If the concern is, instead, that services may be customized, many businesses provide services with little or no customization, and for the subset of companies that have incremental customization services, it will likely be possible to segment those results out from the baseline distribution functions. It is not clear why there is no de minimis qualification for services nor why the logic of separate reliable pricing from para.9.c. cannot also apply to services.*

*These concerns are particularly in point in the life sciences industry and other regulated industries which may undertake routine research and development or manufacturing services in addition to the baseline marketing and distribution activities, as a physical presence is required for regulatory reasons.*

*It is particularly concerning that the exclusion of services would mean that a large portion of*

*companies subject to Amount A would not be in scope for Amount B. These features of Pillar 1*

*were always intended as part of a larger package of policies to stabilize the international tax*

*system. Thus, one should not be operative without the other.*

*Further, existing certainty features of Pillar 1 would not be sufficient, as currently designed,*

*because they rely on bilateral treaties to resolve disputes, and there would be many cases*

*where these are not in force, unless Pillar 1 were also to establish transfer pricing principles to*

*apply to countries without existing tax treaties. It is also uncertain whether that certainty*

*approach is preferable, given that Pillar 1 will already require additional dispute resolution*

*mechanisms and resources, and Amount B should, if appropriately designed, provide a much quicker and less resource*

*intensive pathway to resolution. For all these reasons, the scope of Amount B should be extended to services.*

*Moreover, the commodities exclusion should be broadened. Some members have pointed out that currently hydrogen produced based on the electrolysis of water using decarbonated electricity (so-called “green hydrogen”) is not excluded, as opposed to the case of hydrogen derived from the processing of natural gas, which conversely is expressly excluded from Amount B. These members recommend the inclusion of green hydrogen produced through electrolysis of water as well as Helium, among the list of commodities exclusions. Indeed, Helium is a by-product of natural gas extraction. It is used as a commodity notably for the electronic industries. It is a highly volatile market, for which the benchmark panels used in the Amount B approach would not be applicable.*

1. **[2.3.5] Scoping criterion 9.b – Non-distribution activities separate from the qualifying transaction (p.21)**

*In applying the 30% threshold for the allocation of indirect operating expenses, we support the straightforward and clear approach of using the total costs of all activities performed by the distribution entity as the denominator for evaluation. However, there should be further clarification on how to identify the numerator. For instance, in cases where an entity distributes both in-scope and out-of-scope products, it should be clarified whether sales and marketing costs allocated between the two types of products should be included in the numerator and if there is any particular guidance that should be followed.*

**Section 3** **Application of the most appropriate method principle to in-scope transactions (p.24)**

1. **General comments**

*Enter your answer*

**Section 4 Determining the arm’s length return under the simplified and streamlined approach (p.25)**

1. **General comments**

*Enter your answer*

1. **[4.1] - Pricing matrix (p.25)**

*Taxpayers involved in both distribution and non-distribution activities face challenges in accurately segregating operating assets between in-scope and out-of-scope transactions, for calculation of the OAS ratio. Further, if companies have both in-scope and out-of-scope products based on these rules, they may not have any reliable data for allocated assets by product area. ICC members agree that the scope of Amount B should be expanded to include services, and this is another area where differences in rules by product will generate complexity, disputes, and potentially lack of certainty. Thus, we strongly encourage broadening the scope. In the absence of that action, guidance should be given on options for allocating assets by product (e.g., a reasonableness standard for using allocation keys). For these reasons, OES will also be a better metric to use than OAS, and we would thus recommend eliminating OAS as a metric, given its inherent complexities and lack of consistency as a metric. In any case, more detailed guidance will be necessary for its use.*

*The returns in Figure 4.1 are on the very high end of wholesale distribution as observed by ICC members in their benchmarking of the IT distributors. This may be a result of flawed search criteria (described on p36, Annex A): (a) EUR 2m average revenue minimum threshold is too low and may result in the set being dominated by small companies, which tend to have volatile results and skew the range; (b) use of "software d" as a keyword screening criteria would take out companies that sell software developed by someone else and should not be eliminated; (c) rejection of all companies that do not describe wholesale distribution as their main activity is a faulty screening criterion, as many companies use different verbiage to describe their operations and may not use "wholesale," as we often see is the case in the software/ IT industry; (d) the high-level qualitative checks done, based on websites and the internet, may not be enough to come up with a robust set. A more robust analysis is needed.*

*Further, the screening criteria appear to have applied the qualitative, subjective criteria of Alternative B in determining whether the comparables comprised pure distributors. This would allow for results-oriented screening criteria to generate higher returns than if the quantitative standards of Alternative A were utilized. It is not clear from Annex A what qualitative criteria were specifically applied in determining the dataset.*

*ICC members also note that a number of new quantitative ratios have been inlcuded in the consultation document. However, the document does not provide enough information on how precisely to calculate these ratios. For instance, it would be critical to know whether local GAAP financial results will be necessary to determine the ratio. Thus, we respectfully urge the OECD to offer more comprehensive guidance and clarity on the calculation methodology for these fundamental ratios.*

*Additionally, it should be possible for the tested party to segment the baseline marketing and distribution activity per counterparty, and subsequnelty identify the pricing matrix segment that corresponds to the OAS and OES intensity for that particular segment/counterparty. This would be particularly relevant in cases where, for instance, an entity distributes products purchased from counterparty A with very low OES (i.e. the products do not require much marketing effort from the distributor) and also distributes products purchased from counterparty B with very high OES (i.e. the products require high marketing effort). Given that the profit allocated to the distributor comes from the counterparty, the distributor should not end up in a pricing matrix segment with higher RoS because of the activities carried out by the distributor for counterparty A.*

1. **[4.2] - Mechanism to address geographic differences (p.27)**

*ICC members would like to underscore that the matrix for “qualifying jurisdictions” would produce outputs inconsistent with the arm’s length principle in the aggregate for all in-scope transactions. This is due to the fact that the matrix already reflects data on a globally blended set and adjustment of some, but not all, jurisdictions would skew the results away from the average/interquartile ranges.*

1. **[4.2.1] - Modified pricing matrix for qualifying jurisdictions (p.27)**

*ICC members would highly appreciate the opportunity to review the data supporting the modified pricing matrix, as well as the possibility to comment on the results once they are ready to be made publicly available. In the view of ICC members, differentiated results are not necessary and the data do not show meaningful geographic differences. Regardless, if uplifts are to be applied for certain countries, presumably based on higher results demonstrated in the data, then comparables for those countries should also be removed from the general data set.*

1. **[Figure 4.2] - Modified pricing matrix (return on sales %) for tested parties located in qualifying jurisdictions (p.28)**

*Enter your answer*

1. **[4.2.2] - Data availability mechanism for qualifying jurisdictions (p.28)**

*It is unclear why a “riskier” country should automatically result in a higher return to the tested party, particularly when such risks are generally borne and managed by the principal/IP-owning entities or regional hub entities, and not the local distributor entities. Further, the risks inherent in the sovereign credit rating are often not theoretical and instead actually result in lower margins in these jurisdictions. Such adjustments should not be necessary in order to identify an appropriate arm’s length return for in-scope activities, which should be based on the functions, assets, and risks.*

 *ICC members would like to express their concern in relation to the fact that an adjustment to the return for a jurisdiction based on sovereign credit rating will not reliably ‘’influence” an arm’s length return attributable to baseline marketing and distribution activities. Adjusting the return for a particular jurisdiction would skew the aggregate results from those results in the benchmarking analysis. Accordingly, ICC recommends eliminating the sovereign risk adjustment.*

1. **[4.2.3] - Application of the simplified and streamlined approach using a qualifying local dataset (p.29)**

*ICC members remain of the opinion that comparables data do not support the presence of meaningful geographic differences in profitability. Opening the possibility of local data sets creates greater complexity, and it will be more difficult to ensure consistent processes around data. ICC members would thus caution against the use of local comparables, and instead recommend a more consistent, standardised approach.*

*Should the use of local comparables be absolutely necessary, ICC members would appreciate the establishment of a review and approval process, as well as subjecting data to similar filters. Further, the peer review process is undefined and if the use of local comparables is retained, there should be clearly defined and transparent standards in how comparables are arrived at, including a comment period before final publishing. Concerns persist since it is hard to imagine that sufficient data would be lacking from large commercial databases and it is to be assumed that other sources will have sufficient objective, transparent data.*

1. **[4.3] - Corroborative mechanism to address low and high functionality (p.30)**

*ICC members support the use of corroborative methods, and specifically the Berry ratio cap and collar. This is an appropriate way to guard against unintended outcomes, particularly for low margin businesses.*

*Given that the Berry ratio could generate controversy over classification of costs between operating expenses and cost of goods, it is worth considering if a more straightforward, corroborative mechanism could be based on the operating margin/profit (e.g. return on costs, or cost plus).*

1. **[4.4] - Periodic updates (p.31)**

*The consultation document’s periodic updates section is not entirely clear. It appears that the financial data included in the matrix, along with the risk adjustment percentage and the corroborative mechanism range, will be updated annually, presumably through a refresh of the (undisclosed) methodology for establishing the data (para 77). Because such data are needed to set as well as to test prices, Amount B will not be administrable unless taxpayers have notice prior to the year what data will apply for that year.*

**Section 5 Documentation (p.31)**

1. **General comments**

*In line with the aims of Amount B, the standard local file requirements can and should be simplified, especially for entities that have no non-distribution activity. For instance, it could be appropriate to require a complete local file in the first year that Amount B applies to an entity and to use a standardized and streamlined form for all subsequent years for which there have been no material factual changes. The initial notification requirement should in any event not require documentation that goes beyond what is currently required in a local file.*

**Section 6 Transitional issues (p.33)**

1. **General comments**

*ICC members appreciate the reaffirmation that companies should be able to structure as they see fit, including any restructuring better to meet the requirements of Amount B. This will allow for a more level playing field, so that application of Amount B does not depend on coincidence of how a company had previously organised its operations. However, confusion arises from the comment raising concerns on artificial restructuring. Consequently, it is unclear whether the current versions of the rules would imply that any attempt to split activity or alter operations should or should not be included in scope as it will be treated as an artificial reorganisation. More clarity would be welcomed on what is the point of concern, given that open-ended anti-abuse provisions will only create more disputes around the scope.*

**Section 7 Tax Certainty (p.34)**

1. **General comments**

*From the text of the public consultation document, it emerges that disputes around Amount B would only be addressed through existing procedures: APA or MAP. It is also acknowledged that while some countries might resolve economic double taxation through unilateral corresponding adjustments, most would only be able to do so under MAP procedures. However, MAP is not always available (either because of a lack of an in-force treaty or decisions of one of the MAP jurisdictions). As the main objective of Amount B is to reduce the amount of time and resources currently devoted for APAs, tax audits and MAPs, ICC members would encourage the development of more binding or coordinated agreement and procedures within the simplified process to relieve economic double taxation. Greater certainty could be achieved by including Amount B in the MLC and/or through the design of a specific ex ante and ex post mechanism effectively to prevent and resolve any disputes arising with respect to Amount B.* *Since not all countries incorporate the TPG into law, an MLC could ensure a coordinated approach. Further, for those that have adopted the TPG, the timeline of incorporating these rules by January is insufficient considering the impact and open items remaining. The business community are just now seeing the proposed rules and the OECD should take the time to get it right, including additional consultations*

*An additional option for consideration could be an accelerated MAP process, with mandatory deadlines after which the use of Amount B is deemed to be accepted by all parties if it was the MNE's choice.*

*For out of scope activities (e.g., services), no inference should be allowed to be made from the Amount B framework for the arm’s length return for these out of scope activities. The pricing matrix should not be utilized as a floor for out of scope activities.*

*Finally, when it applies, Amount B should be binding also in respect to customs authorities, i.e. any upwards or downwards adjustment required to arrive at Amount B margin should be recognized for customs purposes.*

**Annex (p.36)**

1. **Annex A - Relevant benchmarking search criteria (p.36)**

*Full comments cannot be provded until the entire economic analysis and the benchmarking search are made available. However, based on the limited information provided in the consultation document, ICC members observe that (1) no filters have been included for IP; (2) Inclusion of filters based on keywords introduces subjectivity into the search process and again is not aligned with the Amount B objectives of simplification and less controversy; (3) Loss makers have been excluded from the search. This blanket filter appear to not be aligned with business realities (during COVID many companies made losses, losses are also retained when companies are in start-up mode). Differently, ICC members agree on rejecting companies that have been loss making for extended period of time e.g. loss making for a period of 3 years.*

1. **Annex B - Industry groupings (p.38)**

*Meaningful comments cannot be provded until the entire economic analysis and the benchmarking search are made available.*

1. **Annex C - Background to modified pricing matrix (p.39)**

*Meanigful comments cannot be provded until the entire economic analysis and the benchmarking search are made available.*

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45 million companies in over 170 countries. ICC’s core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach
 to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world’s leading companies, SMEs, business associations and local chambers of commerce.

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