



Tax Treaties, Transfer Pricing and Financial
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Comments on OECD public consultation document *Pillar One – Amount B*

FAR, the institute for the accountancy profession in Sweden, takes the opportunity to respond on the public consultation document *Pillar One – Amount B*.

Introductory comment

FAR welcomes the objectives that Amount B is attempting to achieve. Those objectives include:

- Reducing the administrative costs for determining distribution returns from transfer pricing perspective on both the taxpayers and tax authorities side,
- Increasing certainty for taxpayers and tax authorities to limit controversy, and
- Maintaining the arm's length principle, as articulated in the OECD Transfer Pricing Guidelines.

Further comments

First of all, it is critical that taxpayers should be given the possibility to decide whether to apply Amount B. If the taxpayers decide to apply "Amount B" tax authorities should not be given the possibility to apply other methodologies/comparables. Only in case the taxpayer decides not to apply for Amount B, method and comparables can be challenged by tax authorities. In such a case the existence of internal comparables, local comparables, applicability of other methods (e.g., CUP) would not be relevant.

Secondly, the suggested scoping criteria may very well introduce new sources of disputes between taxpayers and tax authorities, e.g. inclusion vs non-inclusion in the scope based on different views of the characterization of the entity, as well as its economically relevant characteristics. The scoping criteria should, to the extent possible, be based on circumstances that can be identified by reviewing accounting and tax documentation.



Currently, transfer pricing disputes relating to distributors are often due to disagreements concerning the characterization of the distributor in terms of functions performed, assets used, and risks assumed. Such disagreements can be caused not only by the complexity of the factual analysis that is required, but also by differing interpretations and applications of the methodological framework of the OECD Transfer Pricing Guidelines.

The inclusion of criteria that requires a subjective assessment of the distributor in terms of functions performed, assets used, and risks assumed, may therefore lead to additional sources of disputes. i.e. the objectives of reduced administrative costs and increased tax certainty not being achieved. Hence, we see a need for eligibility (scoping) criteria that leave less room for interpretation, and that result in a significantly higher level of certainty to taxpayers.

Thirdly, we consider the scoping criteria to be too strict. The current number of criteria to be met significantly restricts the pool of taxpayers to which the Amount B framework could be applied. One aspect of widening the scoping criteria would be to address the situation of taxpayers that perform multiple activities. We strongly believe that rather than being excluded from applying “Amount B”, taxpayers engaged in multiple activities should be encouraged to delineate the distribution transactions, segment the financial data accordingly and thereafter be entitled to use the Amount B framework to their appropriately aggregated buy-sell transactions. The Consultation Document does not seem to allow for appropriate segmentation of the financial information of a distributor in cases where an entity performs non-distribution functions (such as manufacturing), and instead disqualifies the entity from Amount B application. As mentioned above, we are concerned that this will restricts the number of taxpayers to which the Amount B framework could be applied.

Finally, FAR also sees the need for some kind of binding mechanism so that a company applying Amount B can rely on that its status will not be challenged, directly or in another jurisdiction. In order to achieve this, it might be necessary to introduce some kind of certification procedure to be handled by the national tax administrations. This procedure must be simple and effective.

Yours sincerely

FAR

A handwritten signature in blue ink, appearing to read 'Michael Johansson'.

Michael Johansson

Chairman of the Comment Letter group Tax, FAR