

## Comments on OECD Public Consultation Document on Amount B of Pillar One<sup>1</sup>

*On July 17, 2023, the OECD released a second [public consultation document](#) seeking input on the plan to simplify the transfer pricing of baseline marketing and distribution activities, known as Amount B of Pillar One, in accordance with the arm's length principle. This update follows a consultation on the main design elements of Amount B in December 2022. This statement represents the position of members of the Intergovernmental Group of Twenty-Four (G-24) on the issue.*

1. The G-24 appreciates the efforts by the G20/ OECD Inclusive Framework (IF) in working towards a consensus solution to develop a simplified way of applying the arm's length principle to benchmarking of 'baseline' distributors. Amount B is extremely critical from the perspective of low-capacity jurisdictions. These jurisdictions lack local market comparables, thus they have no means to benchmark such distributors.
2. The G-24 is in favor of a design of Amount B, which while delivering meaningful simplification, should also be consistent with the arm's length principle to ensure that any jurisdiction's tax base is not adversely impacted.
3. We support a consensus solution. Therefore, it is important that this process is truly inclusive so that the concerns of developing countries and the potential unintended consequences of the new rules are adequately addressed. The public consultation document makes it clear that there are divergent views among jurisdictions on several design elements of Amount B. Given the strict timeline of December 2023 for completing the technical work, priority should be given to delivering an Amount B solution for jurisdictions with no comparables.
4. The G-24 is of the opinion that digital goods do not fit into the category "baseline marketing and distribution activities." The distribution of digital goods is often associated with a high level of service, and their inclusion in this category, given the divergent views, could delay the main focus of the work, which is to address the concerns of jurisdictions that do not have appropriate local market comparables.
5. The G-24 recognizes that the task of defining "baseline" accurately is very critical since it forms the fulcrum for the rest of the technical work, including pricing work. A scoping criterion that fails to identify "baseline" distributors correctly can lead to base erosion for jurisdictions in a scenario where MNEs pass-off their "above-baseline" distributors (who may be entitled to higher returns at arm's length) as "baseline" distributors. Under the pricing leg of the work, it is important that the pricing matrix considers country-level and market-level differences which have an influence on the profitability of companies, such as differences in inflation, interest rate, size of markets, consumer purchasing power, transport costs, etc. This is also intuitively

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<sup>1</sup> This note was prepared by the G-24 Working Group on Tax Policy and International Tax Cooperation and is being submitted on behalf of the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24). Among the G-24 member countries, Argentina, Brazil, Colombia, Cote D'Ivoire, Democratic Republic of the Congo, Egypt, Gabon, Haiti, India, Kenya, Mexico, Morocco, Nigeria, Pakistan, Peru, South Africa, Sri Lanka, and Trinidad and Tobago\* ([www.g24.org](http://www.g24.org)) are also members of the BEPS Inclusive Framework.

logical since developing countries' market conditions are quite different from those of developed countries, hence, we cannot expect to see the same profitability across such disparate markets.

### Specific Comments on the Public Consultation Document on Amount B of Pillar One

6. After weighing the pros and cons of Alternative A and Alternative B, the G-24 is of the opinion that Alternative B strikes the right balance between accuracy and simplification, and therefore, it is preferable. Alternative B is necessary to ensure that the scoping criteria are able to exclude “non-baseline distributors” who may otherwise pass the quantitative scoping filter of operating expenses to sales.
7. A number of G-24 members are not convinced about the reason for choosing operating expenses to sales ratio as a quantitative filter/proxy in the scoping criteria especially in light of footnote 16 of the document which clarifies that this ratio is not an indicator of functional intensity. This is also intuitively logical as a high operating expenses to sales ratio may not necessarily mean that the distributor is above-baseline; it may just be the case that the distributor is performing its business inefficiently or is undergoing a peculiar business cycle event or simply because it has high related party transactions such as intragroup services. Similarly, low operating expenses to sales ratio also may not necessarily mean that the distributor is a “baseline” distributor; it may just be the case that the distributor incurred high operating expenses in the past period to create marketing intangibles, an efficient distribution network, or dominant market position whose benefit it is reaping in the present period. Further, in our view, the upper limit of operating expenses to sales ratio ought to be much lower than what has been proposed in the document. In our experience, even a 30% operating expenses to sales ratio is too high and will bring in above-baseline distributors. The upper-limit should not be more than, say, 12%-15%. It is felt that simplification is important, so further work must be done to formulate scoping criteria that may allow for accurate mass screening of tested parties while preventing the inclusion of non-baseline distributors.
8. Figure 4.1 in the public consultation document presents the pricing matrix derived from the global dataset. It appears from this figure that there is an absence of a consistent statistically significant relationship between operating expense to sales ratio and profitability. The G-24 is of the opinion that only quantitative ratios for which there is a clear, unambiguous statistically significant relationship with profitability should be used. Further, it is noted that industry groupings in the matrix do not have any intuitive or economic basis. We suggest that further work should be undertaken to come up with a sounder and more logical basis for grouping of industries.
9. Further, the G-24 is not convinced by the rationale provided in the document for having a Modified Pricing Matrix (giving higher returns) for certain ‘qualifying jurisdictions.’ For example, it is not clear how many observations per jurisdiction formed the basis behind drawing the conclusion that there is a material difference in profitability in such jurisdiction. We think that any such modified matrix should be allowed only on the basis of robust statistical analysis.

10. We understand that there is a demand for a local dataset exception option. The G-24 is of the opinion that it should be allowed where jurisdictions have sufficient comparables and local database.
11. Further, some G24 members recommend that the revised Transfer Pricing Guidelines should include only the elements of Amount B where consensus has been reached. Lastly, the G-24 reiterates that Amount B is important for low-capacity jurisdictions, which do not have local comparables, and implementation of Amount B for such jurisdictions should be given priority.