

May 20, 2022

Tax Treaties, Transfer Pricing and Financial Transactions Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
By email to tfde@oecd.org

**Re: Business Roundtable comments on OECD public consultation on Pillar One—Amount A:
Regulated Financial Services Exclusion**

Dear Sir/Madam,

Business Roundtable welcomes the OECD's commitment to working multilaterally and with the private sector to ensure sound tax policies and straightforward tax administration, which are essential to protecting investment and economic growth.

On behalf of more than 200 chief executive officers of America's leading companies, Business Roundtable is pleased to submit comments in response to the OECD's public consultation of April 14, 2022 on the Regulated Financial Services Exclusion from the Pillar One, Amount A rules.

Overall View

Because our membership includes regulated financial services providers of different types, we do not have a single, uniform view regarding the proposed exclusion as described in the public consultation document. The deposit-taking institutions strongly support the proposed exclusion with respect to its application to the banking business. However, others among our membership have certain concerns which are reflected in the comments below.

Specific Comments

Expanding the Exclusion for Credit Entities

Entities that provide credit and are subject to similar licensing and regulatory adequacy requirements of other RFIs should qualify as RFIs regardless of whether they fund their operations through deposit taking or other means.

Under the draft, an entity that accepts deposits from a banking or similar business can qualify as a Depositary Institution if the licensing and regulatory requirements are met. Banking or similar business includes the activities of lending and extending credit. However, an entity that is engaged in the same activities and meets the licensing and capital adequacy regulatory requirements of other RFIs but does not accept deposits is excluded from the Depositary Institution RFI category. An entity that meets these requirements but does not accept deposits should not be in scope of Amount A. To illustrate an anomalous outcome created by the draft, a Group could have two separate entities that provide credit to unrelated persons within the same country. Both entities could be subject to licensing requirements and risk-based capital adequacy requirements, but only one takes deposits. Only the deposit taking entity would qualify as an RFI. We believe the equitable outcome is that both should qualify, and that the source of funding should be irrelevant. For example, entities could raise debt from the public through bonds and notes and short-term debt, rather than through deposits.

It appears this is acknowledged in the RFI category for a Mortgage Institution, where the entity is not required to accept deposits but must be licensed to engage in certain activities related to a banking or similar business and appropriately regulated.

Similarly, in the case of entities that extend credit, including through issuing credit cards, the entity should be able to fund the extension of credit in ways other than accepting deposits. Such an entity would be licensed in each market in which it serves customers and subject to appropriate capital adequacy requirements that incorporate a risk-based measure. Concerns that these entities would permit treasury centers to be within an RFI category are adequately addressed by gross income threshold tests and express exclusion of an entity with a substantial business of internal financing. Entities that provide credit without accepting deposits could be subject to a 75 percent gross income threshold requirement that other RFIs must meet (see, e.g., Mortgage Institution).

So long as the entity can meet the licensing, regulation, and gross income measures, the entity should be a qualifying RFI. Denying such an entity exclusion from Amount A solely because it chose, for a whole host of non-tax reasons, to fund its business in a manner other than accepting deposits creates competitive disadvantages based on line-drawing of how entities choose to fund their extensions of credit. Such a distinction is qualitatively different from including or excluding entities based on regulatory differences or internal financing functions.

We therefore suggest that a category of RFI include an entity that meets the licensing and risk-based capital requirements and satisfies an activity-based threshold test without regard to deposits (similar to the Mortgage Institution). A possible definition could require the Group Entity:

- (a) That is licensed to carry on the activities in paragraph (c) under the laws or regulations of the jurisdiction in which the Group Entity does that business or, in the case of a Group Entity that does such business in a European Economic Area

(EEA) Member State, is licensed by a competent authority to carry on such business in an EEA Member State; and,

- (b) That is subject to capital adequacy requirements incorporating a risk-based measure;
- (c) That provides personal, commercial, or other loans or provides other extensions of credit to unrelated customers; and
- (d) For which the total gross income attributable to any of the activities described in paragraph (c) exceeds [75] percent of the Group Entity's total gross income for the period; but
- (e) Does not include a Group Entity a substantial portion of whose business is to provide credit to Group Entities of the same Group that are not Regulated Financial Institutions.

We look forward to discussing with you the need for such an entity and our proposed definition.

Payment-processing Services

We believe that the Regulated Financial Services Exclusion is best achieved through ensuring that there is a level playing field for all regulated businesses that provide financial services that are inextricably linked to the core authorization, clearing and settlement operations of a financial institution that would be exempt, such as electronic payment services. This approach to Pillar One would be consistent with regulatory authorities and frameworks that recognize payment services as a subsector of financial services, which include the World Trade Organization under the General Agreement on Trade in Services, and the Bank of International Settlements in its recommended treatment by financial regulators with respect to oversight and regulation of financial services. This would also be consistent with how countries have enacted digital service taxes (DSTs), in acknowledging that payment services are a core part of financial services in crafting exemptions from DSTs which Pillar One is designed to replace.

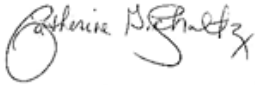
Some of our members are concerned that the definition of regulated financial services institutions reflects an inappropriately narrow exclusion from Pillar One, especially in the rapidly evolving payments sector. They believe that while the RFI definitions appropriately cover many financial services businesses, the definitions could result in differential treatment for other similarly situated financial services businesses, or for the income and profits from financial services activities carried on by different types of financial services businesses, without furthering the policy objectives of Pillar One. With this in mind, the OECD should consider the extent to which differential treatment of similar financial services business or activities could lead to competitive distortions, and to review the impact of the Regulated Financial Services Exclusion rules on the conduct of these activities two years following the implementation of the Amount A rules.

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Business Roundtable urges the Inclusive Framework to take the above comments into account in its work on the Regulated Financial Services Exclusion, in the interest of ensuring that the exclusion will be fully consistent with relevant policy concerns. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Schultz". The signature is fluid and cursive, with the first name "Catherine" written in a larger, more prominent script than the last name "Schultz".

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