

June 10, 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—A Tax Certainty Framework for Amount A”

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 document of May 27, 2022 on a tax certainty framework for Amount A.

High-level Comments

Need for Further Consultation

While we appreciate the opportunity to comment on the public consultation document, we believe that further consultation with the public will be needed after all of the Pillar One building blocks have been revealed and the Inclusive Framework has made progress toward resolving the various unresolved issues noted in the footnotes of the public consultation document. Currently it is impossible for stakeholders to provide fully informed comments on the proposals in the document.

Confidentiality of Taxpayer information

We note that the public consultation document says very little concerning the protection of confidential taxpayer information during the different tax certainty review processes. In contrast, the other public consultation document released on May 27, 2022, regarding issues related to Amount A explicitly addresses the need to protect confidentiality in a number of helpful ways. We suggest that similar provisions regarding confidentiality be included in the rules regarding tax certainty for Amount A. Only relevant confidential taxpayer information should be provided by the taxpayer to the Lead Tax Administration (LTA) which would

confidentially share relevant information with Affected Parties with sufficient revenue at stake, only for purposes of Amount A allocations. In addition, the rules should provide a meaningful incentive for tax authorities and their employees to respect their confidentiality obligations, by preventing any Amount A allocation to a jurisdiction responsible for any breach or misuse of taxpayer information.

Relationship of Tax Certainty Framework to Financial Statements

The tax certainty process will impact non-tax issues. In this regard, particular care must be given to the use of financial statements. Financial statements provide critical information on a company's financial health to shareholders. Financial statements are audited by independent auditors before their release to shareholders, and companies' financial disclosures are also subject to additional oversight from financial regulators. Against this background, the tax certainty process should not function as an additional review or audit of existing, disclosed financial statements, but rather competent authorities should recognize the role of financial statements in relation to the tax certainty process in two ways.

- First, providing advanced certainty allows companies to better recognize and disclose their Amount A tax liabilities to shareholders and potential investors, which may impact a company's performance. Therefore, an effective and efficient tax certainty process for Amount A is important.
- Second, any required segmentation of financial statements for Amount A purposes would significantly increase compliance costs and could erode the value of public disclosures. The tax certainty process should not require segmentation of financial statements beyond what a company may already have undertaken for financial reporting purposes.

Specific Comments

Scope of Advance Certainty Review

We believe that the scope of the Advance Certainty Review needs to be broader than only revenue sourcing and segment reporting. In order to achieve the goal of advance tax certainty, all methodologies involved in the Amount A computation of the Covered Group (including elimination of double taxation, the marketing and distribution safe harbor, withholding taxes, etc.) need to be within the scope of the Advance Certainty Review, with agreement on such methodologies in advance of the year in question.

Composition of Determination Panels

In our view, it is preferable that Determination Panels be composed of government officials only, in order to minimize the risk of confidentiality breaches, ensure oversight and accountability, and develop a consistent approach among governments as the application of the Amount A rules is broadened over time.

Costs of Tax Certainty Proceedings

We believe that all the costs of tax certainty proceedings should be borne by the tax administrations involved, as the tax certainty mechanisms are an integral part of the two-pillar solution that has been adopted by the Inclusive Framework countries to ensure a common approach to taxing large multinational enterprises. Compliance with the Pillar One, Amount A rules will involve a significant investment of resources by Covered Groups and will inevitably give rise to new areas of tax uncertainty which the tax certainty framework for Amount A is intended to address. A Covered Group should not be asked to bear any part of the costs of tax certainty review processes, even if it chooses to withdraw in mid-process. The voluntary nature of the tax certainty process would be compromised if taxpayers were not able to withdraw without incurring a penalty.

Role of the Coordinating Entity (the taxpayer)

We feel that Determination Panels should have the opportunity to consider the issues in light of a presentation by the Coordinating Entity of the approach taken by the Covered Group, and the reasons for taking that approach. The taxpayer has the best knowledge of the relevant facts and circumstances, so its explanation of why it adopted a particular approach to an Amount A issue could be of great value to the Determination Panel.

Tax Certainty Secretariat Proposal

We are not convinced that establishing a Tax Certainty Secretariat as described in the public consultation document is necessary or advisable. The support functions could be performed by the LTA and other Parties involved in a given review process. This would avoid the increased risk of breaches of confidentiality of taxpayer information that would exist if a centralized tax certainty secretariat were handling the administrative aspects of every case, while also ensuring oversight and accountability by governments and their legislatures.

Proposed Expert Advisory Group of Systems Specialists

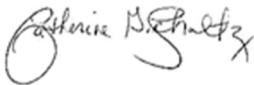
We have concerns about the proposed establishment of an Expert Advisory Group of system specialists to undertake a review of a Covered Group's internal control framework and provide advice to the Review Panel as to whether this framework is reliable or if any improvements are needed for it to be considered to be reliable. There is no detail in the consultation document regarding exactly how this review would be conducted, what information may be accessed, and whether such review would be limited to relevant information to minimize fishing expeditions into highly confidential and proprietary systems information. We are also concerned about the proposal to allow unqualified observers to obtain training (by unspecified trainers) and participate in one or more reviews as an observer. If this dubious proposal is retained, at the very least the approval of the LTA and the taxpayer must be obtained in advance, and any training should be conducted by the LTA.

Transition period

We welcome the fact that the Inclusive Framework is considering a transitional period with special sourcing rules that will ensure a “soft landing” for companies making a reasonable, good-faith effort to comply with the new rules. The consultation document aptly identifies certain risks that the Advance Certainty Process is meant to address – namely, the cost and resources of implementing new systems and the unavailability of data for past periods when rules are not agreed prior to the year under review. If the Advance Certainty Process will not be initiated until after the first year covered by these rules, there must be safe harbors or an earlier certainty consultation to ensure that Covered Groups do not bear these identified risks in the first several years of complying with the new rules. This could be accomplished with clear safe-harbor Allocation Keys. There could also be a guideline to the effect that a company's chosen reliable indicators are presumptively acceptable if they follow the objective of estimating the location of use of products and services. There should be an explicit acknowledgement that systems and data collection processes will not be fully implemented during these initial years, and that reasonable estimates will be sufficient. If the intention is to have the Lead Tax Administration work with the Covered Group on a process for that transition period, then there should be a presumption that the Covered Group is compliant, and there should be a very high bar for later changes in the Review Panel, since changes would significantly undermine certainty and amplify the resource and systems risks noted above.

Business Roundtable urges the Inclusive Framework to take the above comments into account in its work on the tax certainty framework for Amount A. We appreciate your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Schultz".

Catherine Schultz
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