

Comments on the Public Consultation Document concerning Pillar One - Tax Certainty for issues related to Amount A

June 10, 2022

Business Infrastructure Bureau, KEIDANREN

We thank you for the opportunity to submit our comments. We believe that it is crucial to eliminate double taxation by ensuring strong dispute prevention and resolution mechanisms whose outcomes bind all jurisdictions. This will ensure the effectiveness and appropriateness of the Amount A system. The following comments focus on matters that have not been agreed between the members of the Inclusive Framework (IF) in the Public Consultation Document (hereinafter “the Document”). These comments are submitted by the Keidanren’s Business Infrastructure Bureau, based on discussions held by the “Corporate Liaison Group on Pillar 1 - Amount A¹”.

1. Scope of dispute resolution (Article 19 paragraph 1 and footnote 3)

All disputes related to Amount A should be covered. No quantitative materiality threshold to narrow down the scope should be applied. Further, reservations with respect to scope should not be permitted.

A mechanism to resolve disputes between jurisdictions which have not concluded bilateral tax treaties such that both jurisdictions are subject to the outcome should be established.

While the Document focuses on dispute resolution between two jurisdictions, disputes involving more than two jurisdictions may arise where complex supply chains are concerned, for example. Therefore, the OECD should clarify how a multi-jurisdictional dispute would be resolved.

2. Specific issues related to each step

2.1 MAP stage

Competent authorities are allowed to request additional information (Article 19 Paragraph 7). Requests for additional information should be kept to a minimum, since it may not be possible to retrospectively collect accurate information on

¹ Please see footnote 1 of our comments on the revenue sourcing rules:

(<https://www.keidanren.or.jp/en/policy/2022/018.html>)

relationships with customers or other parties.

In addition, there may be cases where Amount A calculations and supporting information are held centrally by the Group's ultimate parent entity (UPE). In these cases, requests from competent authorities should be made to the UPE through the tax authority in the UPE jurisdiction.

2.2 Establishment of a dispute resolution panel

Article 19 Paragraph 16 sets out the composition of members of a dispute resolution panel. Given that the MAP subject to dispute resolution could not be agreed upon by the tax authorities of the Contracting Jurisdictions, the panel should be composed entirely of independent experts to ensure neutrality and fairness. However, we understand that the dispute resolution is closely interlinked with the sovereignty of jurisdictions. Thus, a panel composed of both independent experts and government experts may be acceptable, but the independent experts should constitute a majority. It could be desirable that the conditions for selection of independent experts be clearly defined, and ensure that the experts selected are independent and have no interest in the Contracting Jurisdictions.

Secondly, Article 19 Paragraph 19, and the commentary on Article 19 Paragraph 70 state that an MNE Group may not disclose any information received in the dispute resolution process to any third parties. However, the dispute resolution process may impact the financial audit of the MNE Group, and the Group may wish to obtain advice from tax advisers in relation to the dispute. Therefore, there should not be excessive restrictions on either the information which may be disclosed or the entities to which information may be disclosed.

2.3 Dispute resolution panel review

Firstly, to ensure fairness, a Covered Group should be given the opportunity to make representations to the dispute resolution panel.

Secondly, at least for the initial periods following introduction of Amount A, it should be possible to decide on a compromise between the two competent authorities' proposals rather than having to choose one, as prescribed by Article 19 Paragraph 28 (g) of the Document. This considers the needs of developing countries which have applied the elective mechanism.

2.4 Results of dispute resolution panel review

Article 19 Paragraph 28 (i) of the Document states that "all members of the

Covered Group directly affected by the case indicate in writing whether they accept the proposed Competent Authority resolution within 30 days.” However, given the potentially significant number of affected constituent entities, it should be possible for a Coordinating Entity to confirm acceptance on behalf of all affected entities.

Secondly, Article 19 Paragraph 29 of the Document states that “a dispute resolution panel decision pursuant to this Article shall not be binding on the Contracting Jurisdictions and shall not be implemented if the Competent Authorities of the Contracting Jurisdictions agree on a different resolution of all unresolved Related Issues”. The possibility of an outcome other than the decision of the dispute resolution panel could undermine the MNE Group’s tax certainty, particularly considering that by this stage two years will have passed since the commencement of the MAP. Further, this could undermine the authority of the dispute resolution panel. It should be assumed that the Contracting Jurisdictions will be subject to the decision of the dispute resolution panel.

3. Elective binding dispute resolution panel mechanism (Article 20)

Given the risk that disputes related to double taxation and so forth are left unresolved, incentives could be provided for jurisdictions eligible for the elective mechanism, to encourage its application.