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Input on the Public Consultation Document on the Reports on the Pillar One and Pillar Two Blueprints

Mazars welcomes the opportunity to provide comments to the consultation documents published by the OECD on 12 October 2020, on Tax Challenges Arising from Digitalization of the Economy; the Reports on Pillar One and Two Blueprints. The views expressed in this response are provided by Mazars in its role as tax preparers and consultants for global businesses and not on behalf of, or in consultation with, any particular client.

About Mazars

Mazars is an international, integrated and independent firm, specializing in audit, accountancy, advisory, tax and legal services. Mazars and its correspondents operate in more than 90 countries and territories drawing upon the expertise of over 40,000 professionals worldwide, including 16,000 professionals through the Mazars North America Alliance. We assist major international groups, small/medium enterprises (SMEs), private investors and public bodies at every stage of their development. Our comments in this response our principally focused on the Pillar One Blueprint.

Opening remarks

We remain supportive of the OECD's initiative and the inclusive way in which it is working towards the hugely challenging task of reaching a global consensus in these issues. We also acknowledge the considerable work which has been performed to present the current Blueprints.

We welcome the approach to limit the MNEs within scope by reference to an annual consolidated group revenue threshold with a de-minimis foreign element requirement. Although the quantum of these tests is still to be determined we trust the outcome will be targeted to minimise the compliance costs and impact on both taxpayers and fiscal authorities alike and also, importantly, to provide sufficient safeguard to exclude small/mid-sized businesses. As part of the phased approach contemplated, we would welcome the intention that these complex rules only apply initially to the largest MNEs, as we suggest below, where the issues which Pillar One is aiming to address are more significant.

We also welcome the removal of "Amount C" from the latest Blueprint, as this conceptually would have likely created double counting with the proposed Amount A as well as creating further complexity and uncertainty.

We appreciate the difficulties the OECD faces in reaching a consensus between the members and that is fair and practical to operate. In striving to reach consensus we are concerned however that the scope of the proposals has become too broad, complex and difficult to implement. This complexity combined with the proposed thresholds also means it is perhaps unlikely that developing economies will be able to benefit to the same extent as develop economies.

The proposals appear to be reaching beyond addressing digital economy issues relating to "scale without mass" and appear to seek to subject much wider activities to a global apportionment approach to taxation. This seems to be a much more significant change in policy which goes beyond the challenges represented by the digital economy.

Participation in a significant/active way in an economy is not a new phenomenon and we would suggest most of the issues related to tax avoidance in this area are largely being addressed through existing transfer pricing rules and the other Actions of the BEPS Package,

Indeed, it was only a short time ago that the OECD's position, as put forth within other Actions of the BEPS Package and the OECD Transfer Pricing Guidelines (2017), was that:

> *The arm's length principle has also been found to work effectively in the vast majority of cases. (. . .) Nevertheless, there are some significant cases in which the arm's length principle is difficult and complicated to apply, for example, in MNE groups dealing in the integrated production of highly specialized goods, in unique intangibles, and/or in the provision of specialized services. Solutions exist to deal with such difficult cases.*[1]
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> *A move away from the arm's length principle would abandon the sound theoretical basis described above and threaten the international consensus, thereby substantially increasing the risk of double taxation. Experience under the arm's length principle has become sufficiently broad and sophisticated to establish a substantial body of common understanding among the business community and tax administrations. This shared understanding is of great*

[1] OECD Transfer Pricing Guidelines 2017, Paragraph 1.9

practical value in achieving the objectives of securing the appropriate tax base in each jurisdiction and avoiding double taxation. This experience should be drawn on to elaborate the arm's length principle further, to refine its operation, and to improve its administration by providing clearer guidance to taxpayers and more timely examinations. In sum, OECD member countries continue to support strongly the arm's length principle. In fact, no legitimate or realistic alternative to the arm's length principle has emerged. Global formulary apportionment, sometimes mentioned as a possible alternative, would not be acceptable in theory, implementation, or practice.[2]

The BEPS Action 8-10 Reports enhance the guidance on the arm's length principle to ensure that what dictates results is the economic rather than the paper reality. Actions 8-10 seek to align transfer pricing outcomes with the value creation of the MNE group.[3]

The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created.[4]

The OECD's current proposal for the digital economy in its current broad scope appears to be in direct conflict with its prior guidance and positions regarding the arm's length principle, global formulary apportionment and value creation as a basis for the allocation of profits. Taken together and perhaps individually, the allocation of Amount A and determination of Amount B represent a substantial move away from the earlier position and being essentially a form of global formulary apportionment.

As proposed, the scope of Amount A is capable of allocating profits to market jurisdictions where an MNE has no basis in value creation or substance as we consider further below. This aspect is perhaps the most notable divergence from the historic importance assigned to value creation as a factor in allocating profits.

Amount A has also been presented as an overlay to the existing nexus and profit allocation rules but in practice it may be too difficult to harmonise the two mechanisms to be practicable (the difficulties recognised in resolving double counting and avoiding double taxation highlight this). This is a simple consequence of the existing rules being based on the separate enterprise principle and the calculation of amount A being based on a unitary combined reporting of an entire MNE group's results.

[2] OECD Transfer Pricing Guidelines 2017, Paragraph 1.15

[3] https://www.oecd.org/tax/beps/

[4] Aligning Transfer Pricing Outcomes with Value Creation, Actions 8 10 2015 Final Reports, Foreword, Page 3

Amount B, as proposed, displaces the arm's length conditions for "routine distributors and marketing/sales support providers" with a result intended to "approximate results determined in accordance with the ALP "[5] based on standardised margins. As the OECD have noted in the Blueprint there appears to be some debate amongst members as to how these margins should be established with reference to regions, industries etc.

Particularly in this respect we have concerns that, in the search for certainty, Amount B may cease to be based on any ALP at all and just become, in effect, another allocation key in a global formulary apportionment. If the ALP can be reliably calculated (without too much complexity) there should be no requirement to substitute it with an approximate amount. The impact of market crises (e.g. COVID and the 2008 financial crisis) on an MNE for example will not be accurately reflected in a safe harbour. As we note below, controversy can still arise on whether activity is properly within the scope of Amount B. The result therefore may be divorced from any real connection to the facts and circumstances that have historically been used to allocate profits (functions performed, risks assumed, and assets used) among MNE group members without significant benefits in preventing disputes.

Other aspects of transfer pricing, outside of marketing and distribution, would continue to be subject to the same current uncertainties related to tax dispute prevention and resolution. Rather than carving out a separate regime in the form of Amount B, the ALP should in our view be retained for marketing and distribution. The new framework for dispute prevention and resolution may provide the required certainty for fiscal authorities and MNEs if this were to extend beyond Amount A.

Taking all the above into account, in trying to find a way through to international consensus and so rightly prevent disruptive and costly unilateral measures there may need to be a much greater compromise in the design of the new proposals. To make the measures simpler to implement further compromises may be needed in fairness and proportionality across the open areas of difficulty by further weakening the link between the new tax and value creation. This would however represent a much greater move towards global formulary apportionment which the OECD has previously said is unacceptable in theory, implementation and practice, without adequately differentiating between its previous and current position.

We consider however there is a better option. Our recommendations are:

1. Revisit BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status. Additional changes could be made to expand this concept to include the digital economy.

[5] Tax Challenges Arising from Digitalistation – Report on Pillar One Blueprint OECD 2020 – 1.2.2. Paragraph 14

We believe, and it is noted in the BEPS Action 7 Final Report, that the permanent establishment definition should evolve as the economy evolves. With the current move toward digitalization, adding the concept of a virtual permanent establishment to the definition may be a more efficient way to solve the issue of digital business taxation. Further, an expanded definition of permanent establishment would coordinate well with the continued use of the arm's length principle.

If this approach is taken, the proposed in-scope activities within the Activity Test of Amount A (with the safe-guards for smaller businesses) should be reviewed alongside current international tax regulations. The distinction between remote sales/exports and foreign direct investment should be addressed as it relates to these activities. If the activities of the digital business are deemed export activities, then no permanent establishment (virtual or otherwise) is created, and an income tax would not be appropriate. In this case, perhaps the user jurisdictions should consider using a form of sales tax. However, if the activities are deemed foreign direct investment, then a new (virtual) permanent establishment would be created. The group's profits could be allocated among its members according to arm's length principles, and an income tax applied in all the jurisdictions in which it operates.

2. In our strong view, the arm's length principle should not be abandoned; any application of global formulary apportionment is arbitrary and will create suboptimal results.

   We believe that, *when applied correctly,* the current transfer pricing rules in combination with the prior BEPS reforms will lead to reasonable profit allocation among MNE group members even in the digital economy. If Amount A is adopted and profit reallocated, digital businesses' investment and development activities and the related risks borne will likely no longer be adequately remunerated.

   As such, we recommend the continued use of the existing transfer pricing regulations, with refinements made or perhaps a chapter added to cover the digital economy and also the above virtual permanent establishment.

We would therefore urge OECD members to consider the BEPS reforms that have already been made and give them further time to take effect. We believe they should undertake an assessment of how successful these have been (particularly in relation to the Pillar Two proposals) and ultimately take a more targeted approach to the digital economy without moving towards global formulary apportionment.

We would also welcome further statistically robust research to determine how the new tax proposal will ultimately affect the global economy, relevant industries and to what extent this proposal would achieve the stated BEPS goals (after the current reforms have been properly implemented). We are concerned the current research may not be adequate given the available data limitations and the unresolved nature of the details within the proposals (e.g. in scope versus out of scope, revenue thresholds and de minimis foreign in-scope revenue carve-out amounts etc). To be a viable option there should be reliable evidence that this proposal will effectively reduce tax avoidance, allocate taxing rights fairly and proportionately and consider the additional compliance costs as well as potential changes in business behaviour (location and nature of investment, innovation etc)[6]. If these items cannot be resolved, then the new taxing right could become regarded as prejudicial in favour of selective jurisdictions.

Notwithstanding our comments above, our responses in relation to the specific questions raised are as follows:

I. The activity test to define the Scope of Amount A

We find the positive list and a negative list to define businesses within scope to be generally clear and helpful. In line with our opening remarks it is in relation to the scope applying to CFBs where we have particular concerns.

We are not sure that the case has been made to include pharmaceuticals within scope of Amount A. The noted sustained marketing activities and the activities directed at regulatory compliance with the market are usually conducted through activities *in* the market. In the event local marketing intangibles are created, based on the facts, we expect profit attribution to be such that intangibles can be dealt with through the application of the ALP. The case made in the Blueprint is not in our view consistent with the stated aim of this initiative, namely that of needing changes in response to a changing economy.

Similarly, in the case of franchising licensees, the franchisee will be undertaking activity in the market. Scale is usually achieved through mass in the market jurisdiction and the ALP should allocate profits in a fair and proportionate manner. The proposed approach appears to be a simple global formulary apportionment approach to taxing intangible value rather than taxing any new economic activity or contribution to value.

For these reasons we welcome the exclusions proposed for natural resources, financial services.

II. Design of a specific Amount A revenue threshold

[6] We note also that digital MNE's have already passed on the new DST's of jurisdictions to their customers – so it is the customers who are bearing the costs, not the digital MNEs. The impact of the new proposal should therefore also be considered in this respect. The new taking right might not have the effect OECD members are intending.

We would agree with the OECD that, considering the costs and benefits, there is likely to be little advantage in using a global revenue threshold below the current EUR 750 million threshold that is used for the purposes of Country-by-Country reporting.

In relation to the question of the best approach to define and identify the domestic or home market there will of course be different impacts for centralised and decentralised business models. Applying a test based on the residence of the UPE may be unfair and distortive considering it may not be the entity which undertakes the substantial economic activities relating to generate the relevant revenues. For simplicity it may be preferable to simply set a de-minims Amount A.

III. Development of a nexus rule

As we have commented above, we are not in favour of the approach taken to the nexus rule, preferring instead the concept of a virtual PE within an extended BEPS Action 7 .

Looking at this another way in relation to CFBs for example, if members consider "mere selling" to be outside scope then there does not appear to be any additional merit in bringing entities within scope if they have an actual physical presence which can be remunerated in line with the ALP. The residual profit to the seller operating outside of the market jurisdiction in this context should approximate to the profits from "mere selling".

As we have commented above, we consider that "mere selling" is exporting and so should be outside of scope.

In view of the policy objective (a sustained economic engagement) applying a temporal requirement to market revenue threshold would be rational. In this respect a period of 3 years whereby the market revenue exceeds the threshold may be proportionate.

IV. The development of revenue sourcing rules.

The flexibility proposed in the hierarchal approach is welcome as this enables MNEs to apply the best revenue sourcing rules for their business model within the hierarchy. This information should already be available to the MNE to use and, at the same time, comply with the proposed framework with the least impact on compliance costs.

This principles-based approach to applying the sourcing hierarchy, allows MNEs to apply their own judgement in approaching source selection, particularly in light of any risk of violating legal (private) constraints, and support this through documentation. This is preferable in our view to more rigid requirements which would otherwise prescribe that certain information must be gathered and applied regardless of the MNE's circumstances.

We would recommend further guidance on the approach fiscal authorities should take to their review of an MNE's approach to the hierarchy in the event of audit. In our view the MNE's reasonably exercised judgement should be respected unless it is clear reasonable care has not been taken making that judgement. It should be recognised that whilst information may be conceptually available it might not be readily accessible. Extracting and formatting that information for use for these purposes may present significant operational challenges.

The Chapter introduces a hierarchy of sourcing rules, e.g., basing on billing and address. We would note that the following issues arise in this respect.

The Blueprint sets out a non-exhaustive indicative list of revenues that ADS would typically earn, and the suggested revenue sourcing rules. In this respect we have the following comments.

i. Revenue from Online Advertising Services: The location of the users geolocation/IP address is suggested to be the primary revenue source rule, as this represents the extent to which the advertisement has been shown to users and is thus considered a reliable measure of benefit to the advertisers. Such a direct link to value creation is in our view difficult to apply uniformly; an example where could be the case of frequent travelers who may be spending considerable time outside their location of residence. Allocating revenue to the location of residence of the viewer is a mismatch. If the aim is simplicity of operation, tolerance to this mismatch will likely have to be accepted.
ii. Revenue from the Sale or Other Alienation of User Data: The data value is derived from the information that is contained with the dataset in question. The assumption is that the real-time location of the user may be different from the location of residence. We agree the latter may provide a more reliable link to value creation and so the hierarchy suggested seems practical.
iii. Revenue from Online Search Engines and Social Media Platforms: To the extent that the location where the ADS is used can be located, we agree that the revenue source rule is more reliable than through a manually input system (item iv) as testing the reliability of user inputted data has inherent difficulties.
iv. Intermediation of Tangible and Intangible Goods and Services: The sourcing rule for the purchase and sale of tangible and intangible goods and services is based on jurisdiction of the location of the purchaser at the time of purchase. Would the "traditional" factors such as physical delivery and billing address of the purchaser be considered more reliable in the hierarchy?
v. Digital Content Services: The access online films, music etc. This follows the same revenue sourcing rule, i.e., where the user is located based on geolocation/IP address which is reasonable. Although sourcing based on manual

user inputs are lower down the hierarchy, the limitations to accuracy of this method must still be recognised

V. Segmentation

Our general view is that we agree, the easiest way to achieve the net basis of taxation for Amount A would be to calculate the Amount A tax base on a consolidated basis, and use the consolidated profit margin of the group as a proxy for the in-scope profit margin. This is applied to in-scope revenues to produce a proxy for in-scope profits. MNEs should however retain the option for an alternative basis if they consider this more just and reasonable but, in that respect, segmentation should not be expected beyond that which is already available within the MNE accounting system.

VI. The development of a loss carry-forward regime.

We welcome the inclusion of a loss carry-forward regime particularly in the case of sectors such as pharmaceuticals where there is significant up-front cost and investment.

We believe that Amount A tax base rules should apply consistently at the level of the MNE group or segment where relevant irrespective of whether the outcome is a profit or loss.

We also consider that the carry-forward regime should account for some pre-regime losses and to reduce compliance and administrative costs, a time limit beyond which pre-regime losses would no longer available could considered.

Although it might be more complex, we consider that losses for Amount A purposes should be allocated to market jurisdictions similarly to profits.

We support the idea to extend the carry-forward regime to profit shortfalls in order to improve neutrality by ensuring that Amount A does not apply differently to taxpayers with volatile profits from one period to the next.

VII. Double Counting

As depicted in example in Annex C Box C.3, the netting-off effect for a centralised business model can be well managed and fulfilled. It is obvious that netting-off mechanisms for decentralised business models are not sufficient to assess the potential double counting on certain entities. Taking into consideration the fact that group companies may have different characteristics for certain product lines/markets under the same roof, the financial results of these companies cannot be easily separated between routine or non-routine.

Similarly, non-routine companies may achieve different and fluctuation financial results. In this respect, threshold tests should be clearer. Alternatively, a binding ruling mechanism could work for the determination of the paying entity or elimination of double counting issues.

There should be an international consensus through MLI's or DTT's that, unlike Amount B, Amount A should be taxed only as business profit. Especially for countries where there are secondary adjustments such as withholding taxes, any transfer pricing and other tax implications should be limited to Amount B and not extended to amount A level.

As we have commented above, we have concerns about a significant move away from the ALP. If a safe harbour is to be pursued, it should perhaps be acknowledged by all stakeholders that for in scope revenue the basis of taxation has moved to a form of global formulary apportionment with the potential implications that brings with regard to fairness and proportionality. Acknowledging that to be the case we would share the opinion that although the fixed return may not seek to be consistent with the ALP, it could be agreed it could vary by region or industry (but probably not based on functions since in that case the ALP should apply). Putting aside extraordinary international or local sector downturns or turbulences, fixing the return levels for 3-5 years (except in the case of extraordinary financial circumstance e.g. COVID) would be a practical approach while the trends should be clearly parallel to local sector trends; Consequently, specific countries should not get an unfair benefit from the safe harbour in respect of any one MNE.

If a domestic-to-domestic business exemption is valid for removing an amount from the total to be allocated for Amount A to reduce instances of "double counting", it would not in our view be a practical to apply due to the well-defined challenges outlined at paragraphs 551 and 552 of the Blueprint. For ADS businesses, the concept of a wholly domestic transaction would be an irrelevant and difficult concept to measure.

Another obstacle with the domestic-to-domestic business is the risk of non-recognised transactions. For example, if the group entity should have a related party income from its foreign related party in an arm's length arrangement but the transaction is not recognised for tax purposes (e.g. "check the box" entities), Amount A would be also be eliminated in addition to Amount B for that region. If the calculation and allocation of Amount A will be delivered through a formula that is not based on the ALP, then the risk of non-arm's length arrangement effects should also be taken into consideration in domestic-to-domestic business exemption.

VIII. Development of a process to identify the entities in an MNE group that bear the Amount A tax liability (the paying entities) for the purpose of eliminating double taxation.

The processes as outlined appears to be overly complex and would benefit from worked illustrative examples. This follows on from our opening remarks regarding the difficulties of overlaying global formulary apportionment onto a separate entity basis of taxation.

Conceptually it may be possible to simply trace the revenues which have been subject to the Amount A tax liability and use this as an allocation key. Amount A is allocated along the supply/value chain according to the entities which are realising residual profits from the relevant activity (so based broadly with an overarching profitability test) along the line suggest at paragraph 605. In this way Amount A could be allocated on a just a reasonable basis. Documentation around activity tests would appear to be irrelevant given the formulary nature of Amount.

This in form does not appear dissimilar in respect to the approach to allocating profits we recommend in our opening remarks according to an entity establishing a virtual permanent establishment, without compromising through the use of global formulary apportionment.

IX. The issue of scope of Amount B and definition of baseline marketing and distribution activities.

If an Amount B is to be pursued our view is that it should be narrowed down further to cover only specific activities, or specific business models that would fall under the category of “baseline marketing and distribution”. This is because both marketing and distribution related activities and business models are quite varied in terms of overall scope, nexus and coverage and encompass a wide gamut of services and activities.

Typically, “distribution activities” could generally be classified into limited risk distribution activities or normal distribution activities or full-fledged distribution activities. Difficulties arise however in periods negatively affected by crises such COVID or the 2008 financial crisis. A distributor may perhaps be regarded as “limited risk” with reference actual levels of risk exposure in mature and/or stable market conditions and/or the degree of risk control activities. In in unstable times they may however be expected to bear risk and so the fixed rate of return may be inappropriate with regard to the particular facts. This is another risk in moving away from the ALP.

Similarly, “marketing activities” could include various activities like conducting marketing research, organizing online marketing events, advertising activities, promotional campaigns, secondary data-based marketing activities, outdoor advertising services etc.

Thus, there should ideally be a specific and well-defined list of activities that would fall under the category of “baseline marketing and distribution”, considering the nature of activities, local tax rules and regulations as well as geographical/external market conditions and dynamics.

Moreover, detailed guidance on the arm’s length return or remuneration approach and methodology should also be provided/explained for “Hybrid arrangements”- wherein the entity is rendering services that fall within both the positive and negative list.

We are of the view that certain specific quantitative indicators or thresholds should be used while establishing entities that fall under the scope of Amount B. This is because we expect there would only be limited entities rendering baseline marketing and distribution activities in the overall value chain of the MNE Group that would warrant the need for a fixed ALP based remuneration for their activities. Thus, only such entities should be covered under the scope of Amount B.

We are also of the view that multifunctional entities should not be brought under the ambit of Amount B as the overall revenue stream or segmental accounts of such entities would include revenue from different activities.

Segmentation / fragmentation to establish revenues within Amount B in these cases may even create the kind of profit diversion issues identified in BEPS Action 7. The overall functional characterisation of such multifunctional entities would likely be more complex therefore as compared to entities who are primarily providing baseline marketing and distribution activities.

In some cases, there would be an overlap of different activities making it slightly more difficult for Amount B application. Thus, such multifunctional entities should be excluded from the ambit of Amount B.

As to whether Amount B will be effective in reducing disputes, greater certainty would seem to be gained in relation to rates of return expected however, disputes will still likely arise as to whether entities qualify to be within scope of Amount B or are within the "negative list". In our experience these tend to be the difficult and time- consuming areas of dispute. This further highlights the difficulties in moving away from the ALP and whether any simplification would in fact be achieved here.

X. The appropriate profit level indicator ("PLI") for calculating Amount B.

In case of baseline marketing activities, an appropriate profit level indicator (PLI) should be set as "mark-up on total cost base (inclusive of direct and indirect costs)" of the service provider. This could then give an indication of an appropriate arm's length return for the overall operational costs incurred by the service provider, considering the overall Transfer Pricing principles and guidance. This PLI can allow for differences in functions by assuming that they are reflected in the level of total operating expenses, with many items able to be included in either cost of goods sold or other operating expenses.

In the case of baseline distribution activities, an appropriate PLI should be set as "return on sales (at an EBIT level)", as this PLI is relatively objective and consistent among accounting systems. It is frequently used in existing transfer pricing analyses, can be easily understood and can be calculated from publicly available data. Further, this PLI can be compared without taking into consideration the distorting effect of whether the business is funded by debt or equity, since the impact of interest income and interest expense would be excluded from the analysis.

In the interests of fairness and proportionality we consider that Amount B should account for variations in returns to baseline marketing and distribution activities in terms of both factors i.e., industry and region. Some of these variation factors could include

- Nature and overall market size of the industry and the geographical region;
- Number of industry players in the region;
- Degree of competition in the industry and the region as well;
- Nature of products and/or services being sold/distributed/manufactured in the industry and the region; and
- Intensity of market, price, technology and product/service quality risk applicable to all the players in the industry

XI. The development of tax certainty process to prevent and resolve disputes on Amount A.

We would suggest that the lead tax administration coordinating the early certainty process is likely to be the administration in the jurisdiction where the ultimate parent entity (or related MNE entity) that has asked for the 'early certainty' process – is resident. The lead tax administration is therefore likely to be in control of all the information that will likely lead to an apportionment of amount A to different jurisdictions. This potentially creates a situation where the tax administration of a jurisdiction that may need to give up tax revenue to other jurisdictions, is in control of the process that determines how much will be reallocated. This might lead to a situation where the party in control of the process might be seen not to be independent and at risk of being seen to look after its own interest. The option of the review panel process may help mitigate issues here, but depending on its constitution, could still potentially be giving a biased result.

The proposals seem to contemplate that the most efficient option for those MNE's potentially facing reallocation of amount A to different jurisdictions, would be to opt for the early tax certainty process. However, it seems this will only be effective if all jurisdictions agree to the process and it is operated in a way which they all agree with. It seems difficult to conceive that this sort of multilateral agreement on a standardised approach to be uniformly applied - can be reached in practice.

If agreement on the early tax certainty process is not reached, and is not applied globally, there is a risk that the time, resource and effort involved in undertaking an 'early tax certainty process affecting only a few jurisdictions may not be considered worthwhile.

In relation to whether the UPE is the most suitable entity to be the co-ordinating entity, in addition to the reasons listed in para 718 of the Blueprint, there could be difficulties of independence to using the tax administration in the jurisdiction of the UPE where most of the profit is recognised in that jurisdiction for accounting purposes.

If the majority of commercial profit is recognised in a jurisdiction other than that of the UPE, depending on the final form of the recommended 'early tax certainty' process, it may be more effective for the tax administration of the jurisdiction where the commercial profit is recognised to be the lead tax administration. In that case it may make more sense for the constituent entity of the MNE in that jurisdiction to act as the co-ordinating entity.

To encourage MNE participation in the certainty process it might be helpful, to provide that, in the event the MNE disagreed with the outcome of the review panel, it could apply for some form of arbitration instead of having to abandon the early tax certainty process altogether. This might give the MNE a sense of having an equal say in the process, rather than the process being under the control of the tax administrations.

XII. The introduction of new approaches to provide greater certainty beyond Amount A.

We have outlined our general views in the opening comments to our response and agree with reference to paragraph 711 of the Blueprint that work should be undertaken on a new mandatory and binding dispute resolution mechanism beyond Amount A. There may be challenges to participating in Mandatory Binding Arbitration for smaller countries (considering that many of these do not currently engage in MAP[7]) and so a program of support may be required.

We note too, in line with our comments above that considerable work is still required to secure the tax certainty that is an essential element of Pillar One. We also have doubts as to whether the compliance costs noted at paragraph 710 relating to these proposals are particularly clear. As noted in our opening remarks we welcome further impact analysis in this respect. We are however hugely appreciative of the OECDs continued work in these areas.

We are broadly in agreement with the mechanism outlined, although more detail of course would be welcome on the panel review mechanism. Statistical reports on the performance of the peer review will be welcome to provide transparency and confidence in the system.

Whilst members may not be in agreement as to the extent to which Pillar One should incorporate new tax certainty approaches beyond Amount A, this would appear to be the best time to agree these approaches and establish a broader framework which could be included in the multilateral instrument required to effect all the proposed changes under this initiative.

[7] We note for example BEPS Action 14 has not been fully resolved.

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Acknowledgement of submission

We would be grateful if you could acknowledge safe receipt of this submission and ensure that Mazars is included in the List of Respondents when any outcome of the consultation is published.

Mazars would like to take part in the virtual consultation meetings scheduled for mid-January 2021.

On behalf of the global partnership of Mazars we respectfully submit our comments to the consultation document published by the OECD on 12 October 2020. For any clarification please contact the undersigned.

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