



SUBMITTED VIA EMAIL: OTP_Pillar1MLC@treasury.gov

December 8, 2023

Secretary Janet Yellen
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Comments on OECD/G20 Inclusive Framework Pillar One Model
Convention Text

Dear Secretary Yellen:

The American Chemistry Council (ACC), based in Washington, D.C., represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. A complete listing of our member companies can be found at our website www.americanchemistry.com.

Thank you for the opportunity to comment on the OECD/G20 Inclusive Framework Pillar One Model Convention Text (Pillar One MC). We appreciate Treasury's willingness to receive comments, as this is the first opportunity to comment on the complete text of the Pillar One MC. The OECD released components of Pillar One with some input from the business community, but the OECD did not offer additional consultations of the complete package. The ACC views this as a defect in a process designed to rewrite how countries tax multinational enterprises (MNEs).

The Pillar One MC represents a fundamental change in taxing rights established by the League of Nations in the 1920s. Specifically, current treaties rely on some form of physical presence in a jurisdiction as a precondition to tax business profits. The United States Model Income Tax Convention (2016) defines a permanent establishment as including some form of physical presence, such as an office or a factory, but also provides a specific carveout for a warehouse of goods.

The Pillar One MC departs from the concept of a permanent establishment as the minimum connection between a location and moves to a sales-based standard for nexus. The Pillar One MC establishes nexus over MNEs with € 20 billion with profitability of 10% or greater, based on modified financial statement revenue. Twenty five percent of the excess profits are then redistributed to market jurisdictions, which is referred to as Amount A. An MNE does need to take any intentional steps for its products to be sold in a market. For example, a component

manufacturer can sell to a third-party manufacturer that incorporates its inputs into a finished good that is sold in several markets. The component manufacturer could be subject to tax based on where its customer's finished goods are sold.

ACC has five observations and comments regarding the Pillar One MC. The first is on process. Business should have another opportunity to consult with the OECD and Inclusive Framework regarding the proposed changes after the release of the Pillar One MC. There have been numerous technical changes that will require our members to understand whether and how the proposed rules will apply. Second, a two-month domestic consultation period is insufficient. The ACC notes that the period for proposed regulations regarding reporting on digital assets¹ was extended by a month, and that regulatory package did not seek to fundamentally revise the international tax system.

The second set of comments addresses the need for delayed implementation due to the complexity of the Pillar One MC.

The potential complexity for ACC members is significant because of the requirement to resource the sale of component chemicals to the location of the sale of the finished good. Under Articles 6 and 7, the revenues of a manufacturer of components that are designed to be incorporated directly or indirectly into a finished good that will be sold are treated as “arising in the Jurisdiction in which the finished goods containing the component are delivered to the final customer.”² However, a chemical that is used in a process but does not become part of a finished good is not a component for purposes of Amount A. This will require ACC members to ascertain the use of the chemicals by their customers to separate use as a component.

The following example shows the complexity of the issue for chemical manufacturers. In the first example, Chemical Group 1 manufactures emulsions for a wide variety of applications. The emulsions are commonly used in the construction industry as part of backings on a variety of products, including carpeting, papers, as well as paint and caulking. Chemical Group 1 sells the chemicals to various construction industry manufacturers, who incorporate the emulsions into their products. The finished construction products are then sold across the globe to retailers, who ultimately sell the finished construction products to customers. Chemical Group 1 would need to either track the emulsions to ultimate sale of finished products or alternatively demonstrate other reliable factors to establish where revenue should be sourced. Some of the emulsions will be used by Chemical Group 1's customer in its manufacturing process and will not be part of a finished good. Chemical Group 1 will need to obtain the data from the customer to ensure the appropriate amount of chemical sales are treated as components versus end sales to manufacturers.

The complexity for ACC members could be reduced in one of several ways. First, Pillar One could be narrowed to eliminate business-to-business transactions. ACC members sell significant volumes of chemicals to other businesses and cannot track each sale through to the ultimate place of sale of finished goods. Alternatively, the exception for extractives could be expanded to include chemical manufacturers.

Some ACC members note the new Autonomous Domestic Business Exemption provision foreseen in the MLC. This provision allows to switch off Amount A's mechanism (both for profit allocation

¹ <https://www.federalregister.gov/d/2023-17565>

² Pillar One MC, Art. 7(1)(c).

and relieving purposes) for each country where an MNE does not exceed certain thresholds in terms of percentage of intercompany cross-border transactions and imports or exports of products compared to external sales generated by the entities established in the country. If a critical mass of countries or revenues meet the thresholds, the whole group may be out of the scope of Amount A.

This provision is very welcome for groups having a highly decentralized and local business model, for which the application of Amount A would lead to unintended consequences without any economic rationale.

However, ACC members would like to point out that the thresholds which are set as a cap for the Autonomous Domestic Business to be characterized are extremely low. In particular, the maximum deviation between revenues which are sourced to a jurisdiction per Amount A sourcing rules and the external revenues recognized by the group entities in that jurisdiction is plus or minus 5%: this is very low even for highly local businesses. The ACC members would like to suggest that the Inclusive Framework raise this threshold to 10%, which would be more realistic. Otherwise, the groups which benefit from these tests may face a “cliff effect” as soon as they cease to meet the thresholds, immediately entering in the extreme complexity of Amount A’s mechanism.

To the extent ACC members remain in scope of Pillar One, members will need significant time to hire additional staff and program to be able to capture the data required to capture ultimate place of sale, data that is currently not available. Members may also need to modify contracts to obtain the data from third parties regarding ultimate place of sale of finished goods or other data sufficient to generate reliable allocation keys. These changes are on top of significant burdens placed on the business community through the rapid implementation of Pillar Two. We recommend a multi-year delay to provide MNEs and tax authorities the opportunity to onboard the Pillar One MC. This will also allow tax authorities to hire and prepare for dispute resolution.

Our third observation is regarding potential design flaws in the Pillar One MC. ACC members have significant expenses related to the research and development of chemicals and processes. While market jurisdictions will claim a greater share of the profits, they do not want to share in the costs of development and management of such products. This creates an economic mismatch. The mismatch is pronounced where an MNE lacks any presence in the market other than the ultimate destination of its goods.

Similarly, it is unclear why there is any discount on withholding taxes collected by market jurisdictions. Withholding taxes should receive full credit against Amount A profits reallocated to a market jurisdiction.

The fourth set of observations address dispute resolution. The Pillar One MC moves in a positive direction for purposes of resolving both Amount A disputes and Related Issues. ACC supports mandatory binding arbitration to resolve cross-border disputes between countries. We believe it will play an important role if and when the Pillar One MC enters into force.

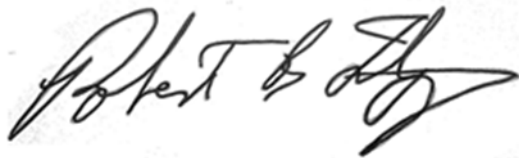
To reduce the instance of double taxation, the ACC recommends including mandatory binding arbitration beyond Amount A to include Related Issues. ACC members will be unable to obtain certainty if some countries can opt out of binding arbitration on transfer pricing, permanent

establishment, and other issues that will affect the distribution of Amount A. We are concerned that some Inclusive Framework members routinely prevent taxpayers from seeking relief from double taxation under an applicable treaty, which will prevent MNEs from receiving certainty under Amount A.

Finally, ACC believes in a robust Amount B³ that will provide certainty for routine services and sales. We look forward to a continued engagement with the OECD and Inclusive Framework on Amount B. Moreover, Amount A should not move forward without an enhanced Amount B.

ACC appreciates the opportunity to provide this feedback on the Pillar One MC. Thank you for your time and attention.

Very truly yours,



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³ Amount B would create a transfer pricing methodology safe harbor for in-scope marketing and distribution activities.