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December 11, 2023

The Honorable Janet Yellen
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Subject: U.S. Department of the Treasury, October 11, 2023, Press Release
Request for Comments, Draft OECD/G20 IF Pillar One Multilateral Convention Text
Via electronic submission

Dear Secretary Yellen,

Enclosed are comments on behalf of Novo Nordisk Inc. in response to the above referenced press release.

We appreciate the opportunity to provide our comments. If you have any questions or would like additional information, please contact me at your earliest convenience.

Sincerely,

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Novo Nordisk Inc. Comments on the
Draft OECD/G20 Inclusive Framework Pillar One Multilateral Convention Text
December 11, 2023

On October 11, 2023, the U.S. Department of the Treasury ("Treasury") announced a request for public input on the draft OECD/G20 Inclusive Framework ("IF") Multilateral Convention ("MLC") to Implement Amount A of Pillar One ("Pillar One MLC") and accompanying documents. Pillar One is being negotiated as part of the OECD/G20 IF Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy. Novo Nordisk Inc. ("Novo Nordisk" and/or the "Company") appreciates the opportunity to respond to Treasury's request for comments regarding the Pillar One MLC.[1]

Novo Nordisk's key focus is on discovering and developing innovative biological medicines and making them accessible to patients throughout the world. For the last century, the Company has been consistent in its overall mission to drive change to defeat diabetes and other serious chronic diseases such as obesity and rare blood and rare endocrine disease. Novo Nordisk has significant operations and provides medicine to approximately 4 million patients in the U.S. The U.S. operations include distribution, research and development, and manufacturing resulting in employment of nearly 6,000 people.[2]

In January 2019, the OECD/G20 IF issued a Policy Note that addressed the tax challenges of the digitalization of the economy and introduced its proposals into two pillars - one of nexus and profit allocation (i.e., Pillar One) and another on ensuring a minimum level of taxation (i.e., Pillar Two). Subsequently in January 2020, the OECD/G20 IF published a statement on the "…Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy".[3] The statement highlights the purpose of Pillar One to "expand the taxing rights of market jurisdictions" and defines Amount A as "a share of residual profit allocated to market jurisdictions using a formulaic approach applied at an MNE[4] group (or business line) level". Over time, the OECD/G20 IF made a series of developments on the specific provisions of Amount A and on October 11, 2023, the OECD/G20 IF published the Pillar One MLC.[5]

The Pillar One MLC provides a package of guidance on the application of Amount A of Pillar One. As Treasury contemplates its approach to negotiations with the OECD surrounding the implementation of Pillar One, Novo Nordisk appreciates the opportunity to provide its views on elements of Amount A put forth in the Pillar One MLC.

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[1] The Draft Multilateral Convention Text was released on October 11, 2023.

[2] Novo Nordisk A/S is a global healthcare company headquartered in Denmark. Novo Nordisk Inc. is a wholly owned U.S. subsidiary of Novo Nordisk A/S. The company facts outlined in this letter are representative of the global organization.

[3] OECD (2020), Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy – January 2020, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps-january-2020.pdf

[4] Multinational Enterprises ("MNE")

[5] OECD (2023), The Multilateral Convention to Implement Amount A of Pillar One. – October 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/multilateral-convention-to-implement-amount-a-of-pillar-one.pdf

Comments Regarding Determination of Covered Groups Subject to Amount A

Introduction

Pursuant to Part I, Article 1 of the Pillar One MLC, the Convention applies only to the Group Entities of Covered Groups and provides that guidance is contained within the Pillar One MLC on the identification of a Covered Group. Part II, Article 2 defines three key terms which can be used to determine what is considered to be a Covered Group:

- "Group Entity" is defined as an entity that is included in a "Group"
- "Group" is defined as an "Ultimate Parent Entity" ("UPE") and any other entities whose assets, liabilities, income, expenses, and cash flows are included in the Consolidated Financial Statements of the UPE.
- "UPE" is generally defined as
  a) an Entity that directly or indirectly owns a Controlling Interest in any other Entity; and
  b) is not directly or indirectly owned by another Entity with a Controlling Interest.

Part II, Article 3 specifically addresses the definition of what is considered a "Covered Group" for purposes of Amount A, which indicates that a Group is a Covered Group for a period if it has in that period adjusted revenues greater than EUR 20 billion and a pre-tax profit margin greater than 10 percent. We have noted for Scope Determination purposes, the Pillar One MLC also indicates that disclosed segments reported by the group are subject to the Amount A calculation if the Group fails the profitability test.

With respect to the current guidance included in the Pillar One MLC, it is not clear as to how to determine the Group for which the calculation and allocation of excess profits should apply under certain circumstances. Additional clarity is needed to assist in determining the proper Group, such as when a publicly traded company that files a consolidated set of financial statements is owned by a legal entity that holds the majority of votes but a minority of capital ("controlling shareholder") which may or may not issue its own independent set of financial statements that include the publicly traded entity financial data.

Proposed Approach

In the example referenced above whereby a publicly traded company is owned by a legal entity that is the controlling shareholder, an additional exception is requested for the publicly traded company to be treated as the Group for which the calculation and allocation of excess profits should apply. If the UPE is not publicly traded but has a controlling interest in a publicly traded company, we propose that the next entity that is directly or indirectly owned who is publicly traded should be deemed the "UPE" and considered a separate segment. This segment would be responsible for their consolidated group's Amount A calculation, separate from the Amount A calculation of the controlling shareholder and would ensure that both parties conform to the Amount A guidance separately. We request that this proposal be applied for both the initial Scope Determination and the subsequent determination of the deemed UPE that will be subject to the Calculation and Allocation of Profit.

Discussion of Proposal

The proposed approach of providing an exception to allow for the deemed UPE to be the publicly traded company instead of an entity that is a controlling shareholder will allow for several benefits to companies in preparing the calculation and allocation under Amount A. These benefits would include mitigating concerns with the following:

- Confidentiality Maintenance- If a controlling shareholder is deemed the UPE, the publicly traded company bears a confidentiality risk in attempting to conform to the Amount A guidance by releasing their information to the controlling shareholder. This contains more detailed, sensitive source information needed to determine the Amount A calculation which the controlling shareholder is not privy to and is not contained within the consolidated financial statements that are released to the public.
- Control Over the Calculation/Allocation- The controlling shareholder would not be willing to share their calculation of the overall Amount A because it contains sensitive information for other legal entities in which it has an ownership interest in. This would be concerning as the controlling shareholder would provide the amount to be allocated to each entity without affording them the ability to validate the inputs and merits of the calculation. Further, the publicly traded company would not be able to reliably forecast or manage its profit allocation used to calculate the jurisdictional tax expense. This would be due to Amount A being impacted by the sales and operating profits realized by other companies/groups sharing the same controlling shareholder.
- Administrative Burden- Requiring the calculation to be performed at the controlling shareholder level will require an intense collaborative effort between various parties that will need to provide inputs to the calculation. This will prove to be administratively burdensome and difficult to implement. Further, entities providing input to the calculation may not be willing to share some of the information needed to perform the calculation.

A publicly traded company filing a consolidated financial statement should already have access to all the information needed to complete the calculation for its own consolidated group. Thus, the proposed approach would ensure that the deemed UPE would not bear a confidentiality risk and allow them to be responsible for their own segment's Pillar One Amount A calculation.

Comments Regarding Revenue Sourcing Rules for the Sale of Finished Goods

Introduction

In determining the market jurisdictions that are eligible to tax a portion of the MNE's "excess profit" under Amount A, companies are required to classify consolidated revenue into categories and apply specific sourcing rules to identify the jurisdictions where the goods or services of the MNE are consumed or used (i.e., the market jurisdiction to which the revenues are allocated). Part III, Article 7 of the Pillar One MLC provides certain principles to be followed for the purpose of identifying a reliable method to determine the jurisdictions in which the adjusted revenues of a Covered Group shall be treated as arising. Specifically, Article 7(1)(a) addresses the sourcing method of "Adjusted

Revenues derived from the sale of finished goods…" and indicates that it "…shall be treated as arising in the Jurisdiction in which the finished goods are delivered to the final customer."

The MNE must then meet the reliability tests outlined in Article 6(3)(b) to establish that the information used to determine the jurisdiction in which the finished goods are delivered to the final customer is reliable. If this information does not meet the reliability tests and is not deemed reliable, Article 6(4)(c) indicates that the MNE must use a global allocation key to source the Adjusted Revenues to market jurisdictions. This global allocation key is based on jurisdictional macroeconomic factors, such as final consumption expenditure published by the United Nations for a particular jurisdiction.

Proposed Approach

Article 7(1)(a) requires that the sourcing of the finished goods be determined based upon where they are delivered to the final customer. For companies that sell their products to a third party wholesaler, retailer or distributer, this information is not available without obtaining the data directly from each third party customer which it contracts with. While obtaining this information from a third party is considered to be reliable under Article 6(3)(b), the data could be difficult to obtain from the third party customers due to confidentiality concerns or unwillingness to share, and the MNE would not have a means for validating that the data being provided meets the reliability test requirements.

Separately, there is also a risk that the information available to the MNE either through its own means or obtained from a third party will not be deemed reliable under any of the reliability tests, resulting in the MNE being required to leverage jurisdictional macroeconomic factors to determine the sourcing.

In light of the above considerations, we request that a provision is added which would allow the MNE to use a different sourcing method if it is unable to generate the data itself for commercial purposes or to fulfil legal, regulatory, or other related obligations. Our proposed method is to source the revenue to the jurisdiction in which the finished goods are delivered to the first third party customer (i.e., the third party wholesaler, retailer, or distributer) as opposed to the jurisdiction in which the finished goods are delivered to the final customer.

Discussion of Proposal

A MNE in the pharmaceutical industry who primarily sells to third party wholesalers, retailers, and distributers bears a significant level of complexity and takes on an administrative burden in determining the jurisdiction in which the finished goods are delivered to the final customer. The proposed approach of the alternative sourcing method would allow for several benefits to companies in preparing the calculation and allocation under Amount A. These benefits would include mitigating concerns with the following:

- Complexity and Administrative Burden- Once a MNE sells to a third party, information regarding the movement of goods from one jurisdiction to another is not readily available within the MNE. As a result, the MNE must request sourcing information from each of the third party customers to determine where the finished goods are delivered to the final customer. This places an extreme administrative burden on both the MNE and its third party customers who may or may not be subject to the Pillar One rules (thus may not have this information readily available).

- Confidentiality Concerns & Additional Compliance Costs- In many cases, third party customers will be unwilling to share this information due to confidentiality concerns. This could require the MNE to incur additional costs to hire an independent service provider (subject to its own confidentiality provisions) to collect and consolidate sourcing information. Further, even with the independent service provider, the third party customer may not be willing to provide the necessary information to perform the calculation.
- Reliability Test Validation- Article 6(3)(b)(i)(B) indicates that information must be collected by the third party provider for its own commercial purposes or pursuant to its own legal obligations to pass the reliability test. It is unclear in the Pillar One MLC whether the information from a third party provider indicating the jurisdiction of the final customer will always pass the reliability tests. Further, the MNE will have no way of validating that the reliability test is passed.

The proposed approach would reduce the complexity, costs, and administrative burden of a MNE in obtaining this level of information. Additionally, the proposed approach would ensure that each independent taxpayer is responsible for their own Pillar One Amount A calculation. In practice, this mechanism results in the MNE and the third party bearing their own responsibility in determining the jurisdiction of their first third party sale to source their Adjusted Revenues. Finally, the proposed approach avoids the MNE being required to rely on jurisdictional macroeconomic factors to determine the sourcing which are outside of its control and may or may not be indicative of its true finished goods sourcing.

Comments Regarding Elimination of Double Taxation

Introduction

Part III, Article 5 of the Pillar One MLC provides for adjustments to be made to avoid double counting profits and introduces the Marketing and Distribution Safe Harbor ("MDSH") adjustment which reduces the profit amount allocated to a market jurisdiction to the extent that there would otherwise be "double counting" (i.e., the eligible market jurisdiction already has taxing rights over the MNE's "excess" profit under existing rules). In determining the MDSH adjustment, the MNE must begin with jurisdictional profits relevant to the Elimination of Double Taxation (outlined in Part IV of the Pillar One MLC) and apply any relevant upward adjustment for withholding tax. Then, excess profits are to be offset against Amount A allocations to ultimately avoid taxing the same profit twice in the same jurisdiction.

The Elimination of Double Taxation provision ensures that there is relief from double taxation which may arise from the interaction of Amount A with the existing international tax system. To calculate such relief, each group entity and jurisdiction is placed in a tier-based system based on its jurisdictional return on depreciation and payroll ("RODP"). The RODP is then used as a mechanism to identify relief entities entitled to the elimination of double taxation.

Proposed Approach

Instead of approaching the calculation by separating the MDSH adjustment using RODP and then eliminating double taxation, we propose simplifying the calculation by grouping the two concepts together and instead applying a percentage based upon each jurisdiction's share of the group profit of the consolidated group.

Discussion of Proposal

For a MNE to calculate the MDSH based on RODP and the Elimination of Double Taxation calculation using the tier-based system under the RODP, the MNE would need to track the depreciation and payroll in each jurisdiction separately. Further, it must then hold separate legal entity and jurisdictional calculations to determine the appropriate allocation mechanism based on its tier. The proposed approach simplifies the calculation, as well as reduces the administrative burden and complexity of holding separate jurisdictional RODP calculations.

Conclusion

Thank you for your consideration of the above issues and recommendations. We appreciate the significant time, resources, and efforts being allocated by Treasury to negotiate the fair and proper implementation of Pillar One. If you have any questions in the interim, please feel free to contact Paul Hoogsteden, Head of U.S. Tax at (609) 712-0650 or PHOG@novonordisk.com.