

MEDICAL DEVICE COMPETITIVENESS COALITION

Comments on the Draft OECD/G20 Inclusive Framework Pillar One Multilateral Convention Text

December 11, 2023

The Medical Device Competitiveness Coalition (“MDCC”) is composed of five medical device manufacturers with significant operations in the United States.¹ Together, MDCC companies employ over 120,000 people in the United States and over 300,000 globally. We lead the world in the development, manufacturing, and commercialization of innovative devices that save and improve the lives of patients around the world. MDCC companies resemble the “bricks and mortar” industry profile from past decades. We create jobs and capital investment in the jurisdictions in which we develop, manufacture, and sell our products. For our industry, the Arm’s Length Standard (“ALS”) works to appropriately allocate taxing rights of our global consolidated profits among the jurisdictions in which we make those investments and maintain those important functions.

The MDCC appreciates the opportunity to comment directly to the U.S. government on the draft OECD/G20 Inclusive Framework Pillar One Multilateral Convention (the “MLC”). As the U.S. Treasury’s press release states, this is “the first time that a complete draft text of the Pillar One MLC documents is available to the public.” We applaud the U.S. Treasury for its efforts to have the OECD release the MLC and for seeking input from the business community. Our comments focus on the broad question of whether the MLC will achieve one of its primary objectives, i.e., to “ensure stability and certainty in the international tax framework.”² In the MDCC’s view, the MLC will not achieve that objective.

The complexity and arbitrariness of the MLC cannot be overstated. It is 212 pages that is attempted to be explained by another 638 pages. Arbitrary rules and formulas are used throughout the MLC, from scope, to revenue sourcing, to calculations of profits allocated to market jurisdictions, to the determination of the marketing and distribution safe harbor, to the identification of relieving jurisdictions, to the calculation of profits subject to double tax relief. And even after all this complexity, there is still a lack of clarity on how the MLC interacts with Pillar Two and Pillar One Amount B to provide certainty and avoid double taxation in an efficient manner. In addition, since the MLC disproportionately affects U.S. taxpayers, guidance on interaction with the U.S. foreign tax credit rules is imperative for taxpayers to understand the consequences of the MLC.

The MDCC recognizes the challenges posed by today’s reliance on the ALS and applauds the OECD’s attempts to improve our international tax system with a more administrable and objective process. Unfortunately, we believe that taxation of

¹ Abbott, BD, Edwards Lifesciences, Medtronic, and Zimmer Biomet.

² Preamble to the MLC.

international trade is innately complex and the idea of achieving harmony with the MLC's one-size-fits-all system layered on top of the ALS only adds a new level of complexity and is misguided.

We also appreciate the MLC's attempt to provide a "Tax Certainty Framework" that includes binding dispute resolution, but we are skeptical that the MLC's system of review panels and arbitrary formulas will lead to consistent outcomes, reduce controversies, or prevent double taxation. Rather, we believe other countries will continue to seek more revenue from companies like ours, both under the MLC and through continued aggressive audits.

We believe it is impossible to understand the impact of the MLC without detailed and complicated modeling, which can produce arbitrary and anomalous outcomes. This illustrates the MLC's overall complexity and the fact that the MLC is not grounded in any principled policy or established precedent. As stated above, MDCC companies are already appropriately subject to tax on the earnings generated from our global investments. In the MDCC's view, it is time to pivot away from the MLC's arbitrary and overly-broad approach and instead focus on the narrower problems of the proliferation of digital services taxes and how best to consider nexus and allocation of taxing rights for the digital economy.
