UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

December 5, 2023

VIA EMAIL

U.S. Treasury Department
OTP_Pillar1MLC@treasury.gov

Re: USCIB comments on U.S. Treasury request for "public input on the draft OECD/G20 Inclusive Framework Multilateral Convention to Implement Amount A of Pillar One (Pillar One MLC) and accompanying documents."

Dear Sir or Madam,

The Tax Committee of the United States Council for International Business ("USCIB") submits the comments in this letter in response to the formal U.S. Treasury request for public input on the draft OECD/G20 Inclusive Framework Multilateral Convention to Implement Amount A of Pillar One (hereafter, the "Amount A MLC") and accompanying documents.

The USCIB Tax Committee consists of over 460 tax experts that derive from USCIB's dues-paying members, which include leading U.S.-based global companies from every sector of the U.S. economy and professional advisory firms. The comments herein generally reflect the consensus position of the USCIB Tax Committee, unless otherwise noted.

Introduction

We value the work that U.S. Treasury, the other members of the OECD / G20 Inclusive Framework on BEPS (the "IF"), the OECD Secretariat, the Task Force for the Digital Economy ("TFDE"), and the OECD technical working parties (collectively, the "drafters" or "negotiators") have undertaken to date in designing and drafting the rules for the Amount A MLC.

In our past consultation letters to the OECD on the design elements of Pillar One we consistently asked for the opportunity to review and comment on the totality of the Pillar One solution as captured in a comprehensive version of both the Amount A MLC and the Amount B rules (intended to be included in the OECD Transfer Pricing Guidelines in early 2024). We have that opportunity with the Amount A MLC consultation request of October 11, but we are restricted in the detail of our response given the relatively short consultation period for a package of documents exceeding 850 pages with novel mechanisms, procedures, and other features in its technical operation and its administration. In its release announcing the consultation, U.S. Treasury acknowledged the challenges inherent in evaluating the Amount A MLC:

1400 K Street, N.W.
Suite 525
Washington, D.C. 20005
www.uscib.org

> Because of the breadth and complexity of the changes proposed, we view public input as critical to our process—to ensure transparency, to facilitate the resolution of several remaining open issues, and *to hear whether the proposed framework would be workable for U.S. taxpayers and other stakeholders*.[1]

In addition to coming to terms with the breadth and complexity of the Amount A MLC itself, it will be of critical importance to understand the forthcoming U.S. foreign tax credit regulatory guidance related to taxes imposed under Amount A. USCIB member companies will only be able to assess the full financial and operational impacts of Pillar One once all these documents, along with the pending Amount B guidance, are available and reviewed together.

We note that the formal Amount A MLC consultation is at the request of U.S. Treasury, not the OECD. To our knowledge, the United States and Finland are the only IF members to launch a formal consultation on the Amount A MLC. Given the high proportion of U.S. companies subject to the Amount A thresholds, we believe it is appropriate and essential to seek feedback from the U.S. business community and appreciate this important opportunity to ensure that the rules are practical and work effectively. We consider the Amount A MLC with this in mind. We also note Secretary Yellen's earlier statements that the final Amount A MLC text will not be available for signing at 2023 year-end as per the latest timeline but a revised timeline is not yet confirmed. We therefore consider this pause to consult as an important opportunity to share some comments and consider next steps. The third purpose excerpted above in U.S. Treasury's release—determining "whether the proposed framework would be workable"—has guided our review of the Amount A MLC.

The U.S. Internal Revenue Service (IRS) will play many roles under Amount A, as lead tax administration, market jurisdiction, and relieving jurisdiction. The disproportionate number of U.S. multinational enterprises ("MNEs") covered by Amount A and the administratively burdensome tax certainty process under the Amount A MLC will mean that significant IRS resources will need to be dedicated to support these processes, and if these needed resources are not available, there is a risk of having to divert such resources from existing tax certainty functions that play a critical role in the avoidance of double taxation for U.S. MNEs. Accordingly, if the United States becomes a party to the Amount A MLC, appropriate resources and funds for the IRS—and in particular, resources dedicated to the U.S. competent authority—will be needed.

Executive Summary

We recognize that this advanced version of the Amount A MLC includes material improvements from last year's interim design proposals that reflect U.S. business input in the related formal OECD consultation rounds. These improvements include some consideration of withholding taxes and some accommodations for autonomous domestic businesses in the calculation of Amount A. However, other changes in the marketing and distribution safe harbor ("MDSH") and the elimination of double taxation ("EODT") designs may introduce new anomalies for at least some in-scope companies, based on member modeling. It is difficult to discern the relative impact of these changes in this version of the Amount A MLC because they will necessarily impact companies in varying degrees. We recognize that the computationally-heavy design decision—

[1] Emphasis added.

intended to reduce potential conflicts arising from differing interpretations of company specific factual circumstances—is likely to result in outcomes that may not be consistent with the stated goals of Amount A, at least in some instances, for both companies and countries. These aspects need to be clearly understood and accepted by all policymakers that may be affected.

We support the continued engagement of the negotiators on the Amount A MLC text to ensure it is workable across the broad group of in-scope companies. We intend the recommendations in this letter to be meaningful guidance to enhance the success of a final Amount A MLC text. In evaluating a next draft of the Amount A MLC we would also expect to see guidance on the relationship between Amount A and Pillar Two calculations and a final version of the Amount B rules reflecting the key input in our September 1, 2023, consultation letter and intervening discussions with U.S. Treasury.

Considering the likely alternative of further unilateral measures and other actions that may be taken by countries in lieu of a multilateral solution, we encourage U.S. Treasury to remain engaged in the process to achieve a comprehensive conclusion of **all** remaining final design features. Specifically, we would like to highlight the following:

- A solution that causes double taxation is not sustainable over the long run and therefore should be a key concern for governments and the U.S. business community, and we have highlighted areas where we see significant risk of double taxation in the Amount A MLC.
- In particular, it is critical to clearly delineate the interaction between Pillar One, Pillar Two, and the U.S. foreign tax credit regime, as effective relief from double taxation may be impossible if these regimes are not appropriately coordinated.
- The lack of access to the Amount A certainty process in the event of one or more unilateral audits will effectively force taxpayers to opt for a certainty process that could take more than four years. Even where double taxation is ultimately relieved, relief may be unreasonably deferred. Rather than simply defer to domestic law for the timing of relief, the Amount A MLC should mandate that relief be provided early in the process.
- As we have highlighted in the past, the sourcing rules do not align with data collected in the ordinary course of business and will force businesses to use allocation keys that do not reflect the realities of their business or bespoke methodologies agreed in the advance certainty process. This makes it imperative that proper resources be allocated to advance certainty review panels, and that panels provide flexibility for MNEs to devise workable methodologies that align with operational realities.
- While we appreciate the necessity for political compromises, further compromise on the withholding tax provisions of the Amount A MLC would undermine its objectives and risks over allocating profits to market jurisdictions. It would be preferable that these rules, and the outcomes of applying them, be grounded in sound tax policy principles.
- Exceptions to the definitions of digital services taxes ("DSTs") and relevant similar measures ("RSMs") must not be so broad that they undermine the Amount A MLC's overall objective of stabilizing the international tax system. These definitions should be refined, as discussed in detail below.
- Progress on Amount B, including further work to expand its scope beyond the wholesale distribution of tangible goods, is necessary to stabilize the transfer pricing audit environment. To provide meaningful simplification and certainty, Amount B should be designed and implemented in a coordinated fashion, such that the application of Amount B in one

jurisdiction is respected in the counterparty jurisdiction. Where Amount B does not apply, robust tax certainty mechanisms are needed to effectively and efficiently eliminate and prevent double taxation.

If these objectives can be delivered, U.S. Treasury may be able to approve a final, complete Pillar One package next year, and provide the U.S. Congress with the time and capacity to consider adopting the package.

Detailed Comments

1. Autonomous Domestic Business Exemption

USCIB welcomes the inclusion of the autonomous domestic business exemption ("ADBE") concept in the computation of Amount A. In many instances this will ensure that grossly distorted outcomes will not result from the application of Amount A, e.g., when a sizable autonomous domestic business experiences profit margins that vary significantly from the overall group. Unfortunately, as currently drafted, the ADBE is unlikely to preclude grossly distorted outcomes for conglomerate groups operating both an autonomous domestic business and other businesses in the same jurisdiction. USCIB members consider that a Covered Group should be able to apply the ADBE to separately reported results (including separately stated lines of business within a broader segment) that are included in the public financial statements of the Covered Group. To avoid complexity, it may also be appropriate to limit the application of the ADBE to situations where the activities of the autonomous domestic business exceed a certain threshold (such as a percentage of revenues of the overall group).

USCIB members note that the current design of the ADBE has a significant cliff effect[2] if either the 15% revenue or 15% expense threshold is exceeded. For this reason, members suggest consideration is given to the addition of a second threshold at less than 20% where an exclusion of 80% of that jurisdiction's income could be achieved. Alternatively, we recommend that some relief be provided if an MNE does not meet the expense/revenue thresholds in a given year due to a change in business facts in such year, following the relief provided in respect of the ADBE condition relating to revenue sourcing.

2. Marketing and Distribution Profits Safe Harbor

2.1. Policy objective

The Report on the Pillar One Blueprint issued in 2020 (the "2020 Blueprint") described the OECD and IF's policy intent of the Marketing and Distribution Profits Safe Harbor ("MDSH") as follows:

[2] A "cliff effect" in this regard is the situation in which a small change in the underlying business facts and/or the input variable in the Amount A calculation can result in a disproportionate change in the outcome/tax effect. For example, if the underlying business facts that may cause a jurisdiction to be exempted under the domestic business exclusion change by a very small amount such that the business no longer qualified for the domestic exclusion, the result could significantly and disproportionately increase the profits reallocated under Amount A.

> The premise of the "marketing and distribution profits safe harbour" is that Amount A should be allocated to a market jurisdiction that is not allocated residual profits under the existing profit allocation rules but should not be allocated to a market jurisdiction where (for its in-scope activities) an MNE group already leaves sufficient residual profit in the market. It would not be a traditional safe harbour but would instead "cap" the allocation of Amount A to market jurisdictions that already have taxing rights over a group's profits under existing tax rules. Conceptually, it would consider the income taxes payable in the market jurisdiction under existing taxing rights and Amount A together and adjust the quantum of Amount A taxable in a market jurisdiction, on the basis of limiting it where the residual profit of the MNE group is already taxed in that jurisdiction as a result of the application of the existing profit allocation rules.[3]

USCIB members remain concerned that the MDSH does not adequately deliver on this objective, based on a number of USCIB members' initial modeling of the impact of the proposed MDSH rules. This means that the current design of the MDSH will frequently not cap the allocation of Amount A to market jurisdictions that already have taxing rights over the residual profits of a Covered Group. This limits the potential contribution of the MDSH to greater tax certainty, as there will be only a limited incentive for tax administrations to cease making non-arm's length transfer pricing adjustments, knowing that this would lead to a corresponding reduction in the profits allocated to the jurisdiction under Amount A. USCIB members are particularly concerned by the following design features of the MDSH:

1. *De minimis* threshold of €50m;
2. Determination of normal or routine profit;
3. Proposed jurisdictional offset percentages;
4. Reductions to the Withholding Tax Upward Adjustments; and
5. Risk that these design features are amended in the future.

Of particular concern and discussed in further detail below is the treatment of withholding taxes. Even under the mechanics of the current Amount A MLC, it appears from modeling performed by one of our members that the withholding tax adjustments may be the primary driver of whether the MDSH is effective in avoiding double counting of taxable profits in market jurisdictions, and the countries objecting to the withholding tax provisions within the Amount A MLC text are some of the primary countries for which this calculation holds true. The MDSH and, therefore, the entire Amount A MLC will fail to meet its purpose if an effective withholding tax adjustment is not provided in the final text.

[3] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. Page 124, paragraph 501.

2.2. *De minimis* threshold

The MDSH contains a *de minimis* threshold that prohibits its application for jurisdictions in which a Covered Group has taxable profit less than €50 million, and hence will significantly limit the number of jurisdictions where the MDSH applies. In practice, the de minimis threshold is too high, resulting in the inability to apply the MDSH for very large market jurisdictions. For example, if a group's transfer pricing policy allocates an operating margin of 5% to its distributors, a jurisdiction would need to generate €1bn in revenues before the MDSH could potentially apply. The MDSH *de minimis* threshold is disproportionally high when compared to the low nexus threshold for Amount A of €1m, which is further lowered to €250,000 for jurisdictions with a Gross Domestic Product (GDP) of less than €40bn.[4]

The combination of these thresholds means there will be many jurisdictions where the MDSH will not apply in any circumstances. As a result, MNEs will potentially face double counting of residual profits in many jurisdictions. In addition, these jurisdictions will still be able to pursue aggressive, non-arm's length transfer pricing adjustments without this negatively impacting the additional profits they are allocated under Amount A. We recognize that such adjustments may be subject to mandatory, binding dispute resolution mechanisms, if the relevant intragroup transaction is covered by a tax treaty. However, we also note that not all intragroup transactions are covered by such treaties and that the cost of mutual agreement procedure (MAP) may make pursuing any mandatory, binding dispute resolution mechanism uneconomical. For these reasons, USCIB members support a substantial lowering or elimination of the *de minimis* threshold.

2.3. Determination of normal or routine profit

Within the MDSH calculation, a jurisdiction's normal or "routine" profits are defined as the higher of (1) marking up the jurisdictional depreciation and payroll by a ratio equal to 10 percent of the Covered Group's sales over the group's depreciation and payroll, or (2) three percent of adjusted jurisdictional revenues. This determination of "routine" profits is not consistent with the definition of "routine" under traditional transfer pricing principles and, for marketing and distribution jurisdictions, may yield results that are not consistent with the anticipated design of Amount B.

To promote a more consistent architecture in Pillar One and prevent double counting of profits, it will be important to have consistency between Amount A and Amount B where possible. In certain instances, the return in a market jurisdiction determined under traditional transfer pricing may be below the 10% Return on Depreciation and Payroll Elimination Threshold. In these situations, there may be incentive for a tax authority to audit an MNE's operations and increase taxable income outside of Amount A up to the level of the Elimination Threshold. To effectively guard against this, access to the comprehensive certainty review process should be available in

[4] The very low nexus thresholds continue to raise questions about the overall efficiency of the Amount A design. Based upon modeling, these small jurisdictions may collect a nominal amount of tax from each Covered Group. It is conceivable that the additional resources necessary to administer the Amount A tax system coupled with the complexity of the rules may result in an administrative cost to these small jurisdictions that exceeds the additional revenue to be collected.

the case of a unilateral audit, and a peer review process should monitor whether tax examiners propose adjustments based on theories that have previously been considered and rejected in the Amount A certainty process. Such an approach may allow jurisdictions to collect additional revenue (which may not be in line with the arm's length principle) without impacting their guaranteed Amount A allocation.

2.4. Proposed Jurisdictional Offset Percentages

The proposed jurisdictional offset percentages of 90 percent for low depreciation and payroll jurisdictions, 25 percent for other jurisdictions that are Lower Income Jurisdictions, and 35 percent for other jurisdictions that are not Lower Income Jurisdictions, further reduces the impact of the MDSH. Relying on a depreciation and payroll metric to determine which offset percentage applies means that investing in new facilities in a jurisdiction could materially impact the application of the MDSH in that jurisdiction. Moreover, USCIB members continue to believe that all profits above a routine return give rise to double counting and thus should be available to offset against Amount A. We believe the jurisdictional offset percentage should be deleted.

2.5. Reductions to the Withholding Tax Upward Adjustments

It is a positive step that the Amount A MLC (through the MDSH) recognizes that market jurisdictions can and do use withholding tax to tax Covered Group's residual profits, and that withholding taxes should therefore be accounted for in the MDSH. The Withholding Tax Upward Adjustment is subject to three separate limitations, a reduction factor varying between 15 percent and 70 percent, an exclusion for normal or routine profit, and the jurisdictional offset percentage (discussed above). The effect of this means that amount of profit accounted for when computing the MDSH will typically be 20 percent to 50 percent of the "withholding tax upward amount" (i.e., the profit that would need to be booked in a jurisdiction to give it equivalent taxing rights to that claimed through withholding tax).

USCIB members consider that there should be no reduction to the Withholding Tax Upward amount. The modeling indicates that the withholding tax adjustments are critically important in policing jurisdictions from double counting both Amount A and other source-based taxation methods on excess profits. Withholding tax adjustments must be part of any workable final Amount A MLC and the United States should not agree to any further dilution of this important feature. We also believe the haircut percentages are inappropriate.

We are also concerned with the long transition period in accounting for the effects of withholding tax through the MDSH. The transition period is, at a minimum, seven years, with the possibility of extension beyond that period. For the first two years of the transition period, the MDSH does not account for withholding tax at all, and it only takes into account a reduced fraction until the end of the transition period.

USCIB members recognize that these outcomes are the result of political compromise among the IF members. Further compromise on this matter would undermine the principles behind Amount A. We suggest that the transition period be eliminated so that withholding taxes can be accounted for from the onset of the effective date of the Amount A MLC.

2.6. Risk that these design features are amended in future

The MDSH also contains a series of variables that play a significant role in determining the precise calculation of Amount A profit that is eliminated and not available for surrender to market jurisdictions. Various officials representing IF countries have stated these variables represent a negotiated outcome between OECD and IF countries. Due to the fact these are negotiated values, we are concerned the variables can be adjusted in the future to arrive at more results-oriented outcomes after jurisdictions are able to see calculations in practice. This potential lack of stability in the Amount A design is particularly concerning because it leaves open the possibility that key tax policy makers outside of the OECD (e.g., the United Nations) could attempt to influence the design of the MDSH in future years to yield a more favorable (and less economically rational) result for small and/or developing economies.

3. Revenue Sourcing

We welcome the simplification of the Amount A MLC sourcing rules in response to the business community's input on the earlier OECD design drafts. However, we believe the current rules remain excessively burdensome and will lead to considerable implementation challenges. These rules can be further simplified and made more practical.

The rules around sourcing of revenue and allocation of profits must recognize the unique business models and supply chain structures inherent in different sectors. The current approach may not adequately address the nuances of all industries, leading to potential misalignment with economic realities.

In particular, we are concerned that the sourcing rules for many business-to-business revenues will nearly always result in the default selection of an allocation key or in the use of a bespoke agreed methodology. This will either result in a distorted allocation of profits (in the case of an allocation key) or in a significant compliance burden (in the case of a bespoke method). Expanding the lists of permissible indicators to include commonly available information such as billing addresses would address these issues.

3.1. General Comments

We recognize that there have been improvements to the sourcing rules for Amount A in response to prior comments. It is noteworthy that there are predominant character rules and that certain guiding principles are made clear, for example, the expectation that companies should be able to rely on commercial and other available information rather than the need for new reporting obligations. We appreciate the ability in some cases to rely on allocation keys. However, some of the examples help demonstrate how companies would navigate the rules where data for enumerated reliable indicators is not available.

We appreciate the improvements and clarifications of intent in the text and examples. We simply wish to note that, since many of the enumerated reliable indicators are unlikely to be available to companies, it will be very common that companies will need to work with advance certainty

review panels (after an Amount A return has been filed) to devise actual compliance processes that reflect these principles but also pull from available data.

Inclusion of the "reliable indicator" and permission to use certain allocation keys are welcome inclusions. However, the rules are still very complex to implement. We would expect that companies will have to introduce additional IT and work process requirements to ensure sales are accurately captured in line with the rules in the Amount A MLC. Such changes will not be easy to implement and will require additional resources to effectively manage.

In this regard, the negotiators should allow for sufficient time for the in-scope MNEs to implement Amount A. In general, the implementation will be a significant undertaking. We suggest that the Amount A MLC should come into effect at least 2 years after the threshold signatory requirements are satisfied.

The *de minimis* thresholds are of no practical benefit. Even on its face, the scope of Amount A is currently limited to MNEs with greater than EUR 20B revenue. For developed countries at a EUR 1M revenue threshold, this amounts to 0.005% of global revenue. For 'low GDP' countries this amounts to 0.00125% of global revenue. This will likely only eliminate a very small number of jurisdictions from the Amount A calculation, based on the modeling by some of our members and requires new compliance filings in jurisdictions that have immeasurably small connections with the actual business being taxed. The modeling demonstrates that at least one member is likely to have an Amount A liability in more than 180 countries, many with a net tax due of less than EUR 50K. We note that if the 100 in-scope MNEs have a similar profile in these "small" countries, the net tax collection from Amount A will be approximately EUR 5 million per country. The *de minimis* thresholds should therefore be increased to at least 10 million EUR in revenue or should be measured via a minimum level of tax due in a surrender jurisdiction (for example, at least EUR 50,000).

3.2. Sourcing of Other Services—Annex D, section F

For sourcing of Other Services (including cloud computing services), we welcome that the revised rules for "Large Specific Customer" seek to remove requirements that service providers request additional data from their customers. However, by requiring businesses to segregate customers into three groups (resellers, large customers, and small customers) to apply different allocation methods can require information not routinely contained in systems or obtained from customers as a matter of course. The rules remain onerous and difficult to implement. There can be a million accounts, with accounts of a single customer linked, and data on whether a customer meets the definition of reseller contractually limited to resale with no input into a different service would be difficult to systematically obtain.

Further, some customers are both consumers of services and also resellers, meaning that the application of the rules will require segregating the revenues from services that are used as a customer versus those which are used for resale to apply the different sourcing criteria, which may be impractical or impossible in some cases.

For Large Customers, the Amount A MLC calls for the headcount allocation key to be used, which requires a different allocation to be applied for each location that Large Customers have their

headquarters. This will be extremely burdensome and may not be practically possible from a timing perspective, as it would require taxpayers to segregate their customers into a subset of Large Customers, obtain customer-specific information as to those customer's HQ location (which may not be knowable based on public data), to then determine the appropriate allocation key.

The "reasonable efforts" requirement for information of specified large customers is unnecessarily subjective and creates uncertainty and undue burden for Covered Groups. The term "client file" is used in the Explanatory Statement but is left undefined and leaves open significant uncertainty as to what standard would be required of a Covered Group to determine if it has such information in its possession. Instead, there should be clearly defined guidance as to what would be considered reasonable efforts (e.g., looking at any contracts or customer intake forms). Further, it is not clear that sourcing revenue based on aggregated headcount data produces a more reliable result than the address of the immediate service recipient.

3.3. Definition of Online Intermediation Services—Article 7, subsection 1(d)

When considering the provisions in a more general context for payment processors, especially with the ambiguity around the definition of "online intermediation services," several issues arise. Without a clear definition of "online intermediation services," it's challenging for payment processors to ascertain if they even fall under the purview of "online intermediation services". The impacts of which can result in a different source rule in comparison to other services.

For example, if a payment processor is characterized as offering online intermediation services, it would be required to source revenue as arising as 50 percent in the jurisdiction in which the purchaser is located and 50 percent in the jurisdiction in which the seller is located. Article 7, Subsection 1(d)(iv). Alternatively, if a payment processor is characterized as providing a service under Subsection 1(d)(ix), the revenue is treated as arising in the jurisdiction in which the service is used. This lack of clarity can lead to uneven application. We recommend providing for a clear definition of what qualifies as an "online intermediation service".

Our review of the examples provided in the Amount A MLC gives us the impression that the IF recognizes that some of the enumerated indicators and other rules that we have highlighted in this section will not always produce practical rules that lead to straightforward compliance. We appreciate that the solution in many of these cases seems to be the development of more bespoke frameworks that leverage company data in the context of advance certainty panels. While this is a more resource-intensive approach, we appreciate the acknowledgment of the real compliance challenges behind some of the policy goals underlying these rules. Given this, however, we strongly recommend that tax authorities appropriately resource for processes that will require robust engagement in advance certainty panels.

3.4. Intangible Property

Adjusted Revenues from intangible property (whether by way of licensing, sale, or any other form of alienation) are sourced according to the nature of the use of the intangible property. However, this approach encounters practical challenges in certain industries, notably in pharmaceuticals as well as in the technology sector, where intangible property usage during product development is

multifaceted and geographically diverse. In the pharmaceutical industry, tracking the specific location of intangible property use, such as where a licensee utilizes it, is not only impractical but could lead to a disproportionate allocation of revenue. For instance, distributing milestone payments among numerous countries, based on the diverse locations of clinical trials or research activities, would create an overly fragmented and complex revenue sourcing model.

While there is recognition that publicly available information might help determine the location of use, current frameworks fall short in providing clear guidelines on equitable distribution across various usage locations. This lack of specificity risks an inconsistent and potentially unfair allocation of profits. Therefore, a much simpler approach is needed, such as considering the principal location of the licensee as the primary place of intangible property use. This method would align more closely with the operational realities of industries that rely heavily on global networks for, e.g., product development.

3.5. Allocation Keys

USCIB members remain concerned that the proposed allocation keys, and in particular the reliance on Gross Domestic Product (GDP) for sourcing certain types of transactions such as components, do not adequately reflect the revenues that U.S. MNE groups generate. For example, the United States accounts for approximately 25% of GDP, but many U.S. businesses generate 50 percent or more of their revenue from the U.S. market. To the extent that revenue is sourced using a GDP-based allocation key, this will underweight the revenue sourced to the United States. The effect of this is that the profits allocated to the United States under Amount A will be underweighted and the profits allocated to other jurisdictions that have a large GDP but represent a relatively smaller market for the products sold by many USCIB members, such as China, will be overweighted.

While allocation keys can be distortive in some cases, in other cases they provide appropriate outcomes while offering valuable simplification. In this regard, the introduction of a knock-out rule is unreasonable and overly burdensome. It dramatically reduces the simplification introduced by the use of regional or global allocation keys, and it is not realistic to expect companies that are large enough to be within scope for Amount A to be able to conduct a contractual analysis at the customer or distributor level to determine whether this rule applies. Moreover, the rule requires companies to prove a negative, which we generally oppose. To the extent that the knock-out rule is maintained, it should be at the election of companies who wish to apply it for certain selected transactions.

4. Elimination of Double Taxation

Since its outset, the objective of Amount A has been to reallocate taxing rights to market jurisdictions, with a corresponding reduction in the taxing rights of residence jurisdictions. USCIB members are concerned that, as drafted, the Amount A MLC's mechanism to eliminate double taxation will result in the profits of Covered Groups being subject to double taxation in some instances.

4.1. Policy objective

As outlined in prior comments, USCIB members continue to believe that the profits reallocated to a market jurisdiction should be reallocated from the jurisdiction (or jurisdictions) that realize the residual profits arising in respective of said market jurisdiction. The formulaic approach to identify relieving jurisdictions adopted by the Amount A MLC means that a residence jurisdiction (Jurisdiction X) could be required to relieve double taxation in respect of a market jurisdiction (Jurisdiction Y), even when the entity (or entities) resident in Jurisdiction X are not entitled to the income derived from Jurisdiction Y. USCIB members maintain that it would be preferable for the mechanism for eliminating double taxation to require that a connection exist between a residence and market jurisdiction (Jurisdiction X and Y in the example above).

That said, USCIB members have particular concerns about the following features of Part IV of the Amount A MLC, relating to the Elimination of Double Taxation, which we consider will result in double taxation in some instances:

1. Unallocated Amount A relief amount carried forward mechanism;
2. Inconsistency in the computation of Adjusted Profit before Tax of a Covered Group and Elimination Profit;
3. Provision of Relief for Amount A Taxation to Relief Entities in general;
4. Provision of Relief for Amount A Taxation in the U.S.; and
5. Identification of Relief Entities Entitled to Elimination of Double Taxation.

4.2. Unallocated Amount A relief amount carried forward mechanism

The Amount A MLC provides that Amount A can be allocated to and taxed in market jurisdictions even where such profits exceed the “Amount A relief amount” (i.e. the sum of the profits of specified jurisdictions in excess of the Elimination Threshold Return on Depreciation and Payroll) with the excess carried forward for relief in future periods. This approach means that Covered Groups will face temporary unrelieved double taxation where the profits allocated under Amount A exceed the Amount A relief amount.

This temporary unrelieved double taxation could become permanent where the profits of a Covered Group subject to Amount A consistently exceed its Amount A relief amount, or where the prior unallocated Amount A relief is allocated to a jurisdiction that was not Party to the Amount A MLC when the unallocated Amount A relief arose.

USCIB members consider that Amount A should, in no circumstances, create temporary or permanent double taxation, and that such outcomes are inconsistent with the objectives of Amount A. For this reason, USCIB members consider that it would be more appropriate for the allocation of Amount A to be capped where the proposed allocation exceeds the Amount A relief amount, and that any excess allocation of Amount A is carried forward and subject to reallocation in a future period when the Amount A relief amount is sufficient to fully eliminate double taxation.

4.3. Inconsistency in the computation of Adjusted Profit before Tax of a Covered Group and Jurisdictional Elimination Profit

If the unallocated Amount A relief amount carried forward mechanism is retained, then the adoption of one measure of profit to compute Amount A and a different measure of profit available to provide relief from Amount A taxation (the Jurisdictional Elimination Profit) will exacerbate the risk that the profits allocated under Amount A exceed the Amount A relief amount and hence of double taxation.

Jurisdictional Elimination Profit generally accounts for greater deductions than the computation of Adjusted Profit before Tax. An obvious example is the treatment of stock-based compensation ("SBC"). The computation of Adjusted Profit before Tax accounts for SBC based on the expense recognized in a Covered Group's Consolidated Financial Statements, whereas the computation of Jurisdictional Elimination Profits accounts for SBC based on the amount deductible for tax purposes. In jurisdictions, such as the United States, where the tax deduction for SBC typically exceeds the expense recognized in the Consolidated Financial Statements, this inconsistency will mean that a Covered Group's Adjusted Profit Before Tax is systemically greater than Jurisdictional Elimination Profit, and hence there is a risk that the Amount A relief amount is insufficient to fully eliminate the double taxation arising from Amount A.

Another example is the treatment of withholding taxes. A source (or market) jurisdiction can tax profits realized by non-residents through withholding taxes. Payee jurisdictions are typically obligated to provide relief from double taxation for the withholding tax suffered by the payee. The Amount A MLC accounts for the profits taxed in source jurisdictions through withholding tax by making a Withholding Tax Upward Adjustment in the source (or market) jurisdiction and a Withholding Tax Downward Adjustment in the payee jurisdiction. The Withholding Tax Upward Adjustment includes a series of adjustments (discussed above in relation to the MDSH) that reduce the effect of this adjustment to between approximately 20 percent and 50 percent of the withholding tax upward amount. Moreover, the Withholding Tax Upward Adjustment is only accounted for in the MDSH and not when calculating a Jurisdictional Elimination Profit for the purpose of identifying the relieving jurisdictions.

In contrast, the Withholding Tax Downward Adjustment in the payee jurisdiction accounts for the full effect of relief provided by the payee jurisdiction. Thus, it is feasible, and perhaps likely, that a payment from Jurisdiction X to Jurisdiction Y that is subject to withholding tax has no impact on the profits allocated to Jurisdiction X under Amount A while significantly reducing the Jurisdictional Elimination Profit recognized in Jurisdiction Y. As discussed above in relation to SBC, the effect of this inconsistency is to increase the risk that profits subject to reallocation under Amount A exceed the Amount A relief amount resulting in double taxation.

4.4. Provision of Relief for Amount A Taxation to Relief Entities

USCIB members have consistently and unanimously supported relying solely on the exemption method to relieve the double taxation arising from Amount A. Members consider that this most appropriately reflects the objective of Amount A, which is to reallocate taxing rights from one jurisdiction to another, and that the exemption method will ensure that double taxation is effectively eliminated in the period when it arises.

USCIB members are concerned by the flexibility provided in the Amount A MLC, which allows jurisdictions to relieve double taxation through a (1) direct payment; (2) refundable tax credit; (3) non-refundable tax credit; or (4) exemption (or deduction). Members are concerned that in jurisdictions that rely on non-refundable tax credits there is a significant risk that constraints on the use of such credits, such as carry-forward limits or basketing, mean that double taxation will ultimately not be effectively eliminated. For example, the Amount A MLC requires that non-refundable credits are available to be carried forward, but only for three subsequent fiscal years.

USCIB members are also concerned about the time it might take to receive relief from double taxation, where a relieving jurisdiction disputes whether it is responsible for relieving double taxation or there is a dispute over the amount of relief that should be provided. At present, it appears that a Covered Group would be expected to pay the tax due under Amount A upfront, while the Amount A MLC does not require relief from double taxation until a Review and / or Determination Panel have concluded, which could be four or more years after the tax due on Amount A has been paid to market jurisdictions. While domestic law may provide for relief from double taxation at an earlier point, a backstop rule in the Amount A MLC is needed to ensure timely and appropriate elimination of double taxation.

USCIB members encourage the U.S. Treasury to provide clear guidance on how the it intends to relieve double taxation arising from Amount A, and to engage with other jurisdictions that can be expected to relieve double taxation to provide clarity on the method through which double taxation arising from Amount A will be relieved.

4.5. Provision of Relief for Amount A Taxation in the U.S.

As outlined above, USCIB members strongly encourage the United States to relieve the double taxation arising from Amount A by exempting the income reallocated under Amount A from tax in the United States. However, recognizing that the United States has a longstanding history of relieving double taxation through nonrefundable foreign tax credits, members have identified a number of features of the existing U.S. foreign tax credit (“FTC”) regime that will need to be carefully considered to ensure the full relief of double taxation arising from Amount A:

- **Source and Section 904 category.** The U.S. FTC regime should provide that U.S. source income that is subject to tax in a foreign jurisdiction under Amount A is resourced to foreign source income and is treated as section 904 general limitation income rather than separate section 904(d)(6) treaty resourced limitation income. In addition, the U.S. FTC rules will need to clarify which profits of the relief entity (or entities) are subject to reallocation under Amount A.
- **Expense allocation.** No expenses should be allocated to Amount A profits at relief jurisdiction (whether a CFC or U.S. group) as the profits allocated under Amount A are already a 'net' amount.
- **CFC Amount A Taxes and previously tax earning and profits (“PTEP”).** Where a controlled foreign entity (“CFC”) of a U.S. entity is identified as a relief entity then: (1) the Amount A profits taxed in the U.S. should be treated as PTEP; and (2) the Amount A profits taxed outside the U.S. should be included in the general limitation section 904 basket (consistent with the principle of Article 12(4)(b) of the Amount A MLC).

4.6. Identification of Relief Entities Entitled to Elimination of Double Taxation

USCIB members are concerned by the flexibility provided in the Amount A MLC about the identification of relief entities, and that this flexibility may result in relief entities being identified that have insufficient existing profits to fully relieve double taxation. Members consider that the approach to identifying relief entities should be designed to maximize the timely relief of double taxation arising from Amount A.

5. Administration and compliance

USCIB members welcome the simplification and standardization of the administration and compliance framework for Amount A provided in the Amount A MLC. Members reemphasize that this simplification and standardization will be critical for Amount A to operate effectively, and have identified specific areas of the administration and compliance framework that warrant further consideration and simplification.

5.1. Common Documentation Package

The intended contents and scope of the Amount A Tax Return and Common Documentation Package have not yet been disclosed. Without understanding the reporting framework envisioned for Pillar One, it is not possible to assess the extent of the impact of the compliance and reporting processes that will be necessary to comply. Coupled with the Pillar Two Global Information Return, this will be a significant change for all impacted parties in the amount of data that MNEs must produce, and tax authorities must review. The OECD should urgently release proposed formats for both the Pillar One Amount A Tax Return and Common Documentation Package.

Tax reporting is a critical element of tax certainty. Until the reporting requirements are further developed by the IF and reviewed by MNEs, it will not be possible to fully comment on the tax certainty provisions. Efficient tax reporting of relevant data can be a significant enabler of tax certainty. In contrast, tax reporting that requires voluminous and extraneous data can be an impediment to tax certainty.

5.2. Internal Control Framework - Article 19

We recognize and appreciate that the internal control framework no longer requires audit committee approval, and we agree that requiring sign-off from expert personnel with the practical competency is a positive step. However, we would note that the personnel best equipped to endorse an Amount A internal control framework would, for many large MNEs subject to Amount A, often be personnel at a lower tier than is currently envisioned by paragraph 556 of the Explanatory Statement. It would be most appropriate for the required endorsement to come from the individual with oversight and responsibility for the MNE’s Amount A obligations, rather than the individual responsible for all of the MNE’s global taxation obligations.

For many in-scope Amount A taxpayers, the novel Amount A-related controls are unlikely to be critical financial controls. The Amount A MLC should make clear the upside to companies from

investing in Amount A compliance controls and taxpayers will invest in such controls accordingly (e.g., by providing guardrails to prevent audits of the underlying data if the control framework is approved and functioning properly). Further, more details on what is envisioned in paragraph 558 of the Explanatory Statement on how tax administrations would verify the framework should be provided, keeping in mind that any process should minimize burdens on both tax administration and taxpayers.

5.3. Currency Conversion Rules - Article 21

It is unclear how the threshold rules are supposed to work when Parties are given the flexibility to use their own exchange rates where there are "legal or practical impediments". Clarification is needed on what happens when there is a dispute over thresholds. Companies need the ability to rely on clear rules, so it would be helpful to provide a default conversion rate rule that an MNE could opt to apply. It should be clarified that whether legal or practical impediments exist is fundamentally an operational question that justifies deference to the MNE's determination in the event of a dispute.

5.4. Article 37—Exchange of Information

The level of detail in the data required for calculations under the Amount A MLC is beyond any tax compliance regime in place. While it is appreciated that the guidance warns that this should not be used for a "fishing expedition", there are no clear guardrails to avoid that. It is unclear why there is a need to share this data for "tax policy analysis", which also appears to be permitted.

Further guidelines need to be developed to protect sensitive information and to limit what is shared to information that is necessary for Amount A MLC compliance in the recipient jurisdiction. Also, more protective rules need to be in place where there are breaches of confidentiality, since there is such wide variation in the protections provided among parties in their domestic law, given the more sensitive nature of the data that is being incorporated into calculations under this Amount A MLC.

6. Tax certainty

We have mixed comments on the tax certainty provisions in the Amount A MLC. On the one hand, USCIB members have significant concerns with the design of Amount A given the complexity and lack of ability to intuitively understand the resulting tax implications of basic business decisions. We are concerned that the design of Amount A does not achieve the 2020 Blueprint document's promise of tax certainty.[5] Our concerns are based upon the lack of predictability and potential

[5] See, for example, paragraph 3 of the 2020 Blueprint which states: "Pillar One is focused on new nexus and profit allocation rules to ensure that, in an increasingly digital age, the allocation of taxing rights with respect to business profits is no longer exclusively circumscribed by reference to physical presence. Globalisation and digitalisation have challenged fundamental features of the international income tax system, such as the traditional notions of permanent establishment and the arm's length principle (ALP) and brought to the fore the need for higher levels of enhanced tax certainty through more extensive multilateral tax co-operation."

difficulty in advising business on the Amount A calculation implications of routine business decisions.

On the other hand, we commend the novel and progressive approach to dispute prevention (the certainty element) and dispute resolution (the mutual agreement procedure ("MAP") element) provisions contained in the Amount A MLC. These new elements should offer building blocks to future dispute prevention and resolution approaches that can be attractive to business. We encourage the OECD to continue to explore ways to incorporate the positive elements of the Amount A MLC certainty and MAP provisions into the existing tax treaty framework and other dispute prevention and resolution mechanisms.

The 2020 Blueprint document appropriately captured the importance of improving tax certainty as follows:

> Securing tax certainty is an essential element of Pillar One. Providing and enhancing tax certainty across all possible areas of dispute brings benefits for taxpayers and tax administrations alike and is key in promoting investment, jobs and growth, and G20 Finance Ministers have recognised the importance of international cooperation to ensure tax certainty as an integral part of arriving at a consensus-based solution to the tax challenges of the digitalisation of the economy.[6]

USCIB agrees with the view of the G20 Finance Ministers on the overall importance of tax certainty and proactive tax dispute prevention. The current approach to tax certainty (generally via mechanisms contained in bilateral tax treaties) is cumbersome, slow, and costly, with limited access for taxpayers, either due to a lack of an applicable bilateral treaty or due simply to being cost prohibitive. We welcome the advancement of the tax certainty provisions in the Amount A MLC to provide a more coordinated and broadly available approach to this issue. In this regard, we are pleased to provide our perspective on both the positive aspects of the tax certainty provisions in the Amount A MLC as well as the provisions in the Amount A MLC that may require additional development to fully meet their intended objectives.

In summary, USCIB believes tax certainty is a critical aspect of a properly functioning international tax framework. It enables the efficient allocation of resources for MNEs and tax administrations. Tax certainty also facilitates predictable and sustainable financial outcomes that benefit all stakeholders. It is encouraging that the OECD, IF, and G20 recognize the importance of tax certainty. The building blocks for tax certainty in the Amount A MLC should continue to be further explored, and where necessary, improved upon to facilitate tax certainty that is broadly adopted, timely, and binding on all parties.

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[6] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. Page 174, paragraph 704.

6.1. Positive Features

In our view, positive aspects of the tax certainty provisions include the following:

- **Creation and focus on advance certainty provisions that can provide forward-looking and binding multilateral certainty.** Similar to the purpose of Advance Pricing Agreements, the intent of the advance certainty provisions is to provide certainty over a number of future years (3-5 years) that is binding on all affected parties.

- **Creation of a robust and binding certainty process that is designed to amplify the existing network of double tax treaties.** This approach has the potential to be a consistent mechanism to resolve a wide range of complex disputes concerning transfer pricing, business profit attribution, and withholding tax characterization.

- **The introduction of strict deadlines including measures to ensure that inactivity on the part of one of the Parties to the Amount A MLC will not slow down and undermine the certainty process.** The introduction of deadlines should make both MNEs and tax administrators accountable throughout the envisioned tax certainty processes. These strict deadlines combined with the knowledge that once admitted to the process a binding outcome will be achieved should give confidence to all stakeholders in the overall process.

- **Creation of a single body (i.e., the Determination Panel) that is responsible for delivering a binding outcome when no outcome can be reached via other certainty processes.** In our view, the existence of this panel and of binding arbitration mechanisms (as opposed to its actual operation) will help focus all stakeholders to actively seek mutually agreeable solutions and discourage extreme negotiating positions prior to last resort arbitration.

- **Apparent lack of objections by IF members to the certainty provisions in the Amount A MLC.** We note that there do not appear to be any material objections to the certainty provisions (this is different than other provisions—i.e., withholding tax). This is encouraging as it hopefully illustrates that all countries in the IF view improvements in tax certainty and dispute resolution as important goals.

6.2. Areas for improvement

In contrast, the architecture of the dispute resolution and tax certainty provisions in the Amount A MLC does leave open the opportunity for several areas of improvement that should be addressed. These improvement opportunities include:

- **Ensuring that business has an active role in the dispute resolution process.** In our experience, disputes are resolved in a timely manner when an impacted taxpayer is involved to clarify facts and answer questions. The operation of the Amount A MLC should ensure that business can maintain an active role in the dispute resolution process.

    - For example, in instances where a Determination Panel is convened to consider alternative approaches put forward, the Amount A MLC could provide for a taxpayer to put forward a proposal for an alternative approach which addresses

objections made or at least give taxpayers the right to offer comments on the practicality of applying the alternative approaches presented by the Parties. While we welcome the inclusion of any written explanation of the taxpayer's position in the materials provided to the affected parties and to the Determination Panel under Article 27, allowing for the inclusion of additional materials provided by the taxpayer in response to the alternatives under consideration would allow for better informed and higher quality decision making. In addition, the taxpayer's proposal should be included among the proposals which Determination Panel may select.

- **Providing access to certainty in the event of uncoordinated Amount A audits.** Article 23(1) provides for access to the comprehensive certainty review process in the event of a multilateral tax examination of Amount A, but not in the event of one or more unilateral audits that are not subject to multilateral coordination. We do not see any reason why certainty and the elimination of multiple taxation should not also be available in the case of unilateral audits, and would caution that failing to provide a certainty mechanism in such cases will effectively force taxpayers to opt into the comprehensive certainty process for each filed year, even if the issues have been extensively covered in prior reviews. Failing to provide access to the certainty process to resolve disputes that arise in audits would therefore drain limited tax administration resources that could be better expended elsewhere.

- **Constituting appropriate panels.** The composition of determination panels is critically important to USCIB members who have different perspectives. While some believe this concern is moderated by the Determination Panel processes that require a majority to support an outcome or ranked choice voting, they still think the composition of the pool of independent experts should be closely monitored to maintain a pool of highly qualified and nonpartisan independent experts. This may prove challenging due to the relatively small pool of qualified experts globally that have the necessary skills to solve complex international tax disputes. Other USCIB members are concerned that the magnitude of the reallocation of U.S. MNE profits under Amount A and the likelihood that reviews will involve determination panels make the inclusion of non-governmental personnel on determination panels inappropriate, and that the determination panel should be comprised of government officials from the UPE lead tax administration, relieving jurisdiction, and market jurisdictions that are subject to government oversight. Appropriate panel design is key to the stability of the process and to the protection of sensitive and confidential taxpayer information shared as part of the process.

- **Ensuring equal access to the dispute resolution processes.** The novel concepts in the Amount A MLC MAP provisions require an existing bilateral tax treaty. Many intercompany transactions are not covered by bilateral tax treaties; for instance, the United States lacks treaties with Singapore, Hong Kong, and most of Latin America and Africa. As a result, disputes concerning such transactions would not be eligible for the certainty mechanism for related issues, even though the October 2022 Progress Report on the Administration and Tax Certainty Aspects of Pillar One featured a provision that would have extended tax certainty in these cases (i.e., proposed Article [Y]). Full and comprehensive tax certainty should be an objective of all tax administrators despite gaps in the bilateral treaty networks.

- We continue to believe that a solution is needed in these cases, particularly given that many companies will not qualify for any protections under Amount B given the current limited scope in those rules. In the alternative, the scope of Amount B should be broadened (e.g., to include services), to reiterate a recommendation the business community has continued to make.

- **Guaranteeing meaningful certainty outcomes.** Paragraph 753 of the Explanatory Statement notes that "[a] member of a Covered Group would have no access to the dispute resolution panel mechanism where a MAP competent authority mutual agreement had resolved related issues but was not implemented, even though the related issues would in substance remain unresolved in such cases." Problems with the implementation of MAP resolutions are increasingly common in some jurisdictions, and without implementation a MAP resolution is a hollow and expensive outcome, both for the taxpayer and for the competent authority of the jurisdiction that has not neglected its commitment to implement the resolution. To guarantee meaningful outcomes, the certainty process for related issues should include guardrails to ensure implementation.

- **Even with the best efforts of the OECD and IF, the Amount A MLC provisions still have complex timelines and the potential for unnecessarily slow dispute resolution.** While the timelines mentioned above should help to ensure the process moves forward, they are complex. We believe there are opportunities for simplification. The OECD and IF should continue to engage in discussions to seek simplification opportunities where possible. In our experiences, the most complex tax disputes are resolved not through the following of complex rules, but rather through collaborative working relationships between tax administrators that act as "good treaty partners".

6.3. Timing

Simplification, where possible, is necessary because timely and efficient processes for dispute prevention and resolution are critical to ensure predictable and consistent financial outcomes. The Amount A MLC provisions still have rather lengthy timelines for certain processes. For example:

- Acceptance into certainty processes can take up to 210 days (approximately 7 months).[7]

- The timelines are not complete and still include steps for which deadlines are not specified. Even without accounting for those steps, however, it appears that the full comprehensive certainty review process, including an amended filing following the process, would take between 30 and 48 months from filing in a Determination Panel is needed, even if there are no delays in providing information to the review panel.[8] Furthermore, the rule that one review cannot begin until the prior review has concluded raises the possibility of cascading delays.[9] In lieu of this rule, the Amount A MLC should provide that if a review for a prior period has not concluded by the time a review for a later period should otherwise begin, and the delay is not

[7] MLC Article 23(3); Understanding on the Application of Certainty, sec. 8(2).
[8] *See* Articles 23, 26, 27; Annex F; Understanding on the Application of Certainty, Sections 8-10.
[9] Understanding on the Application of Certainty, Section 9(1).

due to the MNE, the MNE's Amount A results for the later period should be deemed to be accepted as filed by all affected parties.

- Disputes can only access the MAP provisions of the Amount A MLC after 2 years. In addition, under the Amount A MLC provisions, Competent Authorities are permitted to agree to extend the two-year timeline, without a time limit with no consent from the Covered Group.[10] This extension should not be permitted without the consent of the Covered Group. Once the dispute has continued for that timeframe, Parties should move toward engaging the dispute resolution panel. If in the alternative, this provision is maintained, there should be some clear time limit that respects the overall goal of expeditious resolution.

- MAP Competent Authorities can mutually agree to exclude issues from the scope of the Dispute Resolution Panel.[11] There are no further requirements at that point to engage in dispute resolution procedures, explain their conclusion, or otherwise resolve the relevant related issues. This flexibility is not in line with the stated objectives of the dispute resolution processes envisioned under Pillar One. In the spirit of encouraging dispute resolution and stability, this provision should be deleted. If, in the alternative, it is retained, there should be a requirement to engage in some dispute resolution process (presumably more suitable to the Parties) to ensure resolution and the avoidance of double taxation.

- MAP Competent Authorities can mutually agree to depart from the decision of the dispute resolution panels within 90 days of the decision.[12] First, this leaves the outcome uncertain for an additional 90 days, following an already extensive timeline. This generates more instability and uncertainty. Second, this erodes the certainty benefit of having the dispute resolution panels to bring disagreements to a conclusion. This option for a renewed round of negotiation following the already long process of getting to a certainty decision should be removed.

7. DST and relevant similar measures

7.1. Introductory Comments

We note that our previously-submitted comments on the DST consultation document were considered, and that some improvements were made in the Amount A MLC. In particular, we are pleased that delegates agreed not to introduce a "*de minimis*" exception to a DST/RSM designation or a proportionality limit, and that subnational DSTs are within the scope of review and subject to withdrawal. We believe that DSTs are destabilizing regardless of the level of political entity that imposes them, and including subnational DSTs within the scope of review appropriately accounts for their destabilizing effect. However, although there are improvements, we note that not all of our previously-submitted comments were adopted. Therefore, we are reiterating some of those previous comments here because we continue to believe that they are important. Further, we believe that much of the added text narrows the scope of the rule to the detriment of the stabilization goal, so we are recommending refinements and clarifications for the new text. While we have provided significant recommendations with respect to various provisions

[10] MLC Article 35, paragraph 1(ii).
[11] MLC Article 35, paragraph 10(b).
[12] MLC Article 35, paragraph 13.

of the Amount A MLC, some are meant to alleviate concerns we have with administrative complexity, excessive resource allocation, pressure on panel frameworks, and speed to certainty, but the need to remove destabilizing and discriminatory tax measures is one of the core purposes behind the Pillars project, so we have particular interest in seeing a successful implementation of these principles.

The stated goal of Pillar One is to stabilize the international tax system. The approach taken in Pillar One—to allocate a new taxing right, via Amount A, to market jurisdictions—is a dramatic change to the global tax system and countries' agreement to that dramatic change is predicated on the removal of certain destabilizing factors that exist in the current international tax system. We consider the removal of the identified existing DSTs an important and meaningful step toward stability, but it is also imperative that the rules under Pillar One limit the possibility of further discriminatory tax measures—discriminatory with respect to certain industries, business models, or countries—as well as other measures that destabilize tax norms. Other factors, including the proliferation of aggressive and unusual transfer pricing positions, the use of "anti-abuse" legislation as a lever to pressure taxpayers to reorganize local operations or change transfer pricing positions, and the introduction of UN Article 12B, continue to destabilize our international tax system. While we appreciate public statements that the IF will consider these destabilizing factors, the context and timing in which the IF will conduct this work is not clear, so we urge Treasury to advocate for the IF to undertake additional work to address these factors. While removing existing DSTs and prohibiting future DSTs/RSMs is an important step forward, it should not be the end of the IF's work to stabilize the international tax system.

7.2. Comments on Article 38 and Annex A, List of Existing Measures Subject to Removal

We appreciate the publication of Annex A and are pleased that most of the taxes listed on the Annex are taxes that have traditionally been considered DSTs. USCIB believes that the taxes currently listed on the Annex should be withdrawn regardless of whether any changes are made in the future to the definition of DST/RSM currently in Article 39(2) of the Amount A MLC. However, we also believe that Annex A is incomplete. For example, Canada's DST is not listed on Annex A. While the reason for excluding Canada's DST may be that Canada's law has not yet been enacted, we believe that Canada's tax clearly should be withdrawn—regardless of whether the definition of DST in Article 39(2) or some other standard is applied. We also note that Annex A does not include any digital content taxes, even though digital content taxes appear to otherwise satisfy the definition set forth in Article 39(2).

We support the statements in Article 38(2) and paragraph 915 of the Explanatory Statement that whether a particular measure is included in Annex A shall not be considered evidence as to whether that measure is described in Article 39(2). In addition, paragraph 915 notes that the absence of a measure in Annex A does not indicate that such measure is not described in Article 39(2). Both points are important, and their inclusion in the Amount A MLC and the Explanatory Statement demonstrates the need to provide the Conference of the Parties with greater flexibility in designating a measure as one that should be added to Annex A. We will discuss the constraints that Article 39 appears to impose on the Conference of the Parties, and the need for greater flexibility, further below.

We note that a decision can be made to deny an Amount A to a country considering implementing a DST/RSM only following the date of a Conference decision. We recommend that, in all cases, Amount A should be denied from the date such a law is enacted. Allowing for a DST/RSM to remain in effect until a potentially long process for resolution is concluded, may incentivize these very destabilizing measures, since consequences may be substantially deferred. At a minimum, amounts paid due to such DSTs/RSMs should remain creditable against any Amount A owed to that jurisdiction until there is an offset.

7.3. Comments on Article 39

First, USCIB appreciates the refined text in Article 39(1) confirming that there will be a full denial of the Amount A allocation for any Party that has or enacts a DST/RSM. We are troubled, however, that the Amount A MLC allows for an interpretation that electing whether to impose a DST/RSM or collect tax under Amount A is potentially a legitimate policy choice for a Party to make. USCIB does not believe that imposing a DST/RSM is a legitimate policy choice under any circumstance, and we are concerned that merely requiring countries to forgo collecting taxes under Amount A is an inadequate deterrent to enacting DSTs. We urge Treasury to advocate for more impactful consequences for countries that impose a DST/RSM. Such consequences could, for example, preclude countries that impose a DST/RSM from participating in the Conference of the Parties and suspend information sharing with countries that impose a DST/RSM.

Second, we also are pleased that the third criterion in the definition of DST/RSM (in Article 39(2)(c)) eliminates the requirement from the consultation document that the tax is "not treated as an income tax under the domestic law of the Party". This deletion improves the test as it makes it clear that the mere assertion by the taxing state that the tax is outside the treaty satisfies this criterion.

In addition, in our previous comments on the consultation document, we expressed concern about the provision in Article 39(3)(a) excluding rules that address "artificial structuring" from treatment as a DST/RSM. Our concern stemmed, in part, from the vague term and lack of a definition. The Explanatory Statement provides additional clarification, which is useful. Paragraphs 946 and 948 state that rules to address artificial structuring are limited to "rules aimed at addressing avoidance of existing domestic nexus standards based on physical presence." While this provides some standard for applying the "artificial structuring" exclusion, we are concerned that the reference in paragraph 950 to arrangements or transactions that have "as one of their principal purposes" the avoidance of nexus requirements is overly broad and will increase tax disputes. As a result, we propose narrowing the reference in paragraph 950 to arrangements or transactions where "the" principal purpose is the avoidance of nexus requirements. We also propose modifying paragraph 950 to clarify that only rules which contain an abuse of law element, like a traditional anti-abuse rule, could qualify for the "artificial structuring" exception. We believe this approach will address IF members' concerns by permitting narrowly tailored rules while furthering members' interests in preventing an increase in tax disputes.

7.4. The definition of a DST/RSM should be broadened and the subjective elements should be revised.

Consistent with our views in our letter on the DST consultation document, USCIB continues to believe that, by requiring all three criteria in Article 39(2) to be met, the definition of DST is too narrow since discriminatory measures can still be implemented under these rules, leading to unintended consequences, and undermining the overall project. As noted in our previous letter, we believe that the definition should be disjunctive and propose that a measure be treated as a DST/RSM if it meets the criteria listed in our previous letter. In that letter, we proposed that a tested tax should be treated as destabilizing if it had any one of several features, including that the tax targeted a particular industry or the economic burden of the tax falls disproportionately on non-residents.

While Article 39(2)(a) describes an appropriate criterion for designating a tax as a DST/RSM, we are concerned that the criteria described in Article 39(2)(b) are too limiting, permit the proliferation of measures that should be treated as a DST/RSM, and do not provide the Conference of the Parties with sufficient flexibility to do its job of assessing new taxes on an on-going basis. We have significant concerns with the criteria described in Article 39(2)(b)(ii).

7.4.1. Article 39(2)(b)(ii): Ring-fencing

Paragraph 930 of the Explanatory Statement suggests that Article 39(2)(b)(ii) is intended to cover measures that result in a *de facto* ring-fencing of non-residents or foreign-owned businesses. While we agree with the goal of covering measures that result in *de facto* ring-fencing, we think the language in Article 39(2)(b)(ii) misses the mark because it is too rigidly crafted and does not provide the Conference of the Parties with sufficient discretion to designate a tax as a DST/RSM. While ring-fencing based on residency status or domestic as opposed to foreign ownership is a strong indicium of discriminatory intent, ring-fencing by industry (*i.e.*, targeting digital services) is another strong indicator of discriminatory intent. USCIB recommends that the Conference of the Parties should be able to apply a guiding principle, when examining whether a particular tax qualifies as a DST/RSM, that any tax that ring-fences based on digital assets or content is presumed to have discriminatory intent. By applying this guiding principle, for example, the Conference of the Parties would be able to designate a withholding tax on payments for automated digital services as a DST/RSM, whereas the current language of Article 39(2) may be too rigid to result in such a tax being treated as a DST/RSM. We appreciate that our concerns may have been discussed during the discussions referenced in footnote 10 of the DST consultation document, but we remain concerned that blatantly discriminatory taxes may escape designation as a DST/RSM. Accordingly, we strongly urge Treasury to continue advocating with the IF that ceasing to discriminate by industry or sector must be a guiding principle when the Conference of the Parties examines a tax to determine whether it is a DST/RSM.

7.4.2. Article 39(2)(b)(ii)(A): "In practice exclusively or almost exclusively"

In addition to liberalizing the standard for determining that ring-fencing has occurred, we also believe that Article 39(2)(b)(ii)(A) must be liberalized. That portion of the definition requires a tax to apply "in practice exclusively or almost exclusively" to non-resident or foreign-owned businesses. We expressed concern about this approach in our previous letter on the DST consultation document, and we continue to have similar concerns.

Paragraph 936 of the Explanatory Statement describes when Article 39(2)(b)(ii)(A) is met, and provides that a measure would, in practice, be applied almost exclusively to non-resident or foreign-owned businesses if "only a few percent of the taxpayers were both resident and domestic-owned". We do not believe that this standard appropriately reflects the commercial reality of which taxpayers are subject to DSTs. For example, the taxes listed in Annex A are generally targeted at a few global companies that provide digital services, although there may be one (or even a few) domestic taxpayers in those jurisdictions that are subject to the tax. The mere existence of one or two domestic taxpayers does not prevent the taxes listed on Annex A from being inherently destabilizing (something that the IF appears to understand, given that these taxes are appropriately listed on Annex A in the first place). Rather, it is the fact that these taxes are focused on digital service suppliers and have as one substantial purpose the goal to assert source-based taxation on non-resident suppliers that makes them destabilizing to the international tax system.

We note that paragraph 937 of the Explanatory Statement indicates that the assessment described in the previous paragraph relies on the collection of data and that the enacting Party has the responsibility to provide data on the proportion of domestic taxpayers. The Explanatory Statement does not specify to whom the data should be provided, although we infer that it would be provided to the Conference of the Parties. We have several concerns with this. First, a non-resident taxpayer or foreign-owned business will not be privy to this data and will not be able to know that it should challenge a particular tax under Article 39(2)(b)(ii)(A). Second, there is a risk that by providing this data, an enacting Party could violate taxpayers' rights to, and expectations of, privacy in their taxpayer data.

Accordingly, we recommend deleting the final sentence of paragraph 936 of the Explanatory Statement. If some measure of proportionality must be retained, we recommend that the proportion of the *overall tax liability* that is attributable to resident compared to domestic taxpayers is a better measure than the *number* of resident and domestic taxpayers that are in-scope of a particular tax. Further, although the reference to a “few percent” is an example, not a threshold, we would expect de facto discrimination to be found in cases where the tax “predominantly” impacts non-residents, and that very minimal domestic impact, does not give a pass for discrimination.

7.4.3. Article 39(2)(b)(ii)(B): "Insulating domestic businesses"

Article 39(2)(b)(ii)(B) revises the second criterion of this factor—that the tax has "the effect of insulating domestic businesses from the application of the tax". While the statement in the Amount A MLC that whether Article 39(2)(b)(ii)(B) is met will be a facts-and-circumstances

analysis, which appears to provide the Conference of the Parties with discretion in applying Article 39(2)(b)(ii)(B), we believe that apparent discretion is misleading. Using the word "insulating" imposes an incredibly high standard, and we are concerned that—as a practical matter—no tax will be deemed to "insulate" domestic businesses based only on scope limitations.

Paragraph 938 of the Explanatory Statement explains that "a measure is regarded as insulating domestic businesses when it is designed in a way that prevents them from being covered." While this may have been intended to provide the Conference of the Parties an opportunity to examine a country's intent and therefore provide discretion in evaluating taxes, there is a significant risk that it will result in totally opposite consequences—namely, governments will be encouraged to exercise creativity in the way that they design taxes that would otherwise be DSTs/RSMs, which undercuts Pillar One's goal of stabilizing the international tax system. We see no reason to revise the second conjunctive criterion in Article 39(2)(b)(ii)(B) and believe that the proposed revisions do more harm than good. Instead, we believe that Article 39(2)(b)(ii)(A) can and should stand alone. Accordingly, we would propose revising Article 39(b)(ii) to read in full, "applies revenue thresholds, exemptions for taxpayers subject to domestic corporate income tax in that Party, or other scope restrictions that cause the measure to apply in practice primarily to non-resident or foreign-owned businesses."

7.4.4. Article 39(2)(b)(ii) Flush Language: "Policy Objectives"

The flush language of Article 39(2)(b)(ii) states that whether Article 39(2)(b)(ii)(B) is met shall be determined based on "all relevant facts and circumstances, including the policy objectives of the tax" and paragraph 940 of the Explanatory Statement further provides that "when the exclusive or almost exclusive application of a measure to domestic or foreign-owned businesses is the result of the pursuit of policy objectives that are not related to the insulation of domestic businesses, and the legislative features are consistent with these objectives, the measure shall not be considered as ring-fenced."

Introducing "policy objectives" as a broadly available mechanism to exclude a tax from otherwise being treated as a DST/RSM is deeply troubling. The concept of "policy objectives" will simply encourage governments to identify some facially benign rationale—such as furthering environmental policy or reducing child poverty—for an otherwise discriminatory tax and neither the Amount A MLC nor the Explanatory Statement gives the Conference of the Parties sufficient discretion in examining a government's intent, a tax's "legislative features", or distortive overall impact to designate such taxes as a DST/RSM. We further note that the example in paragraph 940 is unrealistic and not useful as a practical matter. If the government in question in the example had an "obvious policy objective unrelated to insulating domestic businesses", it could have achieved that goal through a regulatory mechanism, instead of a tax. The concept of "policy objectives" fails to recognize that the use of a tax is *prima facie* evidence of a revenue-raising objective, and any distinction between residents and non-residents in tax obligations demonstrates a discriminatory intent. Ultimately, this exception is likely to swallow the rule or, at a minimum, make it extremely difficult for the Conference of the Parties to examine various new taxes and consistently apply the definition in Article 39(2). Accordingly, we propose that the flush language in Article 39(2)(b)(ii) should be deleted.

While we believe this provision has a greater potential for creating disputes, uncertainty, or destabilization than solving real policy concerns, if some additional factor is required here to reflect non-discriminatory policy objectives, we strongly believe guardrails are necessary. In the alternative, we would recommend that those policy goals could be part of an "angel list", reflecting tax provisions with a long, well-established history or broadly accepted and understood goals shared by IF members. As another alternative, since addressing the taxation of the digitizing economy is a critical focus of implementing Amount A, and overlap would suggest duplication of measures and likely double taxation, there could be an explicit guardrail to disqualify policy goals that are purportedly achieved by taxes based on the participation of users in digital activity (resulting in re-sourcing of associated revenues), which should be the purview of Amount A. Furthermore, the Explanatory Statement and related examples should also make clear that where there is also evidence of discrimination as a policy goal, such tax would be considered a DST/RSM. Again, while we strongly believe that the better approach is the elimination of this provision, we are willing to actively engage in brainstorming the right guardrails to ensure that this exception does not undermine the broader objections of this articles of the Amount A MLC.

7.5. Article 40: Treatment of Specific Measures in Scope of Tax Treaties

We applaud the focus on significant economic presence provisions that are equally as destabilizing to the international tax system as other more explicitly identified provisions. We note that there is no clear consequence when these measures are introduced, so we recommend adding a clarification that similar remedies and consequences will result in these cases.

7.6. Annex H: Review Process and Early Clarification on DSTs / RSMs

We appreciate the measures to address destabilizing measures at the subnational level and consider these critical policies in the effort to stabilize the international tax system. The problem of destabilizing and discriminatory taxes cannot be solved if the problem simply moves to a more local level. The current obligation, however, is simply to monitor and report efforts to remove these measures. Amounts imposed by subnational governments should reduce the Amount A allocation of the relevant country, regardless of whether the national government controls the subnational legislation. Otherwise, there are no features to mitigate the impact (*e.g.*, double taxation) of these destabilizing measures and little incentive to take effective action to cause the removal of the destabilizing measure.

7.7. Standstill Agreement

As we have recently expressed in our November 14, 2023 letter to Deputy Assistant Secretary of the Treasury Michael Plowgian, we consider an extension of the standstill agreement related to DSTs necessary to continue progress on these policies. The terms of that agreement, including the treatment of past DST collections (providing credits to align with the results under Amount A) are critical, so clarity on those mechanisms would be important. We appreciate Treasury's negotiation of that agreement and believe that continued alignment under that agreement allows for space to achieve better policy outcomes and avoid destabilizing tax and trade outcomes.

Given how targeted these destabilizing measures have been toward U.S. companies, we have appreciation for Treasury's engagement on these issues and believe that engagement is critical for protecting U.S. companies' competitiveness around the world, and ultimately to those companies' capacity to provide jobs, infrastructure, other investments, and economic growth at home in the United States as well.

8. Treaty compatibility, entry into force, review and extension provisions

8.1. Treaty compatibility

We appreciate Article 46 clarifies that the provisions of the Amount A MLC will prevail in the event of conflict with bilateral tax treaties, thereby mitigating the question of precedence with existing tax treaties for the signatory jurisdictions of the Amount A MLC. However, there remains the open question as to how the provisions of the Amount A MLC will interplay with jurisdictions that are not a party to a bilateral tax treaty with a signatory jurisdiction (a "non-party jurisdiction").

The Amount A MLC alters taxing rights under existing treaties of the signatory jurisdictions. While Articles 5, 7, and 9 of the OECD Model or UN Model treaties restrict taxing rights where there is a local entity or a permanent establishment, the Amount A MLC provides taxing rights where nexus in a jurisdiction is based on sales in the market. This leaves open the question as to what happens in non-party jurisdictions, especially since the Amount A MLC contains a provision that requires MNEs to reduce the allocation of profit under Amount A where a non-party jurisdiction would be allocated the obligation to pay Amount A and where Article 7 of the OECD Model or UN Model treaties is applicable. The rules as they stand will require a complex treaty analysis for each non-party jurisdiction which will result in an additional compliance burden for MNEs and will likely result in jurisdictions having conflicting views/interpretations. Therefore, the IF should work to establish clear rules for how the Amount A MLC's provisions would function where there is nexus in a non-party jurisdiction, including, for example, the creation and maintenance of a public list of these non-party jurisdictions.

8.2. Entry into Force

The entry into force requirement in Article 48 that at least thirty (30) instruments of ratification representing a total of 600 points as set out in Annex I is an important baseline to ensure the Amount A MLC does not enter into force before there is meaningful buy-in from a minimum number of countries. These thresholds ensure that the majority of the impacted MNEs and a wide number of jurisdictions are included in Pillar One. We encourage the OECD and IF to enforce these minimum requirements to promote stability and certainty in the international tax system. For the Amount A MLC to meet its goals, we recommend that these thresholds include a requirement that some critical mass of relieving jurisdictions (major UPE countries and the "investment hubs") be signatories. Furthermore, once the entry into force requirements are met, it is important that the IF continues to encourage additional members to ratify in order to achieve global consensus and long-term stability.

8.3. Review and Extension Provisions

The points assigned in Annex I are important to understanding how Articles 43, 48, and 51 will operate. Article 47(4) attempts to set out a process for how the assignment of points should be updated, but the process is not clear since there has not been background provided on how the "data available" will be determined. Furthermore, it is not clear how the Conference of the Parties will update if they are unable to reach consensus on the topic. Given the importance of Articles 43, 48, and 51 to the continued functioning of the Amount A MLC, there should an agreed framework regarding the underlying methodology and process for updating the points.

Article 43(5)(b) should be modified to reference a majority of total points by reference to those points of Parties for which the Amount A MLC is in force (e.g., the threshold should be set at 60% of the points of Parties that have ratified the Amount A MLC) to ensure there are not disproportionate impacts of an adjustment of the revenue threshold to a limited number of countries with a high proportion of in-scope MNEs.

The provisions in Article 51 for automatic termination should be lowered from 550 points to 300 since a number greater than 300 could still represent a significant number of Parties. Not all countries listed in Annex I may sign onto the Amount A MLC initially, so the total number of points of the Parties may only be in the low 600s. As a result, one country could easily tip the balance from the 600 points required under Article 43 to below 550. Setting the points at a floor of 300 would ensure there are enough in-scope MNEs without providing the opportunity for one or two countries totaling 50 or so points to potentially undermine the work of the OECD/IF.

Enabling countries to withdraw unilaterally from the Amount A MLC is an important feature to preserve some elements of tax sovereignty. However, countries should agree to continue their commitment not to implement DSTs or similar unilateral measures even after withdrawal. Article 50 limits a Party's ability to withdraw from the Amount A MLC for a 5-year period after the Amount A MLC has come into effect. This timeframe provides much needed certainty for business. The OECD/ IF should design and adapt a mechanism to ensure this rule is effectively implemented. An example would be a process whereby the jurisdiction that ceased to be a party of the Amount A MLC would submit a request to determine whether a certain measure is a DST or a similar unilateral measure.

9. Segmentation

While we understand the policy objective of requiring segmentation, we believe additional simplifications to the segmentation rules are necessary. The segmentation rules in Annex C result in some complexities for calculating Amount A on a disclosed segment basis given disclosed segment reporting is not developed on a legal entity basis and a single disclosed segment will often reflect a portion of operating expenses incurred by nearly all group entities (resulting in a significant number of entities being a "mixed segment entity"). Furthermore, disclosed segment results generally use allocation keys to allocate expenses which will not tie exactly to intercompany flows whereas the Amount A MLC requires entity-level calculations of pre-tax income, which are necessarily determined after internal transfer pricing flows, on a segment-by-segment basis. Determining entity-level elimination profits under the segmentation rules thus requires MNEs to reconstruct transfer pricing policies at the segment level which is extremely

burdensome. As a result, further simplifications in the disclosed segment provisions would be welcome, including additional simplifying rules or assumptions, to alleviate some of the extreme burden placed on those MNEs which will need to calculate Amount A on a disclosed segment basis.

Annex C Section 4(2) increases the compliance burden for MNEs with disclosed segments and could result in disparate treatment from MNEs without disclosed segments. For example, two MNEs with the exact same consolidated financials could have different Amount A reallocations, with an MNE with disclosed segments having a greater Amount A reallocation on a disclosed segment basis when compared to a MNE which only reports on a consolidated basis. Furthermore, the MNE with disclosed segments will need to run two parallel calculations (at the Group level and disclosed segment level) and compare the two even when it would otherwise be treated as a Covered Group, increasing compliance costs significantly when compared to MNEs with consolidated financials (which only need to run one consolidated calculation at the Group level). Accordingly, Annex C Section 4(2) appears punitive towards MNEs with disclosed segments and should be removed.

10. Interaction with Pillar Two

USCIB members consider it critical that the interaction between Amount A and Pillar Two is clarified. This is essential so that USCIB members, and tax administrations, can assess the impact of Pillar One and Two together. The Commentary to the Global Anti-Base Erosion ("GloBE") Model Rules states that:

> Tax on net income of a Constituent Entity under Pillar One would be treated as a Covered Tax under the GloBE Rules as a tax with respect to income or profits. Because Pillar One applies before the GloBE Rules, any income tax with respect to Pillar One adjustments will be taken into account by the Constituent Entity that takes into account the income associated with such Tax for purposes of calculating its GloBE Income or Loss.[13]

USCIB members request confirmation that tax paid on profits reallocated to market jurisdictions under Amount A will be treated as additional Covered Taxes of the Relief Entity (or Relief Entities) in the jurisdiction where the entity (or entities) is resident. Capturing all the technical points is beyond the scope of this consultation response.

11. Interaction with Amount B

USCIB members continue to have concerns that the Amount A MLC, and in particular the MDSH, will fail to deliver on its stated objectives and will result in double taxation. This is one reason USCIB members continue to support the adoption of Amount B with a broad scope, extending to the distribution of services (including digital services). USCIB members continue to believe that a broad scoped Amount B is the best safeguard against upward transfer pricing adjustments to marketing and distribution activities that are inconsistent with the arm's length principle. USCIB

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[13] OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti- Base Erosion Model Rules (Pillar Two),* OECD, Paris, p. 92.

would also like to have the opportunity to review the next iteration of the Amount B rules before they are included in the Transfer Pricing Guidelines (in early 2024 it is understood).

Conclusion

We hope that U.S. Treasury and the other negotiators find our comments constructive and helpful and that these comments validate the utility of such consultations. We and select expert members of our Tax Committee are available to you to discuss any aspects of our comments in this letter.

Best Regards,

Rick Minor
VP & International Tax Counsel
U.S Council for International Business

John Stowell
Chair, Tax Committee
U.S. Council for International Business