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BEPS 2.0 – Pillar 1, Amount B Model Competent Authority Agreement (MCAA)

In recent years, the Organisation for Economic Cooperation and Development (OECD) and G20 have worked together to change global tax rules in an effort to combat tax avoidance by multinational companies.

As discussed in our recent insight on Pillar 1 – Amount B (LINK to insight), the Organisation for Economic Cooperation and Development (OECD)/G20 Inclusive Framework on BEPS (IF) have developed a two-pillar solution to address the tax challenges arising from the digitalisation of the economy. This framework includes:

- Pillar 1 - including Amount A, permitting allocation of taxing rights to market jurisdiction in respect of the most profitable multinational enterprises worldwide, and Amount B, which aims to simplify the application of existing transfer pricing rules; and
- Pillar 2 – the introduction of a global minimum tax rate.

Amount B, or the simplified and streamlined approach, has been developed as a mechanism to simplify the application of the arm's length principle for baseline marketing and distribution activities, with a focus on supporting Low Capacity Jurisdictions (LCJ). Its intention is to reduce transfer pricing disputes and compliance costs, while increasing tax certainty, through the use of a pricing framework for qualifying transactions. For LCJs these challenges can often be amplified due to lack of tax authority resources and difficulty in accessing data.

Ongoing work by the IF saw it extend its political commitment to respect Amount B outcomes for covered jurisdictions, which includes not only LCJs but also some low- and middle-income countries. This commitment requires members of the IF to respect Amount B outcomes in relation to covered jurisdictions in cases where the counterparty territory does not implement Amount B, and to take all reasonable steps to ensure double taxation does not arise where the simplified and streamlined approach is used and a bilateral double tax treaty exists between the relevant jurisdictions. Following the publications by the IF in the first half of 2024 with respect to Amount B, work remained to agree a list of jurisdictions within the scope of this political commitment and to provide practical tools to further support this objective.

What are covered jurisdictions?

On 17 June 2024, the IF published its Statement on the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B. The list, to be reviewed and published every 5 years, currently includes 66 countries that fall into the determinative criteria. This criteria requires a jurisdiction to be a low- and middle income jurisdictions under the World Bank Group country classification by income level and either:

- Be a member of the IF, excluding EU, OECD and G20 members;
- Be a member of the IF and an EU, OECD and G20 member country where the jurisdiction has expressed to the IF willingness to implement Amount B[1]; or
- Be a non-IF member that has expressed a willingness to apply Amount B to the IF (upon request and approval by the IF).

The political commitment can also be extended to any other jurisdiction on a bilateral basis.

What is the MCAA?

On 26 September 2024, the IF published the Model Competent Authority Agreement (MCAA) as a practical tool to facilitate the implementation of the political commitment.

[1]This is the case in respect of Argentina, Brazil, Costa Rica, Mexico, and South Africa.

The political commitment made by the IF can be implemented through domestic legal and administrative practices. However, in the absence of this, the MCAA facilitates the commitment where a bilateral double tax treaty is in place.

The agreement remains optional to introduce and the language subject to change following bilateral negotiations. Jurisdictions may enter into such agreements even in cases where neither party is a covered jurisdiction.

Notably, the MCAA provides for the following:

- Any outcome arising under the simplified and streamlined approach in the applying jurisdiction will be respected as an appropriate approximation of an arm's length return.
- Where double taxation arises as a result of the application of the simplified and streamlined approach in one jurisdiction (i.e. the covered jurisdiction), the Mutual Agreement Procedure (MAP) can be initiated. Parties to the agreement will seek to resolve the issue by applying the Amount B approach to the qualifying transaction.
- Where possible, the counterparty jurisdiction will seek to provide a unilateral adjustment in accordance with the outcome of MAP, or provide another satisfactory solution.
- Agreement on the upper bound of operating-expenses-to-net-revenues under the quantitative filter applied in determining whether a transaction is qualifying. While the applying jurisdiction may choose an upper bound between 20% and 30% (per the guidance) in their domestic application of Amount B, this threshold may vary under the bilateral agreement.
- Competent authority of a jurisdiction party to the agreement to notify the counterparty competent authority of any downward adjustment relating to any qualifying transaction (whether in relation to the application of the Amount B approach or the OECD Guidelines) to prevent double non-taxation.

Our observations

The MCAA is a helpful practical tool for resource constrained jurisdictions that are likely to adopt Amount B that will go some way to securing the political commitment made by the IF, regardless of the domestic legislative and administrative practices of other members of the IF that may choose not to adopt Amount B.

Securing this commitment is not only important for LCJs but for taxpayers that may be facing the risk of disputes as a result of the asymmetric adoption of Amount B. Despite the moves forward, uncertainty remains as MAP does not require a resolution to be reached and there is no guidance as to what the next steps might be in this scenario.

There are also complexities arising in relation to the quantitative filter, that may now see variation between the domestic and bilateral position. Agreeing the upper bound between states removes some difficulty that could arise as a result of asymmetric cross-border treatment but leaves open the possibility that transactions of the same nature could face different treatment depending on the counterparty. While the level of variation remains to be seen, a fixed upper bound would have provided greater certainty in this respect.

We are here to help

If you have any questions on Amount B's simplified and streamlined approach or would like assistance with the understanding the impact on existing transfer pricing policies, please get in touch with a member of our specialist team or speak to your usual Azets advisor.

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