

BEPS 2.0 – Pillar 1, Amount B Summary

Following the 2015 publication of the Action Reports by the Organisation for Economic Cooperation and Development (OECD) as part of the Base Erosion and Profit Shifting (BEPS) project, work in relation to Action Point 1: Addressing the Tax Challenged of the Digitalisation of the Economy has been ongoing. Taxation has been ongoing.

On 1 July 2021, 130 countries in the OECD/G20 Inclusive Framework on BEPS (IF) approved a historic statement for reform of the international tax rules to address the issues arising from digitalisation. The Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy introduced:

- Pillar 1 – included 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.

The IF has since made a number of publications relating to Amount B, including the 'Pillar One – Amount B' report on 19 February 2024. The guidance is aimed at providing a simplified and streamlined approach to the application of the Arm's Length Principle (ALP) for in-country baseline distribution and marketing activities. In this insight, we explore what Amount B is, how it operates, our observations, and how we can help.

What is Amount B?

Amount B provides for a simplified and streamlined approach for application of the ALP, which seeks to align arrangements between related parties with that seen between independent parties, to in-country baseline marketing and distribution activities. Its introduction specifically seeks to address the needs of Low-Capacity Jurisdictions (LCJ) with more limited administrative resources. It covers qualifying transactions undertaken by wholesale distributors and can be introduced by jurisdictions on a mandatory or optional basis, or not at all.

Amount B looks to simplify the transfer pricing requirements applicable to wholesale distribution of tangible goods, regardless of industry and revenue levels. It achieves this by establishing a fixed Return on Sales (RoS) ranging from 1.5% to 5.5% (+/-

0.5%) subject to a cap-and-collar mechanism and additional adjustments for certain qualifying jurisdictions. The pricing is dependent on the in-scope entity's industry, operating assets and operating expenses as well as the jurisdiction in which the activities are undertaken.

Amount B has been incorporated into the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) as an Annex to Chapter IV and may apply for qualifying transactions for fiscal years beginning on or after 1 January 2025.

Amount B is underpinned by the ALP and Chapters I-III of the OECD Guidelines, requiring qualitative analysis to determine in-scope entities and qualifying transactions. Where a jurisdiction does not apply Amount B, the OECD Guidelines take precedence; however, where Amount B is applied, the arm's length return for baseline distribution and marketing activities can be supported through a fixed return based on the entity's industry grouping, quantitative ratios and adjustments depending on the jurisdiction in which the entity operates.

Scope

In determining the scope of the simplified and streamlined approach, the following must be considered:

- **Jurisdictions:** Amount B can apply on a mandatory or optional basis, dependent on the domestic legislative position and administrative practices. The approach may have a direct effect in certain countries following its incorporation into the OECD Guidelines.

Asymmetric adoption of the rules is therefore possible, creating complications to transfer pricing policies and potentially causing double taxation. Where a country chooses not to adopt the approach, the result may still be respected depending on the jurisdiction in which it is applied

(this will be the case for covered jurisdictions), either through unilateral or bilateral measures. On 26 September 2024, the IF published the Model Competent Authority Agreement (MCAA) as a practical tool to facilitate the implementation of the commitment to respect Amount B outcomes with respect to these jurisdictions (see here for further details).

- **In-scope entities:** While an exhaustive list of baseline distribution and marketing activities is not provided, a set of core distribution activities are recognised as falling within the scope of Amount B, regardless of entity and transaction size.

In-scope entities include those undertaking wholesale distribution to unrelated parties as well as sales agents/commissionaires that contribute to such activities. Non-distribution activities are excluded, as are retail distribution above a de minimis threshold.

- **Qualifying transactions:** To qualify, transactions must be able to be reliably priced using a one-sided transfer pricing method, with the distributor/sales agent/commissionaire being the tested party. A quantitative filter considering the ratio of operating expenses to net revenue also applies, mainly to exclude certain entities that may carry out additional functions.

Transactions involving non-tangible goods, services or commodities, or cases where the tested party carries out non-distribution activities that cannot be evaluated and priced separately, are excluded.

Pricing

Amount B tests the arm's length return using the transactional net margin method. A fixed RoS to be earned by the tested party is determined using a pricing matrix developed from a global data (see below).

A three-step process is undertaken to determine the fixed return:

1. Identify the industry grouping of the tested party. Guidance is provided where distributed products fall into more than one grouping and in some cases, segmentation may be required.
2. Determine the factor intensity, considering Net Operating Asset Intensity (OAS)¹ and Operating Expense Intensity (OES)² of the tested party.

3. Identify the pricing matrix segment that corresponds to the intersection of industry grouping and factory intensity classification under steps 1 and 2.

Pricing Matrix (return on sales %) derived from global data set			
Factor intensity (see step 2 below)	Industry Grouping 1	Industry Grouping 2	Industry Grouping 3
A) OAS 45% or more, any level of OES	3.50 (+/-0.5)	5.00 (+/-0.5)	5.50 (+/-0.5)
(B) OAS 30% to 44.99%, any level of OES	3.00 (+/-0.5)	3.75 (+/-0.5)	4.50 (+/-0.5)
(C) OAS 15% to 29.99%, any level of OES	2.50 (+/-0.5)	3.00 (+/-0.5)	4.50 (+/-0.5)
(D) OAS less than 15%, OES 10% or more	1.75 (+/-0.5)	2.00 (+/-0.5)	3.00 (+/-0.5)
(E) OAS less than 15%, OES less than 10%	1.50 (+/-0.5)	1.75 (+/-0.5)	2.25 (+/-0.5)

Following the above, further steps are required to determine whether additional adjustments to the fixed RoS per the pricing matrix are required:

- The RoS determined under Step 3 is tentative, with potential adjustments required subject to an operating expense cross check, using the equivalent return on operating expenses and assessing this against a cap-and-collar range.

Where the equivalent return on operating expenses falls below the collar rate, upward adjustments to this level is required. Where the equivalent return on operating expenses falls above the cap rate (for which alternatives apply in respect of certain qualifying jurisdictions), a downward adjustment to this level is required.

- The return may also be subject to a net risk adjustment where the tested party is in a qualifying jurisdiction based on the jurisdiction's sovereign credit rating.

Documentation

Documentation requirements will be determined on a jurisdictional basis, but much of the information underpinning the application of Amount B is already included within the Local File requirements. The OECD has suggested that simplified requirements could be introduced for small and medium sized enterprises.

¹Ratio of operating assets (tangible and intangible fixed assets (excluding goodwill) + working capital) to net revenue, calculated on a three-year weighted average basis.

²Ratio of operating expenses to net revenue, calculated on a three-year weighted average basis.

Particularly relevant information will include:

- Support for the accurate delineation of the transaction (i.e. the functional analysis and wider context for the transaction);
- Written contracts/agreements;
- Calculations determining revenue, costs and assets and any allocation. As this information is required to assess whether a transaction is qualifying, it will likely need to be disclosed not only by the tested party but also the counterparty to the related party transaction; and
- Reconciliation of the above schedules to the financial statements.

The OECD recommends that taxpayers notify tax authorities when applying Amount B for the first time and in doing so, consent to applying the approach for a minimum 3-year period. Tax authorities may require relevant information to be submitted as part of this notification and in advance of the transaction.

Our observations

What is clear from the Amount B guidance is that the approach is underpinned by the ALP and that there is a continued need for accurate delineation in line with the OECD Guidelines' existing approach. Appropriate application requires a thorough analysis as would be required for testing any related party transaction; however, there is the possibility that economic analyses performed for qualifying transactions could become more streamlined and consistent.

Despite its potential, the varying approaches of jurisdictions to Amount B and the numerous reservations of certain countries as to its design (i.e. India) have created uncertainty as to whether the objective of greater administrative simplicity and reduced tax disputes will be achieved.

At a minimum, businesses with wholesale distribution activities will be required to assess their position (including whether they operate in-scope activities and whether their related party transactions are qualifying) in territories introducing Amount B on a mandatory basis. Beyond this, businesses can review their transfer pricing policies to determine whether applying Amount B on an optional basis provides a beneficial simplification and the impact of applying the approach to country and group level Effective Tax Rates (ETR). Taxpayers will need to remain conscious of the asymmetric application of Amount B as countries begin to implement the provision (or not). Reviewing

the position as early as possible can minimise any disruptions to existing transfer pricing policies.

We are here to help

Our specialist transfer pricing team can support businesses preparing for the introduction of Amount B in several ways, including:

- **Qualitative analysis**, including determining whether entities are in-scope and whether transactions are qualifying.
- **Quantitative analysis**, including assessing the applicable fixed return for any qualifying transactions / in-scope entities, testing the potential returns and flow through to counterparties and assessing the impact on profits at a country level as well as Group ETR.
- **Documentation**, including a review of existing documentation and evidentiary information to support application of the simplified and streamlined approach, and determining areas where further work can be undertaken (for example, in relation to written contracts or potential avenues for improving tax certainty, such as Advance Pricing Agreements).
- **Implementation**, including reviewing existing transfer pricing policies as well as processes and systems, making recommendations to ensure businesses are Amount B ready and assessing broader tax impacts (such as those related to customs / indirect taxes).

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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