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Consultation on Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One

Dear Sir/Madam

The Irish Tax Institute welcomes the opportunity to contribute to the OECD Inclusive Framework public consultation on the Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One (Progress Report). We note that the proposals set out in the Progress Report have been prepared by the OECD Secretariat, and do not represent the consensus views of the Inclusive Framework, the Committee on Fiscal Affairs (CFA) or their subsidiary bodies.

We have outlined below the feedback we have received from our members, who are tax professionals that provide tax services and business expertise to Irish owned and multinational businesses.

1. Administration Framework for Amount A

The Progress Report notes that in developing the Administration Framework for Amount A the objective is, where possible, that the Administration Framework should allow for tax administrations to deal with Amount A without significant modification to their current tax administration and systems infrastructure.

In our view, this approach is likely to give rise to difficulties as Amount A is a novel tax concept which does not fit neatly within existing tax administration systems and processes.

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Minimising double taxation outcomes

The Progress Report notes that discussions in the Inclusive Framework are continuing regarding the process of identifying the taxpayers in market jurisdictions and relief entities in relieving jurisdictions. The two approaches under consideration are a 'single taxpayer approach', where that entity would be liable for the Amount A tax in all jurisdictions, or a 'multiple taxpayer approach' where one or more entities from the relieving jurisdictions would be liable for the Amount A tax and a single group entity would coordinate payment on their behalf.

In our view, in considering the advantages and disadvantages associated with the 'single taxpayer approach' or 'multiple taxpayer approach', the primary objective must be to ensure that the possibility for double taxation outcomes is minimised. The entities of a MNE frequently have different accounting periods and often both corporate and tax compliance deadlines vary across jurisdictions which further adds to the complexity of providing timely double taxation relief.

The Progress Report notes that to reduce the administrative burden on taxpayers and tax administrations, a centralised filing will be provided in each jurisdiction, whereby the filing obligation for the Amount A Tax Return and Common Documentation Package will be met in all jurisdictions if the documents are filed centrally with the Lead Tax Administration by the Group's Coordinating Entity. In order to reduce the administrative burden for taxpayers, we consider a centralised system which would provide double taxation relief should also be examined.

Common Documentation Package

The Model Rules for the Administration of Amount A allow for a business to file the Amount A Tax Return and Common Documentation Package with the Lead Tax Administration who will then distribute it to all Affected Parties (i.e., market and relieving jurisdictions). As the Common Documentation Package may contain sensitive commercial information, our members have concerns regarding the proposal to share the complete Common Documentation Package with all Affected Parties.

In our view, it would be important that there are appropriate safeguards for taxpayers including, for example, by limiting the sharing of data with Affected Parties to relevant information only and ensuring there is appropriate recourse for a taxpayer if there is a breach of data confidentiality.

2. Tax Certainty Framework for Amount A

The Progress Report outlines three certainty review processes that would be available to businesses:

- a. Scope Certainty Review
- b. Advance Certainty Review
- c. Comprehensive Certainty Review

While we welcome the inclusion in the document of timelines for the various stages of each of the review processes, it is essential that consideration is given to the options available to taxpayers in the event that these timelines are not met by tax administrations.

Advance Certainty Review

An Advance Certainty Review is intended to provide certainty over a group's methodology for applying certain aspects of the new rules that are specific to Amount A. Where a group's proposed approach is accepted, it is proposed that certainty will apply for a set number of future years, so long as agreed critical assumptions continue to apply. However, our members have raised concerns regarding the intended scope, timing, and process of the Advance Certainty Review.

(i) *Scope*

There are many aspects of the Amount A rules that are not covered within the Advanced Certainty Review process, such as the marketing and distribution safe harbour and the mechanism for elimination of double taxation. As a result, notwithstanding the outcome of the Advance Certainty Review process, a MNE may continue to have concerns regarding its interpretation and application of some aspects of the Amount A rules. In our view, a more comprehensive Advance Certainty Review process would provide greater certainty to taxpayers.

(ii) *Timing*

The Progress Report provides that a Group's first request for Advance Certainty could be made when it files its Common Documentation Package for the first year of Amount A. Advance certainty would be critical for both financial statement reporting and in terms of the potential impact of the operation of Pillar Two rules. Therefore, in our view, the Advance Certainty Review should take place as early as possible.

(iii) Review of a MNE's internal control framework

The Advance Certainty Review process involves a review of a MNE's proposed methods and controls undertaken by a Review Panel. As the process will require analysis of relevant aspects of a MNE's internal control framework, the Review Panel will rely on the recommendations of an Expert Advisory Group of tax officials, who satisfy the requisite training and experience criteria required to undertake systems reviews and audits.

Our members have concerns regarding the proposed analysis of a MNE's internal control framework which is to be undertaken by the Expert Advisory Group. Delays in the tax certainty process are likely to occur because of the length of time it will take to identify suitable experts and for those experts to investigate and understand an MNEs' systems and processes.

As part of their audit of an MNE's financial statements, independent external auditors review the systems, controls and processes which MNE's have in place. In our view, as the Amount A rules are based on consolidated financial statements, the possibility of placing greater reliance on existing reports and work of external auditors as part of the Advance Certainty Review process should instead be explored.

3. Tax Certainty for Issues Related to Amount A

Part III of the Progress Report contains draft provisions on tax certainty for issues related to Amount A. Article X of the draft provisions applies where there is an existing bilateral tax treaty with a Mutual Agreement Procedure (MAP) Article whereas Article Y outlines a MAP process which will apply in cases where there is no existing bilateral treaty. Clarity would be welcomed on the role of a MNE in the MAP process and the extent to which the views of a MNE will be taken into account in the MAP process.

Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in relation the above matters.

Yours sincerely



Colm Browne
Institute President