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Public Consultation on the Secretariat Proposal for a "Unified Approach" under Pillar One
Joint comments by economiesuisse and SwissHoldings

Dear Madam, Dear Sir,

economiesuisse, the Swiss Business Federation represents approximately 100,000 companies from all business sectors and regions of Switzerland with a collective work force of some 2 million. SwissHoldings represents the interests of 58 Swiss-based multinational enterprises from the manufacturing and service sectors (excluding the financial sector).

We thank the OECD for the opportunity to provide comments on the Secretariat Proposal for a "Unified Approach" under Pillar One. First, we would like to make some general remarks on the project. This is followed by Appendix 1 where we provide a summary of our proposals for a successful and fair implementation of the new tax framework. Finally, in Appendix 2 we provide concise responses to the specific questions posed in the consultation document.

Our transfer pricing experts Avni Dika and Michael Streibel intend to participate in the public consultation on November 21/22 in Paris as representatives for SwissHoldings and economiesuisse. In addition, Christian Frey (Deputy Head of Public Finance & Taxes at economiesuisse) intends to participate as well.

We appreciate the initiative taken by the Organisation for Economic Co-operation and Development (OECD) for a multilateral solution regarding taxation of the digital economy. We agree that the observed trends towards unilateral and uncoordinated tax measures due to more digitalized business models across a broad range of industries require an adaptation of the international tax framework. We strongly advocate to keep the international tax system based on the arm's length principle and to drive for simplification within this concept. A targeted transformation going beyond the arm's length principle based on a new Nexus, may be useful particularly in relation to consumer facing digital business models in jurisdictions without any physical presence.

The general remarks we would like to make are the following:

1. **A sustainable solution that prevents unilateral tax measures requires a robust consensus on the underlying policy rationale.** Where the proposal departs from the arm's length principle, it needs to be replaced by a new convention, which is based on a broad consensus in the Inclusive Framework. In order to meet the objective of ensuring efficient and simplified tax compliance and tax dispute resolution, this new convention should be rooted in sound economic and tax principles.

2. **Regarding the definition of "consumer facing" a mere *consumption*-based sales criterion is inconsistent with corporate taxation where value *creation* takes place.** Since the term "consumer facing" aims to combine elements of the "user participation" approach and "marketing intangibles", it needs to be based on a consumer *interaction* beyond mere consumption. We propose to define "consumer facing" by concrete and objective "consumer interaction" elements like active user input.

3. **Value creation crucially depends on Research and Development (R&D) and long-term investment in Intellectual Properties and know-how (IP).** The share of non-routine profits assigned to market jurisdictions needs to appropriately balance between R&D and IP investments as well as risk-taking in residence-countries and the marketing and promotion activities towards market jurisdictions. Business reality shows that generating non-routine profits is impossible without research, development and design of innovative products or services. Only a useful product/service motivates users to interact and consumers to buy. Marketing activities alone will not generate any profits beyond a short period. Hence, Amount A must be moderate.

4. **A new Nexus unconstrained by physical presence must not imply massive tax compliance costs for businesses.** In order to simplify governance and compliance processes and to minimize disputes, the jurisdiction of the parent company of an MNE should be responsible to centrally manage all Amount A related aspects, including the elimination of double taxation in allocating the amounts for deduction / exemption to the surrendering countries.

5. **Market jurisdictions should only receive allocation of Amount A profits once the country has signed up to a multilateral instrument including robust binding mandatory and multilateral dispute resolution mechanisms.** Otherwise, double taxation risks will increase considerably.

6. **A comprehensive country-by-country impact assessment appears to be essential.** Such an analysis allows for a transparent public discourse and an informed decision making by the Inclusive Framework members**.**

Yours faithfully,

Dr. Frank Marty
Executive Board Member
economiesuisse

Dr. Gabriel Rumo
Director
SwissHoldings

Appendix 1: Summary of input on the technical implementation of the "Unified Approach"

Key aspects for a successful and fair implementation of the new tax framework are the following:

1. The new rules need to be as clear and simple as possible AND **implemented simultaneously in ALL countries**. Market jurisdictions should only receive allocation of Amount A profits once the **country has signed up to a multilateral instrument,** including robust dispute resolution mechanisms. Otherwise, double taxation risks will increase considerably.

2. Existing **dispute resolution mechanisms** (e.g., APA/MAP or ICAP) are often not sufficiently efficient and effective enough in practice. Hence, fast – NEW – mandatory binding arbitration - mechanisms are essential for the new tax framework. We recommend that a **new "Multilateral Central Tax Board/Committee"** shall deal with all related questions (at least Amount A and B) in order to ensure consistency, avoid disputes and reduce compliance burden for all stakeholders.

3. The implementation of the Unified Approach – in particular Amount A – will result in significant **additional administrative burden** for many MNEs requiring large investments in the IT infrastructure and in-house tax and finance resources. Complexities are increased with continued changes in the MNE's business portfolio through restructurings, reorganization of business lines, acquisitions and divestments. This applies especially to MNEs with decentralized business and transfer pricing models and a decentralized IT/financial reporting infrastructure, often seen in industries with mainly B2B activities. The compliance burden will increase significantly also for the tax authorities.

4. The scope needs to be clarified (with clear criteria and inclusion/exclusion list). In this regard the majority of member firms believe it would be helpful to clarify that as a general rule all business-to-business (B2B) operations are out of scope of Pillar 1 and to define an exclusive list of certain specific B2B operations which are in scope. We welcome the exclusion of the extraction and commodity businesses. Industry-specific carve outs should be granted if reasonably justified. In our view, this is the case also for financial services.

5. Profit before tax of **Group GAAP** shall be used (IFRS, USGAAP etc.) as basis to determine Amount A (or the consolidated segment in scope).

6. **Segmentation** is particularly relevant for "mixed" MNEs with multiple business lines and different business models, where some are in scope and some not. In case all business lines of an MNE are in scope, no segmentation shall be required in order to keep it simple, but an option needs to be provided to the MNEs If segmentation is executed, it should follow existing business line segmentation or a sub-segment by geography or business, within a segment.

7. **Sales to third party distributors/intermediaries** who themselves sell further to third party consumers in different countries are impossible to track for MNEs as the final sales destination is not known. To keep it simple, focus should be on sales to the unrelated party in Country X and the respective allocation of Amount A only to Country X.

8. In order to minimize compliance costs, the **new nexus** should only be applied if both reasonable materiality (sales) thresholds are met (*to be determined*), i.e. (a) from a group perspective AND (b) reasonable (high enough) country specific thresholds. Materiality thresholds should also be provided for "mixed" MNEs which operate in-scope (e.g., consumer facing) and out-of-scope (e.g., B2B) activities.

9. Following considerations for the determination of **Amount A**:

   a. The **deemed routine reward** should be set at a "high enough" level (minimum 10% or higher for specific industries) on an MNE level. Otherwise, there is the risk that excessive profits for Amount A are determined which do not exist (i.e. risk of double taxation).

   b. On the other side, the **profit share/allocation** (Amount A) to market countries needs to be moderate, considering that residual profit is in general driven by many other factors (in particular R&D, technology, synergies, DEMPE) which are not related to markets/consumers AND the limited contributions and risks borne by routine distributors from an overall value chain perspective.

c. As one size does not fit all, determination of Amount A must additionally also take account of decentralized business models relying on local entrepreneurs in the Markets, which already have residual profit.

d. A clear description of the economic principles underpinning Amount A is of critical importance. The lack of reasonable economic principles might lead to significant market distortions, unfair results and the risk that the solution needs to be fundamentally changed again in the near future.

10. A clear and simple **legal basis to execute the required "income/profit" adjustments** needs to be implemented. Basic principles of the cost sharing regulations could serve as a basis. I.e. all "constituent entities" of the group (legal entities, existing PEs or new digital PEs) would need to enter into a global "profit (and loss) sharing arrangement" with (a) clearly defined rules how to calculate the share of Amount A (including reasonable limits) AND (b) how to execute the required income adjustment payments (credit or debit note). A "tax coordinator" within the group would need to be nominated (probably HQ of group or segment in scope) to manage the process.

11. Ideally, new rules should build on existing CIT compliance processes (use existing local taxable entities, where possible) and make required compliance adjustments instead of creating a separate standalone Amount A "compliance burden", in particular as there is a link between Amount, A, B and C.

12. Moreover, in order to minimize the compliance efforts for the preparation of the whole financial analysis of the MNE and in particular the risk of disputes a **"centralized tax audit process"** needs to be implemented (i.e. detailed tax audit in one country only). However, an upfront review and approval of Amount A should also be considered and is preferred.

13. Amount B should be based on the current arm's length standard. To **determine Amount B**, sufficient rates should be available from concluded bilateral APAs (at least for limited risk/routine distribution activities) and average rates should be used as basis. However, a race to the top should be avoided to ensure fairness and therefore not only a minimum profitability but also a maximum allowable profitability has to be clearly defined. Industry specific rates should be applied. If the MNE transfer pricing model allocates already more than the minimum profitability, then this additional profitability should be deducted from Amount A to avoid double allocation and taxation.

14. Clear definition of Amount B is necessary, i.e., what is included (e.g., purchase/sale of products, after-sales services) and **differentiations between applied distribution related business models** (e.g., LRDs, agents/commissionaires, marketing service providers).

15. Flexibility should be provided to MNEs, which are not in scope of new rules (e.g., B2B) to **fully or partly opt in**. In particular, the application of Amount B – as a safe harbor - for distribution activities should be considered in order to minimize compliance efforts and risk of double taxation (including APA/MAP cost).

16. A fair and simple solution to **deal with loss situations** needs to be implemented. In particular, for the calculations of Amount A a "claw-back" or "earn-out mechanism" should be considered. Moreover, an average multi-period approach for the calculation of Amount A would help to partly solve this challenge from a conceptual and operational perspective.

    Moreover, in loss situations also a **reasonable reduction of Amount B** should be considered (e.g. reduce Amount B by X% (e.g. 50%) in the new tax framework in case the MNE is operating with losses or the total profitability is not sufficient to cover Amount B)). A minimum positive return (floor) could still be guaranteed.

17. One important limit/cap should be linked to the *total distribution related* profit margin in market country. I.e. sum of Amount A and B should not be higher than X% of the total profit margin of the group (e.g. max ¼).

Appendix 2

ISSUE	QUESTION	SUB-PART	COMMENTS
1. **Scope**	Under the proposed "Unified Approach", Amount A would focus on, broadly, large consumer (including user) facing businesses. What challenges and opportunities do you see in defining and identifying the businesses in scope, in particular with respect to:	a. their interaction with consumers/users?	1. In order to provide certainty for businesses as well as tax authorities we propose, as a general rule, to carve out all business-to-business (B2B) operations from the scope of Pillar 1. 2. Moreover, we propose to formulate a very specific list of all the B2B operations, which need to be included due to different/special kinds of interactions with consumers/users. 3. A mere consumption-based sales criterion is inconsistent with corporate taxation where value creation takes place. Since the term "consumer facing" aims to combine elements of the "user participation" approach and "marketing intangibles", it needs to be based on a consumer interaction beyond mere consumption. We propose to define "consumer facing" by concrete and objective "consumer interaction" elements like active user input.
		b. defining the MNE group?	1. Group Consolidation shall be the basis.
		c. covering different business models (including multi-sided business models) and sales to intermediaries?	1. A sensible approach is needed for "mixed" MNEs having both consumer-facing and B2B operations as regards whether they should and, if so, to what extent and under what conditions, be covered under Pillar 1. 2. This could work as a combined threshold of (1) certain percentage of revenues of consumer-facing operations to total operations of the MNE and (2) the absolute size of the consumer-facing operations. 3. The aim is also to carve out MNEs, which total revenues are above the threshold, but their consumer-facing operations are minor and including such operations would only result in additional administrative burden for both, MNEs and the tax authorities, without any significant tax impact. It should be noted that the implementation of Pillar 1 implies significant administration burden for the MNE and the involved tax authorities.

			i. <u>Example 1</u>: MNE compares the amount of revenues derived from consumer-facing operations to its total revenues and if the ratio is below a certain threshold (e.g., 20%), consumer-facing operations should be carved out. ii. <u>Example 2</u>: The analysis could be performed on a business line level, as reported in the MNE's annual report. A business line could be covered under the proposed approach if its revenues from consumer facing operations exceeded, for example, 90% of its revenues, and the total revenues of business lines, which meet this condition (consumer-facing business lines), exceed 750 MEUR or a certain threshold of total MNE's revenues. 4. Either clear definitions or assumptions are needed in case of businesses which can serve both, consumers and B2B, e.g., in relation to how to assign revenues to one or the other type of operations. 5. These cases could also be addressed by clearly formulated carve outs of businesses or industries which can clearly serve both types, i.e., sell the same products to other businesses and consumers. 6. In case of B2C operations the scope should be limited to businesses which are engaged in a market remotely (from abroad). Pure domestic B2C transactions should also be out of scope".
		d. the size of the MNE group, taking account of fairness, administration and compliance cost?	1. The approach under discussions should not create unnecessary administrative burden for MNEs or the tax authorities. Hence, we support to limit the scope to large MNEs. 2. With regards to fairness and equal treatment, thresholds should consider the size of consumer-facing operations within an MNE and also take into account their relative size compared to the total MNE's operations (see comments above).
		e. carve-outs that might be formulated (e.g., for commodities)?	1. We welcome the exclusion of the extraction and commodity businesses. 2. Industry-specific carve outs should be granted if reasonably justified. In our view, this is the case also for financial services based on regulatory requirements with regard to capital and people functions in the market jurisdiction. We further refer to the comments of the Swiss Bankers Association (SBA) regarding a carve out of the banking industry and the comments of Insurance Europe regarding a carve out for the insurance industry.

2. **New Nexus**	Under the proposed "Unified Approach", a new nexus would be developed not dependent on physical presence but largely based on sales. What challenges and opportunities do you see in defining and applying a new nexus, in particular with respect to:	a. defining and applying country specific sales thresholds; and	1. There could be thresholds considering materiality of sales in the countries from the MNEs perspective. For example, the taxing rights should be limited to the countries cumulatively covering 80% of the total MNE's revenues (also considering in relation to other data points like countries' GDP). 2. This would allow MNEs and the tax authorities to use their resources in the most efficient manner, focusing on the largest taxing right allocations, which in any way would constitute a large majority. 3. *Intermediary*: It needs to be clarified how to deal with sales to third party distributors/intermediaries who themselves sell further to third party customers (consumers) in different countries. The final sales destination (final consumer) usually is not known and cannot be controlled by the MNE/supplier. To keep it simple, focus should be on sales to the unrelated party in Country X and the respective allocation of Amount A only to Country X. 4. The existing concept of the dependent agent under the OECD Model Tax Convention becomes obsolete with the new nexus regime. In order to avoid distorting overlaps with the new nexus definition, which also envisages to cover the interaction with costumters in a market jurisdiction, the dependent agent concept must be eliminated when incorporating the new regime into the Model Tax Convention. 5. The new nexus should require that the thresholds are fulfilled in at least 2 consecutive years to demonstrate sustainable economic activity in the respective jurisdiction.
		b. calibration to ensure that jurisdictions with smaller economies can also benefit?	1. We need to find the right balance between 2 conflicting objectives, i.e. "broad" country coverage and simplicity (minimal compliance costs for all stakeholders). 2. Therefore, a new nexus should only be applied if both reasonable materiality (sales) thresholds are met (*to be determined*), i.e. (a) from a group perspective AND (b) reasonable (high) country specific thresholds. i. The allocation of an Amount A to a specific country generates high administrative costs for MNEs (audit, etc.). Even if the allocation of low amounts would be desirable, especially for small countries, the costs linked with every single allocation must be reasonable and should be significantly lower than the allocated amount. ii. One simple country specific de minimis threshold might be for example USD 1 revenue per inhabitant of a country. Hence, the nexus would only apply to MNEs that generate revenues of USD 1 or more per inhabitant in a given market. iii. A threshold regarding the global Amount A of a group or segment (e.g. min. 0.5 million Euro) and a country threshold determining that a calculated Amount A for a specific country of below ,e.g., 50 thousand Euro won't be allocated.

3. **Calculation of Group Profits for Amount A**	The starting point for the determination of Amount A would be the identification of the MNE group's profits. The relevant measure could be derived from the consolidated financial statements. In your view, what challenges and opportunities arise from this approach? Please consider in particular:	a. what would be an appropriate metric for group profit?	1. Group GAAP shall be used (IFRS, USGAAP etc.) 2. The chosen metric should form a taxable base and therefore, profit before tax should be considered as an appropriate one (or the most similar metric available under different accounting principles). 3. Certain adjustments/allocations will be required, e.g., to account for corporate costs not allocated to any business lines and non-core businesses. 4. A minimum threshold for Amount A in relative terms and absolute term shall be set (e.g. if total Amount A is less than XUSD, no complicated income adjustment should be initiated).
		b. what, if any, standardized adjustments would need to be made to adjust for different accounting standards?	1. If Group GAAP used by the MNE will be applicable, no further adjustments to the accounting standard or reconciliations should be required. Any additional adjustments will not significantly impact the amounts discussed but will create additional administrative burden for both, MNEs and the tax authorities (at least should be limited and clearly defined (e.g. for goodwill)).
		c. how can an approach to calculating group profits on the basis of operating segments based on business line best be designed? Should regional profitability also be considered?	1. Main reason and case to consider any segmentation is for "mixed" MNEs with multiple business lines, where some are in scope and some not. In case all business lines of an MNE are in scope, segmentation shall not be required in order to keep it simple. 2. Additional regional segmentation (so that the profits from Region A can only be distributed across market jurisdictions from Region A) should not be obligatory as it will add complexity and it is not clear if this would result in a more fair distribution. 3. For any potential segmentation, consistency over time is key. 4. Additional comments regarding business line segmentation: i. There are various reasons why MNEs structure their business into business lines, but taxation is not the reason and should not be the reason. If business line segmentation may impact taxation, there is the incentive for MNEs to structure their business lines in the most tax optimized manner which may distort the actual purpose of business line separation and may weaken Pillar 1 effectiveness.

			ii. Reporting for certain regions/businesses may change during the year and from one year to the another. Groups typically change the structure regularly. Comparability of different years will not be possible, and the allocation of Pillar 1 taxable profit may become volatile. iii. There are significant confidentiality issues if unpublished business line data shall be used. iv. How to deal with non-core business lines and extraordinary items? Such data is often not published.
4. **Determination of Amount A**	In determining Amount A, the second step would exclude deemed routine profits to identify deemed residual profits. The final step would allocate a portion of the deemed residual profits (Amount A) to market jurisdictions based on an agreed allocation key (such as sales). In your view, what challenges and opportunities arise from this approach?		1. Key is to provide MNEs with clarity by setting up an undisputable return for routine activities as well as the agreed allocation key. 2. We agree that consensus on these figures through a higher-level, political agreement will provide more simplicity and avoid numerous tax disputes. 3. In any case, total excessive profits shall only be determined on group level or business line in scope level and the ratio should be set at a "high enough" level. Otherwise, there is the risk that excessive profits for Amount A are determined which do not exist (i.e. risk of double taxation) and/or are related to trade intangibles. 4. For certain business lines the profit margin may vary significantly over the life cycle. With respect to equal treatment of different business models and to provide business with tax certainty, it is necessary that excessive profits in one year can be compensated by below routine profits in other years. Hence, there should be an inter-temporal (potentially negative) element in the calculation of the Amount A based on past (potentially below routine) profit margins. Alternatively, Amount A could be determined based on a rolling average of the profit margin over a number of years. This approach helps to solve (at least partly) the question of the proper treatment of losses. 5. Moreover, in order to deal in an efficient manner with timing, implementation and compliance issues an "average-rolling forward approach" should be considered. I.e. the average Amount A of last X years will be used as a basis for the new tax compliance framework of the current year. For example, the average Amount A of the FY14-18 (known end FY 18/beginning FY 19) will be used as a basis for the current FY 19 compliance and IA/TP process. 6. Moreover, the profit share/allocation of Amount A needs to be on the low side of the range, considering that residual is in general derived from many other factors (R&D, technology, synergies) which are not related to markets/consumers and the limited contributions and risks borne by routine distributors from an overall value chain perspective.

			7. In this context, in contrast to the ALP, the new proposal lacks clear “economic principles”. A clear description of the economic principles underpinning Amount A is of critical importance. The lack of reasonable economic principles might lead to significant market distortions, unfair results and the risk that the solution needs to be fundamentally changed again in the near future. In particular it should not be interpreted as the basis to move to a formulary apportionment tax framework
5. **Elimination of Double Taxation in Relation to Amount A**	What possible approaches do you see for eliminating double taxation in relation to Amount A, considering that the existing domestic and treaty provisions relieving double taxation apply to multinational enterprises on an individual-entity and individual-country basis? In particular, which challenges and opportunities do you see in:	a. identifying relevant taxpayer(s) entitled to relief?	1. A multilateral clear and simple solution is required to determine and deal with Amount A throughout the completely new tax compliance process. 2. MNEs should be able to opt for the entities that should be held to have been taxed, particularly in case where a number of entrepreneurs within the group (or business line) are entitled to residual profit. Usually, this should be the entities that generate the residual return within the MNE’s business model. This may be the IP companies, the HQ company (of the relevant segment in scope) or for example production entities supplying to the market jurisdictions. The MNE should be able to appoint a group entity that shall serve as the overall “tax coordinator”. It is expected that significant resources are required to administer the process. 3. Ideally, we should build on existing CIT compliance process (and use existing local taxable entities, where possible/existing) and make required compliance adjustments instead of creating a separate standalone “Amount A compliance burden”, in particular as there is a link between Amount A, B and C.
		b. building on existing mechanisms of double tax relief, such as tax base corrections, tax exemptions or tax credits?	1. Income/Profit Adjustment Mechanism: A clear and simple legal basis for “Income Adjustments” (IA) needs to be implemented to effectively allocate the “right profit” to the “right” countries. Please note “IAs” most likely will be required in both directions. I.e. potential existing too high profits in country X might need to be relocated – via the “lead/tax coordinator entity” (probably HQ/IP owner(s)) based in country Y – and reroute the appropriate portion to country Z. 2. Moreover, it needs to be clarified how to treat the required IAs from an indirect tax and customs perspective (exclude it?). Would it trigger any VAT registration obligations? In

			addition, it should be clarified that no withholding tax should be applied on any IA payments. 3. Such IA would need to be recognized in statutory accounts to create a legal title for cash payments, which subsequently would be used to settle newly created tax liability. An adjustment only “on the tax return” would not be effective. 4. From a conceptual, compliance and implementation perspective (e.g. payment procedures, central coordination, true-up/down mechanism), we should consider to “replicate” some basic principles of the cost sharing regulations. i. I.e. all “constituent entities” of the group (legal entities, existing PEs or new digital PEs) would need to enter into a global “profit (and loss) sharing arrangement” with (a) clearly defined rules how to calculate (including reasonable limits) AND (b) execute the required IA payments (credit/debit note, i.e. both directions are possible). ii. A tax coordinating/clearing entity within the group would need to be nominated (probably HQ of group or segment in scope). Moreover, at local level it needs to be clarified which entity(ies) or PEs (in case more exist in a country) will be accountable to deal with Amount A. As for the CBCR process, this could be covered by existing adjusted CIT returns and will most likely be the entity dealing with distribution related activities (or the new digital PE). 5. An alternative approach would be to build on the principles of the CBCR framework. I.e. the tax authorities of the nominated “lead county” (probably the country of HQ) would be accountable to manage the whole IAs with/between all countries in scope based on the economic analysis (and audited) financials provided by the nominated “tax coordinator” of the group. 6. In order to minimize the compliance efforts for the preparation of the whole financial analysis of the group and in particular the risk of disputes a “centralized tax audit process” needs to be implemented. 7. Whereas, an upfront review and approval of Amount A would be preferred. 8. Following considerations with regard to a central tax audit approach: i. A - timely - (tax) audit (certification process) should be only performed in the country of the nominated tax coordinator of the group. ii. The audit could be performed by external auditors and/or the respective local tax authorities. iii. The completely new financial analysis together with the certified tax audit report could be shared with all tax authorities as part of the normal tax and TP compliance process. iv. Finally, any questions and potential disputes with regard to the determination of Amount A shall be dealt with directly between the tax authorities.

			v. Any disputes should be decided and solved by a new multilateral governance body within a reasonable short period (max 3 years).
		c. ensuring that existing mechanisms for eliminating double taxation continue to operate effectively and as intended?	1. This is dependent on the identification of relevant taxpayer and adjustment mechanism discussed under sub-question b) and c) above. 2. Moreover, also the potential impact on WHT on dividends needs to be considered. "Amount A adjustment" in market jurisdictions may lead to additional WHT tax costs through additional dividend repatriation from the MNE's company in the market jurisdiction to the parent company.
6. **Amount B**	Given the large number of tax disputes related to distribution functions, Amount B of the "Unified Approach" seeks to explore the possibility of using fixed remunerations, reflecting an assumed baseline activity. What challenges and opportunities does this approach offer in terms of simplification and prevention of dispute resolution? In particular, please consider any design aspects and existing country practices that	a. the need for a clear definition of the activities that qualify for the fixed return; and	1. Significant efforts should be invested in defining baseline activity (including examples) so that it is clear to taxpayers as well as market jurisdictions which activities are remunerated under Amount B and which should trigger additional remuneration under Amount C. 2. The range of typical distribution related activities and function and risk profiles are as follows: a. Marketing support services (typically remunerated on C+), b. Agents c. Commissionaires d. Limited risk/routine distributor and e. Fully-fledged distributors. 3. Different profit targets need to be provided to the different activities and respective function and risk profiles (substance) in a specific country. If for example the reward for the base line distribution (in the list above probably (d) is set at X% of sales, the reward for the activities (a) to (c) must be significantly lower. A simplification assumption could be 1/Y of X (e.g. 1/5) of the base line profit OR reasonable safe harbor rules are provided for function a-c (based on existing APA; either RoS based or on a cost-plus basis; probably around 5-10%)). 4. It should be considered whether every business/industry can apply the same profit level indicator such as RoS.
		b. a determination of the quantum of the return (e.g., single fixed percentage; a fixed percentage that varied by	1. To determine Amount B, we are of the opinion that sufficient rates from concluded bilateral APAs should exist for many countries (and regions/industries); at least for limited risk/routine distribution activities. 1. Hence, an average rate of existing bilateral APAs should be considered as a basis for a potential simplified one global rate (alternative: one rate per industry/region more accurate but also more complicated to manage/maintain).

	could inform the design of Amount B, including:	industry and/or region; or some other agreed method).	2. However, a race to the top should be avoided to ensure fairness and therefore not only a minimum profitability but also a maximum allowable profitability has to be clearly defined. 3. Depending on the range of such rates, industry specific rates should be applied. 4. Moreover, also for Amount B a multilateral solution is required. The proposed amounts need to be accepted by all impacted countries. 5. Finally, we would like to highlight that TP adjustments will be required to achieve the new safe harbor values. However, executing TP adjustments is a serious challenge in many countries (in some countries even not possible by law). Hence, an alignment and adjustment of the existing tax (and indirect tax and customs) framework will be required to minimize tax disputes and compliance burden for all stakeholders.
7. **Amount C/Dispute Resolution and Prevention**	In the context of Amount C of the “Unified Approach”, what opportunities do existing and possible new approaches to dispute prevention offer to reduce disputes and resolve double taxation? In particular, what are your experiences with existing prevention and resolution mechanisms such as:	a. (unilateral or multilateral) APAs?	1. If the definitions for Amount B are clear, MNEs should easily identify instances in which additional remuneration in form of Amount C is due and consider this in their transfer pricing policies. 2. Calculation of additional remuneration under Amount C should follow regular transfer pricing rules (but also considering a certain return for Amount B) and should be easily auditable by the tax authorities. 3. APAs should be offered to MNEs and should lead to mandatory conclusions in order to limit cost and time invested by the parties to such proceedings. 4. However, existing APA processes are often not efficient and effective enough; too long and complicated (mainly due to resource challenges/limitations on the side of the tax authorities).
		b. ICAP?	1. The profit allocation triggered by Pillar 1 proposal has truly multilateral character. Any resulting double taxation is to be solved only in a multilateral manner going beyond multilateral scope exercised so far under MAPs and APAs (typically single number of countries). 2. Creating a board or platform to administer the reallocation of excessive profits (Amount A) between many jurisdictions would allow consistency, effectiveness and

			shift administrative burden away from MNE. This could work in practice such that Amount A calculated by MNE (on net basis) is deposited/declared to ICAP-alike board to approve it and administer its allocation between affected jurisdictions. The outcome could be reported to MNE (tax coordinator) to merely execute respective adjustments (see comments above).
		c. mandatory binding MAP arbitration?	1. MAPs should be offered to MNEs and should lead to mandatory conclusions in order to limit cost and time invested by the parties to such proceedings. As for APAs, existing MAP process are often not efficient and effective enough, too long and complicated (mainly due to resource challenges/limitations on the side of the tax authorities). 2. Hence, a fast – NEW - mandatory binding arbitration mechanism is key for the new tax framework.
Other Comments?			**Administrative Burden – in particular for complex, large MNEs** 1. There are a number of large complex MNEs with decentralized business and transfer pricing models and a decentralized IT/financial reporting infrastructure, especially in industries with mainly B2B activities. Complexities are increased with continued changes in the business portfolio through restructurings, reorganization of business lines, acquisitions and divestments. For such MNEs the Unified Approach, including the proposed allocation of global financial results and the required data availability, will mean a significant administrative burden requiring large investments in the IT and in-house tax resources infrastructure. 2. Hence, besides the risk of double taxation and a fair profit allocation we are highly concerned about the additional administrative burden to comply with the (complicated) new tax framework. **Timing of first implementation** 1. Timing of the taxing right will need to apply to the succeeding financial year due to the timing of preparation of the financial statements and tax return deadlines in different countries (more detailed analysis needed). Later timing of the taxing right could, however, help to align the timing of the taxing rights in relation to all MNEs considering various financial year ends. I.e. if we exceed the threshold in year X first time than the tax filling (and tax payment) obligation would start in Year X+1, with a final tax return due during the year X+2.

2. The rules should ensure that instances in which countries are challenging the taxing right allocations done by MNEs are limited, as these will result in disputes, which will potentially be difficult to resolve. This is due to the fact that a change in the amount of the taxing right allocated to one market jurisdiction changes all the remaining allocations.

Opt-In option

1. Flexibility should be provided to MNEs - not - in scope of new rules (e.g., B2B or thresholds not met) to fully or partly opt in.
2. In particular, the application of Amount B - as a safe harbor - for distribution activities should be considered in order to minimize compliance efforts and risk of double taxation (incl. APA/MAP cost).

Avoiding Double-Counting

1. A mechanism to adjust income allocation, in particular also to avoid double counting of Amount A (double taxation), needs to be implemented.

    Example: MNE is operating in country X with a full-fledged (license) manufacturer and distributor. Required profit level is determined on TNMM basis and according to the local TP study the required local Operating Margin (RoS) is

    - A) higher than the deemed routine profit
    - B) even higher than the total profit of the Group as a whole

    Questions:

    i. Do I still need to allocate an Amount A to Country X.
    ii. Or in scenario B, do I – instead - need to re-allocate some “excess profits” in X to other countries in order to avoid double taxation? Probably yes!
2. Reasonable limits and floors can help to mitigate the risk of double counting.

			Amount C / Safe harbor for ROUTINE activities not related to distribution 1. OECD should consider to introduce also **reasonable** safe harbor values (as already provided for “low-value adding-services”) also for non-distribution related **routine** activities (e.g. for contract R&D or contract manufacturing). 2. Also for other non-distribution related routine activities meanwhile, sufficient bilateral APA values should be available. 3. Average bilateral rates could form that basis to provide also targets for certain regions/countries/industries and therefore reduce the compliance efforts for all and in particular the risk of double taxation. 4. In such a case, MNEs and tax authorities could focus on the right income allocation of the non-routine related profit allocation within the group. 5. A cost-plus range between 5-10% on all other non-distribution routine activities (e.g. contract R&D, manufacturing or other service (not low-value adding) should be considered as a basis. **Loss situations** 1. To ensure a fair new tax framework the treatment of losses needs to be analyzed and considered. As market countries will contribute in future on “excess” profits it is more than fair to ask for their contributions in the opposite situation, i.e., very low profit and in particular loss situations. 2. In particular, for the calculations of Amount A a “claw-back” or “earn-out mechanisms” should be implemented. 3. Moreover, as discussed above, an average multi-period approach for the calculation of Amount A would help to solve partly this challenge from a conceptual and operational perspective. 4. Finally, in case of loss situations (in particular in case of multiple years due to crisis or start-ups) in addition a reasonable reduction of Amount B should be considered. One simplified approach could be to reduce Amount B by X% (e.g. 50%) in case the whole group (in scope of the new regulations) is operating with losses (or the total profitability is not sufficient to cover Amount B). One might argue this is beyond the ALP but so is the whole new framework. However, this is a fair concept in a new two-sided approach based to the profit split concept, which is the basis of the new tax framework. Also, in the adjusted proposal at a minimum return could be “guaranteed” in the new tax framework for routine activities.

			Limits and Floors 1. Building also on the challenges for loss situations, to ensure that the - total - profit allocation to markets is reasonable and fair from an overall value chain perspective, a reasonable limit/floor concept should be implemented in the new framework. Moreover, reasonable limits and floors will help to mitigate the risk of double counting. 2. Following additional limits/floors should be considered, e.g., considering limited contributions and routine nature, the total distribution related profit margin in market country, i.e. sum of Amount A and B, should be not be higher than X% of the total profit margin of the group (e.g., max ¼).