SwissHoldings
Federation of Industrial and Service Groups in Switzerland

Nägeligasse 13
CH-3011 Bern
+41 31 356 68 68

info@swissholdings.ch
www.swissholdings.ch

Tax Treaties, Transfer Pricing and Financial Transactions Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration

Per mail to: TransferPricing@oecd.org

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SwissHoldings comments on public consultation document: Pillar One – Amount B

Dear Madam/Sir

The business federation SwissHoldings represents the interests of 63 Swiss-based multinational enterprises from the manufacturing and service sectors (excluding the financial sector).

SwissHoldings would like to thank the OECD for the opportunity to comment on the Draft Model Rules for Tax Base Determinations related to Amount B under Pillar One.

A. GENERAL

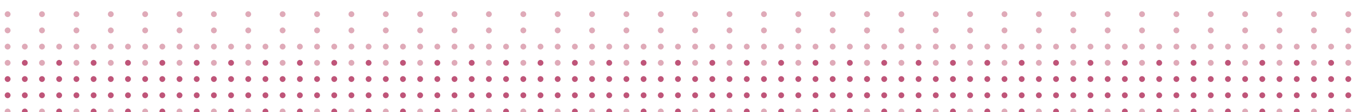
1. We **fully support the initiative and main objectives** of the new Amount B (AB) rules to simplify and streamline the process for pricing so called "**baseline marketing and distribution activities ("BMDA")**. OECD should clarify the distinction between BMDA and Routine Distribution activities in order to
   - ➢ enhance tax certainty and reduce tax disputes, and
   - ➢ address the needs of *low-capacity jurisdictions ("LCJs")*.

2. We are very pleased that the scope of AB has broadened considerably since the December release. However, further efforts should be made to expand the scope further and provide additional clarifications.

3. From our perspective, **broad application with simple and clear guidance** should be the centrepiece of new rules to meet the objectives.

4. In essence, our practical understanding is that the main objective of *AB* is to "**replace**"
   - ➢ the **existing profit targets** (which in practice for over 95% of cases are determined on a (one-sided method) TNMM basis), using specific benchmarks;
   - ➢ **with reasonable safe harbor values (AB)** consistent with the arm's length principle, and acceptable for both taxpayers to the transaction (*ideally globally*) as well as the involved tax authorities.

5. We understand the concerns of LCJs regarding the *"unavailability of local comparables"*. However, this challenge is not new and currently exists (partly) in many developed countries or regions. However, in practice, this challenge was "addressed/solved" with reasonable relaxation



of the comparability requirements, i.e., adjust/expand the search criteria by industry and/or regions (*acknowledging also that TP is not an exact science*).

However, we are of the opinion that the new rules should help to better address these general practical challenges and associated risks, for both LCJs and developed countries.

6. As mentioned in par. 6 & 7, we fully support that the accurate delineation of the qualifying transactions should be based on existing general TP principles, i.e., based on a **robust functional analysis** and supported by appropriate documentation.

7. Regarding the pricing matrix and **potential country specific exceptions**, we are very concerned that they "**over-engineer**" the whole model, by either trying
   - to make TP an exact science and/or
   - to please all countries.

   It lacks also economic justification. Again, simplicity should be paramount to achieve the main objectives.

8. Given practical and economic challenges of proposed model, as an alternative, OECD should consider providing a simpler framework.

   Based on the work currently performed, providing the full range, supported by the practical experience (i.e., focus on values from category C-E) is easier to apply. In other words, using the full range, currently 1.5% - 4.25%, for all taxpayers and industries, without the complicated and economically questionable ratios or define industry specific benchmarks which could then also take into account the industry specific non-baseline contributions as defined in criterion 9a.

   Moreover, this simplified framework should be supported with additional reasonable corroborative mechanisms (min./max. profit levels for distribution activities) to improve quality and fairness.

9. One of the major concerns from **all** member firms is that the new rules will create in future tax audits and/or APAs a new floor (**"minimum profit level")** for BMDA (independent of whether in scope or not). We request further clarification that this is not the case.

B. SCOPE

Distribution of goods & services and retail businesses

10. As stated above, to meet the objectives, the scope of the application should be as **broad, simple, and clear** as possible. Hence, inclusion of clear definitions for all relevant parameters (including distinction between digital goods and digital services) is key.

11. **We do not support any scope limitations (i.e., the exclusion of distribution of services as well as the limitation of the retail business to only 20%).**

12. In the current business environment, digital services (e.g., SaaS) are part of the product portfolio of many industrial MNEs in the B2B area. Excluding digital services will significantly and unnecessarily reduce the scope of AB. Digital services are also often sold together with hardware.

13. Excluding entities that perform such activities will result in the exclusion of entire industries, similar to the exclusion of entities that also sell digital services. In the industrial goods industries, it is very common that the MNEs' distribution entities also provide certain services such as commissioning, warranty and repair service and other after-market services. Although the primary role of distribution entities is the distribution of products, services are often additionally required in order to sell their products because of customer demand for such services.

Similarly, in the pharmaceutical industry routine regulatory services are performed as part of the distribution of pharmaceutical products in order to receive and maintain local distribution rights in a regulated industry.

14. Importantly, the comparable companies which are used in benchmark studies typically provide additional services to its core activity or function. Accordingly, the exclusion of taxpayers providing (related/integrated) services in conjunction with distribution of products is not in line with the ALP.

    In case political support cannot be obtained for this reasonable economic proposal, as a compromise OECD should at least in phase 1 consider allowing up to a max of 49% of the revenue to be from services, until more "accurate/specific" benchmarks are provided by the OECD, for distribution of digital goods and/or provision of services.

    The same applies for the retail business. In case there is not political support for this reasonable economic proposal, as a compromise OECD should at least in phase 1 of the new rules consider increasing the *de minimis value* from the currently proposed 20% to at least 49%, until more accurate/specific benchmarks are provided by the OECD, for retail activities.

Alternative A (quantitative) versus Alternative B (qualitative)

15. Many of our member firms are confused about the 2 alternatives because the starting point of the analysis is the general functional analysis (covering both qualitative and quantitative aspects) which in any case needs to be performed by the taxpayer (*as also mentioned in the box on page 12*). There does not appear to be a justification for adding additional steps (either alternative A or B) in a process which is supposed to be "simplified".

    From our perspective, a "**<u>separate additional qualitative analysis</u>" as such should be avoided to keep the rule clear and simple.** Based on the simplicity of the approach our members clearly prefer Alternative A over the more complex Alternative B.

    The current wording of Alternative A (perhaps incorrectly) implies that a detailed FAR analysis does not need to be performed any longer when applying the new rules, which we assume was/is not the intention.

    Although a pure quantitative approach (*Alternative A*) seems to be simpler and more administrable than Alternative B, we have doubts that in practice any potential "functional unclarity" might be used as a trigger for disputes in future tax audits.

    Alternative B is focusing only on the accurate delineation of the activities of the entities potentially in scope, but it completely ignores the lack of the same detailed information for the Distributors in the Database. As a result, Alternative B would apply profitability ratios of Third Parties that are likely performing also non-baseline activities to the very accurately delineated intercompany transactions that are considered purely baseline.

    Either the qualitative analysis can be performed with the same level of accuracy on both the tested parties and the set of comparables or otherwise the result would be distorted. OECD and IF members should acknowledge that it is impossible to perform this qualitative analysis with the same level of accuracy for companies in the database simply because of the lack of detailed information and they should instead rely on quantitative methods and statistical analysis to smoothen the differences and provide reliable results.

    Instead, the focus should be on the clarification and practical guidance of what constitutes BMDA as part of the ordinary FAR analysis (including quantitative and qualitative aspects, definitions and examples), which in any case needs to be performed by the taxpayer.

16. With regard to the **operating expense ratio** mentioned in par 8b, in order to enable a broad scope, we recommend using the proposed higher ratio of a maximum of 50% of sales

(independent of the selected Alternative A, B or other combined/neutral approach). It will be important to provide further clarity on the definition of operating expenses for this purpose.

Before introducing any quantitative adjustments, their correlation with profitability must be first demonstrated and explained. Through solid statistical analysis, it must be proved that these adjustments are increasing the reliability of the results rather than taking it as an assumption.

17. With regard to Alternative B, it needs to be ensured that **tax administrations do not "blindly" conclude that a two-sided approach is the right TP methodology**, even in cases where the taxpayer does not fully meet all parameters and/or performs additional activities. In fact, we are surprised about this discussion in the context of the new rules.

    The application of a profit split method is in practice applied only in special limited cases, and usually not to price distribution activities (new *Amount A framework is a different aspect*). The current language in this regard is misleading and should be clarified.

Example 1A: Specialized Activities

18. We support the additional clarifications and examples such as **Example 1A ("specialized activities")**.

    However, we are very concerned about the wording and assumption that any "**specialized activities"** per se represent non-baseline or "non-routine services" and trigger an exclusion. This as a standard assumption is not appropriate and needs to be clarified.

    Moreover, as mentioned above (usually) for integrated services offerings in competitive environments, such services are also provided by independent distributors/comparables used as a basis to determine the pricing matrix.

    Last but not least, the materiality of these (additional) activities compared to the overall distribution business needs to be considered. Only if very unique AND material, should an exclusion be considered (*reasonable thresholds/limits could help to clarify*).

19. We have the same concerns - as above - for the **"customer-specific technical engineering support functions".** These are activities which in theory could often be outsourced and/or provided separately by other parties (*and typically routine in nature*).

    Hence, if not material, those cases should not be automatically excluded from application of the new rules.

    Moreover, it should be considered that via the "TP model and fixed margins" those costs are economically financed by the supplier.

    And more importantly, due to higher costs (and probably also assets) these are economically more than sufficiently compensated with an increased profit target in the proposed pricing matrix. Please note that the profit target increases at least by a factor of 2.5 from factor intensity category E to B (*economic support and justification is unclear to us*). Again, reasonable thresholds/limits could help to clarify.

Example 2A and 2B: Highly Regulated Industries

20. We support in principle the addition of examples such Example 2A regarding highly regulated industries.

    However, the language and description used is misleading and unclear and might lead to disputes. Further clarifications are required.

    The starting point and assumption must be that taxpayers in regulated businesses (e.g., pharma, agrochemical, etc.) are by definition within the scope of new rules.

Please also note that independent distributors (likely included in the set of the current pricing matrix) are performing "supporting regulatory activities", without which they could not profitably conduct their business. Regulatory approval of a pharmaceutical product is a must for any pharmaceutical company to distribute a product in a market. Such regulatory requirements often include the activities of continuous clinical trials - so called phase IV trials -, application for new product launches and ongoing pharmacovigilance activities.

As stated above, the materiality of these activities as compared to the total distribution business needs to be considered which provides evidence that such regulatory activities do not represent a core activity. Only if very unique AND material, should a total exclusion be considered. BDMA should automatically include any regulatory activities mandatory by law even if they are performed by highly educated and paid employees, as this is the case in any regulatory activity in the pharmaceutical industry.

Finally, and once again as stated above, via the TP model and "fixed margins" those costs are economically financed by the supplier. And more importantly, economically they are more than appropriately compensated with an increased profit target in the proposed pricing matrix (please note that the profit target increases by a factor of 2.5 from factor intensity E to B, economic support and justification is unclear to us).

Scoping criteria: commodities

21. We do not understand why commodities should be excluded (in general these are low margin businesses). Considering the practical challenges in applying a CUP for the commodities business, to simplify application and meet objectives taxpayers should be (at least optional) allowed to benefit from the new simplification measures.

    At a minimum, the OECD needs to consider a reasonable materiality threshold (compared to total distribution activities).

Scoping Criteria 9c. separate transactions

We are very pleased that segmentation is now permitted, where it can be separately evaluated and priced. This was/is standard practice in current framework.

22. In par. 40 certain activities (included in a not exhaustive list) are assumed to be non-distribution activities by definition. It is important that a clear definition is provided and that OECD and IF members consider that in some very regulated industries these activities are strictly related to the distribution. This the case of R&D activities in the Pharmaceutical Industry, where some studies are required by authorities to allow the distribution of products in the country and are not performed with the purpose of discovering or developing new products; these types of studies should be not considered as R&D for the purpose of excluding them from the scope of Amount B.

23. We appreciate the administrative simplification proposal mentioned in par. 42. However, we do not understand why such a **ratio/limit is required for the indirect cost allocations**. The focus should be on a reasonable allocation mechanism as such and less on the amount. Hence, we recommend deleting the "limit" and instead focus on clarifications and examples to ensure clear and simple execution.

24. As a new requirement, in practice limited experience exists in segmenting the balance sheet. Hence, many taxpayers will find it particularly challenging to segment balance sheets for purposes of determining the ratio of operating assets to sales. The difficulties some taxpayers will face in segmenting balance sheets should call for rules to protect against tax authorities requiring segmentation where a taxpayer would not otherwise segment (not needed for TNMM today). Importantly, the fact that balance sheet data cannot be reliably segmented for AB purposes does not give rise to any inference regarding the reliability and appropriateness of

segmenting income statement data for a traditional transfer pricing analysis. This is specifically true for multi-functional legal entities with in-scope and out-of-scope activities which share assets.

25. **Bundled/integrated transactions** (par. 46) should not automatically lead to exclusions. In cases where these are integrated and also performed by independent distributors and/or are not material, new rules should apply. Again, a reasonable materiality threshold (limit) is key. Further clarification is recommended.

C. ARMS LENGTH RETURN / PRICING MATRIX

26. We appreciate the efforts to provide a pricing matrix and differentiate by industry groups. However, with regard to the proposed economic results further clarification, justification and adjustments are required to meet the objectives. Taxpayers will not apply an unreasonable and complicated model where there is no transparency of the process.

27. We understand that the factor intensity parameters, Operating Assets and Operating Expenses have a certain impact on comparability and at the end to some extent also on profitability.

    However, looking at the new pricing matrix, surprisingly it seems that **assets and costs (and particularly assets) are now the new "main value drivers" for distributors**, which so far in practice are significantly less relevant (if at all) when applying the TNMM (perhaps *with the exception of the treatment of pass-through costs or exceptional costs*).

    We do not understand the surprisingly huge impact of those new value drivers on the target profitability for distributors. I.e., how can the OECD justify that Distributors in Category A have a 2.5 higher net margin than Distributors in Category E. (the factor is even 3 for industry grouping 2)? Further justification and transparency are required.

    Thus, so far, in practice taxpayers have applied more or less the same net-margin for all distributors (in country/region with assumed same FAR profile) and have not differentiated by OA/OE intensity. This has been accepted by tax authorities during tax audits and/or APAs and indeed consistency is seen as a good thing. This is one of the acknowledged advantages of TNMM versus the resale minus method.

    The distribution entities that are used to create the pricing matrix have also different OA/OE intensity. Therefore, this feature is already reflected in the matrix and no further adjustment would be needed if considered all together.

    Instead, the current proposal is trying to create an additional segmentation of the dataset based on OAS and OES, therefore the member firms believe it is critical to show how this has been prepared (nothing in Annex A in this regard).

    In addition, the current matrix is using a single target profit point instead of the traditionally accepted interquartile range and introduces an arbitrary 0.5% variability to create a target range. The member firms believe that the interquartile range should remain and be used in the matrix, as it provides a statistically more reliable estimate of arm's length principle than a single point as proposed in the current version of the consultation document. A slightly broader range will also avoid disputes in case of limited deviations from the target range; for example, either because the taxpayer is not able to reach the target with its pricing and adjustments or because of disagreements in the way allocations are made between in-scope or out-of-scope activities.

28. Based on <u>*practical experience*</u> when determining the profit targets for distribution activities (supported by benchmark studies and in many cases APAs), the pricing matrix tends more towards in the range of category C-E. I.e., the observed/applied ranges are in practice cantered between 1.5% to 4.25%.

29. With regard to the country risk premium, this is already reflected in the profitability of distributors from those countries that are included in the set used for the pricing matrix and, accordingly, no further adjustment is needed.

30. With regard to the creation of special benchmarks to accommodate for the lack of data for certain countries, if there is enough evidence (as stated in the ConsDoc) that this would have a material impact, then these distributors should be added to the global set instead of creating a dedicated one. In case there is not political support for this proposal, as a compromise OECD should at least consider creating a limited number of regional sets instead of Country specific ones.

31. As the current pricing matrix is already skewed towards the high end of the observed target profit ranges, we see no economic justification from an arm's length perceptive to consider further adjustments and exceptions (i.e., special benchmarks, country risk premium, etc.).

32. Given practical and economic challenges, **as an alternative OECD should consider providing a simpler framework.**

    Based on the work currently performed, providing the full range, supported by the practical experience (i.e., focus on values from category C-E) is easier to apply. In other words, using the full range, currently 1.5% - 4.25%, for all taxpayers and industries, without the complicated and economically questionable ratios or define industry specific benchmarks which could then also take into account for the industry specific non-baseline contributions as defined in criterion 9a.

    Moreover, this simplified framework should be supported with additional reasonable corroborative mechanisms (min./max. profit levels for distribution activities) to improve quality and fairness.

33. If the Industry Grouping (even if not recommended from our view as described above) is kept in the final regulations it is suggested that Industry Groups are defined more clearly.

34. There are multi-business member firms which fit into more than Industry Grouping. If this is the case, it is suggested that the predominant Industry Group can be applied or such groups can opt out of the application of AB. Otherwise, additional segmentation would be required making the practical implementation of AB very difficult, if not impossible.

Corroborative mechanism – cap/floor

35. We appreciate the consideration of additional corroborative mechanisms to ensure a more reasonable framework. However, the proposed Berry Ratio Cap of 1.5 is too high and should be reduced. Based on our experience, such high amount cannot be supported with benchmark studies.

36. We ask OECD to clarify the implementation of the Berry Ratio Collar-cap rule and to confirm that this would trigger an automatic adjustment. In particular, OECD and IF members shall confirm that all states will accept both upwards and downwards adjustments.

37. Moreover, in particular to better address the economics for industries and MNEs with low margins (or loss making business), we suggest applying an additional cap. Proposed model does not consider well enough this aspect.

    The purpose of the AB is to ensure an arm's length profit to simple and base line activities, hence our recommendation is to further revisit the matrix to ensure that the target profit for BDMA is not absorbing a too high portion of the overall profit of the MNEs. It is not arm's length for low margin and/or loss-making businesses to allocate the majority or all of the profits to the distribution activities.

OECD should continue the benchmarking work on a TNMM basis in the back-up, to support the reasonableness and compliance with ALP of provided simplified profit share ratios.

Mechanisms to address geographic differences

38. Because this is a global set, from our perspective there is no need for additional models, different matrixes, or any exceptions. These add unnecessary complexity (*TP is not an exact science*) and are contrary to the objectives.

39. Hence, a majority of the members firms prefer to keep it simple. I.e., we prefer to exclude certain countries where required rather than to add unnecessary complexity with unclear and economically debatable models.

40. As OECD acknowledges that specific numbers are available only for a small number of countries, it should instead be considered to add this data to the global set, instead of creating a modified/specific matrix. The addition must be based on a reasonable approach and be fully transparent.

    Moreover, when applying in theory such a model, "double counting" aspects need to be considered. To the extent that the 'higher than average' countries have their own pricing matrix, then these comparables must be excluded from the global set, otherwise their higher results are double counted in the results of the other markets. This aspect again demonstrates the need to keep things simple and not try to overengineer the whole framework.

41. We also do not fully support the economic logic for higher returns for so-called high-risk countries, considering that the targets are determined for low-risk distribution activities. The high-risk stems from government managed (mis-)behaviors which are predominately independent from the risk a single company in such country faces.

    The formula (bottom of p28) could result in an adjustment up to 7.3% (85% OAS * 8.6%) which is significant and unjustified if the risk is passed back to the foreign counterparty. If one would apply the rules for example in Argentina, most MNEs would need to allocate in future their total profits to the distribution activities, leaving no profits or even a loss to the counterparties (other functions of the value chain).

42. However, considering the key objectives (i.e., broad application of rules with broad country coverage), as a "political compromise", we could support an approach where so called "qualifying countries" could target – as an exception - the upper end of the proposed simpler and fairer general global pricing matrix (4.25% plus proposed limits).

Commissionaire & Agents ("C&A")

43. We appreciate the inclusion of C&A. However, to apply the matrix with RoS as a PLI to commissionaires or agents would lead to an over-proportional and non-arm's length excessive profit allocation to them in many cases (assuming that the RoS is applied on the supplier's revenues and not the agent's revenues). The suggested floor (BR of 1.5) does not cover the economic aspects in an appropriate manner and cannot be supported by benchmark studies.

44. To reflect better economic reality (significantly reduced distribution activities with lower contributions, and in particular also a significant lower risk profile, e.g., inventory management and risk, bad debt risk, etc.) we propose to
    - significantly reduce the Berry Ratio cap for C&A (i.e., reduce the cap to 1.15) and /or

- to apply for C&A a fraction of the proposed RoS target provided pricing matrix (e.g., 1/4).

Periodic Updates

45. We recommend that the updates should be done at least every 3 years and not every 5 years.

D. DOCUMENTATION

46. The documentation requirements should not go beyond the current local file requirements as we are only replacing the current benchmarks with the pricing matrix to be provided in future by the OECD.

47. In par. 89, there is a list of requests possibly made by countries to companies seeking to apply for the simplified and streamlined approach and it is unclear whether these requests are valid only for the first notification or if they can be repeated every year; we suggest to remove from the list the request to provide a written contract signed prior to the occurrence of the qualifying transaction, in fact, even if this is a normal practice, this requirement is in contrast with chapter I of the guidelines that stipulates that “regardless of whether a written contract is in place, tax administrations or taxpayers can assert or challenge the approach based on the accurate delineation of the transactions". Therefore, the existence of a contract signed before the occurrence of the qualifying transaction shall not be a requirement. A transfer pricing policy must be sufficient. Especially for large MNEs with decentralized transaction flows and potentially hundreds of legal entities which all transact with each other written agreements for all relations cannot be administered.

48. The **notification procedures** should be simple, and ideally included in the CIT or special TP return (where applicable). Again, in the end we are only replacing the profit target, which can be verified in future tax audits.

E. ANNEX A. BENCHMARKING SEARCH CRITERIA

49. In principle we support the key principles of the search process. This should help to reduce disputes (in general). However, the final guidelines should provide full transparency of the companies accepted and rejected and the reasons.

50. We do not agree with the automatic exclusion of any loss-making entity from the final set. In business reality, companies performing routine activities or BDMA can sometimes be loss-making. There could be limits to the number of years of consecutive losses but not an automatic rejection.

51. We suggest to remove the contradiction between the searching criteria and the text exclusion criteria with regard to R&D: there is a 3% threshold R&D on Sales used when filtering comparables’ data and then in the qualitative analysis the simple presence of R&D in the activity description is causing an exclusion.

F. ANNEX B. INDUSTRY GROUPING

52. Further clarity is required. For many member firms (e.g., multi product) the grouping category is not clear.

53. In particular, the issue regarding MNEs selling product falling in multiple industries must be carefully considered and accurately delineated.

54. Further clarification is also required with regard to the creation of ad hoc industry groups based on data obtained from websites vs. the use adoption of internationally recognized codes used in the databases. We agree that databases are not necessarily super accurate, but in our experience the websites in general are not providing any better and more detailed information.

55. The concept of statistically significant differences in the profitability that will support the creation of industry groups should be clearly defined and proved.

G. OTHER

Year-End TP adjustments

56. We recommend that new rules also address the possibility of so-called year-end adjustments. Without year-end ("YE") adjustments it is not feasible for most MNEs to reach the required (narrow) target margin. Some countries do not currently allow YE adjustments which reduce profit, and it needs to be a prerequisite of applying AB that such adjustments are permitted.

57. In addition, in order to mitigate risks, the customs (and VAT) impact needs to be considered and addressed.

   - One option could be to exclude completely any YE adjustments required for the proper application of AB from any customs compliance adjustment procedures (*similar to the new Brazilian TP rules*). Otherwise, OECD and tax authorities need to provide taxpayers with a simple legal framework to initiate the adjustments (in both directions) for customs compliance. As the impacted countries and (tax) authorities are the same, they have to find a political and technical solution for it.

   - Another option to minimize the need for YE adjustments is to apply the required profit target on a multiple year basis (weighted average) and/or roll-forward the potential gap of year 1 into the next year (both directions).

   - An alternative wider global range (*we proposed 1.5% to 4.25% based on current matrix*) should help to reduce challenges (but we acknowledge it does not fully solve it).

58. Moreover, in case adjustments are required, the adjustment should be made to the upper/lower limit of the range and not the midpoint (par. 58).

Accounting Rules

59. Clarity on the accounting principles (GAAP) for financial data that is required for the quantitative analysis for the scoping criteria is key. To simplify and align with Pillar 1 Amount A and Pillar 2, financial data can be provided from reporting systems and, therefore, we recommend Amount B should use data prepared under the accounting principles used by the MNE for its consolidated financial statement (not local GAAP), in line with the Pillar 2 requirement. Or at minimum this should at least be an option, where consistent application over time is key.

Pass-through-costs

60. There is some narrative on the treatment of pass-through costs at the bottom of FN18 on p15, the same as was provided in previous consultation documents. This topic is important for both the OES and Berry Ratio.

    The language is vague and not helpful in terms of defining pass through costs (e.g., whether marketing execution spend by the distributor at the direction of the foreign principal company would be excluded for the calculation of the ratios). It may be purposefully vague as there is no agreement, but this point is so important to all of the financial analysis that it must be

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confirmed. The logical conclusion is that if one qualifies as a BMDA then any spending with third parties on advertising which builds the marketing intangible of the counterparty controlling that spend must be a pass-through cost.

Tax Certainty

61. AB should be implemented as a safe harbor or optional rule to which the taxpayer can opt in or not and not on a prescriptive basis.

62. It is critical that there be strong and efficient dispute resolution processes for AB, particularly as the current proposal increases complexity and potential points of controversy versus delivering the promised simplicity and certainty. These processes must be in place before AB comes into effect.

63. It must be assumed that when applying the new rules, the taxpayer is acting in a **good faith.** Hence, no penalties should be applied in case of future audits with potential different assessment of specific facts.

64. For implementation, there should be a cut-off date, including transition period, ideally applied on global basis.

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We kindly ask you to take our comments and proposals into due consideration.

Yours sincerely,

SwissHoldings
Federation of Industrial and Service Groups in Switzerland

Dr Gabriel Rumo
Director

Martin Hess
Head Tax Policy,
Certified Tax Expert

Cc:

- SwissHoldings Transfer Pricing Group