

WATAF COMMENTS ON OECD/G20 INCLUSIVE FRAMEWORK'S REPORT ON PILLAR ONE - AMOUNT B

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On February 19, 2024, the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) released a report on Amount B of Pillar One, which provides a simplified and streamlined approach to qualifying transactions for eligible baseline distributors.

The report, which is to be incorporated into the OECD Transfer Pricing Guidelines, aims to simplify the application of the arm's length principle to the pricing of baseline marketing and distribution activities, particularly in-scope distributors, to assuage administrative burden, spur tax compliance, and secure revenue mobilisation for tax administrations in 'low-capacity jurisdictions' (LCJs).

Although the OECD report on Pillar One—Amount B took into consideration the demands of the LCJs following the release of the “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022” and that the report gives liberty for countries to decide whether to adopt it or not even if they are not IF members, WATAF has concerns about some aspects of IF’s guidance: (i) the definitions of LCJs, along with the unavailability of the list of such jurisdictions to date; (ii) the use of an operating expense-based metric as a cross-check to cap the return of the distributors under Amount B; (iii) the non-inclusion of an appropriate definition of 'qualifying jurisdictions'; (iv) the design elements of the pricing methodology; (v) the design of the pricing matrix through the use of a single commercial database that has not yielded a geographically representative dataset; (vi) the absence of a qualitative criterion to ensure that only baseline distributors are in the scope of Amount B, among others.

WATAF recommends that until the optional qualitative scoping criterion and the list of LCJs are finalised on March 31, 2024, members, depending on their peculiar situations, may continue to use the OECD Transfer Pricing Guidelines (OECD TPG) in addition to their transfer pricing legislation and the United Nations Practical Manual for Transfer Pricing in determining transfer pricing outcomes and may adopt the African Tax Administration Forum’s (ATAF) “Suggested Approach to Drafting Transfer Pricing Legislation” or the “ECOWAS Directive C/DIR.6/07/23 on the Harmonisation of Transfer Pricing Rules”.

WATAF is committed to defending its member states’ interests by carefully scrutinising the deliverables of Pillar One- Amount B.