

BEPS 2.0 - Pillar 1

Amount B - Impact on Multinational Groups



The below is based on information currently available as at November 2022.

Pillar 1, Amount B will affect Multinational Groups which have group entities that are engaged in performing baseline marketing and distribution activities.

Amount B has certain key design features which are aimed to achieve the following objectives:

- 1 simplify the administration of transfer pricing rules for tax administrations and reduce compliance costs for taxpayers
- 2 standardise the remuneration of related party distributors that perform baseline marketing and distribution ("BM&D) activities in a manner that is aligned with the arm's length principle
- 3 enhance tax certainty and reduce controversy between tax administrations and taxpayers.

The key design features of Amount B are based on the following three specific attributes:

Scope:

The overall approach assumes that the functional attributes of distribution and marketing activities can be unambiguously referenced against a "positive list" and "negative list" of activities that should and should not be performed. The definition of acceptable activities which routine distributors can perform is narrow and limits the kind of entities that will be covered under Amount B. Groups will need to compare the defined activities and compare the actual functional analysis before entities would be allowed to be characterised as routine distributors. In performing this analysis, acceptable quantitative indicators (for example, key financial ratios) can also be applied to support and validate the distribution activities.

The approach does envision distribution entities performing activities in addition to Amount B activities, however without further technical analysis and consensus amongst member states, there is currently no provision for Amount B coverage to increase based on the functional intensity or even other functions that might be performed. Also, taxpayers will need to make available reliable segmented financial information before an alternative approach to Amount B in such instances would be accepted .

Due to these limitations and the very specific defined set of activities, entities characterized as commissionaires, sales agents and other businesses that perform non-BM&D would not be within the scope of Amount B in the initial period.

Implementation of Amount B is not expected to supersede advance pricing agreements or mutual agreement proceeding settlements that would have been agreed before.

Quantum:

Fixed returns for BM&D under Amount B are intended to deliver results which approximates results determined in accordance with the arm's length principle. Determination of the arm's length results is expected to continue using the traditional approach under the transactional net margin method with a return on sales as the profit level indicator. However, such determinations will operate on a rebuttable presumption of an alternative reliable comparable uncontrolled price transaction being available.

A reasonable variation is also expected to be established for arm's length prices which will be based on geographies (i.e., across different markets or regions), industry or functional intensity even for the distribution of the same or similar products.

Implementation:

Implementing Amount B in a uniform fashion is expected to reduce the risk of double taxation and double non-taxation. Accordingly, Amount B will need to be implemented in a coordinated manner and by adopting three key approaches depending on the facts and circumstances:

- a. under domestic law or regulation
- b. where there is no treaty in place, setting up a new treaty based dispute resolution mechanism

- c. guidance to accompany domestic legislation and treaty provisions as required, although the narrower approach to scope may again limit this requirement.

Timelines:

Pillar 1, comprising Amount A and Amount B, was originally expected to come into force in 2023, though is now expected in 2024. There is no specific timeline set out only for Amount B though the OECD claims to be working in a timebound manner for achieving this.



Steps that should be taken now include:

- Identify entities within the Group which perform marketing and distribution activities and verify when a detailed functional analysis was conducted using the comparability factors outlined in the OECD Transfer Pricing Guidelines
- Establish an accurate characterisation of the related group entity and determine if the functions performed are more closely aligned with commissionaires and sales agents
- Map the functions performed, assets owned, and risks assumed of the controlled marketing and distribution activities against the BM&D positive and negative activity list
- Avoid artificial fitment of the activities for gains from perceived benefits under Amount B category as cost of subsequent corrections or transfer pricing adjustments following audits by tax authorities can be significant.

Please contact our team for more guidance on this matter:



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