

Inclusive Framework BEPS Agreement

Public Consultation on Pillar One Amount A – July 2022

Policy Perspectives Update – the Hong Kong SAR



Public consultation on the tax certainty aspects under Amount A of Pillar One

On 27 May 2022, the OECD published two public consultation documents on Amount A under Pillar One. One of the documents is about the **Tax Certainty Framework for Amount A** and the other is on **Tax Certainty for Issues Related to Amount A**. The two consultation documents can be accessed via this [link](#).

Tax certainty aspects of Amount A

Summary of the Tax Certainty Framework

- The Tax Certainty Framework aims to provide certainty for in-scope business groups on various aspects of Amount A, including the elimination of double taxation resulting from uncoordinated compliance activities in different jurisdictions from which the group revenue is derived.
- The Framework contains the following three elements to address different potential risks that may arise from the Amount A rules:
 - A **Scope Certainty Review** – A process to provide an out-of-scope group with certainty that it is not in-scope of Amount A for a given period and remove the risk of unilateral compliance actions by multiple market jurisdictions.
 - An **Advance Certainty Review** – A process to provide certainty over an in-scope group's methodology for applying specific aspects of the new rules under Amount A for a number of future periods. This would be available for a group's methodology for sourcing revenues to market jurisdictions (e.g. categorisation of revenues, choice of reliable method and its internal control framework). The review may also be available for a group's methodology for applying rules on segmentation (e.g. identification of disclosed segments and policies on attributing revenue, expenses and other financial reporting items to each segment).
 - A **Comprehensive Certainty Review** – A process to provide an in-scope group with binding multilateral certainty over its application of all aspects of the new rules for a given period that has ended, building on the outcomes of any advance certainty applicable to the period. This process ensures that tax administrations in all relevant jurisdictions will accept the same approach adopted by a group to the calculation and allocation of Amount A. It also ensures the elimination of double taxation without the need for domestic audits.
- A request for any of the above certainties can be submitted by a group to the Lead Tax Administration (LTA) (which is generally the tax administration of the jurisdiction in which the ultimate parent entity of the group is resident for tax purposes). The LTA or a Review Panel will then conduct a review. Issues where there is a disagreement between tax administrations can be referred to a Determination Panel. The Determination Panel is required to reach a resolution by choosing among the alternative outcomes proposed to it.
- The Review Panel shall comprise the LTA and a number of tax administrations of the affected jurisdictions. The composition of a Determination Panel is under consideration but could include independent experts, government officials or a combination of independent experts and government officials.

- Parties involved should implement the outcomes of the certainty process and should not undertake any compliance activities which are inconsistent with the outcomes. The certainty outcomes continue to apply so long as the group making the request does not (1) withdraw its request or (2) undertake steps outside of the multilateral process to reduce the profit before tax allocated to a party or (3) increase the amount of relief to be provided for the elimination of double taxation.

Summary of the tax certainty issues related to Amount A

- The document contains the draft provisions to be included in the Multilateral Convention on Amount A. These provisions set out a mandatory and binding mechanism for resolving transfer pricing and permanent establishment profit attribution disputes that cannot be resolved through the mutual agreement procedure (MAP) process.
- The draft provisions cover various aspects of the mandatory and binding dispute resolution mechanism such as (1) the types of dispute that are within the scope of the mechanism, (2) the different steps in the dispute resolution process and the indicative timeline, (3) the appointment of the dispute resolution panel members, (4) the decision-making model and (4) the interaction between the mechanism and the other existing mandatory binding dispute resolution mechanisms (e.g. MAP or arbitration).
- For developing countries which are eligible for deferral of BEPS Action 14 peer review and have no or low levels of MAP disputes, an elective (instead of mandatory) binding dispute resolution mechanism will be available. The eligibility of a jurisdiction for this elective mechanism will be reviewed regularly.

What's next

The consultation document was released for seeking public comments and does not reflect the final views or consensus of the Inclusive Framework members. Further changes to the conceptual framework may be required before it is translated into model rules format.

Hong Kong business considerations

The Tax Certainty Framework for Amount A provides a mechanism for large business groups in Hong Kong that may fall within the scope of Amount A to seek certainty on whether they are within the scope of Amount A and if yes, the application of the Amount A rules, especially in the transitional year. For large financial services groups in Hong Kong that rely on the application of the regulated financial services exclusions to fall outside the scope of Amount A, they can consider applying for the Scope Certainty Review to obtain certainty that the groups are not in-scope of Amount A.

However, when considering whether it is worthwhile to make a request for any of the three review mechanisms under the Tax Certainty Framework, issues such as the resources and information required to prepare the necessary documentation to support the case (e.g. the Scope Certainty Documentation Package in case of a request for scope review) and the time required for getting a certainty outcome will need to be considered carefully upfront.

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