KPMG

Observations on Amount B

Executive summary

On 19 February 2024, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (the "Inclusive Framework") released a report and reader guide on Amount B — an optional simplified and streamlined approach to apply the arm's length principle ("ALP") to baseline marketing and distribution activities.

The guidance gives jurisdictions the option to apply the simplified and streamlined approach from January 2025, either as a taxpayer safe harbour or as a mandatory rule. This summary provides an overview of the report on Amount B and some initial observations on how multinationals should respond.

Headlines

The Inclusive Framework reached agreement to simplify and streamline the application of the ALP to in-country baseline marketing and distribution activities, with a focus on the needs of low-capacity jurisdictions in October 2021. The report is a continuation of that initiative.

The report has been incorporated into the OECD Transfer Pricing Guidelines ("TPG") as an Annex to Chapter IV (Administrative approaches to avoiding and resolving transfer pricing disputes) and provides an optional simplification that jurisdictions can choose to apply to in-scope distributors, sales agents or commissionaires operating in their jurisdiction for fiscal years commencing on or after 1 January 2025.

Overview of the report

1 — **Considerations regarding the application of the simplified and streamlined approach** explains how jurisdictions will implement Amount B, and that jurisdictions that do not adopt it will not be required to respect its application in other jurisdictions.

2 — **Transactions in scope** defines the transactions that will be in-scope of Amount B (the "Qualifying Transactions"). The scope is the wholesale distribution of tangible goods. Distribution of digital goods, commodities, or services is specifically excluded. The scoping rules also provide that distributors should not own unique and valuable intangibles or assume certain economically significant risks. There is no size threshold linked to the revenue of a group or entity, for example, Amount B is not limited to groups with more than EUR750m in revenue.

3 — **Application of the most appropriate method principle to in-scope transactions** provides that Qualifying Transactions will be priced using the Transactional Net Margin Method ("TNMM") under the simplified and streamlined approach (referred to in this summary as "the Amount B approach"), unless an internal comparable uncontrolled price ("CUP") can be identified.

4 — **Determining the return under the simplified and streamlined approach** sets out how to price the returns due to in-scope distributors based on a standardised pricing matrix, and also includes a return on operating expenses crosscheck and mechanism to adjust the returns for jurisdictions with low sovereign credit ratings and limited benchmarking data availability in the commercial database used by the OECD.

5 — **Documentation** sets out the documentation requirements for businesses applying Amount B.

6 — **Transitional issues** address scenarios where business restructuring will cause a distributor to fall in or out of scope of Amount B.

7 — **Tax certainty and elimination of double taxation** governs the relationship between counterparty jurisdictions, where one jurisdiction seeks to apply Amount B, to ensure tax certainty and the elimination of double taxation.

The report also includes two appendices providing updates on the benchmarking search criteria used to set the Amount B Pricing Matrix and seven worked examples illustrating the application of Amount B.

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What happens next?

The Inclusive Framework's work on Amount B is not yet complete and is subject to a number of reservations by India. Notably, the report does not specify which jurisdictions are committed to adopting Amount B — which is critically important given that its implementation is optional. It also does not define "low-capacity jurisdictions", where the report notes that other Inclusive Framework members have committed to respect the application of Amount B.

The Inclusive Framework is committed to undertake further work on the various aspects of Amount B that have yet to be finalised, such as an optional qualitative scoping criteria, which is seen as critical by India, and is seeking to conclude this work by March 31, 2024.

The African Tax Administration Forum ("ATAF") released a statement to coincide with the release of the report stating their members consider Amount B will be beneficial to them, and that ATAF will be providing practical support to its members as they implement Amount B.

KPMG observation

Recent efforts by the United Nations ("UN") to promote itself as an alternative forum to the Inclusive Framework to discuss international tax policy are perceived to have increased the importance of Amount B. The UN has promoted itself as a body that is better able to promote an "inclusive" international tax agenda, which is widely perceived to mean the interests of developing economies.

India's reservations on a significant number of issues are notable, particularly given that it has no obligation to apply this optional framework. The contrast with the statement from ATAF highlights developing economies divergent interests in Amount B.

KPMG observations: How should multinationals respond?

The implementation of Amount B has the potential to meaningfully change the application of transfer pricing rules to in-scope distributors. For example, the framework places a greater emphasis on operating assets than is typically in current common approaches to benchmarking returns for distribution activities and potentially reduces the extent to which multinationals can set standardised returns across geographic regions.

Multinationals should continue to monitor developments in this space and consider modelling the impact of Amount B for 5-10 pilot entities to better understand the potential implications for their current transfer pricing policy.

1. Considerations regarding the application of Amount B

The report provides jurisdictions with two options to apply Amount B:

1. **Taxpayer safe harbour.** Tested parties resident in the jurisdiction have the option to elect to apply Amount B where they have transactions that meet the scope criteria.
2. **Mandatory.** Tested parties and the tax administrations are required to apply Amount B where transactions meet the scope criteria.

The report notes that the Amount B pricing approach "approximates an arm's length outcome." Hence, whilst it applies (as either a safe harbour or as a mandatory rule) in jurisdictions that choose to adopt it, there is no general requirement that a jurisdiction in which a counterparty is resident that does not adopt Amount B respect its application. The report goes further and states that "taxpayers should not rely on [the Amount B pricing approach] to justify that a result should be treated as an arm's length outcome when filing their tax returns in jurisdictions that do not apply [Amount B]."

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KPMG observation

The fact that Amount B may not be respected and cannot be relied upon in counterparty jurisdictions that choose not to adopt Amount B will potentially mean that instead of simplifying transfer pricing it makes it more complex. In a worst-case scenario, a group could be required to prepare a benchmarking analysis for Jurisdiction X, apply Amount B in Jurisdiction Y and if this results in double taxation, to the extent its available, rely on a mutual agreement procedure ("MAP") to eliminate the resulting double taxation. In short, there is a risk that Amount B makes transfer pricing more complex.

The report notes that the fact that activities are not within scope of Amount B should not be interpreted to mean that the returns for such activities should be higher or lower, or in other words that Amount B does not represent a floor or ceiling for marketing and distribution activities that are out-of-scope of Amount B.

KPMG observation

There had been significant concern from businesses that the Amount B pricing matrix will become a floor for returns for distributors that fall out-of-scope of Amount B. This clear statement that this is not the case is welcome. However, it remains to be seen how tax administrations will respond in practice.

2. Transactions in scope

Amount B applies to two types of transactions, which are defined as Qualifying Transactions:

1. **Buy-sell marketing and distribution transactions** where the distributor purchases goods from one or more associated enterprises for wholesale distribution to unrelated parties; and
2. **Sales agency and commissionaire transactions** where the sales agent or commissionaire contributes to one or more associated enterprises' wholesale distribution of goods to unrelated parties.

KPMG observation

There is no requirement as to the location of the unrelated parties who are purchasing the goods which means that distributors export sales are eligible. However, sales to related parties are not included despite calls for a tolerance threshold to be included (consistent with that for retail sales).

A Qualifying Transaction must satisfy the following additional criteria:

Priced using a one-sided method. Exhibit economically relevant characteristics that mean it can be reliably priced using a one-sided transaction pricing method, with the distributor, sales agent, or commissionaire as the tested party. The report cites a number of references in the TPG that may be relevant for making this determination.

Operating expense intensity threshold. For the 3 prior years, the weighted average operating expense to net revenue ratio is not less than 3 percent and not more than 20 percent to 30 percent; with the upper bound set by a jurisdiction when it adopts Amount B. The ratio test applies only to an entity's distribution activities, where it also performs non-distribution activities operating expenses allocable to these activities are not included in the calculation activities (see below).

Exclusion for the distribution of certain products. Excludes the distribution of non-tangible goods, services, or the marketing, trading, or distribution of commodities.

Exclusion for the performance of non-distribution activities. Excludes activities, such as manufacturing or research and development ("R&D") where these cannot be segmented and reliably priced separately from the baseline marketing and distribution activities. The commentary to this exclusion clarifies that it also applies to distributors that sell a bundle of goods and services, where it is not possible to price the goods and services separately.

Retail sales. Entities that distribute goods on a wholesale and a retail basis are excluded, unless the retail sales are segmented and priced separately, or where for the 3 prior years, the weighted average net retail revenue is less than 20 percent of the weighted average total net revenue.

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KPMG observation

- The Amount B framework is intended to limit transfer pricing disputes relating to the pricing of baseline marketing and distribution arrangements. The framework will not help to address disputes about the accurate delineation of a marketing and distribution arrangement, e.g., whether the activities performed by a distributor go beyond a baseline or routine contribution. These challenges could be partially addressed through the provision of advance tax certainty through the OECD's International Compliance Assurance Programme ("ICAP") if this programme covered the application of Amount B.
- The requirement to demonstrate that a transaction can be reliably priced using a one-sided method means that businesses must accurately delineate a transaction, conducting a detailed transfer pricing analysis, to establish that they can price a transaction using the Amount B pricing matrix. The report emphasises that the determination must be made based on the functional analysis. This limits the potential simplification benefits of Amount B.
- The retention of qualitative aspects to the scope criteria creates uncertainty. For example, the pricing matrix includes pharmaceuticals — indicating that pharmaceutical distribution is included in scope. However, guidance that states obtaining a regulatory license could represent a unique and valuable contribution and hence result in an entity being excluded from Amount B brings this into question given that these activities are frequently performed by pharmaceutical distributors.
- Businesses will be disappointed to see that jurisdictions will be able to choose where to set the operating expense intensity threshold between 20 percent and 30 percent as this is likely to create asymmetric approaches. Previously the threshold was proposed to be 30 percent under Alternative A or 50 percent under Alternative B where it was accompanied by a qualitative filter. The door now appears to be open for jurisdictions to adopt a 20 percent threshold with an additional qualitative filter that will significantly reduce the number of entities that qualify for Amount B.
- The definition of operating expenses specifically excludes expenses that are appropriately passed through under the accurate delineation of the transaction, as well as costs relating to financing, investment activities, income taxes and exceptional items. The report does not provide any new guidance on how to identify pass-through expenses, which is already a common area of dispute. Hence, there is a risk that these disputes spill over into the determination of whether or not an entity is in-scope of Amount B.
- The exclusion of the distribution of services will be disappointing for many businesses, who had hoped to benefit from the additional certainty provided by Amount B. There is no discussion of the rationale for this exclusion, or recognition that the functional profile of entities distributing tangible goods and services can be very similar.
- The example of a distributor that sells products and provides consumer financing is cited as an example of a transaction where it could be difficult to separately price the sale of the goods and provision of financing. This may be particularly relevant for the automotive sector.
- Amount B also appears not to apply for the purpose of attributing profit to permanent establishments ("PEs") as the report refers to distributors that are resident in a jurisdiction which has adopted Amount B.

3. Application of the most appropriate method to in-scope transactions

This slightly cryptically named section is effectively an internal CUP override. In most instances, businesses and tax administrations will not be required to demonstrate that the Amount B pricing method is the most appropriate method, as would be required in a traditional transfer pricing analysis. However, businesses will need to determine whether an internal CUP exists, and where an internal CUP is identified and can be used to reliably price in-scope transactions the business should adopt this method to price the relevant transaction.

The report notes that internal CUPs are rarely used to price distribution transactions outside the distribution of commodities, and hence it would not be expected for this override to apply frequently.

KPMG observation

Internal CUPs were already a keen area of focus for tax administrations in audits and Advance Pricing Agreements ("APAs") and it will be important that businesses looking to apply Amount B have a robust and well documented process for reviewing potential internal CUPs.

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4. Determining the return under the simplified and streamlined approach

The Amount B pricing approach has three components:

1. **Standardised pricing matrix** that sets the standard returns for Amount B.
2. **Operating expense cross-check** that has the potential to adjust the return determined using the pricing matrix up or down based on the return on operating expenses achieved by a distributor under the standardised pricing matrix.
3. **Data availability mechanism for qualifying jurisdictions** that increases the returns determined under (1) and (2) in jurisdictions with limited data in the global dataset and a low sovereign credit rating.

Standardised pricing matrix

The Amount B pricing matrix is similar to the matrix contained in the July Consultation Document (a KPMG summary is available here). The returns are set as a return on sales ("ROS") varying by industry group and factor intensity (approximated by net operating asset intensity ("OAS") and operating expense intensity ("OES")).

Table 1 (below) shows the revised Amount B returns and the returns from the July Consultation Document in brackets below (where these differ from the revised returns). The three industry groupings are also shown below.

Table 1: Amount B Pricing Matrix

Factor Intensity			Industry Group 1	Industry Group 2	Industry Group 3
A.	OAS > 45%	Any OES	**3.50%**	**5.00%** (5.25%)	**5.50%**
B.	OAS = 30% — 44.99%	Any OES	**3.00%** (3.25%)	**3.75%** (3.50%)	**4.50%**
C.	OAS = 15% — 29.99%	Any OES	**2.50%** (2.75%)	**3.00%** (3.25%)	**4.50%** (4.25%)
D.	OAS < 15%	OES > 10%	**1.75%** (2.0%)	**2.00%** (2.25%)	**3.00%**
E.	OAS < 15%	OES < 10%	**1.50%**	**1.75%**	**2.25%**

The industries included in the three groups are shown below, categories that have moved from the July Consultation Document are ***highlighted:***

1. **Industry Group 1:** Perishable foods, grocery, household consumables, construction materials and supplies, plumbing supplies and metal.
2. **Industry Group 2:** IT hardware and components, electrical components and consumables, ***animal feeds, agricultural supplies, alcohol and tobacco, pet foods***[1], clothing footwear and other apparel, plastics and chemicals, lubricants, dyes, ***pharmaceuticals***[2], cosmetics, health and wellbeing products, home appliances, consumer electronics, furniture, home and office supplies, printed matter, ***paper and packaging***[1], jewellery, textiles hides and furs, new and ***used domestic vehicles, vehicle parts and supplies***[2]***,*** mixed products and products and components not listed in group 1 or 3.
3. **Industry Group 3:** Medical machinery, industrial machinery including industrial and agricultural vehicles, industrial tools, industrial components miscellaneous supplies.

[1] Animal feeds, agricultural supplies, alcohol and tobacco, pet foods, and paper packaging were previously included in Industry Group 1.

[2] Pharmaceuticals, used domestic vehicles, vehicle parts and supplier were previously included in Industry Group 3.

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An entity applying the matrix would apply a 3-step process:

1. **Step 1:** Determine the relevant industry group(s) for the tested party (i.e., the entity in-scope of Amount B);
2. **Step 2:** Determine the relevant factor intensity category based on the weighted average OAS and OAS of the tested party for the 3 preceding fiscal years; and
3. **Step 3:** Identify the relevant return in the pricing matrix.[3]

As with the prior consultation document, tested parties will comply with Amount B where they achieve a return that is within 0.5 percent of the relevant return on sales and the testing will be performed on an ex post basis. If a taxpayer falls outside the range, then a tax administration asserting Amount B would make an adjustment to the return on sales determined by the matrix when making an adjustment.

The matrix has been set using a benchmarking search performed in Moody's Bureau van Dijk Orbis database, including both a series of quantitative and qualitative screens, making it difficult to replicate. The Inclusive Framework has not published further details of this analysis, which has been requested by stakeholders.

KPMG observation

- The standardised pricing matrix and the 3-step process are similar to the matrix and process proposed by the Inclusive Framework in the July Consultation Document. Only minor changes of 0.25 percent have been made to some of the individual data points in the matrix, however, there are some important reclassifications into industry group 2 from industry groups 1 and 3.
- The definition of operating expenses and operating assets have a critical role in determining a tested party's factor intensity category. The definition of net operating assets is relatively broad, including tangible and intangible fixed assets (excluding goodwill which India made a reservation on) and working capital. There is no mention of cash being included but where it appears as a short-term debtor balance (e.g., where money is deposited into a cash pool) this could come within the working capital calculation. The definition of working capital includes a guardrail that is intended to limit the extent to which this can be reduced by longstanding current creditors.
- The various quantitative ratios must be determined using an applicable accounting standard — which is either a financial accounting standard that is a permitted basis to prepare financial statements in the jurisdiction or standards whose use is permitted by a jurisdiction specifically for the application of Amount B. Notably, for U.S. groups this may not allow them to use U.S. Generally Accepted Accounting Principle ("GAAP"), which many had requested as part of the prior consultation.

Operating expense cross-check

The operating expense cross-check is a replacement for the previously proposed Berry ratio cap-and-collar and has the potential to adjust a tested party's Amount B return up or down where it falls outside a pre-defined operating expense cap-and-collar range.

The operating expense cross-check is applied through the following 4-steps:

1. **Step 1:** Determine the return on sales for a tested party using the Amount B pricing matrix.
2. **Step 2:** Determine the applicable operating expense cap-and-collar range, which vary by both factor intensity and jurisdiction (with certain "qualifying jurisdictions" eligible for a higher cap).
3. **Step 3:** Compare the return on operating expenses (i.e., earnings before interest and taxes divided by operating expenses) based on step 1 to the cap and collar determined under Step 2.
4. **Step 4:** Where the return on operating expenses based on step 1 is within the cap-and-collar the return determined in step 1 is unchanged, where the return is greater than the cap or less than the collar, the return determined under step 1 is adjusted to either the cap or collar.

[3] The described 3-step process is a simplification that does not describe the application of the pricing matrix to tested parties that sell products that fall within more than one industry group.

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KPMG observation

The Berry ratio cap-and-collar had originally been proposed to address concerns that the Amount B pricing matrix would over-remunerate entities performing sub-baseline marketing and distribution activities. It seems unlikely that the revised operating expense cross-check will address concerns about the over-remuneration of these activities, as its primary effect will be to reduce the returns allocated to entities with low operating expenses that fall in factory intensity categories A, B and C based on their higher OAS. It also seems unlikely that the collar, which is now based on a 10 percent return on operating expenses, will have a material impact on distributor returns given the operating expense intensity (20 percent/30 percent) scoping criterion and 0.5 percent tolerance threshold when testing against the matrix.

It is also notable that the data availability mechanism for qualifying jurisdictions (see below) applies after the cross-check mechanisms significantly reducing the impact of the cross-check in qualifying jurisdictions.

Data availability for qualifying jurisdictions

The data availability mechanism for qualifying jurisdictions is a mechanism to increase the Amount B returns in jurisdictions with limited data in the global dataset used to determine the Amount B pricing matrix and lower sovereign credit ratings (below BBB-). The returns for tested parties operating in these jurisdictions will be increased based on the net risk adjustment percentage for a jurisdiction, which varies from 0.3 percent to 8.6 percent, multiplied by the OAS of the tested party (capped at 85 percent). This means the highest upwards adjustment is 7.3 percent, more than doubling the highest return included in the pricing matrix.

The report does not define qualifying jurisdiction and hence it is not possible at this stage to determine exactly which jurisdictions this adjustment will apply in, but the OECD has committed to publishing the list on its website by 31 March 2024.

KPMG comment

In the July Consultation Document, it was suggested that in the Inclusive Framework's economic analysis geographic differences had been observed to influence the profitability of baseline marketing and distribution activities. This report does not include such a statement and limits geographic adjustments to the Amount B pricing matrix to jurisdictions for which the Inclusive Framework does not have sufficient data to perform an economic analysis, i.e., jurisdictions where financial data is not included in the Moody's Bureau van Dijk Orbis database.

The alternative approaches for addressing geographic variation in returns, the proposed modified pricing matrix and country specific pricing matrix, appear to have been dropped.

Periodic updates

The analysis to determine the Amount B pricing matrix and operating expense cap-and-collar rates will be updated every 5 years unless there is a significant change in market conditions that warrants an earlier update. The financial data and other datapoints used in the application of Amount B are to be reviewed annually.

5. Documentation

Amount B has been widely seen as an opportunity to simplify and streamline transfer pricing documentation — as well as the application of the ALP. However, there is no meaningful attempt in the report to simplify existing documentation requirements.

The report describes how existing transfer pricing documentation, principally the local file, could be used to establish a tested party is eligible for Amount B. It goes on to note that this may need to be supplemented by additional information, such as the financial information required to compute a tested party's Amount B return.

Moreover, the report adds an additional requirement that when a tested party first seeks to apply Amount B it includes in its local file, or other relevant documentation, a consent to apply Amount B for a minimum of three years, unless the transaction ceases to be within scope or there is a significant change to a taxpayer's business.

The report permits a tax administration to require a taxpayer to provide a written contract for the qualifying distribution activities prior to the occurrence of a Qualifying Transaction and application of Amount B. However, the report reiterates that contractual terms must be tested against conduct and economic circumstances when accurately delineation the transaction.

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KPMG observation

Businesses are likely to see the lack of any simplification or streamlining of transfer pricing documentation as a missed opportunity that would have increased the potential benefits of Amount B.

6. Transitional issues

The reports notes that MNE Groups are free to reorganise their distribution business models which may bring them into or outside the scope of Amount B. The report notes that tax administrations can determine the tax consequences resulting from a reorganisation and the guidance in Chapter IX remains relevant. Furthermore, tax administrations may scrutinise artificial reorganisation of intra-group arrangements that are designed to enable a tested party to derive tax advantages from the simplified and streamlined approach, and in particular there may be increased scrutiny where a restructured distributor applying Amount B had incurred losses in prior fiscal years.

7. Tax certainty and the elimination of double taxation

The report acknowledges that the application of Amount B has the potential to lead to double taxation, if the jurisdiction in which the counterparty is resident seeks to make a primary adjustment that is inconsistent with Amount B. In such scenarios, the MAP proceedings must be based on the TPG excluding the guidance on Amount B.

The introduction to the report notes that, subject to their domestic legislations and administrative practices, Inclusive Framework member jurisdictions which choose not to apply Amount B themselves are committed to respect the application of Amount B in “low-capacity jurisdictions” (a term that is not defined in the report). It also notes that work is underway on the implementation of this commitment, including through the development of competent authority agreements that could be implemented in the context of bilateral tax treaties.

KPMG observation

The possibility that the application of Amount B will not be respected in counterparty jurisdictions is concerning and will significantly reduce the benefits of Amount B to taxpayers. In instances where Amount B is applied by “low-capacity” jurisdiction this may be addressed by commitment to respect the application of Amount B provided by other Inclusive Framework members. However, it remains unclear whether bilateral competent authority agreements can feasibly be used to implement this commitment, given that many low-capacity jurisdictions are likely to have limited treaty networks.

There is a requirement that competent authorities do not refer to Amount B in MAP, where the other jurisdiction has chosen not to apply it. This seems unrealistic and problematic in a practical sense, particularly given that Amount B is supported by an Inclusive Framework approved benchmarking analysis.

Finally, the report notes that the terms of existing agreements reached under MAP or bilateral and multilateral APA will remain valid following the implementation of Amount B.

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KPMG observations: How should multinationals respond?

The report states that jurisdictions have the option of applying Amount B from 2025, giving multinationals limited time to assess the impact and if required adjust their transfer pricing policies.

Here are five practical steps that a multinational could take to assess the implications of Amount B:

The report states that jurisdictions have the option of applying Amount B from 2025, giving multinationals limited time to assess the impact and if required adjust their transfer pricing policies.

Here are five practical steps that a multinational could take to assess the implications of Amount B:

1. **Model the impact for 5-10 pilot jurisdictions.** The best way to assess the impact of Amount B is to pick some pilot jurisdictions — that are more likely to implement Amount B, where the scope rules may be uncertain or where the impact on your organisation would be greatest and run the numbers.
2. **Compare existing transfer pricing policies for marketing and distribution activities.** Another simple step would be to review your current transfer pricing policies for marketing and distribution activities against the Amount B pricing matrix. If your returns are broadly in line with the matrix the risks associated with Amount B are lower.
3. **Determine the net operating assets of distribution entities.** Net operating assets are typically not taken into account when setting the returns for distribution activities. Where distribution entities have significant net operating assets this can quickly push up the distribution returns an entity would expect to earn under Amount B, so this is an issue groups may want to revisit.
4. **Evaluate current approach to segmentation.** Where an entity performs distribution and non-distribution activities, Amount B can only be applied where the activities can be reliably segmented. Groups may want to revisit their current approaches to segmentation in light of this guidance.
5. **Revisit existing transfer pricing documentation and internal CUPs.** The Amount B framework still requires robust documentation to demonstrate that a one-sided method can be applied and that no internal CUPs are available. It is always the right time to review your transfer pricing documentation.

The continuing uncertainty around Amount B means that it may still be too early to change transfer pricing models or policies but there are now more than enough details to perform some preliminary analysis and get ready for the next Inclusive Framework release in March 2024

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