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TOP 10 FACTS TO KNOW ABOUT THE OECD AMOUNT B GUIDANCE (*)

1. Amount B Guidance will be incorporated in the OECD transfer pricing guidelines as an Annex to Chapter IV

Amount B Guidance will take effect on fiscal years starting on or after January 2025

2. Amount B is optional for jurisdictions to opt for or not

Jurisdictions will have the choice to opt or not for the application of the Amount B prescribed methodology, which will be binding on both taxpayers and the tax authorities concerned

3. In case a jurisdiction opts for Amount B, its application would be under 'Permit' or 'Require'

As such, if the taxpayers' jurisdiction opts for Amount be under 'Permit' taxpayers will have the choice to either apply Amount B methodology or not. Under 'Require' taxpayers will be required to apply the Amount B methodology on the qualifying transactions

4. For some jurisdictions, the adoption of the Amount B guidance may lead to lower distribution margins compared to the locally benchmarked ones

Jurisdictions will have to conduct an economic analysis and weight the pros and cons of opting for Amount B methodology versus the actual market benchmarking outcomes

5. The outcome of the application of the Amount B prescribed methodology is not binding on the counterpart's jurisdiction

Only the jurisdiction opting for Amount B will be bound by the related guidance and methodology - Unless there is an agreement between the two jurisdictions concerned that prescribes the contrary

(*) On 19 February 2024, the Organisation for Economic Co-operation and Development (OECD) published the final report on Pillar One Amount B (the Report), which is intended to simplify and streamline the application of the arm's-length principle to baseline marketing and distribution activities.

6. Transfer Pricing documentation will still need to be prepared as per the applicable TP requirements

Amount B does not provide for a safe harbor for the preparation / filing of TP documentation. It does however not create additional (or new) TP documentation requirements. It is meant to simplify the calculation of the arm's length margin for qualifying intercompany transactions

7. Intercompany transactions related to the distribution of intangible property are out of scope of Amount B

Amount B guidance (and related methodology) only applies to qualifying intercompany transactions that are strictly related to the distribution of tangible goods. For any other types of intercompany transactions, the applicable OECD TP Guidance will continue to apply

8. Amount B pricing matrix accounts for 'factor intensity' and 'industry grouping' as main factors to determine the applicable distribution margin

Amount B pricing matrix accounts for 5 options for 'Factor intensity' that relate to the business's net operating asset intensity and operating expense intensity. On the other hand, Amount B factors in 3 industry groupings

9. Amount B Guidance does not cover any specific mechanisms to achieve tax certainty and eliminate double taxation

Instead, the Amount B Guidance points out potential issues that may arise in case of situations involving a jurisdiction that has opted for Amount B and a jurisdiction that has not

10. Agreements reached between contracting jurisdictions under Article 25 of the OECD Model Tax Convention on Income and Capital prior to the issuance of Amount B guidance will continue to apply

This includes bi-lateral and multilateral advance pricing agreements as well as mutual agreement procedure cases, for the qualifying transactions and financial periods