

Comments of the G-24 on the Progress Report on the Administration and Tax Certainty Aspects of Pillar One

1. G-24 appreciates the OECD/G20 Inclusive Framework (IF) and the OECD Secretariat for their continued effort to develop a consensus solution for addressing the tax challenges arising from digitalisation and for releasing the Second Progress Report on Amount A of Pillar One for public consultation.
2. G-24 has always favoured fair, simple rules which can be implemented effectively by developing countries. At the same time, it is important that the adoption of the Two Pillar solution results in meaningful revenues, especially for developing countries, so that the solution is sustainable.
3. On a plain reading of the body of substantive rules proposed by the Secretariat, there remains no doubt that the provisions envisaged will still be highly complex to implement and administer. Given the significant inter-jurisdiction variation in administrative capacities of members of the Inclusive Framework, the G-24 recognizes the acute need for intensive capacity building to facilitate streamlined implementation and adoption of the Amount A rules, which require changes through an MLC and relevant domestic laws.
4. G-24 recognises that to create trust in the proposed new international tax architecture, it is imperative that developing countries, which make up a significant number of Inclusive Framework jurisdictions, are provided adequate representation in the new governance structures that are being proposed to implement the new rules.

Part I. Administration of Amount A

Information Filing Requirements

5. The G-24 supports the option of filing the documents directly with the Affected Party simultaneously with the LTA, where the Affected Party provides for automated remote filing / online filing. Such an alternative along with the proposed process will ease the burden of the lead tax administration and also give low-capacity countries sufficient time period to review the common documentation package filed by in-scope MNEs. It will also enable faster processing of the returns.

Identification of Entities liable for Amount A Liabilities

6. In the interest of ensuring that the interest of market economies are protected, G-24 considers that the resident group entity on an in-scope group in the market jurisdiction should be made liable for Amount A tax in that jurisdiction. Such an

approach will reduce the burden on the affected jurisdiction to collect the tax and make the process of payments of tax faster. Further, such an approach will address the pressure placed on a single liable entity to fund the payments under the single taxpayer approach, by distributing the liability among different entities instead of a single entity. It will also address the challenges faced by market jurisdictions in identifying and collecting taxes from the non-resident liable entities. The issues of foreign exchange management will also be managed since the Amount A tax payments can be made quickly in local currencies by the resident group entity. Further, in case there is no resident group entity in a market jurisdiction, a designated Group Entity can be identified as the liable entity, similar to the single taxpayer approach.

Secondary Liability for Amount A

7. G-24 considers that the secondary liability should first lie with any group entity/entities (which may be the UPE also) in the same jurisdiction. Only once the avenues within the affected jurisdiction are exhausted, should the liability be transferred to an entity outside the jurisdiction. This would reduce the burden on the market jurisdiction to enforce collection.

Suspension of Payments of Amount A

8. G-24 does not support the suspension of payments of Amount A liabilities during a Tax Certainty Review process. Any suspension of payments would significantly delay payments to market jurisdictions. The soft-landing/transition periods provide sufficient cushion to the MNEs.

Provision for Timely Relief from Double Taxation

9. G24, after taking cognizance of the requirement of law in many jurisdictions requiring the evidence of payment of tax to be furnished before relief from double taxation is given supports its consideration while deciding time limits in Article 19 of Section 3.8 of Part I of the Progress Report.

Part II. Tax Certainty Framework for Amount A

Random Selection Methodology

10. G-24 supports providing for a selection filter for developing countries in the selection of the Panel Members. The present process of the random selection process from the parties can lead to skewed results. There is a need to create panels that reflect the developmental diversity of the Inclusive Framework members and this is necessary to enhance trust and stability in the new multilateral architecture being developed.

Time Limitation on Tax Administrations to conduct Scope enquiries

11. G-24 does not support any kind of time limitation on the Tax Administrations to conduct Scope enquiries. It is logical that if no documentation package has been submitted by MNE Group and no documentation has been made available to the jurisdiction, the jurisdiction has no visibility on MNE Groups to conduct scope enquiries.

Materiality Threshold for Review Panel Members

12. The G-24 does not support any provision that aims to constrain the ability of Panel members to suggest/propose changes to the Group Common Documentation Package by the introduction of a materiality threshold. The Panels, and by extension the Panel members, have been assigned a task of multilateral adjudication, which is a higher onus than the one cast on Affected Parties. Once assigned to a seat on a Review Panel, it may be inappropriate to equate a Review panel member with an affected party in its responsibilities and obligations.

Time Period between Review Panels

13. G-24 supports the proposal contained in Footnote 67 to incorporate trigger events into the 5-year time period between the Comprehensive Tax Certainty review by the Panels.

Consideration of the Impact of Withholding Taxes (“WHT”)

14. G-24 notes that Clause c of Paragraph 15 of Section 2.3.2 details the scope of Phase II of the Comprehensive Review and refers to the application of the rules on the impact of Withholding Taxes (“WHT”). It is reiterated that WHT was not a part of 2021 October Statement and any move to incorporate its impact and implications within the new proposed taxing right will risk destabilizing the political agreement and vitiate the integrity of the new taxing right itself. It is for these grave reasons, the G-24 strongly urges the removal of any consideration of Withholding Taxes from within the Amount A Architecture.

Determination Panel Composition

15. G-24 supports government representatives in the Determination Panel and would like to reiterate the comments previously provided vide Paragraph 17 of its submission dated 15th August 2022. Panels will be tasked to adjudicate disputes/disagreements related to the allocation of Amount A to market jurisdictions. The panels will be expected to perform what is in essence a sovereign audit function for Amount A and to date, there seem to be no tax administrations

that outsource their audit function to independent parties. The G-24 would like to place on record its concerns relating to confidentiality, impartiality, and conflict of interest if there is any move to induct independent experts on such panels. For the reasons iterated via previous submissions and contained above, we strongly urge for a Determination Panel composed exclusively of Government Officials.

Part III. Tax Certainty for Issues Related to Amount A

Article X

17. Article X provides for the application of a MAP request by a member of an MNE group, if the dispute involves a “Related Issue”. In its present form, Member of the MNE group has to provide a written statement that the dispute involves a “Related Issue”. There is no obligation to provide any justification that the issue is actually related to Amount A. The G-24 considers that it would be appropriate at stage of the MAP request for the MNE group to provide written statement that the unresolved issue is a Related Issue, if the MNE has a consequent obligation cast upon it at the time of invocation of the DRP process, to provide a detailed justification that the issue is in fact a “Related Issue”. The G-24 considers this to be a necessary corollary to the existing provision because the DRP would need detailed information to undertake a substantive consideration in case it has to decide the threshold question itself.

Article Y

18. G-24 would like to express its serious concerns on any proposed inclusion of provision for submission of MAP Requests where no underlying Bilateral Tax Treaty exists. The incorporation would raise various constitutional concerns, the foremost among them being the encroachment on sovereign / Parliamentary discretion to enter into bilateral treaties. Additionally, it would also throw up various technical challenges like defining of various Articles relating to business profits, permanent establishments and so on.

Article Z – Definition of “Related Issues”

19. G-24 expressly considers that only unresolved issues that **have a quantifiable impact on Amount A** should be covered under the scope of the Dispute Resolution Panel and any adjustments to an MNE group entity profit should not automatically open up the avenue for the MNE to request for the DRP process. This would imply that at the time of invocation of the DRP Process, MNE should clearly identify a **nexus between the issue and Amount A**. Furthermore, the term “potential impact” is too vague and can be unduly interpreted to have the widest possible connotation and so would lead to unnecessarily widening the scope of the Dispute Resolution Panel. For these reasons, the G-24 urges the development of a

clearly delineated scope of Related issues that have a direct quantifiable impact on Amount A.

19.1 Issues Definition, to minimize the administrative costs associated with the DRP process and to ensure that only those unresolved issues that have a material impact on Amount A would proceed to the DRP for final resolution. The absence of a Materiality Threshold runs the risk of inundating the DRP process with myriad of cases that may eventually have no or negligible / nonmaterial impact on Amount A and add stress to an already overburdened process, thereby impacting the stability of the structure.

19.2 The G-24 further considers that any adjustments relating to Withholdings Taxes and adjustments emanating from Domestic Anti Avoidance Legislations fall squarely within domestic legal issues and prima facie are not a MAP matter. It follows then that any unresolved issues arising from such types of adjustments should be expressly out of the scope of the DRP mechanism, which is an extrapolation of existing MAP disputes.

Article Z – Definition of “Legally Bound”

20. Present language in Article Z provides the scope of definition to be circumstances in which the Competent Authorities (“CAs”) must adhere to decisions by court or tribunals. However, the commentary provides that compulsory adherence should be a matter of law. In light of the differing legal systems and practices prevalent in the various Inclusive Framework jurisdictions, The G-24 considers the presence of the condition “matter of law” in the commentary to be too restrictive. It is urged that the commentary be made analogous to the substantive provision.

Composition of the Dispute Resolution Panel (“DRP”)

21. G-24 strongly supports a Dispute Resolution Panel composed exclusively of Government officials.