



# American Chamber of Commerce in Italy

## AMERICAN CHAMBER OF COMMERCE IN ITALY

### OECD Public Consultation – Pillar One

#### Executive Summary

The American Chamber of Commerce in Italy, in its primary advocacy role, is willing to provide the comments released by its Tax Committee on the Public Consultation Document on the Reports on the Pillar 1 Blueprint.

#### Premise

Due to the pandemic effect, consumer habits have changed and these changes will endure. There have been substantial and lasting changes in the consumer behavior, in the way people live, work and shop and consequently the way how the enterprises should face the consumer business and review their value chain. In the post-COVID-19 world, the unparalleled growth of e-commerce will disrupt national and international retail and distribution frameworks. Most non-essential retail activities have been shut down; on the other hand, the surviving ones operate in difficult conditions, including labour supply shortages, major disruptions in supply chains and working conditions and likely in a loss-making situation.

As an example, Traditional Distribution/ Retail Sector occupies an important position into the value chain strictly connected to the other upstream Sectors and this is why Pillar 1 works should consider how the business dynamics, value chain and profitability has already changed or is willing to change to enhance the most appropriate solution to ensure appropriate and fair allocation of taxing rights.

As a general comment, Unilateral Country measures resolved under local political pressure would have a greater and even worst impact on multinational activities and investments. Unilateral measures should be eliminated by adopting the Unified Approach to avoid that double taxation issues and burdensome administrative compliance will jeopardize any joint efforts in developing common standard rules on cross border basis.

At the same time, we believe that there is no reason why some industries or sectors should be carved out from the scope of the project. Carve out of specific sectors is discretionary and debatable. In principle, the Unified Approach must apply to everyone. The exclusion should be made on factual evidences based on the companies' business model and the activities on the various market jurisdictions.

The standard principles should apply to universally to avoid horizontal and vertical distortion in tax allocation rights.

#### Scope:

- (Question I):
  - ADS and CFB designation results in line drawing that doesn't reflect the stated policy concerns the project is trying to address which is ensuring local taxation of highly profitable companies that can grow "scale without mass"



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- Instead, there should be a screen to determine which MNEs fall within the Amount A scope. For instance, criteria could be operating margin or X% of PPE to screen out companies that are not profitable.
- The computation of Amount A should follow a ladder approach (digital differentiation approach -> chapter 6.3.) to reflect the overall profitability of the companies in scope and to ensure that those with Amount B (distributors) are not disproportionately impacted, resulting in contributing a greater percentage of overall system profits than those without local presence / Amount B.

## Segmentation of Amount A tax base:

- (Question V and VIII):
  - For companies with a regionally managed business, the same rationale as for business line segmentation would apply: in order to avoid dilution of profitable regions with underperforming ones, or in order to avoid cross-subsidies from highly profitable regions to regions with lower profitability, a regional segmentation should be allowed.
  - Companies can demonstrate that they are regionally managed with their TP documentation or their management structure, and paying entities can be identified on that base (e.g. Masterfile)

## Distribution and Marketing Safe Harbor

- (Question VII):
  - Amount A + B should be based on system profits to ensure that e.g. Amount A and Amount B allocation to countries cannot exceed 20% of system profit.

## Amount B

- (Question IX and X):
  - Amount B is essential to this project. Most MAP cases and disputes center on remuneration for distributors, therefore the only way to achieve certainty in this project is to solve Amount B.
  - We support a broad scope for Amount B, including supporting commissionaires. There is no reason why any sales/distribution or marketing function capable of being benchmarked should not be included in Amount B.

## Tax Certainty

- (Question XI and XII):
  - In addition to the outlined items in the Blueprint, it could help to have a company forward to the panel key details of its Pillar 1 implementation (e.g. segmentation approach, attribution to the market and elimination of double tax) and how those have been determined (incl. e.g. reconciliation with its 10-K and maybe its CBC report).
  - The panel for a specific MNE should consist of a representative mix of payors and recipients of Amount A and provide an advance agreement on the approach proposed by the MNE together with a list of agreed data which the MNE would provide annually to demonstrate compliance with the methodology. The MNE could be required to have its



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audit firm sign off under an “agreed upon procedures” basis that it has followed the agreed methodology.

- The MNE would also be required to commit to following this particular methodology for a defined period (say 4 or 5 years) unless there was a major change in its business circumstance

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