Connect. Engage. Impact.

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

25 January 2023

Tax Treaties, Transfer Pricing and Financial
Transactions Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation
and Development
Paris, France

Via email: transferpricing@oecd.org

RE: Comments on Amount B Under Pillar One

Dear Sir or Madam:

The Organisation for Economic Co-operation and Development ("OECD") launched its base erosion and profit shifting ("BEPS") project in 2013. Action 1 of the BEPS project was entitled *Addressing the Tax Challenges of the Digital Economy*. Action 1 had subsequently grown into a two-pillar solution to address the tax challenges arising from the digitalization of the economy. Pillar One of the two-pillar solution includes an "Amount B," which is intended to streamline the process for pricing baseline marketing and distribution activities in accordance with the arm's length principle ("ALP"). Amount B aims to enhance tax certainty and reduce resource-intensive disputes between taxpayers and tax authorities.

The OECD published a consultation document entitled "Pillar One – Amount B" on 8 December 2022 (the "Consultation Document"). The Consultation Document "outlines the main design elements of Amount B, i.e. the scope, the pricing methodology and the current status of discussions concerning an appropriate implementation framework, and seeks inputs from stakeholders" on the technical design of Amount B.[1] I am pleased to respond to the OECD's request for input on behalf of Tax Executives Institute, Inc. ("TEI").[2]

---

1 Consultation Document at p.4.

2 TEI is a corporation organized in the United States under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986 (as amended).

TEI Background

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 57 chapters in North and South America, Europe the Middle-East & Africa ("EMEA"), and Asia. TEI, as the preeminent association of in-house tax professionals, worldwide, has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our approximately 6,000 individual members represent over 2,800 of the leading companies in the world.

TEI Comments

TEI's comments on OECD tax policy initiatives are driven by four main principles: clarity, consistency, predictability, and dispute resolution/avoidance. Regarding Amount B, these principles translate into five objectives:

1. Increased tax certainty.
2. Multilateral implementation of consistent tax rules.
3. Simplified transfer pricing compliance.
4. Reduced compliance burden.
5. Meaningful data transparency

TEI trusts the comments below will assist the OECD, collaboratively with the business community, in working towards the effective adoption of a consistent set of guidelines by the OECD/G20 Inclusive Framework on BEPS ("OECD/IF"), under local law.

TEI commends the OECD/IF on their thorough review of the many facets of developing an easy to administer transfer pricing solution for low-risk distributors, with the laudable goal of reducing the tax compliance and administrative burdens of conforming to the ALP. The Consultation Document includes specific questions seeking input on Amount B elements to assist the OECD/IF in its development of a consensus view and to ensure Amount B delivers on its goals of enhanced certainty and reduced disputes.

Our reading of the specific questions suggests the OECD/IF is struggling with balancing the need to adhere to the principles of the ALP while delivering administrative simplicity. As the OECD transfer pricing guidelines already state, and as referred to in the consultation document, trade-offs between the two are acceptable. However, the extent of deviation from the ALP for the sake of "administrative simplicity" is a policy decision that must be made by the OECD/IF.

1. Executive Summary

We recommend the OECD/IF design the scope of Amount B to be as broad as possible with as much standardized pricing methodology as possible and resist the understandable urge to obtain the "perfect" ALP result. Otherwise, we fear the perfect will be the enemy of the good and it will be

questionable whether the OECD can deliver a practical solution effectively befitting tax authorities and taxpayers.

To achieve administrative simplicity, support low-capacity countries streamline processes under Amount B, and provide tax certainty benefits for tax authorities and taxpayers, TEI recommends the OECD:

- Broaden the scope of distribution and marketing activities to cover distributors as well as commissionaires, sales agents, retailers, and digital services distributors.[3]
- Confirm Amount B is not mandatory and enable taxpayers an opt-out mechanism from Amount B.
- Simplify the scoping criteria and allow for higher tax certainty about the inclusion or exclusion of certain items from Amount B.
- Ensure there is a timely and mandatory bi- or multilateral dispute resolution mechanism, including where there is no bilateral tax convention between the tax residence of the low-risk distributor and the related party supplier.
- Secure a multilateral and consistent implementation of Amount B that binds the OECD/IF member states to the scope, pricing methodology, and benchmark ranges of Amount B.
- Confirm Amount B applies to multinational enterprises ("MNEs") in scope of Pillar 1, Amount A.
- Simplify the documentation requirements to ensure only necessary and relevant information must be provided.
- Simplify the benchmarking criteria by delivering a set of regional benchmark ranges, not single targets, that broadly apply to low-risk distributors from multiple industries.
- Clarify the interaction between Amount B and the marketing and distribution safe harbor in Amount A.

Regarding the information made available by taxpayers, TEI recommends the OECD/IF add to the commentary on Amount B requiring tax authorities to adhere to and rigorously comply with confidentiality provisions, as well as to reconsider the volume of information taxpayers must provide.

More specifically, taxpayers should be required to make a reasonable effort to provide relevant information to tax administrations. However, we note there are multiple ongoing tax transparency initiatives by the OECD, the European Union, and U.S. Financial Accounting Standards Board ("FASB"). We recommend the OECD/IF to rely on information already made public and not require taxpayers to submit the same information for purposes of Amount B. Relatedly, the transfer pricing documentation

---

[3] In a subsequent phase, TEI recommends the OECD/IF consider broadening the scope of Amount B to cover other limited risk activities such as contract research and development services, contract manufacturing, assembling of products or tolling services. These limited risk activities are expressly mentioned in the OECD Transfer Pricing Guidelines - Annex I to Chapter IV, "*Sample Memoranda of Understanding for Competent Authorities to establish bilateral safe harbours*".

requirements under Amount B should not be more onerous than existing requirements and any required additional information should be directly relevant to the assessment.

Examples of duplicative or irrelevant information requested regarding Amount B are:

- The list of advance pricing agreements ("APAs") is also included in the country-by-country reporting masterfile and shared through the automated exchange of information under BEPS Action 5.
- Bilateral/multilateral APAs and other tax rulings to which the local tax jurisdiction is not a party, which are not relevant to the local assessment. Further, the comment in paragraph 87.l regarding APAs to which the local jurisdiction is not a party "which are related to in-scope transactions" gives the local tax jurisdiction too much discretion.
- The requirement to test transfer pricing at a transactional level and per related counterparty, as opposed to on an aggregated basis. This requires deploying additional resources with little benefits for tax authorities and taxpayers (e.g., enterprise resource planning ("ERP") systems would need to be upgraded to allow for testing margins at a transactional level, and per counterparty).

We recommend the OECD strike a balance between the significant increase to taxpayers' burden of providing additional/duplicative information and the benefits to and capacity of tax administrations to effectively review and manage the volume of data.

Finally, TEI strongly recommends the OECD/IF consider the impact the design of Amount B will have on other areas of taxation, in particular the interaction between transfer pricing under Amount B and indirect taxes. The challenges of managing the interactions between transfer pricing and the ALP, and the customs, value added tax ("VAT") or goods and services tax ("GST") rules are well known by in-house tax professionals. Amount B has the potential to amplify these challenges if implemented as set forth in the Consultation Document.

Amount B's transfer pricing mechanism requires MNEs to, periodically or at year-end, implement a process to adjust the actual profitability of the local limited risk affiliate to an OECD/IF benchmarked range. This is a retrospective adjustment, which is not included in the product pricing for indirect tax compliance purposes. Because most tax authorities lack a coordinated approach between transfer pricing and customs, a retrospective adjustment often results in an overpayment of custom duties or VAT/GST. This can be due to:

- A transfer pricing retrospective adjustment increasing the limited risk distributor's margin, which triggers a reduction in product pricing and an additional corporate tax payment,
- for customs purposes, the reduction to the product pricing should trigger a partial refund of the custom duties paid when the goods were imported into the country,
- similarly, transfer pricing retrospective adjustments decreasing the limited risk distributor's margin would trigger and additional custom duties payment.

While some countries will issue custom duties rulings to facilitate MNE transfer pricing, in practice such rulings will be issued only when they result in additional custom duties, and thus double taxation results as custom duties refunds are often disallowed.

2. Responses to Specific Topics/Questions Raised in the Consultation Document

i. Questions Related to Tax Certainty

Section 6.3 of the Consultation Document raises two questions on tax certainty for public comment. Before addressing the two questions we have the following general comments.

The complexity of the scoping criteria, of the pricing methodology, and of the documentation required, along with the discretion given to tax authorities to interpret the information provided by taxpayers, plus the lack of an effective and mandatory dispute resolution mechanism, is likely to result in an increase in transfer pricing disputes. TEI recommends simplifying Amount B's overall design to reduce this likelihood.

The consultation paper indicates "jurisdictions may wish to introduce a procedure whereby taxpayers are required to notify the first time their transactions fall in scope of Amount B" (paragraph 91). Given the tax uncertainty, the complexity of the design and scoping, and the significant compliance burden, taxpayers should be given the flexibility to elect being in scope or out of scope of Amount B. It should also be clear that a taxpayer that has opted-out of the Amount B rules should not be forced to comply with the documentation requirements nor see their activities benchmarked by using the OECD reference target ranges.

The two specific questions posed on tax certainty by the Consultation Document are:

> 6.3.1. Do you think the current tax certainty framework described in this section is sufficient to prevent or address potential disputes arising in relation to the applicability and/or operation of Amount B?
>
> 6.3.2. Is there any other approach that could supplement this framework to enhance tax certainty and reduce the risk of double taxation and/or double non taxation arising from the application of Amount B, subject to a jurisdiction's availability of resources? For instance, should the work on Amount B include, for interested jurisdictions, the design of an elective early certainty program to provide a specific early (pre-audit) certainty (e.g. streamlined APA-type process) or an indication of the compliance risk inherent to controlled transactions regarding the application of Amount B and its pricing methodology?[4]

[4] Consultation Document at page 47.

The solutions offered by the OECD/IF give little to no tax certainty to taxpayers. TEI would welcome the OECD/IF investing in designing an effective multilateral binding mechanism that timely resolves disputes. More specifically, we call the OECD's attention to the fact that:

- There may not be double tax conventions in place between the OECD/IF Members, which can easily result in double taxation. If no bilateral dispute resolution is implemented as part of Amount B, taxpayers have no mechanism to resolve cross-border disputes in the absence of a convention. Corresponding adjustments at the level of the low-risk distributor counterparts can also be disallowed.
- APAs are offered as a solution but not all countries have an APA program or are sufficiently resourced to address such requests.
- Where double tax treaties apply, there is no equivalent to mandatory binding multilateral dispute resolution mechanism.
- The Consultation Document seems to indicate that corresponding adjustment should be done on a transactional basis and, if that is the case, an effective multilateral dispute resolution mechanism is critical.

Critical for the tax administration and MNEs is that any such dispute resolution mechanism allow for a binding dispute resolution, which is resolved within a timeframe that complies with the statute of limitation of all parties involved.

Overall, we leave the OECD with two questions. First, if Amount B does not apply when an APA applies, why settle for Amount B? Second, if there is no mandatory multilateral dispute resolution mechanism that provides taxpayers with tax certainty, what is the benefit for taxpayers to be within the scope of Amount B?

ii. Questions Related to Transfer Pricing Compliance Simplification

Question 3.5.4. and the related sections of the Consultation Document raise issues and ask questions regarding whether commissionaires and sales agents should fall within the scope of Amount B. Excluding commissioners and sales agents from the scope of Amount B defeats the goal of simplification and therefore we recommend including low-risk distributors, commissionaires and agents within the scope of Amount B.

TEI welcomes the OECD acknowledging in the commentaries to Amount B that low-risk distributors, commissionaires and sales agents have different levels of functions, assets and risks and recommends that such differences be reflected:

- In the definition of baseline activities, and
- In the benchmark outputs by, for example, clarifying which profit level indicator to test a commissionaires and sales agent's arm's length margin, and/or the arm's length point of the benchmark range entities with lower levels of functions, assets and risks.

TEI also recommends the OECD/IF, do further work on the coordination between the Amount B safe harbors and the attribution of profits to a permanent establishment. This should include the knock-on effects of Amount B for commissionaires and sales agents on customs, VAT, and GST compliance.

Question 3.5.7 asks: "Do you consider that the derivation of the data or other information required to substantiate any of the scoping criteria outlined above would result in a meaningful simplification and streamlining of compliance activities based on what is currently required to be prepared and retained?"

The scoping criteria draft paper is complex and an amalgam of standards that could give rise to subjective interpretations by the tax administration and taxpayers. TEI recommends the OECD to simplify the scoping criteria. Considering the narrow scoping criteria of Amount B, and consequently the limited number of companies to which would apply, the desired simplification and streamlining of compliance activities will likely be negligeable.

Moreover, the scoping criteria implies that MNEs business strategy is driven by tax. TEI welcomes the OECD acknowledging that the success and the growth of a business is driven by the business strategy, taxation is a cost of doing business. That is, the Consultation Document implies that, for MNEs to benefit from Amount B's safe harbor, they would need to (re)organize their business operations so that they meet the scoping criteria. MNEs' business strategies are not driven by safe harbors devised for tax purposes.

iii. Questions Related to Consistent Implementation

Section 3.5 sets forth questions related to the scope of Amount B. As an overall observation, we believe the scoping criteria make Amount B's scope too narrow and recommends revisiting the criteria below to allow for a broader application of Amount B, as discussed below.

Paragraph 18.b. states that one of the scoping criteria is that a "distributor must distribute primarily in its market of residence, where the annual net sales generated by the distributor from customers located in other jurisdictions do not exceed" a yet to be determined percentage of its annual net sales. Such a requirement, however, does not reflect modern business practices. Many MNEs operate through regional distributions teams: in today's global economy, more and more distribution and marketing functions have cross-border responsibilities over the sale of products and services. In some industries, distribution and marketing teams may never serve a single market. Thus, the "primarily" domestic sales threshold (presumably greater than 50%) ignores current business operations.

Often these regional distribution and marketing teams serve homogeneous markets: in practice, these teams often serve regions or subregions (as defined in Annex A – paragraph 3.2.2 of the Consultation Document) where the arm's length range is consistent across the countries where sales are made. The "primarily" domestic sales threshold ignores the similarities across countries and markets.

Post covid-19, employees working remotely became more frequent. Globally and across multiple industries, MNEs have been adopting work from anywhere policies. Employees are looking for greater

work flexibility around their work location. The "primarily" domestic sales threshold ignores this trend and the impact it has on MNEs.

Paragraph 18.h. sets forth certain non-sales and marketing activities (referred to as "ancillary activities") that may be performed by an entity that qualifies for the Amount B safe harbor if those activities do not rise above a yet-to-be determined amount of annual net sales or costs. These thresholds, however, do not take into account how MNEs operate.

Most industries offer routine installation and maintenance services. For example, a retailer might, offer garment repairs as a complimentary add-on to its garment sales and such repairs could exceed the permitted threshold, but the repairs are nevertheless ancillary to the primary business of selling garments. The proposed threshold in paragraph 18.h. ignores the support nature of such services in favor of a quantitative measure. Moreover, some industries cannot operate without some of the auxiliary services: hardware, telecoms, elevators, and coffee machine distributors are examples of industries where ancillary services are integrated into the supply chain.

Further, industries cannot operate without licenses to distribute in the country: while the license needs to be obtained locally to satisfy legal requirements, economically the investment and the financial risk of the investment is made by the MNEs' entrepreneur, and not by the local low-risk distributor. For example, pharmaceutical distributors often need regulatory approval / license to sell in a particular country. Such approval is not an intangible, but merely a legal formality permitting the company to do business.

Separately, we believe it is possible to apply Amount B to companies carrying-out multiple low-risk activities, provided the OECD/IF agrees to permit tax authorities to use an MNE's segregated financial statements when applying Amount B.

In cases where a baseline distributor is involved in purchases of products from multiple related party suppliers, the OECD/IF has proposed that the taxpayers evaluate the Amount B criteria at a per transaction/supplier level (section 4.3.4). It is our recommendation that, in such a situation, the baseline distributor should be evaluated at an aggregated level - rather than at a per supplier level - on whether its activities qualify for Amount B inclusion or not.

Additionally, in paragraph 18.c. under section 3.1, the OECD/IF has proposed excluding a distributor that performs any economic activity other than its core distributor functions, from the scope of Amount B. This is in contradiction to the guidance in 4.3.4 where OECD/IF proposes testing the distributor's activities at a per transaction/supplier level. We recommend that a distributor with multiple economic activities be permitted to segment its financial information by the various economic activities and apply the Amount B inclusion criteria at this segmented level. If the distributor qualifies for Amount B for its distribution and marketing activities, then the Amount B rules would be applied to the distribution segmented financial results only. The other economic activities, to the extent that they do not qualify for Amount B inclusion, would be assessed under the regular OECD transfer pricing guidelines.

Retailers/Software Distributor and Amount B

In our view, retailers can meet all the scoping criteria of Amount B and should therefore be included in its scope.

In practice, retailers: (a) have written contracts with their related party suppliers, (b) perform mostly, if not 100%, of their sales in a domestic market, (c) could be bound by the same disqualifying activities, (d) could be tested to check if they carry-out any risk control functions leading to valuable intangibles, (e) may not be undertaking regulatory or technical or specialized service activities that create value or lead to obtaining rights, (f) could be tested to check if they carry-out no strategic sales and marketing, (g) rarely have a single customer to exceed a relevant percentage of net sales, (h) may or may not perform auxiliary activities, (i) have relatively high annual operating expenditures compared to annual net sales, (j) can have limited risks, and (k) may or may not own any unique and valuable intangibles.

It may be that the OECD/IF's reluctance to include retailers within the scope of Amount B is related to theoretical discussions about whether or not customers are an intangible owned by the retailer. TEI recommends the OECD/IF consider including a checklist of questions to determine whether this is the case. Such questions should include:

- is the customer loyal to the retail shop or to the brand? And is the brand owned locally?
- are the customers' decisions to buy linked to its buying power, the product, or some other thing? Is the local retailer in control of that decision?
- does the customer buy solely at the local retail shop, or does it buy online, and have it shipped in?

In addition to retailers, in our view software distributors can also meet the scoping criteria of Amount B and we recommend they be included. Like retailers, software distributors can also meet 100% of Amount B's scoping criteria. It is also possible the same theoretical discussions about whether or not customers are an intangible owned by the software distributor apply. TEI suggests the OECD/IF consider including a checklist of questions like the above to make the decision about a customer ownership more objective and transparent.

iv. Questions Related to Reducing the Compliance Burden

TEI recommends the OECD/IF simplify the pricing methodology and focus on targeting a range of margins, which can be consistently applied across multiple industries and in homogeneous regions.

While the principles set forth in the Consultation Document are well considered, the OECD/IF seems to have lost track of the purpose of the pricing exercise – what is the arm's length range percentage to test transfer pricing compliance? – and to be navigating layers of complexity that are unlikely to produce valuable and consistent outputs. TEI recommends stepping back from the detail and refocusing on the basic question.

As part of this exercise, it is important for the OECD/IF to address the questions below.

How frequently are the target ranges updated? As a rule, by the due date of the tax return, and in preparation of transfer pricing reports, comparables financial information for the year being tested is unavailable. The OECD/IF indicates "the Amount B pricing approach can provide flexibility to take account of economically relevant characteristics of the controlled transaction under review such as geographic filters, industry filters or other relevant factors."[5] TEI recommends the OECD/IF also address:

- How frequently are the target ranges updated,
- How the lack of financial data availability influences the target ranges, and
- How the economically relevant circumstances are planned to be factored in the benchmark results and the target ranges.

Are low-risk activities always profitable? Many tax authorities do not permit loss making distributors to be included in the comparable set and some countries require taxpayers to automatically exclude comparables with losses, regardless of whether such comparables satisfy the comparability criteria. TEI welcomes the OECD/IF clarifying to what extent loss making comparables can be included in the scope of Amount B and influence the output target range.

Are the returns for distribution and marketing activities that different across industries? There are publicly available reports that indicate that the returns for low-risk distribution activities are similar across industries and in homogeneous regions. With the goal of simplifying compliance, TEI recommends the OECD/IF consider setting target ranges that apply across multiple industries and to homogeneous regions.

Could regional benchmarks for homogeneous regions be used to set Amount B's safe harbor ranges? TEI recommends the OECD/IF implement regional safe harbors based on regional benchmarks. This approach would greatly simplify the OECD/IF's work, reduce multi-lateral disputes when countries disagree with the target range, increase the consistency across jurisdictions, and provide taxpayers with greater certainty. Likewise, this approach aligns with how MNEs operate, which is frequently through regional low-risk distributors, especially in areas where a single market does not warrant a separate distributor.

Do independent parties manage their business by targeting a range of results? Or do they have a single target margin? TEI recommends working with a target range of results, not with a single target margin. This approach simplifies compliance and is aligned with current business practice as working with a range reduces the need to trigger pricing adjustments, whereas a single target margin requires the taxpayers to adjust its transfer pricing every time the exact targe margin is not met. Working within a

[5] Consultation Document at page 30.

range incentivizes the local distributions teams to be as efficient as possible, as often their compensation is linked to margin performance.

Can the safe harbor range be calculated based on a multiple year average? TEI recommends the OECD/IF permit the low-risk distributor compliant safe harbor margin to be calculated based on either the single year result or the average results over an appropriate multiple-year period (3 or 5 years). If the low-risk distributor multi-year margin is not within the arm's-length safe harbor range using multiple-year data, then an adjustment would be triggered. This approach would greatly simplify the year-over-year management of transfer pricing compliance.

Is the return on assets applicable to flash title/low inventory title distributors? TEI recommends excluding the return on assets from the list of acceptable profit level indicators to test low-risk distributors. In practice, low risk distributors typically carry low levels of inventory, or sell on a flash title basis. Given these facts, it is unlikely the return on assets would produce a reliable outcome. Rather, TEI recommends the OECD/IF provide MNEs the flexibility to select the most appropriate profit level indicator to test arm's length compliance.

Will all the profit level indicators be accepted by local tax authorities? TEI recommends the OECD/IF reach a binding consensus regarding the acceptance of profit level indicators applicable to test Amount B. For example, the tax authorities in multiple countries refuse to accept the Berry Ratio as an appropriate indicator.

Should the low-risk distributor be tested based on its aggregated margin? Paragraphs 80, 81 and 82 indicate that Amount B may need to be tested on transaction-by-transaction basis. TEI recommends the OECD/IF consider simplifying the approach so that Amount B is primarily tested on an aggregate basis. An exception where a low-risk distributor may be required to segregate its financials is when a percentage of its purchases are from unrelated parties and the distributor's risk profile on such unrelated parties' purchases does not comply with Amount B's scoping criteria.

v. Documentation Issues

The proposed list by OECD/IF, as part of the Amount B documentation imposes an asymmetric and unreasonable burden on taxpayers for a proposal that is meant to be a simplification. The documentation places the burden on taxpayers completely rather than sharing the burden between taxpayers and tax authorities.

Additionally, any documentation request which is not already included in a taxpayer's transfer pricing documentation should be on a one-off basis only. Taxpayers should only be required to provide the needed information once and not on an annual basis so long as the facts and circumstances leading to the Amount B qualification in the first place have not changed.

Our recommendations to simplify the Consultation Document's specific documentation requirements in paragraph 87 are as follows:

- Para. 87.a.: This is implied in all taxpayer submissions and such a certification on an annual basis is unnecessary.
- Para. 87.b.: The functional analysis is already incorporated into the local file and therefore will lead to duplication. Financial information at a per product level is not as easy to retrieve as envisaged by the OECD/IF and will result in an unnecessary burden on taxpayers.
- Para. 87.c.: The local file includes this information and taxpayers should not be required to provide it again.
- Para. 87.d.: The local file includes this information and taxpayers should not be required to provide it again.
- Para. 87.e.: If the taxpayer is not the tested party, then Amount B simplification will not apply to the taxpayer. This information should not be needed if Amount B simplification does not apply to the taxpayer.
- Para. 87.f.: Historical information should not be requested for Amount B because it does not impact the current year Amount B inclusion criteria.
- Para. 87.g.: see recommendation regarding Para. 87.e. and f. above.
- Para. 87.h.: The reconciliation between the financial information used to determine the Amount B inclusion and the annual financial statements does not have any impact on the functional profile of the relevant entity. Requiring such a reconciliation for distributor entities globally on an annual basis creates an unreasonable burden on the taxpayers, especially considering Amount B is intended as a simplification.
- Para. 87.i.: The local file includes this information and taxpayers should not be required to provide it again.
- Para. 87.j.: The local file includes this information and taxpayers should not be required to provide it again.
- Para. 87.k.: This information exists in the intercompany agreements included in the local file and taxpayers should not be required to provide it again.
- Para. 87.l.: The unilateral APA and tax ruling information is included in the Master file and taxpayers should not be required to provide it again.

The OECD/IF's proposal incentivizes the use of secret comparables. TEI recommends the OECD/IF require tax authorities to disclose the name and financial information of the comparable companies selected in the interests of transparency and fairness.

Considering the impact and the level of detail of the benchmarking the OECD is proposing to perform, it is critical that MNEs be informed of (in addition to the name/financial information of the comparable companies):

- the qualitative and quantitative criteria selected for each benchmark,
- the adjustments made to the comparable companies' information to improve comparability,

- the interest rates used to perform comparability adjustments, such as working capital.

• • •

TEI appreciates the opportunity to comment on the Consultation Document. TEI's comments were prepared under the aegis of its EMEA Direct Tax Committee. Should you have any questions regarding TEI's comments, please do not hesitate to contact Benjamin Shreck of TEI's legal staff at bshreck@tei.org or + 1 202 464 8353.

Respectfully submitted,

Wayne G. Monfries
International President
TAX EXECUTIVES INSTITUTE