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Comments on OECD Secretariat Proposal for A "Unified Approach" Under Pillar One

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To: Organization for Economic Cooperation and Development – Tax Policy and Statistics Division, Centre for Tax Policy and Administration

By e-mail: TFDE@oecd.org

From: Foglia & Partners

Re: Comments on Secretariat proposal for a "Unified Approach" under Pillar One

Date: 12 November 2019

Ladies and Gentlemen,

We appreciate the opportunity to submit these comments on behalf of Foglia & Partners on the public consultation document "Secretariat proposal for a "Unified Approach" under Pillar One" ("**Consultation Document**") released by the Organisation for Economic Cooperation and Development ("**OECD**") on 9 October 2019 and to contribute to the ongoing global discussion of these important tax policy matters.

In these comments, we focus first on the overall Secretariat proposal ("**Secretariat Proposal**" or "**Unified Approach**") and then turn to the specific substantive topics to be addressed according to the Consultation Document.

In order to facilitate the analysis of our comments, please find here below a table of contents:

TABLE OF CONTENTS

1. *Foreword and general comments on the Consultation Document* ... 2
2. *Comments on the "Questions" formulated in the Consultation Document* ... 4
   - 2.1. *Scope* ... 4
   - 2.2. *New Nexus* ... 7
   - 2.3. *Calculation of group profits for Amount A* ... 8
   - 2.4. *Determination of Amount A* ... 10
   - 2.5. *Elimination of double taxation in relation to Amount A* ... 11
   - 2.6. *Amount B* ... 12
   - 2.7. *Amount C/dispute prevention and resolution* ... 13

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1. Foreword and general comments on the Consultation Document

The Secretariat Proposal contained in the Consultation Document has been formulated by collecting some commonalities across the three approaches[1] under Pillar One of the "Programme of work to develop a consensus solution to the tax challenges arising from the digitalization of the economy" ("**Inclusive Framework**"), also considering that: (i) all the proposals would reallocate taxing rights in favor of the user/market jurisdiction (ii) the three proposals envision a new nexus rule that would not depend on physical presence in the user/market jurisdiction; (iii) all the proposals go beyond the arm's length principle ("**ALP**") and depart from the separate entity principle; and (iv) all the proposals search for simplicity, administrability, and increased tax certainty in implementation.

On the basis of the above commonalities, the Secretariat Proposal substantially aims at retaining the current rules based on the arm's length principle for cases where they are widely regarded as effective, whilst introducing a new nexus and formula-based solutions in areas subject to debates and disputes in recent years (such as the digital economy environment).

In addition to the proposal of a new nexus largely based on the sales, the Unified Approach proposes a new profit allocation rule that (expressly) departs from the ALP, introducing a formulaic approach that doesn't require (i) any arm's length benchmarking and (ii) any country presence (via permanent establishment or separate subsidiary) or selling via unrelated distributors.

In a nutshell, the Secretarial Proposal provides a three-tier mechanism which allocates profits to the relevant jurisdictions based on a three-tier approach:

- **Amount A**: (by introducing a new taxing right) a share of "deemed" residual profit of an MNE group allocated to market jurisdictions using a formulaic approach, without the need for precise arm's length benchmarking;
- **Amount B**: a fixed remuneration for baseline marketing and distribution functions that take place in the market jurisdiction; and
- **Amount C**: binding and effective dispute resolution mechanisms (relating to all elements of the proposal), including any additional profit where in-country functions exceed baseline activities (as determined under Amount B).

In other words, the Secretariat Proposal seems to initially reject application of the current

[1] Namely (a) the "user participation" proposal, (b) the "marketing intangible" proposal and (c) the "significant economic presence" proposal.

Articles 7 and 9 of the OECD (and UN) Model Tax Treaty to determine the allocation of the profits to taxpayers that fall within the scope of the new economic nexus article[2] (i.e. Amount A). This choice is based on the statement that is "impossible" to use the existing rules based on the ALP to allocate profit based on an economic-model whereby no functions are performed, no assets are used, and no risks are assumed in the market jurisdictions[3].

At the same time, the Secretarial Proposal still relies on the ALP[4] for the determination of Amount B and Amount C, although suggesting that it may be possible to implement – for Amount B calculation purposes – fixed remuneration for certain baseline or routine marketing and distribution activities taking place in a market jurisdiction (if necessary with variances by industry sector), for the sake of simplification and also to avoid transfer pricing disputes in its determination[5].

In the light of the above, as also outlined in the Consultation Document[6], we agree that any definitive solution to the matter should be built on the principles of certainty and consistency among jurisdictions, eliminating double taxation, and minimizing (i.e. preventing) disputes.

In this sense, since the new profit allocation rule goes beyond the ALP (which substantially addresses the taxation where the value is created), coordination between the

[2] At paragraph 26, the Consultation Document considers that "*While Articles 7 and 9 are a common feature of substantially all tax treaties, there is greater variation in the terms of Article 7. But most importantly, a large proportion of tax disputes for large MNE groups are about the interpretation and practical application of those articles, and this is particularly true for marketing and distribution activities*.".

[3] Indeed, paragraph 27 of the Consultation Document states that "*As noted, given that the new taxing right would create a nexus for an MNE group even in the absence of a physical presence, it would be impossible to use the existing rules to allocate profit to this new nexus in cases where no functions are performed, no assets are used, and no risks are assumed in the market jurisdictions. Therefore, new profit allocation rules are required for Amount A*.".

[4] In this respect, the Consultation Document at paragraph 29 provides that "*The new rules, taken together with existing transfer pricing rules, will need to deliver the agreed quantum of profit to market jurisdictions and do so in a way that is simple, avoids double taxation, and significantly improves tax certainty relative to the current position. It is also important that the new rules are reconciled with existing rules. That is, the new rules should not create distortions and should be effectively applicable to both profits and losses*."

[5] The Consultation Document at paragraph 62 states that "*The second type of profit* [i.e. Amount B] *would seek to establish a fixed return (or fixed returns, varying by industry or region) for certain "baseline" or routine marketing and distribution activities taking place in a market jurisdiction. The fixed return under Amount B would seek to reduce disputes in this area, where tensions are important as a result of applying the transfer pricing rules. The intention would be to benefit taxpayers and tax administrations, as it would reduce the risk of double taxation as well as the substantial compliance costs arising from the aggressive enforcement of current transfer pricing rules.*".

[6] We are referring, inter alia, to the above-mentioned paragraph 29 of the Consultation Document.

two sets of rules is definitely necessary in order to minimize mismatches and risks of overlap, as well as double-counting the profits of the enterprise. Moreover, we believe that, in the next stages, the new proposal may also need to be harmonized with existing customs rules.

Similarly, it is worth noting that any risk of double taxation should be avoided by first removing any uncoordinated "unilateral measures" already adopted (or under development) by some countries and after implementing a robust, mandatory and binding dispute resolution process that can provide and guarantee both certainty and timely outcomes to taxpayers.

Since it is currently outside the scope of these comments at this early stage, we will not comment on the future implementation process of the definitive measures to adopt as this will be carried out after the work following this consultation; however, we can already anticipate that it will be crucial to correctly address this implementation phase in order to avoid any unwanted distortion of the market and the global tax environment.

Indeed, as widely acknowledged, it is not usually possible to create tax rights with tax treaties: hence, after the definition of a final definitive measure to implement, domestic laws in the jurisdictions will have to be amended to establish the corresponding source taxing right.

We are aware that this implementation will be difficult and time-consuming to monitor, since it will (hopefully) involve all the BEPS participating countries but, for this very reason, we strongly believe that it will be important to align – both in terms of timing and effectiveness – the domestic implementation of these new taxing rights in all the participating jurisdictions in order to avoid any cross-border distortion or disputes among the different market jurisdictions (and any consequent negative effect for the multinational companies).

On the basis of this foreword, please find here below our comments on the specific substantive topics to be addressed according to the Consultation Document.

2. Comments on the "Questions" formulated in the Consultation Document

2.1. Scope

In determining the scope of the new measures, the Secretarial Proposal takes into account that in today's globalised and increasingly digitalised economy, a range of businesses can project themselves into the daily lives of consumers (including users), interact with their

consumer base and create meaningful value without a traditional physical presence in the market. This would include highly digitalised businesses which interact remotely with users, who may or may not be their primary customers, as well as other businesses that market their products to consumers and may use digital technology to develop a consumer base[7].

On this basis, the Unified Approach is mainly addressed to "large consumer-facing businesses", broadly defined: the Consultation Document make reference, for instance, to businesses that generate revenue from supplying consumer products or providing digital services that have a "consumer- facing element"[8].

The need of a clear definition for "consumer-facing business"

Since the proposal would apply only to "consumer-facing businesses", we believe that, firstly, the kind of business subject to the new rules should be precisely ring-fenced, in order to make clear – for sake of certainty – (i) the perimeter of the new measures and (ii) the actual characterization of certain online businesses for the purposes of the Unified Approach.

With respect to this latter point, for example, under the current proposal it does not seem clear whether a multi-sided online platform providing advertising services to companies is a platform operator or an advertising business (or both), and in addition whether (and under what condition) it is a "consumer-facing business" (e.g. for cases of services rendered to the benefit of enterprises but with direct interaction with the consumers).

In this respect, it would be helpful to clarify whether business to consumer ("B2C") transactions only falls within the scope of the proposal, or, whether it also includes business to business ("B2B") models (and if the latter are also included, under what conditions).

The definitional issue becomes even more crucial when considering its interplay with the Amount A threshold: depending on whether certain lines of a business are included within the scope of the new measures or not, a company may not reach the Amount A profitability threshold and, as a consequence, not meet the conditions for the new nexus to apply in a certain market.

[7] Please refer to paragraph 19 of the Consultation Document.

[8] Please refer to paragraph 20 of the Consultation Document.

Defining MNE group and its size

In defining the concept of "MNE group", the new measure could assess the opportunity of simply adopting or referring to the well-known definition already contained in the OECD Transfer Pricing Guidelines 2017 defined as "*A group of associated companies with business establishments in two or more countries*".

The opportunity to adopt the abovementioned definition could help to simplify, implementing a definition that is functional to the scope, and with respect to which administrations and taxpayers are already confident. Indeed, even considering that digital businesses can be carried out in different countries, including remotely, it is highly unlikely that a "large" digital business creating value over different countries can be carried out through a sole business establishment in a single country.

In the same sense, as also suggested in the Consultation Document[9], considering that the new provision could be much too burdensome (also in term of compliance costs) for companies of a certain size, the €750 million revenue threshold used for country by country reporting requirements could be a valid parameter for determining the size limitation under which an MNE group is not subject to the new rules.

In this way, the scope of the new provision could also be aligned to the country by country reporting obligations, thus allowing the MNE group that collects data for such purposes to collect it – at the same time – also for application of the Unified Approach, once implemented (avoiding the introduction of completely new burdens for groups of enterprises that are not actually able to bear them).

On the possibility of providing for carve-outs

Finally, with regard to the carve-outs suggested in the Consultation Document, we believe that, in general, no *a priori* carve-out should be formulated, since it might risk triggering – in the short or the long term – distortions and some discrimination among the groups operating in different industry sectors.

Indeed, even taking into account the tax policy rationale under the Secretariat Proposal, in our opinion, a clear and precise definition of the scope of the new rules may be enough to exclude businesses which do not deserve to be taxed according to the new rules, regardless of their industry sector.

Our consideration takes into account that each business has its own peculiarities and

[9] Please refer to paragraph 20 of the Consultation Document.

future developments in each industry sector cannot be predicted. Hence, carving out some of them without a case-by-case analysis, cannot guarantee that discrimination in the short or long term will not occur.

2.2. New Nexus

As mentioned in the foreword, the Unified Approach proposes, for businesses within the scope, a new nexus, which does not depend on physical presence but that is largely based on sales[10]. In this way, the new nexus would be applicable in all cases where a business has a sustained and significant involvement in the economy of a market jurisdiction, such as through consumer interaction and engagement, irrespective of its level of physical presence in that jurisdiction.

According to the Secretariat Proposal, the new nexus would be designed as a new self-standing treaty provision and would be introduced through a standalone rule – on top of the permanent establishment rule – to limit any unintended spill-over effect on other existing rules[11].

With respect to this new nexus, the Consultation Document proposes the introduction of thresholds including country specific sales thresholds calibrated to ensure that jurisdictions with smaller economies can also benefit from the new rules.

Moreover, at paragraph 23 of the Consultation Document, it is clarified that such revenue threshold "*would not only create nexus for business models involving remote selling to consumers, but would also apply to groups that sell in a market through a distributor (whether a related or non-related local entity). This would be important to ensure neutrality between different business models, and capture all forms of remote involvement in the economy of a market jurisdiction*".

In light of the above, we believe that the nexus formulated in the Consultation Document may be a reasonable solution, since it identifies, a valid allocation criteria for the profits among the market jurisdictions in non-critical data such as sales (i.e. revenues); however, we highlight the following complementary issues that must be precisely addressed when developing this new taxing right:

- Fair thresholds based on the market jurisdiction to be periodically updated: aiming at a fair tax system, the new nexus threshold should not be relatively high and different on the basis of the relevant market jurisdiction. Indeed, in the case of adoption of the same threshold for the different markets, the user or jurisdiction

[10] Please refer to paragraph 15 of the Consultation Document.

[11] Please refer to paragraph 22 of the Consultation Document.

might end up not having any taxing rights if sales of the multinational enterprises do not reach the threshold. As a consequence, as also proposed in the Consultation Document, there should be a calibration to ensure that jurisdictions with smaller economies can also benefit from the new rules. This calibration could be reached by agreeing on different thresholds which may take into account the level of economies of each country on a global scale. In this sense, the threshold should be periodically updated on the basis of the underlying rationale chosen;

- Allocation of sales made in a market jurisdiction that does not meet the thresholds: in defining the Unified Approach, it should be more clearly specified which companies and jurisdiction will be entitled to claim the profits gained by an MNE group in a country which does not met the revenue threshold. Will the transfer pricing ALPs (e.g. DEMPE) become applicable again, or should some new criteria be considered (e.g. remuneration follows the group entity that owns the intangible assets related to the digital services[12])? As already stated, in general in the foreword, any choice should however consider proper and effective coordination with the existing transfer pricing rules;

- Tracking method of the sales with particular regard to the non-related distributor: taking into account that, as noted above, the revenue threshold "*would also apply to groups that sell in a market through a distributor (whether a related or non-related local entity)*", it would be important to set a precise methodology of sales "tracking and reporting", especially for sales made in markets through non-related distributors.

2.3. Calculation of group profits for Amount A

The Unified Approach proposes, as a "starting point" for Amount A calculation purposes, that the relevant measure of profits could be derived from the consolidated financial statements under the accounting standards of the headquarters jurisdiction prepared in accordance with the Generally Accepted Accounting Principles (GAAP) or the International Financial Reporting Standards (IFRS)[13].

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[12] The "Illustration" in Chapter 3. of the Consultation Document does not seem to provide clear indications about this issue.

[13] In particular, paragraph 53 of the Consultation Document on the point states that "*The relevant measure of profits could be derived from the consolidated financial statements under the accounting standards of the headquarters jurisdiction prepared in accordance with the Generally Accepted Accounting Principles (GAAP) or the International Financial Reporting Standards (IFRS). The advantages of such an approach are that consolidated financial statements are (1) normally readily available and (2) not easily manipulated. To better approximate a proxy of residual profit, further consideration will need to*

The second step in calculating Amount A would seek to approximate the remuneration of the routine activities based on an agreed level of profitability, in order to determine non-routine profits.

On this basis, the Secretariat Proposal however takes into account that non-routine profits can also be attributable to factors that are not targeted by the new taxing right such as "trade intangibles, capital and risk, etc."[14]. In other words, the deemed residual profit in a group may be attributable to a large number of factors that are not connected with the market and user jurisdictions. As a consequence, it proposes that "*Given the practical difficulties of using conventional transfer pricing rules for this step, the proposed approach assumes that a share of the deemed non-routine profit attributable to the market jurisdiction would be determined in accordance with a simplifying convention, such as non-routine profit multiplied by an internationally-agreed fixed percentage, though it is possible that different percentages might be applied to different industries or business lines.*".

Considering the above, we believe that the general reference to the profits contained in the MNE group consolidated financial statements and the adoption of a "fixed percentage" for the determination attributable to market jurisdictions and the profits attributable to "other factors" (such as trade intangibles) could be very risky, since they may include profits that – in principle – do not fall within the scope of the new rules, with consequent double counting and double taxation considering the parallel application of the current transfer pricing rules.

The above issue might be limited (but not completely deleted) by making reference to the different business lines of an MNE group (if any), although disputes between administrations and taxpayers may however arise with respect to the determination of the perimeter of such business lines, especially for industries that are not so straightforward.

In this respect, in our opinion, the opportunity to leave such "group basis approach" moving on a "transactional basis approach" should be explored: i.e. considering the data and the amounts of each category/group of transactions falling under the scope of the new rules, so to try to limit (and prevent) *ab origine* any overlap between the new rules and

be given to the appropriate measure of profits and also to potential standardized adjustments to the reported profit (as per the consolidated financial accounts).".

[14] We are referring to paragraph 57 which states that ""*Once profits in excess of the stipulated level of profitability are deemed to be the group's non-routine profits, it is then necessary to determine the split of those deemed non- routine profits between the portion that is attributable to the market jurisdiction and the portion that is attributable to other factors such as trade intangibles, capital and risk, etc. This is important as non-routine profit generated by MNE groups is attributable to many activities including those not targeted by the new taxing right. For example, a social media business may generate non-routine profit from its customers' data and valuable brand, but also from its innovative algorithms and software.".*

any profits attributable to "other factors" related to intangibles that are outside its scope.

2.4. Determination of Amount A

As noted above, in determining the Amount A, after the identification of the MNE group's profits on the basis of the consolidated financial statements, the Unified Approach proposes to exclude "deemed routine profits" in order to identify "deemed residual profit". Then, the calculated "deemed residual profit" would be allocated to market jurisdiction based on agreed allocation keys (such as sales).

It is worth noting that in the Amount A calculation process, no cross-reference is made to the Amount C calculation.

The risks of overlap (and double taxation) between Amount A and Amount C

As recognized in the same Consultation Document, there could be risks of duplication between the Amount A, determined on the basis of the above mentioned process, and Amount C, which is still determined according to the ALP; this could occur, for example, "*based on an argument that some or all of the profit under Amount A is also in some way referable to the functional activity in the market jurisdiction which is rewarded by Amount C*"[15].

In other words, the Secretariat Proposal expressly recognizes that, in addition to the new taxing right over a portion of the MNE group's "deemed residual profit" (i.e. Amount A), market jurisdictions may have more taxing rights (i.e. Amount C) where there are more functions in the market jurisdictions than have been accounted for under Amount B.

In practice, the Amount A that will be attributed to market jurisdictions would likely have a significant overlap with Amount C, and the taxation of both by market jurisdictions would significantly increase the risk of double taxation.

Moreover, in our opinion, given that Amount C will continue to be determined under the ALP, which is actually independent of the new rules, cases where the whole amount resulting from the three-tier mechanism exceeds the sum of its parts cannot be ruled out.

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[15] We are referring to paragraph 65 of the Consultation Document, which states that "*In relation to Amount C, it would also be important to ensure that the profit under Amount A could not (whether in whole or part) be duplicated in the market jurisdiction, for example based on an argument that some or all of the profit under Amount A is also in some way referable to the functional activity in the market jurisdiction which is rewarded by Amount C. Further work on certain aspects of the detailed interaction of Amounts A and C would therefore be warranted.*".

In other words, cases may occur where the sum of a taxpayer's worldwide Amounts A, B, and C exceeds its actual worldwide profit.

In such cases, it would be very hard to reconcile the amount due by an MNE group in each market jurisdiction, and even the adoption of an *ad hoc* mandatory arbitration procedure may be not sufficient to settle such differences.

In light of the above, we could also explored whether the adoption of a "transactional approach" could be helpful here to prevent or at least limit these types of situations (e.g. also by providing that the overall profits resulting from the sum of Amounts A, B and C can never exceed the total profit of each category/group of transactions).

2.5. Elimination of double taxation in relation to Amount A

Considering that, in general, the existing domestic and treaty provisions relieving double taxation apply to multinational enterprises on an individual entity and individual country basis, it should be carefully assessed whether any double taxation that would occur under the Unified Approach – as proposed – could be settled with the assistance of the currently available mechanisms and procedures.

In this respect, it is worth noting that the Secretariat Proposal does not seem to clarify which country involved in the new taxation system process should provide relief in the case of double taxation of the profits (including Amount A) allocated to the market and user jurisdiction.

More specifically, in the example illustrated in the Consultation Document[16], an MNE group that provides a streaming service ("Group X"), with a parent entity ("P Co") resident in Country 1, provides its services in Country 2 and Country 3 through a subsidiary resident in Country 2 ("Q Co"), being subject to new taxation under the proposed rules both in Country 2 (where Q Co is established and performs marketing and distributing services) and Country 3 (where Group X, and namely P Co do not have a taxable presence under existing rules, but where the sales meet the revenue threshold).

That being said, we believe that, with respect to above mentioned case, resolving any double taxation issues could be made more complex by adopting the proposed approach of identifying the deemed residual profit on a "group basis", rather than on a "transactional basis" (as noted above).

[16] We are referring to the example illustrated in Chapters 3.2. and 3.3. of the Consultation Document.

In this respect, the Consultation Document seems not clear about which Country could provide tax reliefs, since it does not specify whether Country 1 is obliged to provide relief for taxes collected in both Country 2 and Country 3, or whether Country 2 is responsible for relieving the taxes collected in Country 3.

In our opinion, a transaction-based approach would be easier and more suitable to the existing mechanisms of double taxation relief: therefore, for example, making reference to the case illustrated in the Consultation Document, it would be Country 2 that would provide relief (by credit or exemption method) to Country 3 (and not Country 1 where the parent entity P Co is resident), since the "sales" in Country 3 were performed by Q Co resident in Country 2. At the same time and in the same way, with regard to the relationship between P Co (resident in Country 1) and Q Co (resident in Country 2), it would be Country 1 which should provide double taxation relief for the taxation in Country 2.

This approach would allow the establishment of a bilateral relationship, which could consequently allow the adaptation – to the new rules under the Unified Approach – of the existing dispute resolution mechanisms already provided in bilateral tax treaties (please see following paragraph 2.7. for their potential improvements).

2.6. Amount B

Given the large number of tax disputes related to distribution functions, Amount B of the Unified Approach seeks to explore the option of using fixed remuneration, reflecting an assumed baseline activity.

The fixed return under Amount B would seek to reduce disputes in this area, where there are significant tensions due to applying the transfer pricing rules. The intention would be to benefit taxpayers and tax administrations, as it would reduce the risk of double taxation as well as the substantial compliance costs arising from the aggressive enforcement of current transfer pricing rules.

As a general comment, it is clear that the adoption of fixed remuneration for baseline activities – in some way – implicitly overlaps and goes beyond the DEMPE principles set forth under Chapter VI of OECD Transfer Pricing Guidelines 2017.

We understand that this choice would be for sake of simplification and in order to avoid disputes on the issue, but at the same time, for this very reason, we would recommend an effective coordination with the current transfer pricing rules.

In this respect, as also suggested in the Consultation Document[17], it would also be important to formulate a clear definition of the activities that qualify for such fixed return in order to avoid disputes on the inclusion (or not) of certain activities under fixed remuneration, with consequent distorting effects due to the parallel application of the ordinary transfer pricing rules.

2.7. Amount C/dispute prevention and resolution

As noted above, under the Amount C determination process, taxpayers and tax administrations would retain the ability to argue that – according to the ALP – the marketing and distribution activities taking place in a market jurisdiction go beyond the baseline level of functionality and therefore warrant a profit in excess of the fixed return contemplated under Amount B, or that the MNE group or company perform other business activities in the jurisdiction unrelated to marketing and distribution.

According to the Consultation Document, in this context "*it would be essential to consider existing and possible new approaches to dispute prevention and resolution, including mandatory and effective dispute prevention and resolution mechanisms to ensure the elimination of protracted disputes and double taxation*"[18].

Moreover, as noted above in previous paragraph 2.4., with respect to Amount C "*it would also be important to ensure that the profit under Amount A could not (whether in whole or part) be duplicated in the market jurisdiction, for example based on an argument that some or all of the profit under Amount A is also in some way referable to the functional activity in the market jurisdiction which is rewarded by Amount C*".

On this matter, we believe that, considering the three-tier mechanism and its envisaged effects, in order to have an effective instrument of double taxation resolution (with a mandatory result), mandatory MAP arbitration needs to be a "minimum standard" and so a non-negotiable component of the new tax system, to be implemented – without exclusions – by all the BEPS participating jurisdictions.

Moreover, as a general comment based on our experience, we believe that the mechanisms

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[17] According to paragraph 63 of the Consultation Document "*Whilst the distinction between marketing and distribution activities and others performed by an MNE group will, in most cases, be clear, there will be some borderline issues. Therefore, a clear definition of the activities that qualify for the fixed return would be required. The quantum of the fixed return could be determined in a variety of ways: it could be (1) a single fixed percentage; (2) a fixed percentage that varied by industry and/or region; or (3) some other agreed method.*".

[18] Please refer to paragraph 64 of the Consultation Document.

currently provided for in bilateral tax treaties to resolve cases of double taxation (e.g. MAP and MAP Arbitration) might not achieve the effective resolution of such disputes in all cases in a timely manner.

Indeed, in our experience we found some significant shortcomings, in particular as regards the length and the effective conclusion of such procedures, and so we believe that – in any case – any dispute resolution mechanism, which will have been deemed as suitable for the new rules, should be strengthened by also providing, *inter alia*, shorter and reasonable deadlines to resolve them.

Similarly, with regard to the prevention of disputes, we believe that this issue could be pursued through improvement of the multilateral APAs[19], by providing – also for such procedures – shorter and mandatory timelines for their finalization.

We are aware that all the above time improvements would imply a greater commitment by the tax administrations, but it is undeniable that it would be a necessary step to guarantee tax certainty to taxpayers under the Unified Approach.

* * * *

Hoping that you will find our comments useful, please do not hesitate to contact us if you require any clarification.

We welcome the opportunity to discuss these comments in greater detail and to continue to participate in the dialogue as the OECD and country policymakers advance the work on this important project.

* * * *

Foglia & Partners

[19] On the other hand, Unilateral APA cannot rule out the risk that other market jurisdictions may have different views.