

12 November 2019

Tax Policy and Statistics Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
Paris, France
TFDE@oecd.org

Dear Mr Saint-Amans

Secretariat Proposal for a “Unified Approach” under Pillar One

As the representatives of over 200,000 current and future professional accountants in Australia, the two major Australian accounting bodies Chartered Accountants Australia and New Zealand and CPA Australia (together ‘the Major Accounting Bodies’) make this joint supplementary submission on the Organisation for Economic Co-operation and Development’s (OECD’s) Secretariat Proposal for a Unified Approach under Pillar One (the Secretariat Proposal).

We thank the OECD Centre for Tax Policy and Administration for the opportunity to provide our views on the Secretariat Proposal and acknowledge the work done to date under the Program of Work. While we appreciate the timeframes set by the OECD to propose consensus solutions, the following comments highlight the challenges for the Secretariat Proposal to achieve its aims, especially as it requires quite detailed design and implementation phases.

1. The Secretariat Proposal acknowledges that further discussions are needed to establish clear boundaries including scope, size thresholds, exclusions and carve-outs. As these clarifications are crucial to the implementation of the Unified Approach, we recommend that staged public consultation take place to focus on scope, exclusion and carve-outs so that the details can be appropriately clarified and a common agreement reached amongst jurisdictions.
2. It is likely that definitional issues will arise. For example, the term ‘consumer facing’ can encompass a broad range of businesses and their activities including the potential capture of physical products (e.g. sneakers sold through company website). The term ‘consumer’ is also defined in VAT/GST legislation in many jurisdictions and differs between them.
3. There remains a lack of clarity of what the Amount A formula is intended to represent. The distinction between ‘routine’ and ‘non-routine’ profits may not be as simple or clear as intended by the OECD Secretariat.

4. While the Secretariat Proposal uses the language of transfer pricing, the formulaic approach to determining Amount A is explicitly disassociated from transfer pricing concepts. We suggest developing new terms and definitions that better reflect the distinction from transfer pricing principles.
5. While extractive industries are assumed to be out of scope in the Secretariat Proposal, the approach under Pillar One should not require that certain industries, goods or services be excluded by definition, but rather that this is achieved through the design of the rules themselves. This prevents scope creep and provides future certainty.
6. There are potential issues when defining scope and application of the formulaic approach including:
 - a. Integrated value chains are common. For example, a firm undertakes mineral extraction, commodity trading, renewables investment and electricity supply – are they an extractive industry firm?
 - b. Most businesses have a physical and digital presence. For example, a firm receives a smaller amount of revenue from online business than from its retail stores – will Pillar One rules apply?
 - c. Business transformation and diversification. Firms acquire, invest in and divest assets including whole business divisions, or they change business model as the industry and markets evolve. How will Pillar One rules apply to changing enterprises?
7. The Secretariat Proposal presumes that digital, consumer-facing business will generate regular 'non-routine' profits that can be disaggregated to reflect user participation, significant economic presence and marketing intangibles. In reality, start-ups are likely to incur substantial losses and global expansion may include loss-leading strategies. Will losses be treated in the same formulaic way as profits? How will variations in profits from year to year be treated?
8. Similarly, non-routine profits include a return on risk. The Secretariat Proposal should therefore be clear that downside and upside risks will be treated similarly. Negative returns should also be formulaically reallocated along the same principles as profits.
9. We foresee interaction issues between Amount A, B and C, Pillars One and Two, and the current Australian system (e.g. Multinational Anti-Avoidance Law).
10. The Secretariat Proposal raises uncertainty for the tax positions of multinational corporations. The fewer companies that are within scope, the more easily a multi-lateral solution can be found.

11. The Secretariat Proposal is presented as a simpler and more straightforward approach to resolving cross-border tax issues rather than the use of transfer pricing concepts. We anticipate that in the process of further developing the formulaic approach, similar challenges will arise including determining appropriate profit levels, defining the basis upon which profits will be re-allocated, negotiating multi-lateral agreements and dispute resolution.
12. As the Secretariat Proposal develops, there are likely to be challenges around:
- a. Setting appropriate definitions, thresholds and exceptions to ensure that targeted multinationals are captured by the Secretariat Proposal while those who are not intended to be affected remain out of scope
 - b. Determining whether profits should be identified and calculated at global, segmented or regional levels
 - c. Determining the interaction between current permanent establishment rules and the Amount A approach which establishes a new nexus based on sales
 - d. Determining appropriate fixed rates of return for marketing and distribution activities
 - e. Determining how non-routine profits are calculated and re-allocated between jurisdictions
 - f. Formulating the inclusion of downward adjustments for entrepreneurial risk and losses
 - g. Ensuring that formulaic approaches do not end up with a more generous outcome to the multinational than if transfer pricing approaches were used
 - h. Designing effective resolution processes that are more efficient than existing Mutual Agreement Procedures for transfer pricing disputes
 - i. Managing the shift of audit focus by tax administrators from multinational profit levels towards their activities and consumers by jurisdiction.
13. While we support the Secretariat's desire to achieve pragmatic solutions, there is a risk that the Pillar One approaches may become divorced from economic reality (as manifested in the arm's length principle) and that outcomes are politically negotiated between jurisdictions, rather than being based on the commercial realities of multinational business. The trade-off between accuracy and simplicity needs to be carefully managed so that taxpayers are provided with certainty while tax outcomes remain sensible from an economic and policy perspective.

If you have any queries with this submission, please contact either Elinor Kasapidis (CPA Australia) at elinor.kasapidis@cpaaustralia.com.au or Michael Croker (Chartered Accountants ANZ) at michael.croker@charteredaccountantsanz.com.

Yours sincerely



Simon Grant FCA

Group Executive- Advocacy, Professional Standing
and International Development
Chartered Accountants Australia and New Zealand



Dr Gary Pflugrath CPA

Executive General Manager,
Policy and Advocacy
CPA Australia

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents a network of more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world. We actively engage with governments, regulators and standard-setters on behalf of members to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations. We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

About CPA Australia

CPA Australia is one of the world's largest accounting and finance bodies, with more than 164,000 members working in 150 countries and regions around the world.

Our aim is to enhance our members' professional knowledge and support their career development. We do this in many ways, starting with the world-class postgraduate CPA Program. Thereafter, we deliver a range of continuous learning programs, utilising our international networks to source leading-edge content and presenters.

We support our members and the profession internationally by advocating for change at the highest levels and contributing to leading networks worldwide in the finance, accounting and business arenas.

A strategic priority and commitment for CPA Australia is to not only advocate on behalf of members, but also to speak up on issues in the public interest.

CPA Australia's members are bound by a strict professional code of conduct, including an obligation to undertake continuous professional development to ensure that the highest professional standards are maintained.