BUSINESSatOECD

10 June 2022

To: Tax Treaties, Transfer Pricing and Financial Transactions Division
Organisation for Economic Cooperation and Development
Centre for Tax Policy and Administration
2 rue André-Pascal
75775, Paris, Cedex 16, France
Submitted by email: tfde@oecd.org

Re: *Business at OECD* (BIAC) comments to OECD's Public Consultation Document "Pillar One – A Tax Certainty Framework for Amount A"

Dear Secretariat Team,

Thank you for the opportunity to comment on the public consultation document "Pillar One – A Tax Certainty Framework for Amount A (the "Document") and its companion paper released at the same time. These two papers cover perhaps the most important area of the whole Pillar One project from the point of view of the business community along with no double taxation of income. Given the scope of the project and the novelty of many of its provisions and defined terms, along with the fact that many Tax Authorities will have to interpret and administer this in real time, it is absolutely critical to the success of the project that the provisions of tax certainty are both significant and meaningful. We have concerns that we lay out in more detail in the appendix, but in particular we call attention to the crucial points below. We look forward to commenting again on an entire package which allows us to view these proposals in context, but, of course, at any point we stand ready to work constructively with you and the TFDE in order to make Tax Certainty a reality.

Introduction. It is welcome news that the Inclusive Framework has proposed an Advance Certainty process for the more complex parts of Amount A, simplifications for routine annual Comprehensive Certainty reviews, and a transitional period with revenue sourcing rules that will ensure a "soft landing" for companies engaging in reasonable efforts.

However, it is fair to say that businesses had truly hoped for more. Below are elements which we believe need to be added or modified to provide more robust certainty on this complex and new mechanism.

1. **Lack of consensus and incomplete document**. We note the strong and repeated qualifications and reservations in the Document indicating that there is no consensus today on the proposed mechanisms and processes among the Inclusive Framework. We also recognize that any final commentary on the Tax Certainty proposals is necessarily dependent upon understanding the details of the remaining building blocks of Amount A, including but not limited to the marketing and distribution safe harbor ("MDSH"), the treatment of withholding taxes, the paying jurisdiction(s) and the elimination of double taxation. Accordingly, it is particularly important for the business community to have the

opportunity to comment on a new version of the Document for a renewed consultation once a consensus has been reached on all main features of the system.

2. **Expansion and increased emphasis on Advance Certainty process**. We acknowledge and appreciate the Comprehensive Certainty process proposal, but we believe that this could be further improved - to the benefit of both taxpayers and tax administrations - if the Advance Certainty process were to be expanded with agreement reached before the year in question. Indeed, we would like to see much more emphasis on Advance Certainty, which we in turn believe would significantly reduce the level of effort (and possible rework) arising from the Comprehensive Certainty process. We see a role for both - with Advance Certainty focused on securing agreement on methodologies (for particular fact patterns) and their application in context to a particular taxpayer. This would narrow the scope and role of Comprehensive Certainty to that of a review of the actual results of the application of the agreed upon methodologies. Other methodology-based elements that we believe should be granted Advance Certainty include:

   a. Any methodological elements in the upcoming building blocks, such as the MDSH, treatment of withholding tax, segmentation, and identification of relieving jurisdictions.
   b. Scope carve-outs, including the qualification for and calculation of in-scope revenues/profits/bespoke segment data.
   c. How to handle mergers and de-mergers in tax base and scope calculations.

   Since we understand that the rules related to the elimination of double taxation will include the safe harbor mechanisms to address situations where residual profit is already taxed in the market countries, it is critical that this item be reviewed by the panels from the start (i.e., beginning of year 2024), so that the in-scope MNEs can have certainty from the onset on the implications that Amount A may or may not have on their level of taxation in each and every country where they operate.

   Finally, we would like to highlight the need for as much advance certainty as possible from a financial statement reporting point of view. As a result, the advance certainty process should start much earlier than after the closing of the year of application.

3. **Broad-based transition period as bridge to conclusion of initial Advance Certainty Process.** We recognize that this puts more, not less, emphasis on the front end of the process and the transition period, but this could be accommodated through a more expansive application of a transition period that would apply a reasonable basis standard for all facets of Amount A. Critically, we do not believe that the transition period should end until a taxpayer is afforded the opportunity to enter into, and secure a conclusion of an initial Advance Certainty process. Additional reasonable time should then be allowed for MNEs to implement structural systems change needed to deal with the outcome of the Advance Certainty Process.

   Having a transition period for as many Amount A methodology-intensive elements as possible allows businesses to file Amount A returns early in the process while minimizing the

risk of costly amendments or penalties. Tax authorities can also triage and prioritize simpler fact patterns in the Advance Certainty process, so such companies can clear the transition period relatively quickly, and allow more time for the more complicated fact patterns.

Having a broad transition period also minimizes the issue of "telescoping", where the final result of items affecting Amount A is decided and recognized in a later period (since a request for Comprehensive Certainty cannot be filed until after the relevant year has passed), and there is an administrative decision not to re-open the calculation of Amount A for the earlier periods but to make the adjustment in the later period. Telescoping can create issues such as knock-on impact upon Pillar Two, and financial statement uncertainty. Applying the transition period and its "soft landing" more broadly can help ease telescoping issues in the early years.

4. **Internal control process.** We are concerned about the planned detailed review of the internal control and the systems in place within the MNE as part of the tax certainty panel, in terms of time it will take to identify the experts, time it will take for the expert to understand the MNEs' systems, and the lack of guardrails on what data/information such experts can request.

   In order to release their financial statements MNE have systems, controls and processes in place which are already reviewed by the independent external auditors of the company as part of their audit of the accounts – as well as the integrity of those accounts often being overseen by various national and supranational regulators. Since Amount A rules are based on these consolidated financial statements, existing processes and audit reports should be relied upon where relevant. If necessary, auditors could issue a statement confirming that they have audited the relevant internal controls and systems as part of the year-end audit to a reasonable assurance standard. We strongly urge the Secretariat and the TFDE to review and to the extent possible, eliminate this point which would consume unnecessary amounts of time and resources, and have the potential to further delay the certainty process.

5. **Panel composition.** While there is not complete unanimity within the business community on composition, there is general agreement that we have significant reservations and concerns about the use of independent experts rather than representatives of tax administrations on the Review Panel, given the lack of control and oversight of such experts. We do not have a view yet on the composition of the Determination Panel. While some can see advantages of having independent experts on these panels, others feel that we cannot knowledgeably comment on this until the final building blocks are released. We will provide our comments on this issue once the final tax certainty documents are released as part of a comprehensive Amount A document.

6. **Confidentiality.** The proposals are very light on details on preservation of confidentiality of information. More emphasis needs to be placed in this area, including the imposition of meaningful penalties arising from the release of confidential information by tax administrations and panel members. There should be a materiality/relevance threshold relating to the participation and sharing of documents.

7. **Role of MNEs in certainty processes**. MNEs appear to have little role between the initial submissions and reaching conclusion. In order to better inform the process, MNEs should be afforded certain observation rights, including the right to be informed of meetings and a summary of position papers. MNEs should also be afforded the opportunity to make presentation to the panels.

8. **The absence of any mandatory deadlines.** There is no provision of mandatory deadlines for each of the panels to deliver a final conclusion. This is a concern, given the length of the existing MAP procedures (in the case of one MNE, 9 years between the year when the tax is assessed and the year of execution of the elimination of double taxation even within the EU), and given the amount of resources which will be required for the various panels to effectively function. There should be a maximum period for the panel to provide its conclusions - *Business at OECD* (BIAC) members believe between two and four years, including any extensions by the panel. If no conclusion has been reached after that period, the position taken by the MNE should be deemed accepted by the leading tax authorities and all interested Parties without the possibility for further challenge.

We thank you for the opportunity to comment. We would be pleased to respond to any questions arising from both our general and specific comments provided, and, as we noted at the beginning of this letter, would also be pleased to work constructively with you and the TFDE in order to make Tax Certainty a reality.

Sincerely,

Alan McLean
Chair, *Business at OECD* (BIAC) Tax Committee

William H. Morris
Chair Emeritus

Cc: Hanni Rosenbaum, Executive Director, *Business at OECD* (BIAC)

Our detailed comments are provided below:

Para	Topic	Issue	Recommendation
In general	Interaction with existing domestic legislations	We wonder how the many new review and ruling processes envisaged in the documents will fit with existing national / EU legislations / constitutions, particularly in the case of reliance upon the judgment of non-governmental experts or when not all the countries interested are involved in the decision process or in respect of due process of law. This is a critical point as Amount A goes far beyond the existing international tax cooperation instruments: it will determine the level of tax revenues collected or ceded by a State for the in-scope MNE.	N/A.
Background	Implementation assistance	A phase where MNEs have the opportunity to engage in continued structured feedback with the Secretariat on the development of implementation guidance should be considered.	A few suggestions on how this process can run are below: • As we prepare for implementation and are working through the details of our transactions and systems, it would be helpful to have an "Expert Panel" whom we could contact to discuss specific issues and treatments to ensure our interpretations are reasonable. This would happen prior to the Advance Certainty process and transition period, and it would provide timely guidance for MNEs as they prepare Amount A calculations under the transition period under a reasonable basis standard. It could be done as Q&A and published on a "no names" basis to provide consistent treatment in similar cases. • A business advisory group that raises general questions to the Secretariat and work with the Secretariat to resolve such issues. It may also be helpful to engage with the LTAs on such questions.

Para	Topic	Issue	Recommendation
			• The Secretariat can publish additional Implementation Guidance (perhaps on a rolling basis) prior to Pillar One becoming effective. We also suggest a few guardrails for this phase: • The rules need to have been sufficiently developed at this point, and only very practical aspects are left to be decided. • The timing of phase 0 is reasonable (not too short, not too long). • The outcome of bespoke conversations between Lead tax administration and MNE are coordinated and validated centrally.
Part One	Common Documentation Package	Although a simplified documentation process is appreciated, we need to understand in more detail what will be required in that documentation.	The amount of documentation required to apply for the tax certainty processes is critical to the practicality of the procedure. We need a much clearer picture for each of the types of rulings and to understand how this differentiates with/supplements the tax return that will be filed. We are concerned with the proposal that the Common Documentation Package will be circulated to all Listed Parties. If the amount of information required is extensive and goes beyond what is necessary (e.g., agreed-upon methodology, information typically included in the Master File or the country-by-country report), we would recommend that only relevant information should be exchanged by the LTA on a confidential basis with parties with a relevant and material interest. Any confidentiality concerns should absolutely be addressed prior to the document's circulation.
Part One, Para 7	Scope certainty	MNE needs to list the Parties from which it requires certainty. Does this mean MNE will need to conduct revenue sourcing calculations to see which jurisdiction may have otherwise been in scope?	Further clarification is needed on this point.
Part One, Para 8	Scope certainty	The decision rendered is only binding on Listed Parties and not all Parties.	The decision rendered should be binding for all Parties. Or, if the decision is only binding for Listed Parties, the MLC should put in place a simple mechanism of review and assessment when a non-Listed Party submits a claim that a MNE should be in scope.

Para	Topic	Issue	Recommendation
			MNEs may also be amenable to submitting its scope certainty documentation package to more jurisdictions if the information requested are not very confidential in nature (e.g., key figures based on financial statements and a description of the activities of the group).
Part One, Para 11	Advance certainty scope	N/A	Advance Certainty on categorization of revenues and reliable sourcing methods will be critical, and we would hope that this would also include certainty on what data or support will be required, any approaches to "long-tail" revenues (could be small percentage of revenues but entail disproportionate compliance costs without agreements around simplifications), or any other practical considerations around supporting data.
Part One, Para 12	Soft Landing and Transition Period	Purpose is to give clarity before systems are developed to comply	Transitional rules need to give more consideration to allow (1) advance certainty on key issues and (2) time to build the systems to comply. Soft Landing concept is good but it needs to be broader (see cover letter for additional elements we believe should be included in Advance Certainty/soft landing). Domestic compliance systems should be switched off for all countries (not just listed) during the transitional process (both where there are advance ruling requests and where there are comprehensive ruling requests) and no penalties or interest applied. There should be an explicit acknowledgement that systems and data collection processes will not be fully implemented during these initial years, and that reasonable estimates will be sufficient.
Part One, Para 12	Transitional Period Use of Allocation Keys	Clarification needed on when it's appropriate to use allocation keys	It should be made clear that the use of the allocation keys on a temporary basis is referring to cases where data is available for other reliable indicators but time is needed to gather. This should not be used to require additional data that is NOT possible to be gathered. It should also be made clear that in some cases the use of allocation keys will be on a permanent basis (e.g. components).
Part One, Para 12	Transition Approach and Timing of ECP	The ECP will be more relevant and consequential if completed before Amount A is initially implemented	The ideal process for administering Amount A is highly dependent on the design and successful implementation of the early certainty process. The process should be completed with methodologies agreed before the beginning of the first tax year to which it relates.
Part One, Para 13	Non-binding Support	NA	We applaud this concept and more work should be done to develop this idea. The Tax Certainty Secretariat should manage this process. While non-binding, some

Para	Topic	Issue	Recommendation
			deference should be given to the advice given when reviewing the covered group's application for certainty.
Part One, Para 14	Internal Control Audit	Process is inefficient and does not leverage existing financial statement and other filings processes. For example, the expert panel, if it is assessing controls against a materiality level that is congruent with the $250K revenue standard for small countries, will inevitably cause chaos and create multiple standards. The review will also be enormously time consuming for both administrations and MNEs and likely not increase the comfort of authorities – because MNE ERP environments are enormously complex (MNEs of this size can have hundreds of separate financial systems which are involved in the preparation of financial statements). Finally, there is currently no single agreed tax or international standard regarding the design and operation of internal control frameworks ("ICF"s). The proposal is also not explicit regarding the scope of the expert review.	Creating an entire new and separate Internal Control audit process for Pillar One is in not needed as it will be extremely inefficient and time consuming. MNE ERP systems are complicated and are already subject to significant review by their financial auditors. Needing to educate new "Experts" would be burdensome. We believe it is more efficient to leverage the existing audit process by allowing Covered Groups to elect to have their financial auditors do the review and prepare a report (if not already issued by the MNEs auditors). Moreover, the parameters of the "Expert" review, if any remains, should be clearly specified in a manual so that there are guardrails on the process and consistency with the financial audit in terms of materiality and approach. If the expert review must be conducted, we suggest making the following changes: • Clarifying that the proposed expert review should only cover those data points relevant to P1 and incremental to those data points already required elsewhere for financial reporting purposes (e.g., includes new system set up for revenue sourcing; EXCLUDES ERP system used for preparing financial statements). Where the Covered Group's Consolidated Financial Statements are not audited (or certified) by an independent accountant, an ICF review can be reasonable. • Providing a clear frame of reference for the expert review through either 1) developing and publishing a detailed ICF design and operation blueprint or 2) designating certain existing ICF standards (e.g., reasonable assurance standard) as sufficient. Option 2 is recommended as this leverages the significant body of knowledge and experience within many MNEs and only requires incremental improvements and expansion of an existing ICF rather than the operation of a second and independent ICF solely for P1 data points. • Any detailed ICF design should explain: who will engage in this effort, how will they do it, what information and systems are they allowed to access, how proprietary commercial information will be protected to prevent

Para	Topic	Issue	Recommendation
			competitive distortions, how taxpayer confidentiality will be protected, and how governments will have oversight to ensure accountability. • Requiring expert review recommendations regarding incremental P1 Data points to fit within any existing suitable ICF in order to avoid MNEs being required to run duplicate ICFs.
Part One, Para 15	Advance certainty – number of applicable years	The Document suggest that advance certainty will only be applicable "for a set number of future years" if there are no relevant change.	A decision of an Advance Certainty Panel should only be revisited where the Relevant Change that precipitates the reassessment is material and would result in a material distortion to the ultimate results, not immaterial or ordinary course changes of facts that could be expected in an active business.
Part One, Para 15	Advance certainty – meaning of "no relevant change"	Para 22 seems to suggest that outcomes of the tax certainty process apply so long as a Group meets certain criteria. However, Para 65 seems to suggest a wider variety of circumstances (wider than those in Para 22) where an Advance Certainty Outcome ceases to apply.	Recommend to provide further guidance on what is to be understood as a "relevant change". Also the word "organisational structure" in Para 65 should be clarified (e.g., Is this referring to legal entity structure or management structure?). In this respect it could be considered to include a materiality threshold, for instance by building on an approach similar to the one described in para 32 where a CA will refrain from proposing adjustments in cases where these adjustments/ impacts are less than [5 or 10] percent of PBT, relief provided, allocation of group PBT, etc.
Part One, Para 17 and 20	Expert Advisory Group and Independent Experts	Panel composition	The review panel should be solely made up of government officials from the LTA, surrender countries, and market jurisdictions subject to oversight from their respective governments and confidentiality protocols under the multilateral convention.
Part One, Para 19	Consensus	Consensus is needed from all Affected Parties for Comprehensive Certainty. Individual countries without a material stake can block progression of a proposal that has material support among the Affected Parties.	We believe that it is preferable from a policy perspective to progress the review when a recommendation has won the agreement of a supermajority of Affected Parties. There should also be materiality threshold to minimize the opportunity for jurisdictions with little or no revenue at stake to delay the process.
Part One, Para 25	Documentation Package Review where there is not a	N/A	The LTA should act as chair and oversee any review initiated where a Group does not request certainty. The LTA should also be responsible for ensuring that only relevant and material taxpayer information is provided to other relevant parties to ensure confidentiality of taxpayer information.

Para	Topic	Issue	Recommendation
	request for certainty		
Part Two, I, 1.	Timing of request for Scope Certainty Review by Coordinating Entity	This is too late and leads to considerable uncertainty, including affecting the Period's audited financial statements.	This process should be made available to the Coordinating Entity well in advance of the Period(s) to which the determination will apply to.
Part Two, I., 1, Para 5	Notification of all Parties	Where an MNE Group has consumers throughout the world, are all members of the Inclusive Framework considered as Parties that the Lead Tax Administration has to notify? This will create a very burdensome and unnecessary process to achieve advance certainty, particularly as to Scope.	First, the OECD should maintain a running standard listing of all MNEs that have applied for a Scope Certainty Review to the Lead Tax Administration which is automatically made available to the Inclusive Framework jurisdictions. Second, have the Coordinating Entity make a reasonable attempt at identifying all Listed Parties based on internally available data as part of the Scope Certainty Documentation Package. This can be reviewed by the Lead Tax Administration as part of the certainty process.
Part Two, I, 1, Para 13	Undertaking a Scope Certainty Review	The scope review for Financial Service Entities is both too broad and too narrow and critically does not tie into the mechanisms set forth in the regulated financial services ("RFS") Exclusion Draft. For example, there is no need for the information required in para 13(d) to determine whether a FS group is excluded from scope. Conversely nothing is said about the requirements (a-c) necessary to conclude that the revenues of a FS entity are out of scope. The above comment also applies to the extractives industry.	For Financial Service entities, the requirements to exclude a FS group from scope should be tied into the approach used in the RFS Exclusion Draft. For extractive entities, the requirements to exclude a group from scope should be tied into the approach used in the Extractives Exclusion Draft.

Para	Topic	Issue	Recommendation
Part Two, I, 1, Para 18 and 25	How and where are the rights of the affected Group reflected?	It appears that the Coordinating Entity has no rights during the process of development of information requests through deliberation amongst the relevant ax administration Parties. Thus, when a decision is rendered and provided to it by the Lead Tax Administration, is the Group's only recourse to withdraw its request? While there is reference to such involvement in the Determination Panel, this is too late in the process.	If so, this works against the advance certainty process, itself. We would suggest that during the review process and no later than the deliberative phase that the Lead Tax Administration engage with the Coordinating Entity. Here, the Lead Tax Administration could identify what issues, concerns or questions remain, going into the ultimate deliberation, thus providing the Coordinating Entity an opportunity to correct factual misunderstandings, share additional information or share/restate its position, all as part of the Review process.
Part Two, I, 1, Para 31	Undertaking a Follow-Up Scope Certainty Review	It is difficult to see where this follow-up process is much simpler and easier for both tax administrations and Group's to employ than the initial process.	Instead, provide that the Group monitor its compliance with the previously agreed Scope Certainty Review Outcome and indicate so on its annually filed tax return, say, at least every [3] years. This can be monitored by the OECD via information exchange amongst the Lead Tax Administration and all Listed Parties. Of course, where the Group believe its changes are significant and could affect the earlier determination that it was not a Covered Group, it could request a Follow-Up Scope Certainty Review in the manner set forth. In this regard, we believe the preceding recommendation of ongoing Coordinating Entity involvement, prior to a determination, be included as well.
Part II, 2, General	Confidentiality	The Amount A certainty process requires providing sensitive operational, commercial, and contractual information.	For both the Comprehensive and Advance Certainty reviews there should be distinct and clear confidentiality and information protection protocols (limited to relevant information). The MLC should include clear confidentiality rules for all panels to ensure that Group information is not disclosed outside any of the panels. TFDE members should agree that the exchanged Amount A documentation package can be used only for the administration of the agreed Amount A certainty process and not for other tax administration or other governmental administration purposes, to maintain the separation between Pillar 1 and other taxes. If a

Para	Topic	Issue	Recommendation
			jurisdiction is found to have improperly disclosed or misused exchanged information, the jurisdiction will be found to have breached its commitments under the MLC such that it would not be able to impose any Amount A tax and information exchange would be suspended. A jurisdiction that does not abide by its commitments to protect the exchanged information and use it appropriately will have violated the MLC, that jurisdiction should not continue to be allowed to assert an Amount A taxing right.
Part Two, II, 2, Para 2	Power of Attorney /Attestation from all Group entities	This process is too complicated. Some MNEs have thousands of legal entities. It is administratively burdensome to have a power of attorney executed by each one and to have to ask the local affiliate to confirm that it agrees with the Group application. The local affiliate will have no way to reach that conclusion as all of this information and calculations will need to be done centrally. They are unlikely to reach a judgment independently on that point.	The Coordinating Entity should represent the group. Pillar 1 is all about the Group – in terms of scope, and calculation and it is the Group represented by the UPE that will administer this process.
Part Two, II, 2, Para 3; Part Two, II, 3, Para 18	Providing Additional Documentation	Timeline suggested for Coordinating Entity to Provide Documentation may not provide sufficient time.	We suggest the time limit be set initially at 60 days with further time allowed if agreed between the LTA and the Coordinating Entity.
Part Two, II, 2, Para	Materiality and Exchange of Information	Certainty request is exchanged with Competent Authorities of Affected Parties.	We suggest that relevant information be exchanged only with relevant tax authorities over a materiality threshold.

Para	Topic	Issue	Recommendation
9(a)			
Part Two, II, 3, Para 1(d)	Conditions for a review by a Review Panel	Para 1 (d) seems to indicate that Comprehensive Certainty relates to a longer period of at least [five] years (footnote 12 and 13 giving further clarification).	We support Comprehensive Certainty relating to a longer period of time, for instance (and a suggested) for a period of at least [five] years.
Part Two, II, 3, Para 4	Review Panel Members	Requirement of commitment to assign adequate resources to manage the process on a timely basis.	Our experience has been that many governments are under-resourced in the area of transfer pricing disputes. While requiring this commitment upfront is helpful, we believe an additional process should be added to allow the Chair of the panel to remove panel members who do not live up to these commitments and cause delays in the process as a result.
Part Two, II, 3, Para 8	Establishing an Expert Advisory Group of systems specialists	The two further systems specialists selected by different Affected Parties are chosen from the Main Systems Specialist Pool at random. Page 31 (box) clarifies that criteria that nominated specialists are expected to meet shall be agreed by the Parties, but it is for each Party to determine whether its nominated specialists meet these criteria.	If an expert advisory group is adopted, we suggest that there be a formal evaluation process to ensure candidates are qualified and meet rigorous background check specifications. There should also be a process to remove experts from the panel.
Part Two, II, 3, Para 8	Observers	Observers need to adhere to strict confidentiality standards.	We suggest that if this approach is adopted that observers undergo a robust background screening and adhere to strict confidentiality guidelines with oversight by the tax authority which sponsors them. Observers should only be permitted if both the LTA and the taxpayer consent. In addition, observers should be trained by the LTA of the MNE in question.
Part Two, II, 3, Para 11; Part Two,	Proposal of Changes Inconsistent with Review Panel Findings	The exception "unless this is necessary for the correct application of the Convention" is vague and could swallow the rule. The current process may result in all cases going to the determination panel.	The earlier agreed certainty outcomes should be respected as final to uphold the credibility and efficiency of the process.

Para	Topic	Issue	Recommendation
II, 3, Para 21			
Part Two, II, 3, Para 32(b), also FN 18	De Minimis Impacts	Levels of Impact Globally and Locally	It is prudent that there are thresholds for other Affected Parties to disagree with the decisions of the Review Panels. In fact, these should be higher than one percent and five percent that are proposed. It would be preferable that (i) and (ii) be five percent, and (iii) and (iv) be ten percent. Otherwise, the number of proposals with minor changes could make it difficult for the Review Panels to conclude in a timely manner or will later overly burden the Determination Panel process.
Part Two, II, 3, Para 36	Timeline to Provide Updated Documentation Package	N/A – responding to Secretariat input	We recommend the timeline to be 90 days, subject to an extension based on facts and circumstances to be agreed between the LTA and the Coordinating Entity.
Part Two, II, 3, Para 37	Updated Documentation Package	Lack of input from Coordinating Entity in preparing amended Common Documentation Package	We recommend that the Coordinating Entity will review the amendments proposed and have the opportunity to provide further feedback and clarifications, including on the availability of relevant information. Following this the panel will determine whether further amendments are necessary.
Part Two, II, 3, Para 49 (c)	Summary of outcome	One of the outcomes of the Advance Certainty Review process that is described is one where a Group approach does not appear to be robust or reliable and the panel has not been able to identify specific improvements to address this.	If this is a possible outcome, it would be important to give guidance on what options are available at that point. Are Allocation Keys available to fill those gaps? Should the Expert Advisory Group be tasked to work the Group to design an alternative process that the Group would implement? It is important that there is a solution provided if this does in fact happen.
Part Two, II, 3, Para 57	Changes to advance certainty documentation	N/A	It is understandable that, through the Advance Certainty Process, there will be recommendations for improvements to processes going forward. Given this, there should be some explicit principles for any requested changes to ensure the rules are applied in an administrable way. The requests for systems changes, for example, should not require any very costly rebuilds or diversion of material resources (e.g., engineers) from other business objectives. These requests should continue to aim for data that is available in the ordinary course of business, without significant diversion of resources and without creating commercial challenges.

Para	Topic	Issue	Recommendation
			Along the same lines, the principle that changes to requirements should respect prior decisions of Review Panels for the same Group because significant resources may have already been deployed to comply in reliance on those prior decisions. We appreciate the guidance that also states that any changes to a revenue category or Reliable Method for a prior period should first confirm that the relevant data would be available.
Part Two, II, 3, Para 58	Information Exchange Protections	N/A	We recommend that the documentation package should only be exchanged to jurisdictions that have a sufficient stake in the process, in order to safeguard taxpayer data and confidentiality.
Part Two, II, 4, Para 2	Covered Periods	The Lead Tax Administration may undertake the reviews for up to [three] Periods most closely preceding or most closely following the Period specified in the request for Comprehensive Certainty, simultaneously with the review for that Period.	We suggest 5 years be considered.
Part Two, III, 5, Para 7, FN22	Compiling alternative outcomes and comments for a Determination Panel	Differing options from members on whether the Coordinating Entity can provide an explanation that is not one of the alternative outcomes put to a Determination Panel to choose between	We support the view that an MNE should be able to provide an explanation to the Determination Panel as to the position it took or subsequently revised, including a position that is not one of the alternative outcomes put to a Determination Panel to choose between, in addition to the alternative outcomes presented by the Parties. If none of the proposals from the Parties in a panel achieves agreement, it makes sense to include the baseline approach from the taxpayer as well that may be the most persuasive where alternatives are not compelling enough to achieve alignment of the panel.
Part Two, IV, 8	Certainty Outcomes	N/A	Recommend that where the outcome of the proceedings is precedent setting, it should ideally be available in a transparent manner (without disclosing confidential taxpayer information) for all relevant stakeholders globally. This to ensure that the benefits of having the same information regarding the correct application of the rules is available for everyone, on an anonymised and collective basis.[1]

[1] As an example reference can, for instance, be made to the Esma process: https://www.esma.europa.eu/sites/default/files/library/esma32-63-1224_26th_extract_of_eecs_decisions.pdf

Para	Topic	Issue	Recommendation
Part Two, IV, 8	Telescoping	Differing views from inclusive framework members on whether adjustments from a prior period should be reflected in the period in which they such issues were resolved, or reflected in the Period to which the Related Issue relates. Also "Related Issues" is not defined.	The subject of telescoping and the interaction between Amount A and adjustments to Related Issues warrants further consultation – beyond the two-week consultation period. However, we provide our preliminary thoughts below. Reopening prior-year Amount A calculations for Related Issues raises major concerns (e.g., dividend distribution in jurisdictions where there are standalone stat limitation on distributable earnings, infinite loops of adjustments and amended returns). Therefore if an adjustment is made in a later year, the Amount A effects (as a result of changes to the Related Issue) should also be made in that same later year. However, if the MNE does not have sufficient profit in the adjustment year, it could result in an over-allocation of Amount A in the dispute year – some tax committee members also find this scenario unacceptable. Given strong policy reasons for both these approaches, taxpayers should be able to elect either approach, including to electively take back the Amount A impacts to the year in question. A few other caveats: • There should be a simplified method for amending the returns and communicating the adjustments and that there is an expedited ability to receive refunds at the same time as the adjusted payments so as not to cause cash flow issues. • Any such amended return and refund request should not trigger a domestic audit (which happens today in certain jurisdictions). • There should also be protection on the dividend issue mentioned above for such significant adjustments. • Adjustments should be made for the altered Related Issue alone, leaving all other decisions under the Comprehensive Certainty Outcome unaltered. • The difference for each Party payment resulting from this adjustment could then be a credit to the current year. In this way, the Related Issue adjustment still has the same financial effect as if it had been made in the appropriate year, but for logistical ease payments are only adjusted in the current year (in which the Related Issue is resolved) through credits. The

Para	Topic	Issue	Recommendation
			calculation of these credits would then be reviewed in the audit for the current year. "Related Issues" should be defined.
Part Two, IV, 8	Telescoping	While businesses generally support telescoping to avoid amending returns, many issues can arise from this method. For example, how can we close stat books? In countries where you need book reserves to pay a dividend, will that be suspended until the end of the review? In some countries when you apply to tender offers from government you need to produce a certificate that you've paid/filed all your dues for the prior year. What happens if the P1 issues are not resolved? Will we still get this certificate? The loose time limits discussed in the Document makes telescoping a major issue. Also, FX availability may in practice restrict the ability to 'refund' overpayments of Amount A where corrections are due in earlier years.	There should be a clear maximum time period for the review. Where P1 subsequently affects a P2 tax return that has already been filed, the change in P2 can be carried forward as an adjustment to the next P2 return to be filed. Where FX availability is limited, there should be an offset against future liabilities but then that 'receivable' needs to be maintained in hard currency. The potential impacts of applying telescoping in the context of a volatile currency environment points to maintain adjustments in the functional currency of the taxpayer.
Part Two, V, 9,	Process for a review where a request for certainty is not made	A coordinated review process is optional for Parties in case where a Comprehensive Review has not been requested by the MNE.	In case where one of the Parties intends to challenge the application of P1 by the MNE, a mandatory resolution process, similar to a Comprehensive Certainty review but limited to the items challenged by the relevant Party should be implemented to ensure (i) that the issue can be resolved for all relevant open periods and (ii) ensure no double taxation results for this one Party actions.

Para	Topic	Issue	Recommendation
Part Two, V, 10, Para 5	Fees	No agreement yet on who should pay the fees	Recommend that the fees are deducted from the Amount A pool before payments of Amount A are made.
Part Two, V, 11, Para 1(p)(iii)	Lead Tax Administration	The rules regarding the selection of the LTA should be revised in the situation where the jurisdiction of the Ultimate Parent Entity has not implemented Pillar 1. The Document provides that the LTA would essentially be the jurisdiction in which the Group has the most employees, unless a Group has a "significant connection" to another Party jurisdiction and agreement is reached among the Group and both Parties.	Headcount alone should not determine the LTA. Furthermore, the Document leaves open the possibility that the Party jurisdiction with the most headcount simply refuses to relinquish status as the LTA even though the Group clearly has greater substance in another Party jurisdiction. Instead, in situations where the jurisdiction of the Ultimate Parent Entity has not implemented Pillar 1, the LTA should be the Party jurisdiction where the Group has the greatest substantial connections, e.g., higher level functions, assets and risks. This determination could be affirmed in the Group's initial certainty process.
Various	Taxpayer Protections	In each of the panels, there is a mechanism to end the certainty process where a Coordinating Entity is "persistently late in providing information", "uncooperative or non-transparent", etc. This could be a rather subjective standard. Furthermore, there does not appear to be mirroring language for what happens when the review panels act in a similar manner.	It should be explicit in the rules that these gaps must be "material" and the Coordinating Entity is given reasonable time to remedy the failure following a warning, before such a drastic consequence of withdrawing the certainty mechanism is taken. We recommend similar language be applied to allow for taxpayer protections in cases where Review Panel members or other parties are not acting in good faith, which can result in panel members and other parties being removed from the process or acceptance of the taxpayer positions as filed.
N/A	Penalties and interest	The document does not provide sufficient explanation on whether/under what circumstances	Further clarifications should be provided.

Para	Topic	Issue	Recommendation
		would penalties and interest would apply.	
N/A	Impact on developing countries	The tax certainty proposals for Amount A and issues relating to Amount A will pose a significant administrative burden on developing countries relative to their existing obligations. This may discourage them from participating in the approaches more broadly, or it may mean that they are unable to engage on an equal footing with other countries where they do participate.	Additional support (and/or funding) could be considered to ensure that the framework is appropriate for providing the right tax outcomes and certainty over them to all interested parties. We would welcome further opportunities to engage on this topic.