Moore Global Network Limited
1 Hill Street
London
W1J 5LA
www.moore-global.com

Tax Policy and Statistics Division
Centre for Tax Policy and Administration
Organisation for Economic Cooperation and Development
2 rue André Pascal
75016 Paris
France

Sent by e-mail to: TFDE@oecd.org

12 November 2019

Dear Sir or Madam

RESPONSE FROM MOORE GLOBAL NETWORK LIMITED ('MGNL', 'WE') TO THE OECD CONSULTATION DOCUMENT 'SECRETARIAT PROPOSAL FOR A "UNIFIED APPROACH" TO PILLAR ONE'

MGNL appreciates the work that has been carried out by the OECD in this area to date and welcomes the opportunity to provide its comments and views on the complex area presented.

Detailed response

Question 1

Under the proposed 'Unified Approach', Amount A would focus on, broadly, large consumer (including user) facing businesses. What challenges and opportunities do you see in defining and identifying the businesses in scope, in particular with respect to:

a. their interaction with consumers/users;

b. defining the MNE group;

c. covering different business models (including multi-sided business models) and sales to intermediaries;

d. the size of the MNE group, taking account of fairness, administration and compliance cost; and

e. carve-outs that might be formulated (e.g. for commodities)?

Answer

a. Interaction with consumers/users

The most complex area to be considered in designing the scope of the proposed regime is the definition of 'consumer-based businesses'. There are significant complexities on this issue, which we would hope to be clarified further in the next stage of the process. The definition of 'consumer-based business' is highly subjective, which will lead to uncertainty for businesses, and the proposed reach is broad, which we would consider is likely to lead to unfairness in the system. Given that simplicity and fairness are key principles of good tax-policy design, this is a significant area for further focus.

We note that the proposed scope in the current consultation differs from the approach suggested in the previous Action One consultation document, ‘Addressing the Tax Challenges of the Digitalisation of the Economy’. In paragraph 71 of that consultation document, it was stated that “the proposals would need to be limited to businesses in which the contribution of marketing intangibles and/or user participation to the production of income is substantial. This could be determined, for example, through the use of some materiality thresholds (e.g. cost ratios, size of customer and user base, or other metrics)”. The current consultation document states that “the proposed ‘Unified Approach’ should be focused on large consumer-facing businesses, broadly defined…” (paragraph 20).

We would welcome further exploration of a threshold in line with the one suggested in the previous consultation document, which would seek to define in-scope businesses more narrowly, using metrical thresholds rather than a linguistic definition, which is likely to lead to uncertainty and unfairness.

b. defining the MNE group

We would recommend that for simplicity, the definition of ‘MNE group’ for these purposes should not differ from the concept provided by the OECD Transfer Pricing Guidelines and/or the IFRS definition of ‘group’ for consolidated accounts.

c. Different business models

We do not have many specific comments on this matter at this stage. Individual businesses are well-placed to respond with their comments on their particular business models.

It is not clear how the OECD would identify a demarcation between ‘digitally driven’ businesses and ‘digitally enabled’ ones. Would the presence of a simple website of a traditional shop be enough to fall into the ‘unified approach’? Should the website need some interactive functions in order to fall into the scope? Or is it better to focus only on digital/technology-driven businesses? In our opinion, the OECD has to define more precisely the boundaries of the scope of application and restrict the application of the unified approach to digitally driven businesses only, in order to avoid a generalised shift of the tax nexus from ‘residence’ and ‘source’ countries towards ‘destination’ countries/markets.

d. Size of the MNE group

We would suggest that for simplicity, a size threshold based on the one used for the Country by Country (CBC) reporting regime should be used. This would mean that businesses and advisers do not have to learn and understand another different size threshold test.

However, whilst we do not have economic data relating to the impact of the proposals and the number of businesses that may be impacted, we would request that you consider, based on your knowledge, whether in order to ensure that the proposed regime meets policy aims, it may be appropriate to increase one or more threshold(s) whilst retaining the framework of the tests used for CBC reporting. For instance, if it is considered that using a turnover test of EUR 750 million would impact on too many businesses, a higher threshold could be used for that leg of the test.

**e.	Carve-outs that might be formulated (e.g. for commodities)?**

We agree that all industries subject to ring-fencing (such as the extractive industries or commodities) or other specific tax regimes (e.g. shipping tonnage tax), should be excluded from the proposed rules.

Question 2

New nexus.

Under the proposed 'Unified Approach', a new nexus would be developed not dependent on physical presence but largely based on sales. What challenges and opportunities do you see in defining and applying a new nexus, in particular with respect to:

**a.	defining and applying country-specific sales thresholds; and**

**b.	calibration to ensure that jurisdictions with smaller economies can also benefit?**

Answer

**a.	Defining and applying country-specific sales thresholds**

The unified approach aims to adopt a nexus rule that would apply certain sales thresholds to determine whether a business has significant involvement in given jurisdiction regardless of whether or not it has a physical presence in those jurisdictions.

We would like to emphasise that a sales threshold must not be the only factor to take into consideration in order to identify a permanent establishment and therefore a nexus for taxation. Relevant sales can be effected from one country to another even in other traditional ways and without the presence of any PE.

Only the combination of several factors should lead to the identification of a significant digital presence or of a significant economic presence that leads to the identification of a PE: sales turnover should be only one of these elements.

In the previous OECD documents related to BEPS Action 1, other factors were taken into consideration, such as consumer-related indicators, the ownership of a local domain name, local currency options, the data collected, or contracts concluded within a jurisdiction: it seems that the 'unified approach' has forgotten to take all these factors in due consideration.

Furthermore, sales thresholds should be also fixed by reference to the particular economic sector concerned. It is quite easy to reach high sales volumes while selling plant, machinery, aircraft or ships, for example, even without any presence in the foreign customer's country, while it is quite difficult to reach relevant sales volumes while selling small items if there is no presence in the foreign country (physical in the past, physical or digital in the modern digital economy).

OECD anticipates that the new nexus rules would apply in addition to the permanent-establishment legislation, which means that it should be a stand-alone treaty provision, operating on top of the permanent-establishment rule. This could lead to a situation where the unified approach would serve solely to increase the number of MNEs that are subject to tax in a given jurisdiction and would not deprive any jurisdiction of the right to tax the MNE if it is already being taxed in that jurisdiction based on other rules. Moreover, the new approach seems not fully to take into consideration either the effects of the Multilateral Instrument (MLI), which has not even yet been implemented/ratified in many countries or the treaties on avoidance of double taxation. This could again lead to discrepancies, disputes and potential double taxation if, for example, the MNEs already have a physical presence in a given country. From our perspective, there should be more focus on the approach to avoidance of double taxation, because the treaties on avoidance of double taxation cover the mechanisms for eliminating double taxation and this issue was not reflected in the new approach at all.

Lastly, the proposed document fails to address the Pillar 2 document also in a more complex way, which is under development and which should define new global minimum tax regulation. The OECD should therefore analyse in more detail the possible situations that could arise from the abovementioned regulations and documents, which have an effect on the impact of tax in various countries, in order to avoid any possible double taxation impacts for businesses.

The proposed document suggests that the simplest approach for the new nexus would be to adopt revenue thresholds, whereas these revenue thresholds could be defined based on the size of the market jurisdiction and also based on the level of distribution activities of certain groups. We can furthermore agree that to a significant degree, the digital economy of any company is mostly driven by its sales generated in a given country. Furthermore, we need to distinguish between developed and less-developed countries, since measuring sales alone can be misleading by comparison with profitability. We can assume that less-developed countries have lower profitability, lower purchasing power, a lower standard of living etc., which can lead to the mistaken premise that high sales in a less-developed, but large, country should lead to certain tax implications for an MNE.

Furthermore, consideration should also be given to how various factors other than sales, such as intangibles, employees, users/customers affect the value-creation process of a digital business, which from our perspective has more significance for such a business than mere sales.

As mentioned above, we believe that before implementing a fixed nexus rule, the OECD should first perform a more thorough analysis of (a) the global status of implementation of the MLI, BEPS Actions; (b) the current global taxation of digitalised economies; and (c) the tax impacts of permanent-establishment rules and the Pillar 2 document. From our perspective, defining and applying the new nexus based solely on sales thresholds would not reflect the complexities of the digitalised economy, differences between various jurisdictions and stages of economic development stages worldwide. It is most important that the proposed new profit-allocation mechanism together with the new nexus rules not create possible double-taxation discrepancies between jurisdictions and that the proposal should aim towards simplifying the taxation of digitalised businesses, rather than increase potential jurisdictional, interpretative and implementational issues.

b. Calibration to ensure that jurisdictions with smaller economies can also benefit

As mentioned in our answer to point A above, limiting the trigger for the new nexus by reference to a sales threshold alone would not address the issue from a more complex perspective, as sales alone are not the most significant factor in value creation or profit creation.

Before applying sales thresholds, the OECD should undertake a thorough analysis of other factors also, which especially in smaller economies can have a significant impact on value and profit creation.

When comparing smaller vs. larger economies, we first of all need to distinguish whether the smaller economy is developed or underdeveloped, since this can have a significant effect on value and profit creation. After evaluation of the developmental status of an economy, its scale should then be analysed based on the evaluation of several factors such as presence of assets/investments economies of scale, factors that affect value creation, diversification between domestic vs. foreign revenues, user participation etc.

Without a complex analysis of such other factors, the unified approach could create a complex administrative burden for MNEs merely in order to create a mechanism to secure the right to tax profits even in small economies on a global scale and could lead MNEs to take precautionary measures to prevent taxation in every country.

Question 3

Calculation of group profits for Amount A

The starting point for the determination of Amount A would be the identification of the MNE group's profits. The relevant measure could be derived from the consolidated financial statements. In your view, what challenges and opportunities arise from this approach? Please consider in particular:

a. what would be an appropriate metric for group profit

The proposed use of consolidated financial statements would generally provide some advantages, which can also be drawn from the renewed proposal of the European Commission for a Common Consolidated Corporate Tax Base[1]. In the proposal, it is stated that consolidated financial statements solve the problem of finding appropriate transfer-pricing rules within a group, which is also a main issue with regard to the digital economy to which the OECD proposal is especially addressed.

However, it has to be acknowledged that the use of consolidated financial statements such as IFRS has a lot of shortcomings: generally, IFRS and other financial accounting standards are intended to provide a 'true and fair view' of the situation of a company[2]. Existing literature has been discussing the use of IFRS for tax purposes for a long time (consolidated or unconsolidated). Most authors argue that only a simplified version of IFRS (especially without fair-value accounting) would be suitable for tax purposes.

Regarding the appropriate metric for group profit based on consolidated financial statements, different measures such as EBITDA, EBIT or EBT could be taken into account. EBITDA would not be the right measure from our point of view, as it would not appropriately reflect the high relevance of intangible assets/goodwill (and therefore also amortisation) for digital businesses. EBIT would treat all groups equally irrespective of their financing structure. This measure could

[1] See European Commission, COM (2016) 683, pp. 3-4

[2] See SPENGEL, C (2003), "International accounting standards, tax accounting and effective levels of company tax burdens in the European Union" in *European Taxation*, 2003, pp. 253-266; KAGER, R, NIEMANN, R (2013), "Income determination for corporate tax purposes using IFRS as a starting point" in *Journal of Business Economics* 2013, pp. 437-470.

be especially useful as other measures such as EBT could be manipulated through intra-group loan agreements. However, as this problem is eliminated through the consolidation mechanism, EBT would reflect group profit including solely third-party financing. For this reason and also because the high level of investment required by digital businesses in most cases necessitates external financing (debt or equity), we would prefer the use of an EBT measure.

Moreover, any measure other than EBT would diverge considerably from the 'traditional' calculation of profits. Nevertheless, even the use of consolidated EBT based on financial accounting standards differs from domestic tax-base determination rules. This might lead to unintended consequences with regard to the avoidance of double taxation.

b. what, if any, standardised adjustments would need to be made to adjust for different accounting standards

Nowadays, different accounting standards such as IFRS or US-GAAP are predominantly used for consolidated financial statements. Despite the different processes used by the standard-setting committees to align these standards, differences still exist at major points[3]. Moreover, it should be noted that differences might also exist within a single set of standards as between companies and locations as IFRS leaves some discretion to the preparer of the financial statements. IFRS in the EU follow the special endorsement procedure and deviations between original IFRS and IFRS as applied in the EU could occur. Furthermore, some studies have concluded that accounting practices differ widely as between different countries depending on the geographic location of the headquarters[4]. For this reason and as we have already argued, the definition of different accounting standards might fail as differences between companies, countries and the standards per se exist.

As an additional point, it should be remarked that the definition and execution of standardised adjustments puts an additional administrative burden on the groups concerned. Nowadays, most groups operate three different systems: The national commercial accounts, national tax accounts and the consolidated financial accounts. Any standardisation would require a complete review of single elements of a group statement and might easily result in the required operation of an additional new system.

This burdensome procedure has been also acknowledged by the CCCTB proposal from the European Commission: in contrast to the original 2011 proposal[5], the renewed 2016 proposal provides for a replacement of domestic tax accounting systems by the new CCTB system. This new two-staged approach proposed by the European Commission in 2016 also recognises that the use of a consolidated tax base would require an intense and detailed definition of a common tax base as a first step.

c. and how can an approach to calculating group profits on the basis of operating segments based on business line best be designed? Should regional profitability also be considered?

[3] An example would be the different treatment of development costs under IFRS and US GAAP

[4] See DE SIMONE, L (2016), "Does a common set of accounting standards affect tax-motivated income shifting for multinational firms?" in *Journal of Accounting and Economics* 2016, pp. 145-165

[5] See European Commission, COM (2011) 121/4

Based on our answers in the previous sections, we would abstain from a further split of group profits based on business lines or regional profitability. Of course, segmental reporting in group financial statements provides additional insights. However, it is questionable whether it would be feasible to apply the abovementioned standardised adjustments on single business lines either. Additionally, most businesses try to interconnect their single business lines in the context of digitalisation in order to offer a full service to their customers. Therefore, the definition of business lines and the respective decision whether they are in the scope of the proposal or not, puts an additional administrative burden on businesses.

Question 4

Determination of Amount A

In determining Amount A, the second step would exclude deemed routine profits to identify deemed residual profits. The final step would allocate a portion of the deemed residual profits (Amount A) to market jurisdictions based on an agreed allocation key (such as sales). In your view, what challenges and opportunities arise from this approach?

In our view, the concept of determining Amount A diverges significantly from the current concepts of calculating and allocating taxation rights between different countries. We acknowledge that increasing digitalisation and emergent new business models also call for a transformation of traditional taxing rights. However, the proposed concept for Amount A would in our opinion lead to several problems and could only be realised if all participating countries were to agree on common simplified formulae.

We think that the problems associated with Amount A could be demonstrated at best by use of a detailed example. In this example, we consider a group with three entities: The headquarters unit is located in Country A and performs basically all strategic decisions, is the sole holder of all IP and the only party contracting with customers. The entity in Country B is a routine-entity and performs some standardised marketing and distribution support functions[6]. Country C is assumed to be a 'market jurisdiction' as customers of the group exist in that country, but no traditional tax nexus exists. The baseline data, the determination of the taxable profits according to current tax rules as well as the relevant changes introduced by Amount A can be found in the following table.

In what follows, the numbered lines in the example will be discussed in detail and problems or difficulties arising will be explained:

[6] In the example (see page 8), the costs of the routine entity in Country B are reimbursed by the headquarters unit in Country A. We exclude any cost-plus agreement to simplify the example.

Table 1: Detailed example for the calculation of Amount A

		Country A Headquarters, IP Contracting party to customer	**Country B** Routine Entity	**Country C** Market Jurisdiction	**Group**
	Baseline Data (IFRS)				
(1)	Actual Sales	400	400	200	1000
(2)	Personnel Expenses	-500	-100		-600
(3)	Depreciation Expense	-200			-200
(4)	***Group Profit***				***200***
	Tax Base				
(5)	Revenues	1000	100	0	
(6)	Personnel Expenses	-500	-100	0	
(7)	Expenses for Routine Entity	-100			
(8)	Depreciation Expense	-100			
(9)	***Taxable Profit***	***300***	***0***	***0***	
	New Allocation of Taxing Rights - Determination of allocable taxable profits				
(10)	Group Profit ("z%")	z%= '(4) /' (1) =20%			200
(11)	Routine Profits ("x%)	x%= 10%		Assumption:10%	100
(12)	Non-Routine Profits ("y%)	y%= 10%			100
	Split of "y%" in "w%"/ "v%"				
(13)	"v%" - allocate to other factors ("y%"- "w%")	v% = 5%			50
(14)	**"w%" - allocate to market jurisdiction**	w%= 5%		Assumption: 5%	**50**
	New Allocation of Taxing Rights - Determination of Amount A				
	Sales share of each entity	40,00%	40,00%	20,00%	
(15)	Allocation ("Amount A")	20	20	10	
(16)	***Taxable Profit***	***300***	***20***	***10***	

(Lines 1 - 4): In lines one to four of the example, group sales, expenses and profits are calculated based on general accounting and consolidation principles. Therefore, a considerable amount of data[7] - such as sales per county – needs to be collected and accounted for. Reliable access to financial data should be uncomplicated as long as jurisdictions with subsidiaries and permanent establishments are concerned, as they have to prepare and disclose financial statements in line with local generally accepted accounting principles anyway. When it comes to market jurisdictions without a traditional

[7] See GREIL, WARGOWSKE, “Pillar 1 of the Inclusive Framework’s work programme: the effect on the taxation of the digital economy and reallocation of taxing rights” in *Bulletin for international taxation*, October 2019

nexus, however, such information might not be available straightforwardly and a precise, comparable and consistent determination and reporting process would need to be established in order to prevent manipulation and dispute potential. Such a procedure is likely to create additional administrative costs for the respective companies.

(Lines 4 - 10): In addition, the figure of group profit could be challenging to the extent that digital business models are organised in the form of joint ventures or associated companies. Given that in most countries the criterion for a related party in terms of transfer-pricing aspects is – amongst others – a capital share of 25%, consolidation requirements might not be applicable for such companies. Thus, baseline information such as group sales and group profits cannot be generated easily and a further reporting or profit-allocation system for joint ventures and associated enterprises would be necessary, respectively.

(Line 11): The concept of remunerating routine activities with a baseline routine profit is actually not new and supposed to be the outcome of appropriately applied arm's length principles anyway. Hence and in terms of tax certainty as well as for reasons of simplicity an agreed percentage of profit for routine functions according to a safe harbour regulation could be reasonable from our point of view. However, the level of this percentage is likely to cause recurring discussions especially due to the fact that profitability rates vary largely between industries and considering that some jurisdictions will lose taxing rights. Besides, routine functions must be clearly defined and separable from non-routine functions, which could lead to discussion potential and scope of interpretation in practical implementation.

(Lines 12 & 13): The procedure of splitting the remaining non routine profit into the amount allocable to market jurisdictions and the proportion for 'other factors' such as trade intangibles is described rather vaguely in the OECD paper from our point of view. This lack of concreteness is totally understandable given the potential variance of 'other factors' and their 'specific value' between industries or even companies. To define an internationally agreed fixed percentage to account for 'other factors' – as outlined in the OECD proposal – requires a much more differentiated approach and most probably creates much more potential for discussion than the definition of a fixed percentage for routine functions.

(Line 14): The amount remaining after deducting the profit attributable to 'other factors' from the deemed non-routine profit represents the profit proportion allocable to market jurisdictions. In this context, more technical issues arise such as the determination of the tax debtor and the enforcement and collection procedures that are not yet agreed upon in detail.

(Line 15): Finally, the profit attributable to market jurisdictions needs to be appropriately allocated to the respective countries. In order to develop a consistent reallocation system a standardised allocation key is essential. However, revenue recognition guidelines and thus the definition of sales may vary significantly between international accounting standards and local frameworks. Whereas under IFRS 15 only ordinary business transactions are recognised as revenue, the German Commercial Code, for example, contains a more extended description of revenues, including the sale and lease of products and the provision of services in general. Therefore, the portion of allocated residual group profit might be dependent on the revenue definition of the accounting standards of the respective countries. Besides, while intra-group sales are eliminated within the consolidation process, individual financial statements account for such revenues. Thus, it might be inconsistent to allocate a portion of deemed residual profits to market jurisdictions based on the relation of sales derived from the individual financial statements of a company (including intra-group revenues) to sales derived from the consolidated financial statements of the group (excluding intra-group profits).

In general, we think that the determination of Amount A as stated in the OECD proposal is rather complex than simple, requires input of data that are possibly not collected and accounted for at the moment and would lead to additional costs and effort for the respective companies. Besides, fixed percentage rates need to be agreed upon and defended over time.

Question 5

Elimination of double taxation in relation to Amount A

What possible approaches do you see for eliminating double taxation in relation to Amount A, considering that the existing domestic and treaty provisions relieving double taxation apply to multinational enterprises on an individual-entity and individual-country basis? In particular, which challenges and opportunities do you see in:

a. identifying relevant taxpayer(s) entitled to relief;

b. building on existing mechanisms of double tax relief, such as tax base corrections, tax exemptions or tax credits; and

c. ensuring that existing mechanisms for eliminating double taxation continue to operate effectively and as intended.

From our point of view, the general goal of the Pillar 1 proposal is to provide additional taxing rights to countries where under current rules no nexus exists. Based on our earlier arguments regarding the difficulties of using consolidated financial statements plus additional adjustments, we would like to propose an alternative solution. This solution would have the additional advantage that no further double taxation problems would arise.

Our main argument against the proposal was the complicated and difficult manner for determining group income and the distribution mechanism. Therefore, we would propose that all group companies determine their taxable income according to the existing national tax base rules.

In the next step, the EBT of the headquarters entity (in Country A in our example) would be reduced by a fixed deduction of the calculated EBT (e.g. 10%). This deduction would be the taxable income that is allocated in a next step to other jurisdictions where current tax rules do not create any nexus. The definition of the share that is allocated has to be agreed on in a political process. However, this simplified procedure would achieve the goal of providing a new taxation right without the complexities in the original proposal. This is illustrated by the following adapted example:

		Country A	Country B	Country C	Group
	Tax Base				
(1)	Revenues	1000	100	0	
(2)	Personnel Expenses	-500	-100	0	
(3)	Expenses for Routine Entity	-100			
(4)	Depreciation Expense	-100			
(5)	***Taxable Profit***	***300***	***0***	***0***	
	New Allocation of Taxing Rights - Deduction				
(6)	Group Profit	300			
(7)	**Deduction 10%**	**30**			
(8)	Taxable Profit after Deduction	**270**			
	Sales share of each entity	40,00%	40,00%	20,00%	
(9)	Allocation	12	12	6	
(10)	***Taxable Profit***	***282***	***12***	***6***	***300***

The new element is the additional deduction of 30 in Country A, which is then allocated according to the sales share of each entity. With this deduction mechanism, it is inherently assured that no new double taxation conflicts can arise. As an additional feature, this mechanism could build on the data collected for CBC reporting purposes and could also include other factors such as employees or assets. It could also be envisaged that the home country of a group directly transfer the allocated tax payment to the respective countries. This would require that countries exchange their corporate income tax rates on a centralised basis. A guide for the practical implementation of such a mechanism would be the so-called mini one-stop shop (MOSS) procedure that is used for VAT purposes in the European Union.

With regard to the original proposal ('Amount A'), we also think that the integration of a new tax-relief mechanism is very difficult to achieve. The Multilateral Convention that has been concluded to ease the implementation of the BEPS outcomes has not been signed by, or entered into force in, many participating countries[8]. Therefore, the integration of any new mechanism would be a very ambitious and long-term project.

Question 6

Amount B

Given the large number of tax disputes related to distribution functions, Amount B of the 'Unified Approach' seeks to explore the possibility of using fixed remuneration, reflecting an assumed baseline activity. What challenges and opportunities does this approach offer in terms of simplification and prevention of dispute resolution? In particular, please consider any design aspects and existing country practices that could inform the design of Amount B, including:

[8] See the regularly updated list on the OECD webpage: https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties-pdf

a. the need for a clear definition of the activities that qualify for the fixed return; and

b. a determination of the quantum of the return (e.g., single fixed percentage; a fixed percentage that varied by industry and/or region; or some other agreed method).

As discussed in the above questions, from our perspective the proposed mechanism does not reflect many other rules, regulations and other specifics that already have an effect on the taxation of MNEs, such as treaties on avoidance of double taxation, permanent establishments or that could have an effect on MNEs such as the Multilateral Convention or the Pillar Two proposal in the future, once implemented. By implementing this proposed fixed remuneration mechanism without further complex analysis of the other rules and regulations and without the inclusion of a mechanism for avoiding double taxation, from our perspective more detailed discussion of Amount B would not be relevant.

Question 7

Amount C / dispute prevention and resolution.

In the context of Amount C of the 'Unified Approach', what opportunities do existing and possible new approaches to dispute prevention offer to reduce disputes and resolve double taxation? In particular, what are your experiences with existing prevention and resolution mechanisms such as:

a. (unilateral or multilateral) APAs;

b. ICAP; and

c. mandatory binding MAP arbitration?

As mentioned in the answer to question No 6 above, from our perspective the approach should focus on considering and implementing mechanisms for avoiding double taxation at stage one and not implementing a fixed mechanism that would lead to taxation of returns from baseline functions (e.g. Amount B). Furthermore, where an MNE performs more functions in a given market jurisdiction and suffers double taxation, it could apply Amount C mechanisms, e.g. by APAs or other vehicles in order to avoid the impact of double taxation. It must be noted that bilateral or even multilateral procedures taking place between the competent state authorities can take a significant amount of time in practice, very often even years, until the parties involved come to an agreement whereas during this time the MNE must bear the costs of carrying the double taxation impact, which can put financial and economic pressure and administrative burden on it and could lead to situations where the MNE will be looking for ways of avoiding the impacts of this new approach.

Concluding remarks

We are grateful for the opportunity to provide our comments and would be pleased to discuss or clarify our response. In that event please contact either of the two signatories below. Their contact details are listed overleaf.

Yours faithfully

On behalf of MGNL

Marco Mosconi
Leader, International Tax School
Moore Global

Martin Kiňo
Leader, International Corporate
Income Tax Group, Moore Global

Contact details for Marco Mosconi and Martin Kiňo

	e-mail address	Telephone number
Marco Mosconi	mmosconi@moorepa.it	+39 328 648 8374
Martin Kiňo	martin.kino@bdrbb.sk	+421 905 689 761

We should also like to acknowledge the work of the following persons who contributed their answers, views and comments to the above:

Rainer Bräutigam

Ruth Brennan

Eloise Brown

David Kapusta

Katharina Kellerman

Nina Schütte