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VIA ELECTRONIC TRANSMISSION

Internal Cooperation and Tax Administration Division
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Comments on Tax Challenges Arising from Digitalisation – Reports on the Pillar One and Pillar Two Blueprints

Dear Sirs or Madams,

Amazon welcomes the publication of the Organisation for Economic Co-operation and Development ("OECD")/G20 Inclusive Framework's reports on the Pillar One and Pillar Two Blueprints. The Blueprints represent an important step forward towards an agreement among the countries participating in the OECD-led process to reach a consensus solution for the reform of the international tax framework, and we are pleased to provide our comments in response to the Public Consultation Document.

Amazon is a U.S.-listed global company that employs more than 1,125,000 employees worldwide. We seek to be Earth's most customer-centric company. We have organized our operations into three segments: North America, International, and Amazon Web Services. These segments reflect the way the company evaluates its business performance and manages its operations. In each of our segments, we serve our primary customer sets, consisting of consumers, sellers, developers, enterprises, and content creators.

Amazon is a strong and consistent supporter of the OECD's work to achieve a consensus-based solution with respect to taxation of the international economy and we hope our comments provide constructive input toward that goal. As indicated in the OECD's Economic Impact Assessment, failure to reach a consensus will most likely have wide-ranging negative impacts for consumers and businesses, both large and small, and in countries across the globe. Reaching broad international agreement is critical to avoid distortive unilateral measures. Achieving success at the OECD will help provide certainty and stability for the global economy, foster growth in international trade, and minimize the risk of global tax and trade disputes, all of which are vital for the millions of customers and sellers that we are fortunate enough to serve around the globe.

We support the underlying themes of the Pillar One and Pillar Two Blueprints but as the Inclusive Framework itself acknowledged in its request for public comment, some of the aspects within the Blueprints are overly complex and opportunities for simplification are welcome. Pillar One and Pillar Two should allow businesses to comply and all countries to implement in a manner that reduces disputes and prevents double taxation. The long-term reform solutions within the Pillars should be clear and practical. At the same time, uniformity of implementation is critical to ensure that there is not a disparate set of rules in each jurisdiction.

Our comments provided are offered as suggestions to simplify so that the solution is implementable in a practical way for both taxpayers and tax authorities. We look forward to continuing to work closely with all stakeholders to advance our shared goal of a consensus agreement at the OECD.

We would be happy to respond to any questions you may have about the attached comments.

Yours sincerely,



VP Global Tax, Amazon

Detailed Commentary

Pillar One

The following commentary provides ideas and suggestions for simplification, which promote tax certainty and enable a Pillar One solution that can be constructed as effectively as possible for taxpayers and tax authorities alike.

Segmentation

We maintain the view that the most accurate and simplest method of segmentation is to rely on audited financial statements. Any requirement under Pillar One for alternative segmentation outside of already available financial statements would add substantial complexity and ambiguity to the process for both taxpayers and tax authorities and would correspondingly increase the risk of disputes. Financial statement segmentation reflects the way that a business views its operations in accordance with applicable accounting principles. Financial statements are not prepared for tax purposes but, instead, are prepared in a manner prescribed by formal rules and regulations governing securities (e.g., Regulation S-K (17 CFR § 229) in the United States).

Inclusion of qualitative “segmentation hallmarks” that require segmentation beyond that available in financial statements will add considerable complexity and lead to disputes. Should additional segmentation be required, taxpayers and tax authorities will face a significant challenge to prepare and verify any additional segmentation and associated computations (such as loss carry-forward amounts). We would be concerned that this would take up a significant amount of time for both taxpayers and tax authorities through the review panel process, and countries within the panel may themselves not agree on how the hallmarks should be applied to a complex integrated business.

Instances where alternative segmentation is required may also produce results that diverge from the economic realities of a particular business or businesses. Paragraph 465 of the Pillar One Blueprint acknowledges that apportionment between segments using revenue as an allocation key can give rise to distortions. Paragraphs 466 and 467 also highlight the risk that requiring additional segmentation will necessitate additional complex rules to take into account “intersegmental transactions.”

Business lines often share operating expenses that are not tracked by business line or country (e.g., G&A, marketing) and have synergistic or intertwined go-to-market strategies for which forced segmentation may not produce results that accurately reflect how a business views its operations. As technology and consumer preferences evolve, and the Internet of Things becomes more prominent, product offerings and services become increasingly complex and interrelated.

For these reasons, we advocate that no bespoke segmentation be required. We support the use of audited global financial statements as the basis for the implementation of a Pillar One solution, as this financial data is readily accessible and reliable for both taxpayers and tax authorities.

Sourcing

Pillar One’s sourcing approach seeks to consider the place of end consumption as the country location for revenue allocation purposes wherever possible. We support the principle underpinning this approach, but consider that the Pillar One Blueprint could benefit from further simplification. In particular, these areas include (1) sourcing based on user location/IP address, (2) business-to-business transactions, and (3) the obligation placed on taxpayers to substantiate their position that information is either unavailable or unreliable.

For these reasons, as further detailed below, and to promote simplicity and certainty, we suggest that place of consumption be used for sourcing purposes and the purchaser be defined as the first third party customer paying for goods/services (not the end consumer in the chain following any onward sales). In addition, we would recommend that place of consumption for business customers follow the existing VAT rules, as this will be

information available to companies, allowing Pillar One to be implemented efficiently. Consistent sourcing rules between different tax laws would reduce the need for additional systems development and reduce disputes since tax authorities would generally already have access to the data for other purposes.

User location/IP address

We note that in certain situations, for example advertising, the Blueprints' sourcing is based on user or IP location. We are concerned with this approach, as it would be difficult to administer and implement. Allocating sales to the country of the advertiser (the company's customer), using information currently maintained for VAT purposes in most cases would simplify the process. Many businesses do not collect data based on the location of end users/viewers and a disproportionate level of work in terms of changing internal systems would be required to be able to do so. In addition, if, as suggested, aggregate data only is provided, then it is difficult to see how tax authorities could audit the data. If, on the contrary, customer-specific transaction data needs to be retained (even if only for a sample), this could lead to data privacy concerns.

Furthermore, even if user or IP location data were collected, it would likely be inaccurate as a large proportion of internet access is through VPN (including corporate networks) which will not reflect the actual location of users. Detecting VPNs is difficult; there is nothing in the website traffic that identifies the client as a VPN endpoint, which is arguably one of the purposes that VPNs are used for in the first place. Instead, companies can search for suspicious patterns in aggregated data (e.g., IP addresses associated with lots of customers, IP addresses used by VPN blocked customers). This is not an easy or scalable process and it would be disproportionately burdensome to require businesses to detect VPN usage or to accurately assess how much traffic is estimated to be via VPN solely for the purpose of the Pillar One calculation. In addition, location indicators can be different from user to user (they can be masking IP address, they can have GPS off) so it will be extremely difficult to do so on a consistent basis for audit purposes, which will lead to less certainty.

Business-to-business sales

The business-to-consumer sales proposals in the Blueprint are generally reasonable, but for many business-to-business models the current proposals create significant implementation challenges. We suggest simplifying the rules regarding the place of end consumption for business-to-business transactions, mimicking current VAT rules.

As currently written, the sourcing rules could affect companies completely out of the scope of Pillar One. In-scope companies have business customers who are not themselves subject to Pillar One (i.e., they are below global sales thresholds). In-scope companies would be required to request from these business customers their own sales and customer location data, even though they themselves are out of scope.

Business customers likely would not want to provide its customer information to the in-scope company for valid commercial reasons (e.g., security reasons, they may be competitors, etc.) The in-scope company, therefore, has a difficult choice. It could try to impose contractual obligations on their customer to track and report its customer data, refuse to sell to their customer, or be potentially non-compliant with Pillar One (unless it can demonstrate that it has taken all reasonable steps to obtain this information).

This will create an administrative burden, as it would place an additional obligation to collect another large and complex data set on businesses that already go through considerable efforts to maintain a detailed data set for purposes of other tax obligations (e.g., VAT, where VAT treatment is generally based on the location of the customer). We propose that the location of the business customer should be used as the metric for sourcing such business-to-business sales and there should be no requirement for companies to look beyond this sale, which is in line with existing VAT rules.

Reasonable steps / evidence requirements

Beyond the practical concerns noted above, further clarification is needed on what steps are considered reasonable and what evidence would be needed to substantiate business compliance. We have concerns with how companies would achieve certainty and compliance in this area, especially given the time it would take to undertake information collection if additional steps are considered reasonable (by the tax authority review panel), and because systems development work is often a multi-year process requiring substantial financial investments.

We have similar concerns with the requirements to show that information is unreliable. It is not clear how companies would be able to demonstrate that they have met the required standard. We highlighted above the example of IP address for which it is well known that there are (and will always be) inaccuracies due to VPN, automated bots, and the like. Assessing how much traffic results from these connectivity options is more of an art than a science and it is not clear how taxpayers would be able to provide auditable evidence of the unreliability of such data.

It is also unclear if there is a link between “reasonable steps” and “unreliable data.” For example, a company could theoretically build a new system to capture data, but that data could be unreliable. Would it still be considered a “reasonable step” to expend the efforts to build it only to then show the data produced is “unreliable”?

Double Tax Relief

The Pillar One solution should not result in double taxation of profits allocated under Amount A. It is important for companies that there is consistency and clarity of approach on this point in order to promote simplicity and eliminate double taxation. The current proposal notes the two main methods to eliminate international juridical double taxation, the exemption method and the credit method, which are understood to ultimately deliver the same outcome. We note the exemption method appears simpler, more straightforward to apply (especially if it produces a similar outcome), and in line with the general global trend of moving towards exemption systems for relieving double taxation. The credit method would also appear to present technical issues that must be resolved where taxes are allocated pro-rata as opposed to with a market connection test (see Para. 630-631).

The Pillar One solution should also address the interaction of the Amount A calculation with withholding taxes and similar areas of taxation, including offset mechanisms. Withholding taxes on royalties, or similar arrangements, will likely overlap with profits reallocated under Amount A. If there are not clear offset rules aligning withholding tax regimes with Amount A, any imposition of or increase to withholding taxes would generate additional taxation at the source, followed by further double taxation from Amount A reallocations.

Another crucial element in the avoidance of double taxation will be uniformity of implementation. If jurisdictions are able to implement disparate versions of allocation and apportionment regimes, double taxation will result. We recommend the Inclusive Framework focus technical drafting on providing clear plans for implementation that will result in uniform adoption, including whether this will be achieved through Treaty or otherwise.

We support the Pillar One proposals providing relief for losses. We agree that for loss-making groups (or loss-making segments where relevant) there should be no Amount A reallocation and any accumulated losses should be earned out before any reallocation is made in future years. We also support the principle that there should be a carryforward regime that also takes into account pre-regime losses. We would note that a transition calculation to implement this rule will be a one-time exercise which is performed at a group level (or segment level), rather than an allocation of losses to market country. As such we consider that while a time limit may be appropriate (to reduce complexity and compliance costs) this should not be overly restrictive or short (and we note that taxpayers are generally required to keep historic information until statute of limitation periods have elapsed so would be expected to have the necessary data for that period).

Dispute Prevention and Resolution

The Pillar One Blueprint contains a proposal for a centralized filing of the Pillar One calculation and audit queries would be centralized through the lead tax administration. We are generally supportive of this approach.

As the Blueprint recognizes, it will be important to ensure that if disputes do arise there are mechanisms in place to ensure that there is a final binding consensus agreement, within a prescribed timeline, to ensure that double taxation does not arise.

Marketing and Distribution Safe Harbor

We are supportive of the marketing and distribution profits safe harbor to cap the allocation of profits to a market country under Amount A. We consider this, in principle, to be an effective way to ensure profits allocated to a market country are not excessive and that there is not an allocation where sufficient profits are already allocated to that market under current transfer pricing. There should be clear rules on the functions and activities, defined with specificity, which would qualify for such a safe harbor. There should be prescribed rules on how to determine the quantum of profit where a reallocation under Amount A would be limited or not required. Agreeing to a fixed return for all situations will be distortive. As such, we recommend that rather than a fixed return or a return based on sales, such rules should determine a safe harbor that is linked to profitability (consistent with Amount A, which is also based on profitability).

Pillar Two

The form of the Pillar Two system currently outlined has the potential to be incredibly complex, but we think there is a path forward to a workable solution that is not unreasonably complex and will meet the broad policy aims. The below commentary is intended to provide ideas for simplification and suggestions for constructing a Pillar Two solution that can be applied in a manner that is as efficient as possible. It is important that the solution be straightforward and reasonable for taxpayers to apply and tax authorities to audit. The solution must promote tax certainty, encourage compliance, and prevent, to the greatest extent possible, disputes between tax authorities, and double taxation.

GILTI Co-existence

Taxpayers should only be subject to one income inclusion provision, applied at the level of the group's Ultimate Parent Entity ("UPE"). Performing an Income Inclusion Rule ("IIR") calculation where a group is already subject to an equivalent, robust minimum tax regime such as the U.S. Global Intangible Low-taxed Income ("GILTI") rules would be unnecessarily burdensome. Pillar Two does not yet provide how Global Anti-Base Erosion ("GloBE") rules will co-exist with GILTI (i.e., treating GILTI as an equivalent IIR regime), but GILTI co-existence is a key simplification to Pillar Two, and we welcome its inclusion. Coordination with all Pillar Two rules should be prescribed for circumstances where a company is subject to a robust minimum tax regime which is treated as an IIR equivalent regime. The GILTI co-existence provisions should be designed in such a way that any future amendments to GILTI are respected, provided they do not alter the overall policy design of the rules.

Where a company is subject to a robust minimum tax regime, which is treated as an IIR equivalent regime, there should not be the requirement to perform an IIR calculation under GloBE. Calculations performed for the equivalent regime should be sufficient evidence that the GloBE rules are met for audit purposes, and companies should not have to perform GloBE calculations under such circumstances since that would create unnecessary compliance burdens.

Framework for Implementation

The current proposal to implement the IIR and Undertaxed Payments Rule ("UTPR") is by way of changes to domestic law. Therefore, it would become a matter for individual jurisdictions to decide to implement the IIR and UTPR in their domestic legislation. Even where it was agreed to implement the IIR and UTPR in accordance with the multilaterally agreed terms of the GloBE rules, changes to domestic law would need to go through legislatures, potentially resulting in attempts to modify or reject the agreed terms. Furthermore, the timing of the process to implement domestic law varies by country, which may necessitate a long phase-in period. Given the potential for

such issues, a mechanism for ensuring effective overall coordination of the application of the IIR and UTPR across multiple jurisdictions is needed.

Double Tax Relief

As currently drafted, DSTs are considered “non-covered taxes” and therefore, are not considered in the determination of GloBE. If Pillar One is not fully adopted and unilateral DST measures remain, companies will be faced with an inequitable tax burden as they will be subject to local DSTs with no relief for any DST amounts paid under the GloBE calculations. Accordingly, we suggest DSTs, and similar national tax measures, be considered as covered taxes under Pillar Two.

The approach to IIR credits and timing differences appears to be very complex to apply and would require a separate set of books to be maintained solely for Pillar Two purposes. We recommend using deferred tax balances per existing tax accounting as a straightforward approach since those numbers are largely already available and achieve a similar outcome. Although we note from the Blueprint that some countries expressed reservations about this proposition, adopting a deferred tax approach would materially reduce complexity and we do not consider it would deliver a materially different outcome.

Application of STTR

The STTR should be simplified such that there are clear guidelines as to when it is and is not applicable. It should be narrowly drafted to ensure it specifically targets the payments it is intended to catch and only those payment streams. If the STTR is applied too broadly, it could produce adverse and unintended impacts to both tax authorities and taxpayers. Application of a rule on a transactional basis without clear safe harbors introduces significant complexities to the taxpayer from a compliance perspective. Furthermore, determining the appropriate rate of taxation for such transactions will be extremely difficult where the overall profitability (and therefore taxation) of the entity would not be fixed to the time in which the transaction was processed.

The Pillar Two rules should include a list of very narrow and clearly defined intragroup payments which could be subject to the STTR, with all other intragroup payments being outside the scope of the STTR. In addition, existing provisions could be improved by adding formulaic rules for determining when a transaction is subject to nominal rates of taxation, the rate of tax such payments are subject to, when any additional taxation should be applied, and clear safe harbors. Furthermore, any transactions subject to STTR should have specified rules for simplified reporting to ensure compliance burdens are proportionate.

Additional Areas for Simplification

Adjustments specific to local tax laws will create ambiguity, complexity, and distortive effects. The Pillar Two approach should limit such adjustments and instead take a consistent global approach in order to preserve simplicity of administration and uniformity across all countries.

The UTPR is a secondary rule and only applies where a Constituent Entity is not already subject to an IIR. However, as currently drafted, it appears that the UTPR could apply to all payments made by a subsidiary to its UPE as the UPE may not itself be subject to the IIR. We would recommend that this is addressed in order to ensure that the UPE is covered by the IIR, or that alternative mechanisms are in place to ensure that undue compliance burdens are not created. For example, taxpayers could be allowed to self-assess and evidence that the UPE is not subject to taxation below the minimum level as defined under the criteria of the IIR (even if legally the UPE may not be subject to the IIR rules domestically).

We agree with the proposal for a de minimis profit exclusion to scope out countries where the group does not have a material presence or level of revenues. This will provide a level of simplification and reduce administrative challenge for both tax authorities and taxpayers, which is to be welcomed.