AMOUNT B

Technical Webinar on Simplifying Transfer Pricing for Marketing and Distribution Activities

11 February 2025

OECD
BETTER POLICIES FOR BETTER LIVES

HOUSEKEEPING

- The chat function is disabled for security reasons.
- Please submit any questions using the Q&A function.
- This webinar is being recorded and will be available within 24 hours.
- The presentation will also be posted on the OECD website.
- Visit the Amount B webpage: https://oe.cd/amountB

SPEAKERS

Achim Pross
Deputy Director, OECD Centre for Tax Policy and Administration (CTPA)

Noel Maher
Adviser, Transfer Pricing Unit, CTPA

Manuel De Los Santos
Head of Transfer Pricing Unit, CTPA

Kenjiroh Tomita
Adviser, Transfer Pricing Unit, CTPA

Saranee de Silva
Adviser, Transfer Pricing Unit, CTPA

Gabriela Capristano Cardoso
Adviser, Transfer Pricing Unit, CTPA

AGENDA

1. Background and context
2. Recap on Amount B scope and pricing
3. Demonstration of the Pricing Automation Tool
4. Tax certainty and implementation considerations
5. Q&A session

BACKGROUND & CONTEXT

IMPORTANCE OF TAX CERTAINTY

Why does tax certainty matter?

- **For business** → 90% of surveyed businesses indicated that uncertainty adversely affects their business operations and costs.
- **For government** → 60% of surveyed businesses noted that tax uncertainty affects investment and location decisions, impacting growth, jobs.

Sources for Surveys: OECD/IMF 2017 Report on Tax Certainty; OECD/IMF 2019 Progress Report on Tax Certainty

THE TAX CERTAINTY AGENDA FOR TP

Simplification

- Safe harbours for low-risk functions
- Simplified approach for low-value intra-group services
- Standardised benchmarking
- **Amount B**

Dispute prevention

- Cooperative compliance
- Coordinated risk assessment (e.g. ICAP)
- APAs (bilateral/multilateral)
- Joint/coordinated audits

Dispute resolution

- MAP (bilateral/multilateral)
- Arbitration

AMOUNT B - FRAMING THE CONVERSATION

CHAPTER IV

Three **Memoranda of Understanding** on low-risk activities in Chapter IV

2013

May

CHAPTER VII

New guidance on "**Low value-adding services**" in Chapter VII

2015

Aug

BENCHMARKS

Forum on tax administration **communiqué in Santiago de Chile**

2019

Mar

AMOUNT B

Amount B into the **OECD Transfer Pricing Guidelines**

2024

Feb

INCLUSIVE FRAMEWORK MANDATE OCTOBER 2021

Inclusive Framework on BEPS Mandate

"The application of the arm's length principle to in-country baseline marketing and distribution activities will be simplified and streamlined, with a particular focus on the needs of low-capacity countries."

PUBLICATIONS & TIMELINE

FEB
2024
Amount B Report

JUNE
2024
Definitions of Qualifying and Covered Jurisdictions

SEPT
2024
Model Competent Authority Agreement

DEC
2024
Fact sheets & Pricing Automation Tool

JAN
2025
Implementation starts

FEB
2025
Consolidated Amount B Report

SCOPE

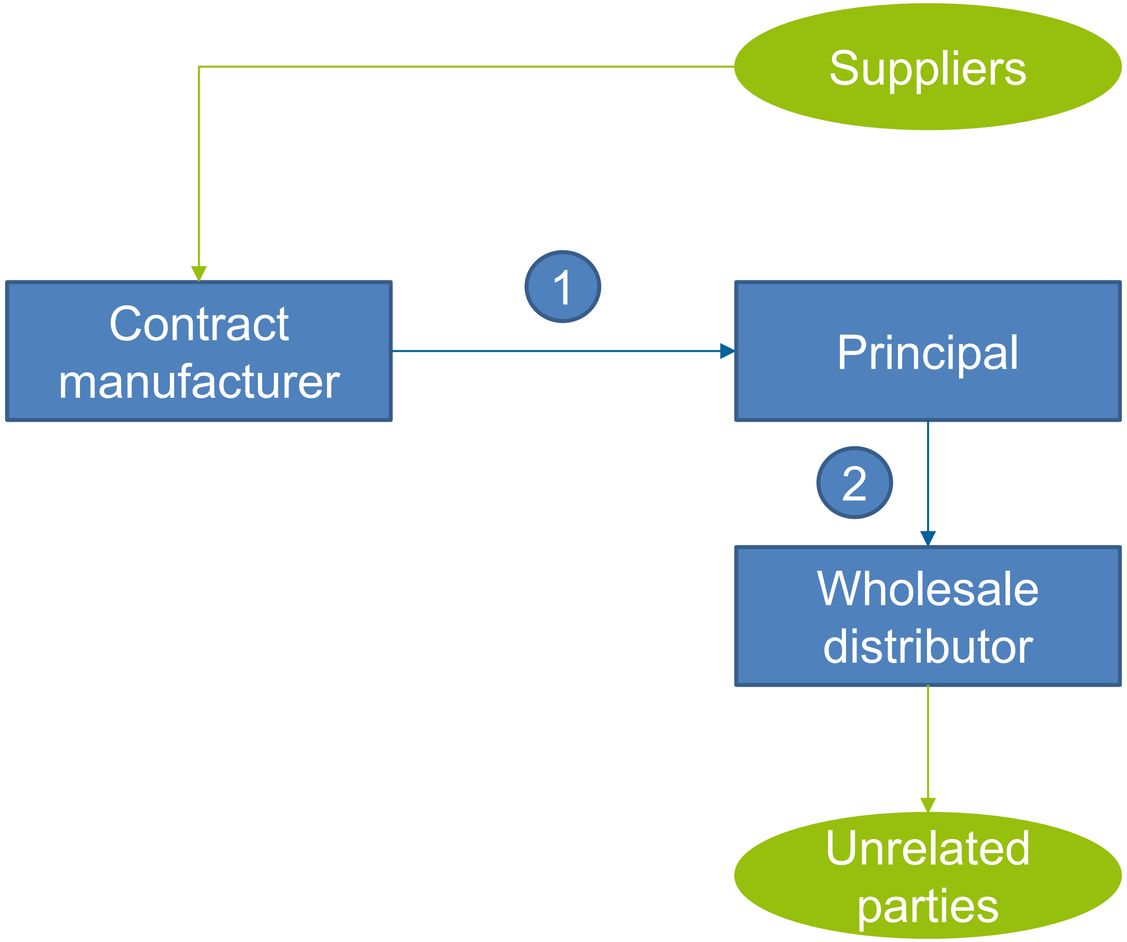
SCOPE RECAP

KEY FEATURES

Applies to wholesale distributors, including buy/sell, commissionaires and sales agents

- No unique and valuable intangibles
- No assumption of economically significant risks
- No distribution of commodities or services or digital goods
- No retail above *de minimis* (20%)
- No non-distribution activities unless segmentable
- No entities with less than 3% OES or above 20-30% OES

QUALIFYING TRANSACTION: EXAMPLE 1

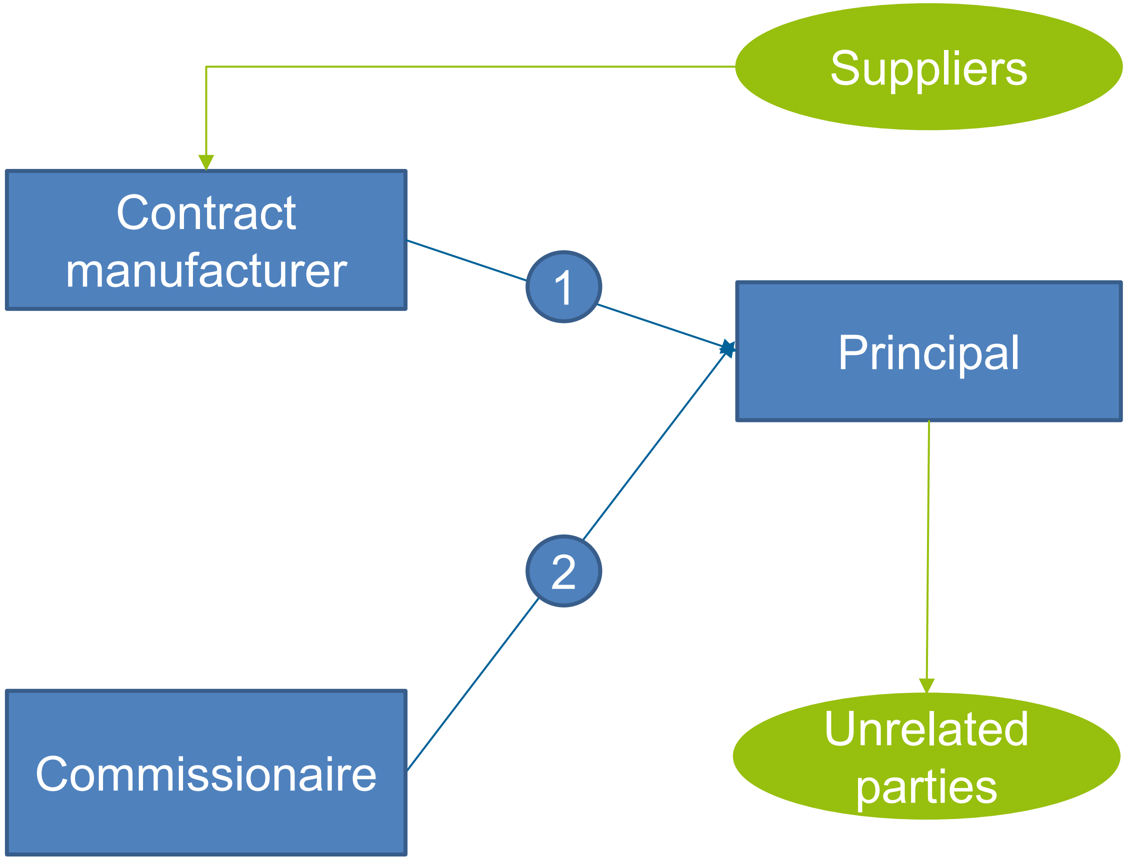


Related party transactions

1: **Manufacturing arrangement -** Contract manufacturer sells finished products to Principal.

2: **Distribution arrangement –** Principal sells finished goods to Distributor – who on-sells to customers.

QUALIFYING TRANSACTION: EXAMPLE 2



Related party transactions

1: **Manufacturing arrangement -** Contract manufacturer sells finished products to Principal.

2: **Commissionaire arrangement –** Commissionaire performs local sales activities but for the account of the Principal – doesn't take title or record sales locally.

SCOPE RECAP

Excluded transactions

- Distributors involved in the **distribution of services** excluded
- Distributors involved in the **distribution of commodities** excluded
- Distributors involved in the **distribution of digital goods** excluded
- Distributors involved in **retail sales above *de minimis*** threshold excluded *(>20% of total annual net sales)*
- Distributors involved in **non-distribution activities** excluded unless segmentable (e.g. manufacturing, R&D, procurement, financing)

SCOPE RECAP

Interaction with other OECD TP methods

- The selection of a transfer pricing method always aims at finding the most appropriate method for a particular case.

- Amount B (as a TNMM-based approach) **will be considered the most appropriate method** for all in-scope transactions.

- The guidance provides **one exception** that enables the taxpayer or tax administration to assert that internal comparables (i.e. the internal CUP method) can be used instead of the Amount B, where applicable.

PRICING FRAMEWORK

PRICING RECAP

KEY FEATURES

Simplified and streamlined approach to pricing

- Application of common benchmarking search criteria and use of global data to inform the determination of arm's length ranges
- Designed as a pricing matrix which takes account of operating assets, operating expenses and industry as relevant profit driving factors
- Use of return on sales as the applicable net profit indicator
- Includes adjustments to address: (i) distortive returns on OPEX, (ii) country risk in higher risk markets
- Subject to periodic updates

PRICING RECAP

Producing the global dataset and pricing matrix

- Pricing matrix was constructed following a centralised benchmarking search leading to the selection of a global dataset of independent companies involved in baseline distribution;
- The global dataset served two critical analytical purposes:
  - **Facilitate regression analysis** to identify economically relevant characteristics where we observe a statistically significant relationship to profitability; and
  - **Calculation of arm's length ROS ranges** using financial data derived from that dataset.
- The analysis was relied upon to construct the pricing matrix using identified profit driving factors: (i) industry grouping, (ii) operating asset intensity, and (iii) operating expense intensity.

PRICING RECAP

Table 5.1. Pricing Matrix (return on sales %) derived from the global dataset

Industry Grouping	Industry Grouping 1	Industry Grouping 2	Industry Grouping 3
Factor Intensity			
(A) OAS 45% or more, any level of OES	**3.50%**	**5.00%**	**5.50%**
(B) OAS 30% to 44.99%, any level of OES	**3.00%**	**3.75%**	**4.50%**
(C) OAS 15% to 29.99%, any level of OES	**2.50%**	**3.00%**	**4.50%**
(D) OAS less than 15%, OES 10% or more	**1.75%**	**2.00%**	**3.00%**
(E) OAS less than 15%, OES less than 10%	**1.50%**	**1.75%**	**2.25%**

PRICING RECAP

Adjustment Features

- Comparability adjustments should only be considered if they are expected to increase the reliability of the results;
- From a simplification standpoint, it would have been desirable to produce a universal and globally consistent Amount B pricing matrix based on the global dataset– without the need for further adjustments;
- However, Inclusive Framework Mandate has been to appropriately **balance simplification and reliability**, and ultimately to adhere to the arm’s length principle;
- We relied upon a **data driven analysis** grounded in economic theory and econometrics, and that supported application of adjustments in certain cases.

PRICING RECAP

Adjustment Features

1. **Operating Expense Cross-Check (cap-and-collar)** – *Section 5.2*

- Corroborative check is performed by testing the return derived from the pricing matrix.
- Compares the return on operating expenses of the tested party to a defined cap-and-collar range.
- Amount B returns can be adjusted up or down to mitigate risk of under / over-compensation.

2. **Data availability mechanism (Country risk adjustment)** – *Section 5.3*

- Provides for an upward adjustment to the return derived from the pricing matrix in certain cases.
- Applies to qualifying jurisdictions with no or insufficient comparable data and evidence that the jurisdiction could be considered a 'higher risk' jurisdiction.
- Sovereign credit ratings are used as a proxy to quantify the adjustment.

DEMO OF PRICING AUTOMATION TOOL

PRICING AUTOMATION TOOL

The tool

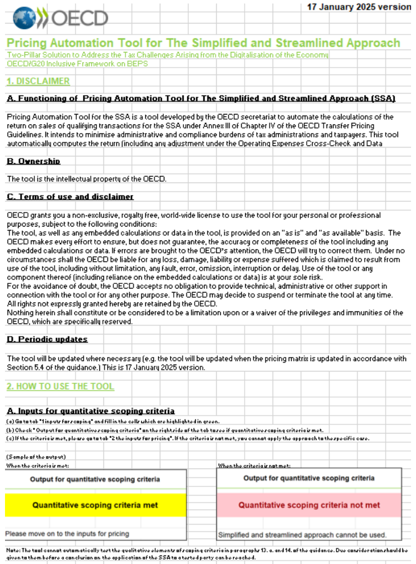
- Completes all quantitative checks and calculations on input of basic information
- Could be used as a first step in risk assessment – reducing resource needed for more technical qualitative checks

Only those cases that meet the quantitative scoping criteria would need further consideration

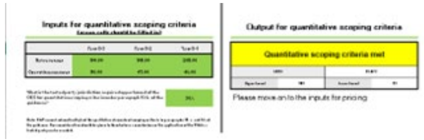
PRICING AUTOMATION TOOL

4 pages

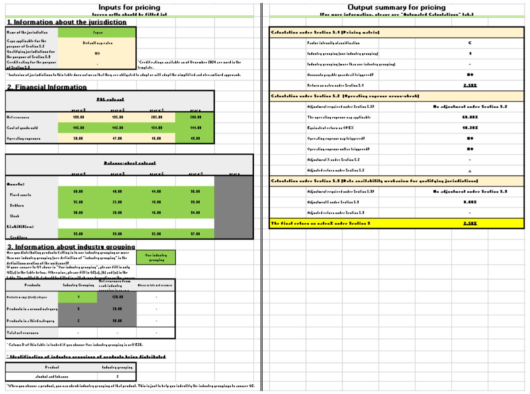
1. Guidance page – for information



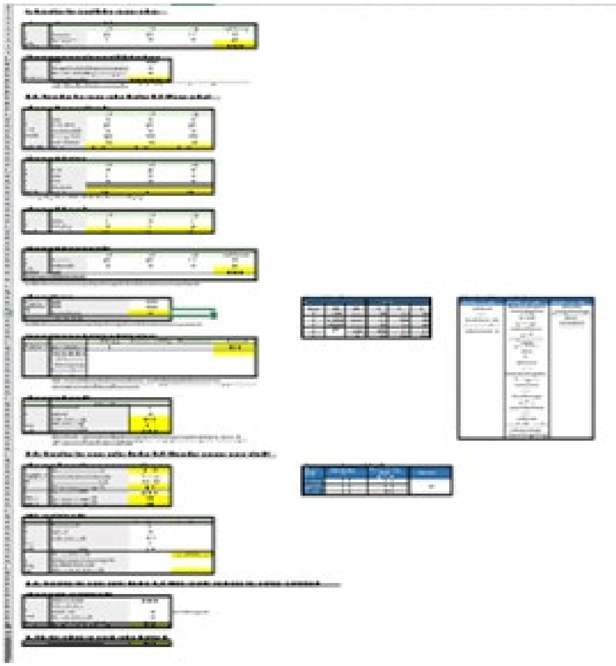
2. Inputs for scoping – data input and result



3. Inputs for pricing – data input and result



4. Copy of all calculations done by the tool - for information



OECD CALCULATION TOOL

Data required for the Amount B calculations

From company accounts

- Net revenues
- Operating Expenses
- Cost of goods sold
- Fixed Assets
- Debtors
- Stock
- Creditors

- Goods distributed by company
- Location of distribution company

From tax administration

- Self-selected upper bound of operating expense intensity – between 20 and 30%

TAX CERTAINTY & IMPLEMENTATION

IMPLEMENTATION

Incorporated into OECD TP Guidelines as an optional approach. Jurisdictions can choose to adopt Amount B from January 2025.

Adopting jurisdictions can apply Amount B domestically as a rule or as a taxpayer safe harbour.

Non-binding on counter-party jurisdictions, except in case of covered jurisdictions. IF political commitment to respect Amount B when applied by a covered jurisdiction.

Amount B can also be used to resolve MAP disputes where both Competent Authorities agree to do so.

IMPLEMENTATION

Inclusive Framework Political Commitment applicable to Covered Jurisdictions

- The purpose of the political commitment is to deliver tax certainty for both Business and Tax Administrations;
- Amount B becomes binding in the counter-party (supplier) jurisdiction when applied to distributors operating in Covered Jurisdictions;
- The current list of 66 Covered Jurisdictions is published on the OECD website and is composed primarily of Low and Middle-Income jurisdictions;
- The list of covered jurisdictions will be reviewed every 5 years.
- Model Competent Authority Agreement (MCAA) to facilitate implementation

For more information: https://oe.cd/amountB

IMPLEMENTATION

Where Amount B does apply, the jurisdiction may adopt it as a RULE or as a SAFE HARBOUR

	RULE	SAFE HARBOUR
Who applies Amount B?	Taxpayer and Tax administration	Taxpayer, upon election to apply Amount B
Can the tax administration of the tested party verify scoping criteria?	YES	YES
Can the tax administration of the tested party assert Amount B on taxpayers?	YES	NO
Counter-party position	Non-binding *(except where tested party is in a Covered Jurisdiction)*	Non-binding (*except where tested party is in a Covered Jurisdiction)*

TAX CERTAINTY

Covered Jurisdiction applies Amount B to distributor in its jurisdiction	TP dispute between two jurisdictions that have both adopted Amount B	TP dispute where one or more jurisdiction(s) have not adopted Amount B
• Both the distributor and supplier jurisdiction are IF members. • Inclusive Framework Political Commitment applies. • The outcome of the application of Amount B by a Covered Jurisdiction to tested parties in its jurisdiction will be respected by the counter-party jurisdiction.	• Counter-party jurisdiction would be expected to respect the application of Amount B by the other jurisdiction. • Reciprocal corresponding adjustments or MAP resolution based on Amount B in the event of audit adjustment / dispute.	• In a MAP or resulting arbitration procedure, the competent authorities of both jurisdictions must justify their positions based on the remainder of the OECD Transfer Pricing Guidelines. • However, Amount B may be relied upon to resolve the dispute, if there is a competent authority agreement that allows for Amount B approach, or if the two jurisdictions otherwise agree to apply Amount B to resolve that specific case.

Q&A SESSION