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Submission File

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Organisation for Economic Co-operation and Development (OECD)
Tax Treaties, Transfer Pricing and Financial Transactions Division,
Centre for Tax Policy and Administration
2 rue Andre-Paris
Paris
France

BY E-MAIL: tfde@oecd.org

Dear Sir/Madam

COMMENTS ON PILLAR ONE – AMOUNT A: DRAFT MODEL RULES FOR NEXUS AND REVENUE SOURCING

1. We present our comments and submissions on behalf of the South African Institute of Chartered Accountants' (SAICA) Transfer Pricing Committee on the public consultation document 'Pillar One – Amount A: Draft Model Rules for Nexus and Revenue Sourcing' released by the OECD in February.
2. We apologise for the delay in submitting our comments, but the comment period was during South Africa's Budget Review period and this severely limited our time to comment. We do hope our comments can still be taken into consideration and thank the OECD for the opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges.

BACKGROUND

3. Amount A of Pillar One has been developed as part of the solution for addressing the tax challenges arising from the digitalisation of the economy. It introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located.
4. The Task Force on the digital economy has been charged with developing the Multilateral Convention (MLC) and its Explanatory Statement as well as the Model Rules for Domestic Legislation (Model Rules) and related commentary through which Amount A will be implemented.
5. The Model Rules, once finalised, will reflect the functioning of Amount A and will serve as the basis for the substantive provisions that will be included in the MLC. The Model Rules are also being developed to provide a template that jurisdictions could use as the basis to give effect to the new taxing rights over Amount A in their domestic legislation.

6. The Model Rules will be supported by commentary. Jurisdictions will be free to adapt these Model Rules to reflect their own constitutional law, legal systems, and domestic considerations and practices for structure and wording of legislation as required, whilst ensuring implementation is consistent in substance with the agreed technical provisions governing the application of the new taxing rights.
7. The Model Rules will cover all aspects of Amount A that would be translated into domestic law. The draft document contains the sections on nexus and revenue sourcing.
8. The OECD seeks comments with respect to these nexus and revenue sourcing rules. SAICA's Transfer Pricing Committee's comments on these rules are discussed next.

COMMENTS ON THE PROPOSALS

Overarching comment

9. The guide is confusing and difficult to understand without the detailed commentary.

10. Submission: Consideration should be given to requesting further comments once the detailed commentary has been released.

Missing or incomplete information in the rules

Article [X]: Nexus test

11. The nexus test proposes Revenues for a period shorter or longer than 12 months which exceeds EUR1million.
12. How will the *revenue thresholds* be determined – as the amounts align to the CBCR thresholds will this mean the test is applied annually in arrears? We would recommend consideration is given to using the preceding year.
13. The nexus threshold of EUR 1 million applies to jurisdictions with an annual GDP equal to or greater than EUR40 billion and EUR 250 thousand for jurisdictions with an annual GDP of less than EUR 40 billion. When testing the GDP, will the calendar years be used or the jurisdiction tax years?

Article [X]: Source Rules

14. Schedule A provides guidance on how revenues should be characterised. How will duplication of accounting be prevented in respect of revenues identified by their predominant character? Further guidance and definitions of this are needed. For instance, finished goods could be software discs which could also be digital goods.
15. Revenues for licensing are now included in Pillar 1. Is it intended for this to override article 12 and domestic withholding tax rules on royalties?
16. The general exclusion for financial institutions is based on the fact that such institutions are regulated. The proposal, however, includes finance transactions for non-financial



institutions. We would recommend consideration is given to excluding financial transactions which are akin to those provided by financial institutions.

17. The proposal suggests deemed delivery rules. Consideration of the interaction of these with customs and indirect taxes should be taken into account. Further, revenues should be calculated net of these taxes.
 18. The tail-end revenue rule seems unreasonable in that it attributes all tail-end revenue to a low-income jurisdiction. We suggest the penalty provision of this only be brought in later to give MNE's a chance to get to grips with the rules before being penalised.
 19. The B2B transactions can default to the business address of the ultimate parent entity but this is not a reliable indicator. In Africa with the extent of informal trade and lack of "reliable indicators" this may well result in revenues being allocated incorrectly.
 20. On page 25, Part 7 deals with "Real Property", but how is "real property" defined?
 21. How will *double tax matters* be resolved where countries retain a domestic digital tax outside the Pillar 1 guidelines? That is, OECD versus non-OECD, as this is important for Africa as many countries are opting out.
22. Submission: Answers to the above questions would ensure that the document is easier to understand and comprehensive, especially from a developing country perspective.

Yours sincerely

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Chairperson: Transfer Pricing Committee

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