20 May 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: **OECD Public Consultation Document on Pillar One - Amount A: Regulated Financial Services Exclusion**

Dear Secretariat,

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to share its observations on the above referenced public consultation document. In view of our understanding of the nature and urgency of the request, as well as the limited two-week turnaround, we set out below a brief summary of the issues on which we believe the Task Force on the Digital Economy (TFDE) and OECD could focus. We would be happy to elaborate on these further or to discuss other matters in the public consultation document.

We support the stated policy goal for the Regulated Financial Services ("RFS") Exclusion, i.e., the exclusion is based on regulatory drivers that generally help to align the location of profits with the market. In that light, we offer several comments on issues with regard to the proposed approach to the RFS Exclusion, outlined below:

Asset Management and Reinsurance

The consultation document indicates that some Inclusive Framework members hold the view that reinsurance and asset management ought not to be excluded from Amount A. We think this would be inappropriate for several reasons.

Asset Management

We believe there is a sound policy rationale for including asset management within the RFS exclusion for a number of reasons. Over the last two decades, the regulatory landscape for many asset managers has changed quite significantly. Many are now part of wider RFS institutions which may have banks and insurance elements, meaning that the regulatory reach for many of these operations is now quite extensive. Most asset managers are now subject to the same form of prudential and risk-based capital requirements that banks and insurance companies have to adhere to as part of their requirements. These regulations typically require asset managers to set aside risk-based capital to manage the risks of their business. Many also interact with other RFS institutions as part of their overall supply chain including distribution activities which may be done by other RFS institutions such as banks, etc.

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Given that many asset managers will meet the three broad requirements for exclusion which banks and insurance companies will be required to meet, it appears inconsistent from a policy perspective to carve-out asset managers from the exclusion when they actually meet the requirements for the exclusion. It would also subject many asset managers to an undue administrative burden.

Finally, Amount A calculations require determination of the ultimate end customer location, which would be difficult for many asset managers to determine given the extensive use of intermediaries within the industry who for good commercial reasons typically do not share this information and are not compelled to do so as part of their interactions.

<u>Reinsurance</u>

Reinsurance is a form of insurance. Distinguishing this one class of insurance from all others seems unjustifiable in our view. From a commercial perspective, insurance groups will set a strategy regarding the classes of insurance business they will write and penalising one class could create a competitive disadvantage for some groups.

By its very nature, reinsurance is a global business. Its function is to help insurers diversify and pool their risks on large scales on a global basis to mitigate losses due to major claims or natural catastrophes that may arise in specific areas. There is, therefore, often little connection between the location of revenues (premiums) received in a particular year and the location of the profits arising in that year. Insurers are compensated by way of a commission payment by reinsurers and this income is taxable in the location of the insurer. If a portion of the reinsurer's profits were also allocated to that same location it could in our view give rise to double taxation in that jurisdiction.

From a practical perspective, many insurance groups write both insurance and reinsurance business. The results are not segregated for accounting purposes and trying to identify which profits could be attributed to reinsurance alone would be a very significant accounting exercise. This would be even more burdensome for those groups where reinsurance and insurance are written by the same legal entity, as the data to perform the tax calculations is unlikely to exist.

Provision of services to intra-group entities

To qualify for the RFS exclusion, an entity (other than a Regulated Financial Institution (RFI) Service Entity - see below) cannot derive a “substantial portion” of its revenues from intra-group service provision. A ‘substantial portion’ currently is defined in square brackets as [50%] as measured against the group entity’s total gross income during the Period from the activity.

Footnotes in the consultation document note that future Commentary would explain that the effect of this rule is to ensure that entities such as group treasury centres (or captive insurers and finance centres that provide loans for the purchase of the group’s own goods) do not qualify for the RFS exclusion. However, some group treasury centres act as an integral part of the maintenance of capital adequacy for the entities who themselves are regulated and would meet the licensing, regulatory capital and activities requirements.

Extending the availability of the exclusion to entities who perform services *exclusively* for the benefit of one or more other related RFIs (defined as an RFI Service Entity), but not to entities who derive a *substantial portion* of their revenues from the performance of the same services, with the performance of such services being equally necessary for the RFI to meet it's prudential requirements, does not make sense to us and we do not see the policy justification supporting this restriction.

We suggest as an alternative approach that as long as the entity [has provided services to] / [derives a substantial portion of its revenues from] an RFI, with the services provided being necessary for the RFI to meet its capital adequacy requirements, then the aforementioned entity should be regarded as excluded from Amount A, irrespective of the ownership relationship between the entity and the RFI.

RFI Service Entity

We welcome the inclusion of an RFI Service Entity within the definition of an excluded entity.

We note it is important that the definition of such entities and examples included in the Commentary align with the functions that a group service entity actually performs for financial services groups. These services often go beyond the example of payroll functions, which is referred to in the consultation document, and in some cases these entities are required to meet regulatory rules in the local territory. To the extent the services are provided to entities which in themselves qualify as RFIs, then in our view there should be no reason to limit the examples for this definition in such a narrow way.

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With this letter we kindly invite you to take our observations into consideration during further development of the RFS Exclusion. We stand ready to discuss the issues raised in this letter in more detail, if that would be helpful at any point - please do not hesitate to contact me or one of the individuals set out below

Yours sincerely,

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