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Transfer Pricing Practice

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OECD's Public Consultation Document on the Reports on the Pillar One and Pillar Two Blueprints – Contribution from economists at NERA Economic Consulting

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1. Introduction

We thank the OECD for providing us with the opportunity to comment on the Pillar One Blueprint. We recognize that a significant amount of work has gone into the preparation of this document. The OECD is addressing highly complex issues and it is likely that in this context, additional conceptual developments will be needed.

Overall, we believe that it will not be possible to maintain consistency between the approach that is being laid out in the Pillar One Blueprint and the arm's length principle, and that at some point in time, it will be necessary for the OECD to make a choice as to whether it maintains the arm's length principle or whether it basically sets a number of safe harbour rules that will likely conflict with the results obtained by independent entities trading at arm's length in the open market. The approach currently proposed by the Inclusive Framework is openly inconsistent with the arm's length principle and with established intercompany pricing processes that achieve results substantially equivalent to those achieved by independent companies trading at arm's length

We are also of the opinion that the approach proposed by the Inclusive Framework may not be based on correct premises in terms of the way multinational enterprises create value and how they deploy their employees and assets to conduct business in the "market jurisdictions." In other words, multinational enterprise's creation of value is linked to the people they employ and the assets they own and develop. The fact a multinational enterprise has sales in a country does not in itself means that it should be subject to corporate income tax in such country. In particular, a multinational enterprise that does not have any functions and/or assets in a country does therefore not carry any activity in that country that create value and should not be taxed in such country.

In our opinion, the arm's length principle is a better way to address the issues that the Pillar One Blueprint is attempting to address. We believe that it is important to give the arm's length standard a chance, particularly now as the BEPS Action Plan is being implemented. The latest

OECD guidelines are just beginning to be relied upon in tax audits and it is not yet possible to assess whether they are effective or not.

In the spirit of contributing to the further development of the Blueprints, we provide our thoughts to address selected questions raised by the OECD Secretariat. In particular, this document focuses on Pillar I and the questions in Sections IX and X concerning the Amount B.

2. Answers to Question IX – The issue of scope of Amount B and definition of baseline marketing and distribution activities

Amount B proposal is basically proposing a safe harbour. While we do not underestimate the benefit of certainty and simplification that a safe harbour can facilitate, we are concerned that a "one size fits all" approach will not fairly or reliably reward many types of baseline marketing and distribution activities. Furthermore, safe harbour rules can lead to substantial abuse.

Additionally, the stated objective of alignment to approximate the arm's length principle (paragraphs 650 and 654) needs to be quantified in terms of the variances that are deemed reasonable and justified in exchange for the reduced compliance cost and enhanced tax certainty (paragraph 651). The technical work program outlined in paragraph 657 needs to establish acceptable levels of "false positives" and "false negatives" vis-à-vis the arm's length principle and their magnitude as a fundamental design criterion. As described further below, we have substantial concerns as to whether a satisfactory alternative to the current "facts and circumstances" approach under the OECD Transfer Pricing Guidelines in fact exists for determining the Amount B in practice.

a) Do you consider that Amount B should be narrow in its scope or should it take on a broader scope? What are the advantages or disadvantages of a narrow or broader scope? [Refers to paragraph 659 of the Blueprint]

"Scope" appears to be defined in two ways within Section 8: (1) whether the scope of baseline distribution and marketing functions should or should not include certain *activities* including commissionaires and agents (see Para. 655), and (2) whether *industries* that fall outside the scope of Amount A should or should not be included in the scope for Amount B (see Para. 659).

In general, the broader the scope of activities that constitute acceptable "baseline sales and marketing distribution activities," the higher the likelihood of the Inclusive Framework accomplishing its stated goals for Pillar One, i.e., establishing clarity and certainty of an arm's length return (ALR) for such activities and lowering the compliance burden for MNEs and tax authorities.

In particular, with respect to commissionaires and sales agents, in our experience, the baseline distribution and marketing activities that are being targeted here and as defined by activities in the positive list typically include those performed by commissionaires and potentially, sales and marketing agents as well. Not including commissionaires and sales agents would leave significant opportunities for manipulation (e.g., MNEs could easily set up a commissionaire structure to avoid being included in the scope of Amount B and the associated remuneration). We understand that inclusion of businesses that provide sales and marketing functions without taking title to goods into the scope of the Amount B will take some additional work when determining the safe harbor renumeration, yet given the potential avoidance strategy discussed above, this additional work seems to be necessary and worthwhile. We further discuss a proposed unifying approach for including both buy-sell distributors and commissionaires / sales agents into the scope of Amount B in our response to Question X.

Marketing and distribution activities are the subject of significant scrutiny and are often centered on commissionaires and low risk entities for the following reasons:

- The ALR for the entity does not match its higher functional intensity
- Marketing synergies across business units or product lines are not fully or correctly incorporated in the selection of an ALR
- Marketing or sales rainmakers are dispersed across multiple geographies and incorrectly compensated for certain specific marketing activities, or the persons performing the activities are creating non-routine marketing intangibles that are not correctly compensated
- The cost base is defined incorrectly (items above or below the EBIT line, items in SG&A rather than in COGS)
- Differences in the selection of marketing company benchmarks.

When conducting transfer pricing audits, tax authorities may conclude that commissionaires, sales agents, and other business models that create PE concerns are operating as "low or limited risk entities." Including them in the scope of Amount B and providing for a fixed ALR provides greater certainty for both tax authorities and MNEs.

With respect to the industry sector scope of Amount B, the Inclusive Framework has gone beyond its careful scoping exercise conducted for Amount A and appears to treat all industries as within the scope of Amount B. In our experience, this may prove to be a Herculean task mainly because while CFB's marketing and distribution models and operations are relatively well understood and their activities fall neatly into the positive or the negative list, this may not be true for ADS marketing and distribution models. In addition, non-CFBs such as capital goods and intermediate goods B2B industries, extractive industries and certain financial services sectors have little to no "distribution" function and perhaps very little investment in traditional sales generation activities. As such, the inclusion of these industries into Amount B presents several problems in classifying their activities into the positive and negative lists. Moreover, many ADS companies go to market with innovative technical sales and service capabilities that differ significantly from conventional CFB sales and marketing functions and that may require different arm's length compensation mechanisms and ratios. In short, it may be necessary for the OECD to amend the existing positive and a negative Lists and create a new version that is applicable to ADS distribution activities. We elaborate on this point in our answer to (b) below.

b) Do you consider the baseline activities outlined in the positive and negative list achieve the narrow scope definition examined in the Blueprint? If not, what changes should be considered? What changes to these lists would be required if a broader scope was adopted? [Refers to paragraphs 664-673 of the Blueprint]

The baseline activities outlined in the positive and negative lists broadly accomplish the objective of narrowing the scope for application of Amount B to a substantial subset of marketers and distributors for whom standardized transfer pricing norms might offer significant savings in administrative costs and increased certainty. In practice, as material differences between industries, regions, functions, assets, and risks are identified, multiple subsets of marketers and distributors with different arm's length compensation norms are likely to emerge, and other categories like commissionaires and sales agents will also be identified that meet the same or similar standardization objective.

The "proof is in the pudding," however, and it remains to be proven whether a top-down, categorization approach will meet the above objectives. The activities identified in the positive list provide breadth of application while the activities identified in the negative list serve to exclude non-routine entrepreneurial functions, assets, and risks that are not inherently susceptible to standardized arm's length norms.

Thus, we would agree with the identified positive and negative lists of activities as an initial classification of potential candidates for the standardization approach, subject to verification in terms of empirical proof and further refinement.

We would disagree, however, with the suggestion that this initial identification of marketers and distributors satisfying the positive and negative criteria is a sufficient basis for standardization or that the required number of subdivisions by industry, region, functions, assets, and risks is small or even practically manageable. Instead, our experience over many decades of benchmarking marketing and distribution functions in multiple industries and geographies indicates that the arm's length profitability drivers are both too material and too multidimensional and idiosyncratic to be summarized simply or reliably in any meaningful internationally recognized classification scheme.

To illustrate the quantitative significance of these different profitability drivers, we identify features of distributors on the "positive" list that give rise to material adjustments in the remuneration of the Amount B. For example, consider a "typical" positive list distributor with a "baseline" arm's length return on sales ("ROS") of 3 percent. The following differences in underlying facts drive material variances in the arm's length profits and ROS:

(1) Differences in net *payment terms* (i.e., receivable less payables) can amount to 180 days or more, or approximately half a year's sales, implying differences in operating profit of 2.5% of sales or more financed at 5% per annum

(2) Differences in *inventories* amounting to 90 to 180 days or more driven by differences in specific market requirements as well as variations in sales volumes, supply chain factors, and the business cycle, financed at 5% or more per annum, implying differences in operating profit of one to two percent or more

(3) Differences in *fixed assets* including logistics facilities and equipment, marketing and sales offices, and after-market service capabilities can amount to 25% to 50% of sales, implying variances of 2.5% of sales or more financed at the cost of capital

(4) Differences in *warranty and other liabilities* of similar magnitude that drive similar percentage differences in operating margins

(5) Differences in *routine marketing and sales functions* resulting in SG&A expense ratios to sales ranging from ten to twenty percent and implied differences in ROS of one to three percent or more

(6) Differences in *cost of capital* between industries, geographies, and firms of different size that can amount to five to ten percent or more per annum and drive differences in operating margins of one to three percent or more depending upon capital intensity

(7) Differences in *market and economic conditions* such as competitive landscape, perceived country risk, etc., that vary substantially over time and across industry sectors can create substantial differences in arm's length outcomes in any given year or context, amounting to several percentage points in ROS outcomes.

The existing OECD BEPS framework provides substantial guidance in determining adjustments and other outside evidence needed to account for these potentially material differences that otherwise undermine the reliability of the results or create illusory certainty and opportunities for abuse. Moreover, existing OECD guidance concerning selection of the most appropriate transfer pricing method provides a needed dynamic principle to drive comprehensive solutions taking into account all relevant factors. This essential principle appears to be entirely missing from the current Inclusive Framework proposal.

Available benchmark companies performing baseline marketing and distribution functions that might be candidates for determining the Amount B profitability ratios, even if they vary by industry or region, are not expected to be, in an absolute sense, very closely comparable. For example, many industries have no independent distribution companies that are comparable to the distribution subsidiaries of the major competitors: thus, there are no independent sales and marketing companies that distribute automobiles at the same level of market as automotive OEMs in North America. Comparable distribution companies that are typically used to benchmark automotive distribution include wholesale distributors of products that are quite different from automobiles, such as IT products, hardware, and building materials. These comparable companies tend to be more asset intensive with longer receivable and inventory days due partly to the different level of market in which they operate (i.e., first-tier distributors selling to a second tier of independent dealers). Measuring baseline marketing and distribution returns using ROS for these potentially comparable companies without taking into account the major differences in working capital intensity will lead to significant distortions in the determination of Amount B for the related baseline marketing and distribution entities and will not deliver results that approximate the arm's length principle.

Similarly, Amount B needs to take account of changes in the business cycle and the economic impacts of supply and demand shocks that may affect the comparable benchmarks and related entities differently. For instance, economic crises such as those brought on by the current

COVID-19 pandemic have significant impacts on many industries and sectors, including companies that perform baseline marketing and distribution activities. If Amount B was in effect at present, it would not deliver a result in accordance with the arm's length principle for these entities. Pre-determined fixed returns would not capture the impact of COVID-19 on baseline marketing and distribution activities and would severely penalize integrated companies with related party distributors relative to companies dealing with unrelated distributors.

In addition, capturing regional differences by determining Amount B based on benchmark baseline marketing and distribution activities for each major region may not be sufficient to account for the impact of country-specific factors and firm profitability. Country-specific political and economic risks warrant a commensurate return that may be quite different from regional averages. For example, countries facing higher risks due to political, economic, social, and other developments can only attract investors when their returns compensate for the higher risk profile.

It is also unclear how responsive this approach will be to changes in business structures and operations, which are becoming increasingly flexible in response to changing market conditions and tax regimes. For example, relocation of a key function from a residual profit earning entity to an entity that is remunerated using Amount B could create issues in the implementation of Amount B. Moreover, many companies, especially the ones operating as ADS marketing and distribution entities, perform activities listed in both the positive and negative lists, making it difficult to delineate and segment the ones included in the positive list. In many cases, these activities are closely linked and cannot be valued separately, requiring a standalone transfer pricing analysis under the arm's length principle:

- Long-standing transfer pricing guidelines were designed based on a CFB two-party trading model with tangible goods and services.
- An ADS entity does not perform Marketing and Distribution activities in the same way as a CFB. ADS entities are primarily engaged in technical market research, negotiating and generating advertising revenues and acting as in-country liaison offices for regulatory/governance bodies.
- ADS entities do not manage "supply chains" in the same way as CFB entities do. Their functions, risks and assets need to be defined differently than what is listed in paragraphs 668 and 669.

How does one treat the very common situation when some of an MNE's activities fall into the positive list while others fall into the negative list? The future policy must provide clear guidance in its final form:

- Apply a Majority Rule > More than, for example, 75% of the MNE activities fall into the positive list or negative list would define the applicability of Amount B.
- When the MNE's activities fall equally into the positive and negative lists, apply the rebuttable presumption "rule" and include in Amount B but giving MNE's the burden of proof to show otherwise.

Thus, to summarize, we believe that broadening the scope of Amount B with respect to more limited functions/risk entities such as commissionaires and sales agents is constructive for both MNEs and tax authorities. However, broadening the scope of industries to all sectors and not having a well-defined and appropriate positive and negative list for the ADS marketing and distribution activities will generate more, not less controversy.

c) Do you consider that quantitative indicators or thresholds should be used when establishing whether or not entities are in the scope of Amount B? Why or why not, and if not what other factors should be considered? [Refers to paragraph 674-679 of the Blueprint]

Quantitative indicators or thresholds are needed if the objective is for Amount B to deliver a result that is consistent with the arm's length principle. One such important indicator for the distribution companies is the intensity of SG&A expenses. Certain sectors of the economy or distribution of certain products require higher SG&A expenses per dollar of sales.

Differences in the intensity of operating expenses between controlled and uncontrolled transactions can result in distortions in the arm's length profit. High levels of SG&A expenses in a distributor can be an indicator of significant sales and marketing activities that result in unique and valuable intangibles. Therefore, SG&A intensity relative to sales could be a good indicator of type and intensity of marketing and distribution functions. Two routine distributors with significantly different SG&A expense levels generally exhibit a different functional intensity. A company involved in baseline marketing and distribution activities with a SG&A/Sales ratio of 10% would be functionally quite different from a company involved in baseline marketing and distribution activities with a SG&A/sales ratio of 30%. Routine distributors with higher (lower) SG&A-to-sales ratios are found to generally earn higher (lower) ROS, reflecting the fact that profit margins are correlated with functions performed.[1]

Similarly, as discussed further below in the response to Question X, differences in capital intensity between controlled and uncontrolled transactions can also result in material distortions in the arm's length profit. These types of quantitative indicators should be computed on a rolling three- or five-year average basis to limit the impact of single-year changes in sales force or IT investments.

d) Do you consider that multifunctional entities (i.e. entities that perform baseline marketing and distribution and other activities) should be eligible for Amount B? [Refers to paragraph 680-684 of the Blueprint]

We are of the opinion that, in general, entities that perform baseline marketing and distribution and other activities should be eligible to apply Amount B so long as the financial results for the different activities can be segmented in an economically sound and reliable manner. This type of segmented financial information for related entities is unlikely to be publicly available

[1] D. Broomhall, "SG&A and Distributor Profits in Transfer Pricing," 16 Transfer Pricing Report 288, 8/9/07

in the audited financial statements. Segmented financial data that may be available for management reporting purposes, such as division or business segment reports or contribution margin analysis for product lines, may not be sufficiently detailed for this purpose and may need additional work or further refinement. For example, division or business segment results may allocate direct expenses only, leaving indirect or other corporate level relevant operating expenses at the entity level. This segmentation analysis would need to carefully examine the baseline marketing and distribution functions listed and identify all relevant revenue and expense items as well as balance sheet items if any of the other activities is valued using a balance-sheet based PLI and if comparability adjustments such as working capital as recommended in the response to question IX.b are implemented.

It may be relatively more straightforward to segment baseline marketing and distribution functions from other distinct functions and activities such as R&D, manufacturing, or back-office services. Segmenting baseline marketing and distribution activities listed in paragraph 668 from high value-added marketing and distribution activities that create marketing intangibles as defined in paragraph 669 is potentially more challenging. For example, activities related to development and maintenance of local customer relationships, which is listed as one of the baseline marketing and distribution activities and activities related to strategic sales and marketing functions in the local market, can be difficult to identify and quantify separately. Similarly, the dividing line between negotiating pricing within MNE's pricing guidelines, which is included as a baseline marketing and distribution activity, versus pricing and negotiation of pricing outside the parameters set by the MNE group, which is listed as an activity not intended to be covered in Amount B, can be less clear and difficult to distinguish in terms of associated expenses given that companies do not typically organize themselves as such. Pricing, whether it is in within the MNE's guidelines or outside of it, is typically handled by the same group or team.

As is true with all aspects of transfer pricing, segmentation of financial data is fact-driven, and there is no universal standard as to how to segment financial information, and thus, it will need to be evaluated on a case-by-case basis.

e) Do you consider that Amount B will be effective in reducing disputes? If not, why? [Refers to paragraph 664-673 of the Blueprint]

In principle, safe harbours should lead to a reduction in disputes relating to the characterization of the entity, the appropriate methods to use and the arm's length operating margin. We believe that the intent of Amount B in the Inclusive Framework does just that and would be welcomed by MNEs and tax authorities alike.

We also believe that there can be unwanted spill-overs and external side effects of safe harbours for distributor PLIs that when adopting the Inclusive Framework, must be thought through and addressed by broadening the scope in Amount B rather than fall to mandatory binding arbitration processes.

The spill-over effects that we anticipate include the following:

- Applicability of both the current positive and negative lists to ADS business models.

- Debate over what constitutes "at least sufficient activities" (Para. 667) for an entity to be considered a routine distributor, especially for ADS marketing entities.

- Differences in the ROS targets established in an APA and those under Amount B. While the Inclusive Framework has clearly stated that the APA terms will be respected and the renumeration will be grandfathered through the current term of the APA, the OECD must issue further guidance on how a renewal should be handled when there is no change in the MNE marketing and distribution operating model and Amount B is significantly different from the terms of the expiring APA.

- How would Amount B safe harbours be adjusted, amended or ignored by tax authorities that have already established guidelines or rules of thumb? For example, the Australian Tax Authority has published routine distribution ROS guidelines by industry and several other countries have "generally accepted" cost plus or ROS amounts applied in transfer pricing audits, MAPs, etc.

- In countries that currently have, or are on the verge of legislating a gross or net level digital tax, will Amount B still act as a safe harbour or will Amount B be irrelevant?

- Are the Amount B safe harbour rates relevant for tax valuation work, e.g., in computing routine returns for a valuation of intangible property?

- If the negative list in Amount B leads to a recharacterization of an entity from low or limited risk to high value-add/strategic entities, is the MNE liable for some form of business reorganization tax such as an exit tax?

- How will Amount B safe harbours interact with COVID-19 guidelines to provide clear guidelines for transfer pricing during a temporary business recovery period (for 2020 and potentially for 2021)?

While we do believe that Amount B will reduce disputes and lower compliance costs for MNEs and tax administrations, the indicative (not exhaustive) questions above must simultaneously be addressed with the finalization of the Blueprint.

3. Answers to Question X - The appropriate profit level indicator for calculating Amount B, and how it should be calculated assuming Amount B is based on a narrow scope

a) What the appropriate profit level indicator should be, for example whether a return on sales set at the (potentially adjusted) EBIT or PBT level should be used? [Refers to paragraphs 686-688 of the Blueprint]

Measuring the Amount B

In answering this question, we would like to begin with some remarks on how the Amount B may be quantified, in general sense.

The Blueprint proposes to use return on sales (ROS) to measure the Amount B [Para. 653]. While this metric may be the easiest one to apply, we are concerned that the results obtained using this profit level indicator may be inconsistent with the stated objective for the Amount B to be applied “in a manner that is aligned with the ALP” [Para. 650]. The reason for this concern is that revenue generated from sales to unrelated customers does not necessarily capture all possible levels of activities of a distributor in different industries. In our experience, activities of sales and distribution subsidiaries of multinational groups that are considered “normal” or “baseline” vary greatly among industries. Goods with high value per unit (e.g. commodities, machinery, vehicles) may require relatively low sales and marketing effort per dollar (or other currency equivalent) of sales, while products with low per-unit value may take proportionately higher sales and marketing effort (e.g., clothing, cosmetics). Consequently, if a uniform ROS indicator is applied to both sellers of “high-value/low effort” goods and “low-value/high effort” goods, it would, in relative terms, over-compensate the functions, assets, and risks (FAR) of the former group and under-compensate FAR of the latter.

As discussed in the response to Question IX above, differences in the intensity of operating expenses (i.e., the ratio of operating expenses to revenue) among the sales and distribution entities must be taken into account. In addition to the intensity of operating expenses, asset intensity of distributors (e.g., ratios of accounts receivable, inventories, and fixed assets per revenue) also varies greatly among industries and must be taken into account for comparability purposes.[2] Thus, our recommendation would be to quantify Amount B in the manner that accounts for differences in both the intensity of operating expenses and the intensity of assets across industries and/or geographical regions.

Further, quantifying the Amount B with the focus on the intensity of operating expenses and the intensity of assets enables covering entities that do not take the title to inventory (such as commissionaires and sales agents) in the scope of the Amount B. As pointed out above, inclusion of such entities into the scope of the Amount B would prevent a potential abuse.

[2] See, for example, Chandler, C. and Plotkin, I. “Economic Issues in Intercompany Transfer Pricing,” 2 Transfer Pricing Special Report 2, 10/20/93 and McClure, H. “Benchmarking the Appropriate Gross Margin for an Indian Trading Affiliate with TNMM—Part 1,” Bloomberg Tax, 11/09/20.

Commissionaires and sales agents would, presumably, have a lower intensity of assets per volume of sales than buy-sell distributors, and most of their remuneration is represented by the return on operating expenses. The benefit of the focus on the intensity of operating expenses and the intensity of assets is that the same factors would be considered as drivers of remuneration for both full-fledged distributors and commissionaires / sales agents, which provides a basis to include commissionaires and similar entities into the scope of the Amount B.***The Choice Between EBIT and PBT***

Given the choice between EBIT and PBT, we support only the former because EBIT, under normal circumstances, measures profits or losses related to the operating activities. However, even the metric such as EBIT should be approached with caution for transfer pricing purposes. In most accounting standards used around the world, one-time extraordinary expenses such as restructuring costs, write-downs of impaired assets, acquisition costs, are booked as part of operating expenses that affect the operating income. In addition, EBIT is impacted by the amount of depreciation and amortization expenses that can vary greatly from one company to the next. If EBIT is derived from the book operating income without adjusting for the effect of one-time extraordinary expenses or income, it would distort the results of an entity related to its operating activities. Thus, we would recommend excluding the impact of extraordinary expenses or income from consideration for the purpose of computing the profit under the Amount B.

Profit Before Tax (PBT) contains additional items that typically relate to the operating activities only indirectly, if at all. Examples of these items are interest revenue and expenses, gains and losses on sale of investments, foreign exchange gains and losses. Therefore, using PBT will further reduce reliability of measuring the return on FAR provided by sales and distribution entities.

b) Do you consider that Amount B should account for variation in returns to baseline marketing and distribution activities by industry and/or region? If yes, what industry and/or regional variations should be considered? Are there any other differentiation factors that should be considered? [Refers to paragraphs 690-693 of the Blueprint]

Profitability of independent sales and distribution companies varies substantially across industries and across geographical regions, particularly when measured by return on sales. Therefore, if the objective of Amount B is to be representative of the arm's length results, returns under the Amount B would be expected to vary as well.

As the discussion in the preceding section suggests, variability of the operating margin of distributors and sales agents is impacted by the variability in the intensity of operating expenses per dollar of sales (i.e., the ratio of operating expenses to sales), the asset intensity of sales (i.e., the ratio of distributor's tangible assets to sales), the returns on operating expenses, and the returns on tangible assets.

It is fully reasonable to expect that factors such as operating expenses per dollar of sales and the asset intensity of sales vary significantly among different industries. In addition, the rates of return on assets vary by geographical markets and through time due to differences in the ease of access to credit markets, interest rates, perceived market risk, level of inflation, tax rates etc. Therefore, in our view, the Amount B has to accommodate variability of returns across industries, geographical markets, and, possibly, incorporate guidance for making adjustments to these returns for unforeseeable economic events, such as a global financial crisis, pandemic, and other events that are outside of multinational enterprises' control.

As a practical matter, accounting for the differences in the intensities of operating expenses and tangible assets does not prevent expressing the Amount B in the form of return on sales, however, instead of a single number, the Amount B may need to be expressed as a set of numbers applicable to specific industries and geographies (e.g., a table).

Quantification of the Amount B linked to the return on operating expenses and, in some cases return on tangible assets, would not be significantly harder to perform compared to the return on sales approach. The returns on operating expenses and, to some extent returns on assets are relatively straightforward to benchmark using market evidence. We are well aware of the challenges associated with identifying independent comparables for certain industries and in certain areas of the world. Nonetheless, we believe that workable approaches are available to deal with these challenges. For example, these approaches may take a form of adjustments to the results of the independent comparables sourced from a different geographical market to the economic conditions of the given geographical market.[3]

[3] See: *Bloomberg BNA - Transfer Pricing International Journal*, 2014. Comparability Adjustments in the Absence of Suitable Local Comparables in Emerging and Developing Economies. (Special Issue).