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# Multinationals Must Conduct Due Diligence on Amount B Approach

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- *Skadden attorneys assess Treasury notice on OECD guidance*
- *Companies must balance compliance burdens with simplicity*

The Treasury Department's recent notice on the OECD's Amount B guidance aims to ease compliance burdens and enhance tax certainty for taxpayers. Multinational enterprises should still carefully assess their specific circumstances and weigh the potential benefits and drawbacks before implementing this approach.

Notice 2025-04 signals plans to issue proposed regulations under Section 482 of the tax code to implement the simplified and streamlined approach for pricing certain controlled transactions involving baseline marketing and distribution activities. US taxpayers within scope can choose to apply this framework, which is in line with the Amount B guidelines, starting Jan. 1, 2025.

**Scope and eligibility.** The streamlined method may not be suitable for transactions involving complex or highly nuanced business models because it isn't appropriate for all intercompany transactions. For instance, it isn't suitable for arrangements involving intangible assets or specialized services, which generally require a more detailed transfer pricing analysis.

Additionally, while the IRS may approve a taxpayer's eligibility for this method, other tax authorities may still reject the application. It's crucial to thoroughly understand the requirements of this method and ensure it is applied correctly.

Clearly defining the qualifying transaction based on the functions performed, assets used, and risks assumed by the parties involved—similar to a traditional transfer pricing analysis—is essential. A qualifying transaction must also demonstrate economically relevant characteristics that make it suitable for pricing using a one-sided transfer pricing method.

In such cases, the distributor, sales agent, or commissionaire would be the tested party—the party in the related-party transaction whose financial results are evaluated against arm's-length standards. Additionally, the tested party's annual operating expenses should fall within a specified range as indicated in the OECD's Amount B rules.

**Applicability across jurisdictions.** While the simplified method will be available in the US, not all jurisdictions are on board. Notably, major countries such as India have raised concerns about the incomplete nature of Amount B.

As a result, MNEs may find themselves in situations where they must comply with both the simplified approach and the traditional arm's-length principle in jurisdictions that haven't adopted these rules. This can make compliance more administratively difficult for taxpayers.

These discrepancies may also expose MNEs to the risk of double taxation, as different tax authorities may assess the same transactions using different methodologies. In some instances, the typically reliable mutual agreement procedure may present challenges as well, as treaty partners may opt to reject the simplified analysis if these rules aren't enforced within their jurisdiction.

To address this, MNEs should perform thorough jurisdictional due diligence to ensure that the simplified approach is permitted—and that it aligns with local regulations in regions where they have significant operations.

**Compliance.** MNEs must balance between the simplicity of this approach and the need to substantiate their intercompany pricing in the event of an audit. Although documentation requirements may be less rigorous under the simplified method, it remains essential to keep adequate records and files to support all transfer pricing analysis globally—not just in the US.

MNEs should consider whether it is necessary to prepare separate documentation based on traditional arm's-length principles for jurisdictions that may not recognize the simplified approach.

While adopting the simplified method in the US is a positive step, MNEs should mitigate potential risks by performing comprehensive due diligence, including consulting with transfer pricing experts for guidance.

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