

May 20, 2022

VIA Electronic Mail tfde@oecd.org

Tax Treaties, Transfer Pricing and Financial Transactions Division

OECD/CTPA

To: Transfer Pricing and Financial Transactions Division OECD/CTPA

The Electronic Transactions Association (ETA) provides these comments in response to the OECD Public Consultation Document on Pillar One – Amount A: Regulated Financial Services (RFS) Exclusion, released May 6, 2022.

It is our hope that these comments will assist the Task Force on the Digital Economy (TFDE) in understanding the significant concerns of ETA members, including leading financial institutions, global payment networks, and the broader fintech industry.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. Its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. ETA advocates for the payments industry to help drive innovation in the global market for payments technology services.

Distortive Concerns with Proposed RFS Exclusion

ETA members are concerned that the definition of regulated financial services institutions reflects an inappropriately narrow exclusion from Pillar One, especially in the rapidly evolving payments sector. While the RFI definitions appropriately cover many financial services businesses, the definitions could result in differential treatment for other similarly situated financial services businesses, or for the income and profits from financial services activities carried on by different types of financial services businesses, without furthering the policy objectives of Pillar One. With this in mind, the OECD should consider the extent to which differential treatment of similar financial services business or activities could lead to competitive distortions, and to review the impact of the RFS Exclusion rules on the conduct of these activities two years following the implementation of the Amount A rules.

Multilateral Approach

ETA and its members favor a multilateral solution to the tax challenges arising from the digitalization of the economy. We are encouraged by the TFDE consultations on proposals designed to implement the G7 and G20 leaders' agreement on the parameters of a broader international framework-specifically, its commitment to ensure "appropriate coordination

between the application of the new international tax rules and the removal of all Digital Services Taxes, and other relevant similar measures, on all companies”.

We believe that the RFS Exclusion is best achieved through ensuring that there is a level playing field for all regulated financial services businesses that are inextricably linked to the core authorization, clearing and settlement operations of a financial institution that would be exempt, such as electronic payment services.

This approach to Pillar One would be consistent with regulatory authorities and frameworks that recognize payment services as a subsector of financial services, which include the World Trade Organization under the General Agreement on Trade in Services,¹ and the Bank of International Settlements in its recommended treatment by financial regulators with respect to oversight and regulation of financial services.²

This would also be consistent with exclusions for payment services provided in many countries’ digital services taxes (DSTs), which Pillar One is designed to replace. While we agree that it is desirable to find a multilateral solution that prevents the continued proliferation of digital services tax measures, we appreciate that these measures have generally recognized that providers of payment services should be exempt. Since 2018, many countries with DST legislation and Member States of the European Parliament and Council of the European Union have excluded financial service providers from their DSTs given the business model’s similarity and inter-dependence to telecommunications and the banking sectors. We recommend a similar scope for the RFS Exclusion.

For example, the European Commission justified the exclusion of payment service providers to DSTs in its detailed explanatory memorandum to Member States:

“[t]he value creation for such other services, which can be generally defined as communication or payment services, lies with the development and sale of support software which enables that interaction to take place, and it is less attached to the users’ involvement. Therefore, communication or payment services remain outside the scope of the tax...”

ETA submits that Pillar One should include a similar definitive exemption excluding payment service providers.

Conclusion

ETA thanks you for the opportunity to submit these comments and looks forward to providing whatever additional information we can provide to inform policymakers’ deliberations to implement a multilateral tax system.

Respectfully submitted,



¹ WTO Panel Report, *China—Certain Measures Affecting Electronic Payment Services*, WTO Doc. WT/DS413/R (adopted July 16, 2012), paras 7.58-7.59.

² [Bank for International Settlements, *Principles for Financial Market Infrastructures* (2012)].



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