

Statement on the definitions of qualifying jurisdiction within the meaning of section 5.2 and section 5.3 of the simplified and streamlined approach

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1. Introduction

1. The report on Amount B, which provides a simplified and streamlined approach for baseline marketing and distribution activities, was approved and published by the Inclusive Framework on 19 February 2024 and incorporated as an Annex to Chapter IV of the OECD Transfer Pricing Guidelines.

2. The report was published pending completion of further work on outstanding administrative aspects of the guidance, including the definitions of qualifying jurisdiction within the meaning of Section 5.2 and Section 5.3 of the guidance.

2. Definition of qualifying jurisdiction for Section 5.2 (Operating expense cross-check)

3. For the purposes of the simplified and streamlined approach, an operating expense cross-check is applied as a guardrail within which the primary return on sales net profit indicator is applied. The mechanism provides for the application of default cap rates and alternative cap rates, with the latter being applicable where the tested party is located in a qualifying jurisdiction.

4. Analysis suggests that adjustments arising from the operating expense cross-check may occur more frequently for distributors in lower income jurisdictions compared with higher income jurisdictions. Some IF members believe that result is inappropriate and inequitable, while others believe it reflects an economically rational outcome from the operation of the operating expense cross-check. To accommodate both views, a compromise was reached whereby a second, higher set of operating expense cap rates, will apply in cases involving “qualifying jurisdictions.”

5. Some IF members accepted the compromise under the rationale that a higher frequency of adjustments arising from the operating expense cross-check results in an inequitable use of operating expenses in the design of the guardrail, whereas other IF members accepted the compromise under the rationale that a higher frequency of adjustments would place a greater burden on low-capacity jurisdictions in having to administer the guardrail. On this basis, “no inference” language has been included in the definition and reflects the fact that the inclusion of alternative cap rates in the design of the guardrail should not be construed as implying that the operating expense cross-check would (in the absence of the alternative cap rates) appropriately or inappropriately apply to lower income jurisdictions due either to lower operating expenses in such countries as compared with higher income jurisdictions or due to lower capacity in such countries as compared with higher income jurisdictions.

6. However, both groups of IF members agreed that “qualifying jurisdiction” is not defined by reference to low capacity.

Text to be inserted to replace the existing placeholder definition in the Definitions section of the guidance in the Annex to Chapter IV of the OECD Transfer Pricing Guidelines:

“Qualifying jurisdiction(s) within the meaning of Section 5.2 refers to jurisdictions that are classified by the World Bank Group as low income, lower-middle income, and upper-middle income based on the latest available ‘World Bank Group country classifications by income level’. The list of qualifying jurisdictions for Section 5.2 purposes will be fixed prospectively, published and updated every 5 years on the OECD website. In accordance with paragraph 43 of this guidance, no inference should be drawn from the inclusion of alternative cap rates for qualifying jurisdictions within the meaning of the operating expense cross-check nor from the inclusion in (or exclusion from) that list of any jurisdiction.”

List of Qualifying Jurisdictions within the meaning of section 5.2 (Operating expense cross-check) – June 2024

- Afghanistan
- Albania
- Algeria
- Angola
- Argentina
- Armenia
- Azerbaijan
- Bangladesh
- Belarus
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia and Herzegovina
- Botswana
- Brazil
- Bulgaria
- Burkina Faso
- Burundi
- Cabo Verde
- Cambodia
- Cameroon
- Central African Republic
- Chad
- China
- Colombia
- Comoros
- Congo
- Costa Rica
- Côte d'Ivoire
- Cuba
- Democratic Republic of the Congo
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Eswatini
- Ethiopia
- Fiji
- Gabon
- Gambia
- Georgia
- Ghana
- Grenada
- Guatemala
- Guinea
- Guinea-Bissau
- Haiti
- Honduras
- India
- Indonesia
- Iraq
- Jamaica
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kyrgyzstan
- Lao People's Democratic Republic
- Lebanon
- Lesotho
- Liberia
- Libya
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Moldova
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nepal
- Nicaragua
- Niger
- Nigeria
- North Macedonia
- Pakistan
- Palau
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Rwanda
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- Sao Tome and Principe
- Senegal
- Serbia
- Sierra Leone
- Solomon Islands
- Somalia
- South Africa
- South Sudan
- Sri Lanka
- Sudan
- Suriname
- Syrian Arab Republic
- Tajikistan
- Tanzania
- Thailand
- Timor-Leste
- Togo
- Tonga
- Tunisia
- Türkiye
- Turkmenistan
- Tuvalu
- Uganda
- Ukraine
- Uzbekistan
- Vanuatu
- Venezuela
- Viet Nam
- West Bank and Gaza Strip
- Yemen
- Zambia
- Zimbabwe

The list of qualifying jurisdictions does not imply that the aforementioned jurisdictions are obligated to adopt or will adopt the simplified and streamlined approach.

3. Definition of qualifying jurisdiction for Section 5.3 (Data availability mechanism)

7. The data availability mechanism provides for upward adjustments to the returns otherwise derived from the pricing matrix in certain circumstances. The mechanism is intended to account for cases where there is no or insufficient data in the global dataset for a particular tested party jurisdiction upon which to validate the appropriateness of the Amount B pricing matrix coupled with evidence that that jurisdiction could be reasonably considered a 'higher risk' jurisdiction. Sovereign credit ratings are used as a proxy to determine 'higher risk' jurisdictions and to quantify the applicable adjustment under the mechanism.

Text to be inserted to replace the existing placeholder definition in the Definitions section of the guidance in the Annex to Chapter IV of the OECD Transfer Pricing Guidelines:

“Qualifying jurisdiction(s) within the meaning of Section 5.3 refers to jurisdictions¹ with (i) a publicly available long term sovereign credit rating² of BBB+ (or equivalent) or lower from a recognized independent credit rating agency, and (ii) less than 5 comparables in the global dataset. The list of qualifying jurisdictions for Section 5.3 purposes will be fixed prospectively, published and updated every 5 years on the OECD website. In accordance with paragraph 43 of this guidance, no inference should be drawn from the inclusion or exclusion of any jurisdiction from the list of qualifying jurisdictions beyond its relevance to the mechanics in section 5.3 of the simplified and streamlined approach.”

¹ Excluding EU member countries.

² A jurisdiction without a long-term sovereign credit rating from a recognized independent credit rating agency and with less than 5 comparables in the global dataset will nevertheless be regarded as a qualifying jurisdiction if it is classified by the World Bank Group as low income, lower-middle income or upper-middle income based on the 'World Bank Group country classifications by income level'.

List of Qualifying Jurisdictions within the meaning of section 5.3 (Data availability mechanism) – June 2024

- Afghanistan
- Albania
- Algeria
- Andorra
- Angola
- Argentina
- Armenia
- Azerbaijan
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belize
- Benin
- Bhutan
- Bolivia
- Botswana
- Brazil
- Burkina Faso
- Burundi
- Cabo Verde
- Cambodia
- Cameroon
- Central African Republic
- Chad
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Cuba
- Curaçao
- Democratic Republic of the Congo
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Eswatini
- Ethiopia
- Fiji
- Gabon
- Gambia
- Georgia
- Ghana
- Grenada
- Guatemala
- Guinea
- Guinea-Bissau
- Haiti
- Honduras
- Indonesia
- Iraq
- Jamaica
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kyrgyzstan
- Lao People's Democratic Republic
- Lebanon
- Lesotho
- Liberia
- Libya
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Moldova
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nepal
- Nicaragua
- Niger
- Nigeria
- North Macedonia
- Oman
- Pakistan
- Palau
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Rwanda
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- Sao Tome and Principe
- Senegal
- Seychelles
- Sierra Leone
- Solomon Islands
- Somalia
- South Africa
- South Sudan
- Sri Lanka
- Sudan
- Suriname
- Syrian Arab Republic
- Tajikistan
- Tanzania
- Timor-Leste
- Togo
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Uruguay
- Uzbekistan
- Vanuatu
- Venezuela
- West Bank and Gaza Strip
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