

12<sup>TH</sup> ANNUAL NABE

# TRANSFER PRICING SYMPOSIUM

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**NABE**  
National Association for Business Economics

## Pillar One Amount A: Slippery Slope to Formulary Apportionment *Panel Discussion*

## Panelists



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# Introduction

- Focus: interaction between Amount A and Article 9, which has been the historical standard of “fairness” in taxation.
  - *Key question: does Amount A weaken the Arm’s Length Principle?*
  - *Are we on a slippery slope towards formulary apportionment?*
- Amount B will also be discussed as it relates to the interaction between Amount A and Article 9
- *Disclaimer:* Views expressed by panelists from advisory and law firms are their own and not those of the organizations for which they work. One of our panelists represents Johnson & Johnson and has been authorized to address certain aspects of Amount A and not others. We will all be respectful of these limitations.

## TOPIC 1: Allocation of Amount A

- Amount A allocation is predicated on the ratio of the revenue sourced by an MNE in a market to the total revenue of the MNE.
  - Designed to source revenue to markets in which an MNE may not have a physical presence.
- Safe-harbor marketing and distribution cap on Amount A is then used to limit Amount A's entitlement in markets in which the MNE already has a physical presence.

## TOPIC 2: Funding of Amount A

- Amount A re-allocates taxing rights, but not taxable basis. Jurisdictions funding Amount A must have the ability to pay.
  - This implies that the “fairer” party to pay is whichever party has the most profit relative to some basis.
  - Entities that make risky investments with delayed returns could end up funding those which have costs and revenue in the same year, which may adversely affect research and development.

## TOPIC 3: Co-Existence of Pillar One and Article 9

- Amount B will provide a minimum guaranteed profit margin to limited-risk distributors and a marketing and distribution cap may limit these distributors' entitlement to Amount A.
  - This framework must co-exist with Article 9.
- It is unclear whether Amount B is consistent with Article 9.

## **TOPIC 4: Potential Revisions to Article 9 or the OECD TP Guidelines**

- In the wake of BEPS, many countries and tax administrations pushed the use of global profit splits.
- Could Article 9 have been amended to achieve the results of Amount A?

## Final Thoughts