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2020 Review of BEPS Action 14 Minimim Standard

Unilever thanks the OECD for the opportunity to submit comments on the 2020 Review of the BEPS Action 14 Minimum Standard. In our experience as a multinational group operating in over 100 countries worldwide, it is critical that double taxation is minimised. In a world of increasing cross-border taxation disputes, the effectiveness (or otherwise) of dispute resolution mechanisms only grows in significance.

In this respect, we are highly supportive of the Action 14 concept and programme, however in the spirit of continuous improvement we offer constructive comments on where this Action might be further enhanced. We understand that Business in Europe submitted a response dated 11 January 2021 and we write in overall support of that submission. In addition, we highlight certain aspects of those comments.

Inapproprate restrictions on access to MAP

Despite contrary intentions in the Action 14 Minimum Standards, we continue to experience instances where audit settlement on cross border issues is conditional on the taxpayer waiving its right to pursue MAP. It cannot be conceptually right for a tax authority to deny access to valid, internationally recognised, dispute resolution mechanisms in this way, and we support stronger action by the OECD to prevent such instances.

Importance of functional separation

While we recognise the resource efficiencies in having a close connection between the tax audit team and the competent authority, there needs to be a meaningful separation between these two functions. Failure to do so constrains the competent authority in their work and prevents independent negotiation between the two competent authorities.

However, we see merit in enabling competent authority teams to engage earlier on in the audit process, in instances where is it clear that MAP will result from the audit outcome. Removing requirements for domestic audits to be completed in full before MAP proceedings can begin would accelerate the MAP process, resulting in efficient resource deployment as well as reducing the interest burden on taxpayers (as a result of interest on tax payable accruing through consecutive rather than concurrent audit and MAP processes).

Resources required for MAP

As we see the incidence of cross border taxation disputes increase, and with little prospect of reduction in such disputes, it becomes increasingly important to ensure that tax authorities are properly resourced for MAP, both in terms of technical capability and headcount. Resource could be more efficiently deployed if MAP information requests were standardised at an international level, and if efforts to adopt a more collaborative approach between competent authorities were regarded as best practice, particularly in the context of fact finding and engagement with the taxpayer.

Conversion of MAPs to APAs

Again, in the spirit of efficient resource deployment, there is considerable benefit to both tax authority and taxpayer in facilitating the conversion of MAP to APA. We hope for recognition that this represents best practice where the issue at stake remains extant.

We reiterate our support for Action 14, and look forward to continued engagement on this matter.

Yours sincerely

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