

PUBLIC CONSULTATION DOCUMENT

# Pillar One – Amount A: Draft Model Rules for Domestic Legislation on Scope

4 April - 18 April 2022



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# Background

## **Introduction**

Following years of intensive negotiations to update and fundamentally reform international tax rules, 137 members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) joined the [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#) (the Statement) released in October 2021. The Statement sets out the political agreement on the key components of Pillar One and Pillar Two.

Amount A of Pillar One has been developed as part of the solution for addressing the tax challenges arising from the digitalisation of the economy. It introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located (hereafter, “market jurisdictions”).

The Inclusive Framework has mandated the Task Force on the Digital Economy (TFDE) – a subsidiary body – to advance the work needed to implement Amount A. In particular, the TFDE has been charged with developing the Multilateral Convention (MLC) and its Explanatory Statement as well as the Model Rules for Domestic Legislation (Model Rules) and related Commentary through which Amount A will be implemented.

## **Model Rules**

The Model Rules, once finalised, will reflect the substantive agreement of the members of the Inclusive Framework on the functioning of Amount A and will serve as the basis for the substantive provisions that will be included in the MLC. The Model Rules are also being developed to provide a template that jurisdictions could use as the basis to give effect to the new taxing rights over Amount A in their domestic legislation. They will be supported by a commentary. Jurisdictions will be free to adapt these Model Rules to reflect their own constitutional law, legal systems, and domestic considerations and practices for structure and wording of legislation as required, whilst ensuring implementation is consistent in substance with the agreed technical provisions governing the application of the new taxing rights.

The Model Rules will cover all aspects of Amount A that would be translated into domestic law. They will consist of different titles. This document contains the section on Scope (currently Title 2), as well as relevant definitions (currently included in Title 9). The Model Rules for Scope and the relevant definitions will be translated into the MLC and Explanatory Statement.

The schedules for the Extractives Exclusion and the Exclusion for Regulated Financial Services are not contained in this document, and will be released for public consultation later as standalone documents. Further, the schedule containing the provisions governing the application of Amount A to a disclosed segment will be released at a later date.

## **Model Rules on Scope**

The Model Rules on Scope determine when a Group will be in scope of Amount A and subject to the detailed provisions contained within the Model Rules. The scope rules are designed to ensure Amount A only applies to large and highly profitable Groups and, as far as possible, have been drafted to apply in a quantitative and objective manner, such that they are readily administrable and provide certainty as to whether a taxpayer is within scope.

The Model Rules on Scope apply at the level of a Group, in accordance with the general design of Amount A. The concept of a Group is specifically prescribed for Amount A purposes and, broadly, is

defined by reference to an Ultimate Parent Entity (UPE) that is set at a level where Consolidated Financial Statements are commonly prepared under financial accounting standards. The Model Rules include a small number of exceptions which provide that certain Entities cannot be a UPE and these rules apply in limited circumstances to ensure a standardised approach to define a UPE. Further, the Model Rules include an anti-abuse provision that will apply as a deterrent to prevent a Group that is held under certain types of entities from being artificially fragmented into numerous Groups in order to circumvent the scope rules.

A Group will be in scope of Amount A where it meets two threshold tests. The two tests are simple in concept and provide, firstly, that the Group's Total Revenues must exceed an absolute amount of EUR 20 billion (or equivalent) in a Period<sup>1</sup> and, secondly, the Group's relative profitability as measured against its Total Revenues must exceed 10%.

Additionally, the Model Rules provide that a Group's profitability must exceed the 10% threshold in at least two of the four prior Periods (referred to as "the prior period test"), following the general design of the GLoBE rules, and on average across those four prior Periods and the current Period (referred to as "the average test"). These rules seek to deliver neutrality and stability to the operation of Amount A, and ensure Groups with volatile profitability are not inappropriately brought into scope, which limits the compliance burden placed on taxpayers and tax authorities. The application of the prior period test and the average test are appropriately modified where a Group undertakes a business reorganisation. While these tests are presented in this manner in the public consultation document, commentators should note that this does not reflect the final or consensus views of the Inclusive Framework and that the TFDE is currently exploring a number of open questions in this area of the Amount A design, including the following two open issues:

- whether the Total Revenues of a Group should be subject to equivalent rules as the prior period test and the average test (which apply to profitability); and
- whether the prior period test and the average test should apply, as currently drafted, as a permanent feature of the scope rules or, alternatively, apply as an "entry test" only. Under the latter option, once a Group falls in scope of Amount A for the first time, the prior period test and average test would no longer apply, and thereafter only the Total Revenues and profitability of the Group in the current Period would determine whether the Group is in scope.

The Model Rules include a placeholder for exceptional scoping provisions which may apply to a disclosed segment as reported in a Group's Consolidated Financial Statements. These rules will operate in limited circumstances to bring a disclosed segment in scope of Amount A where the disclosed segment meets the revenue and profitability thresholds, discussed above, on a standalone basis, but the Group as a whole does not. The detailed provisions governing the application of Amount A to a disclosed segment will be provided in a separate schedule and this will be released at a later date.

Finally, consistent with the Statement, two targeted exclusions are provided under the draft Model Rules: for Extractives and Regulated Financial Services. Schedule F will contain the detailed provisions governing the operation of the Extractives Exclusion and Schedule G will contain the detailed provisions governing the operation of the Exclusion for Regulated Financial Services. These provisions will be released for public consultation at a later date.

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<sup>1</sup> The revenue threshold will be reduced to EUR 10 billion, contingent on successful implementation including of tax certainty on Amount A, with the relevant review beginning 7 years after the agreement comes into force, and the review being completed in no more than one year.

**Public consultation instructions**

This is a working document released by the OECD Secretariat for the purposes of obtaining input from stakeholders. It does not reflect the final views of the Inclusive Framework members. It presents the work undertaken to date, which has reached a sufficient level of detail and stability such that it is now suitable for consultation. The TFDE has agreed that this working version can be released on the basis that it is without prejudice to the final agreement. As such, while the rules are intended to illustrate the framework for scope, further changes may be made. Thus, the release of this document reflects consensus within the TFDE as a procedural matter that public comments should be sought at this time, but does not reflect consensus within the TFDE regarding the substance of the document.

Comments are sought with respect to the rules in this document. Where relevant, input should refer to the relevant section of the rules. While comments are invited on any aspect of the rules, input will be most helpful where it explains the additional guidance that would be needed to apply the rules to the circumstances of a particular type of business, as well as input on whether anything is missing or incomplete in the rules.

Interested parties are invited to send their comments on this discussion draft no later than 18 April, 2022. These comments will be examined at the following meeting of the TFDE.

Comments on this discussion draft should be sent electronically (in Word format) by email to [tfde@oecd.org](mailto:tfde@oecd.org) and may be addressed to: Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA.

Please note that all written comments received will be made publicly available on the OECD website. Comments submitted in the name of a collective “grouping” or “coalition”, or by any person submitting comments on behalf of another person or group of persons, should identify all enterprises or individuals who are members of that collective group, or the person(s) on whose behalf the commentator(s) are acting.

# General Articles

## Title 2: Scope

### Article 1: Covered Group

1. The obligations contained in Titles 3 to 9 of this Act apply to any Group Entity of a Covered Group with respect to a Period [beginning][or][ending] on or after the Commencement Date.<sup>2</sup>
2. A Group is a “Covered Group” for a Period where both sub-paragraphs (a) and (b) are met:
  - a. The Total Revenues of the Group for the Period<sup>3</sup> are greater than EUR 20 billion<sup>4</sup> (*the global revenue test*). Where the Period is shorter or longer than twelve months, the EUR 20 billion amount is adjusted proportionally to correspond with the length of the Period.
  - b. The Pre-Tax Profit Margin of the Group is greater than 10 per cent (*the profitability test*):
    - i. in the Period (*the period test*);
    - ii. in two or more of the four Periods immediately preceding the Period (*the prior period test*); and
    - iii. on Average across the Period and the four Periods immediately preceding the Period (*the average test*).<sup>5</sup>

<sup>2</sup> The Commentary will clarify that while the application of the Act is limited in scope to enterprises that meet the definition of a Group and other conditions set out in the Act, the legal obligations contained in the Act will apply to the members of that Group that meet the definition of Group Entity. Titles 3 to 9 refer to the operative provisions of the Act that will apply to Group Entities part of a Group that is in scope of Amount A.

<sup>3</sup> As currently drafted, paragraph 2(a) solely requires that the Total Revenues of the Group are greater than EUR 20 billion in the current Period. However, this is an open issue and discussions at the TFDE are ongoing with regard to whether rules equivalent to the prior period test and the average test in paragraph 2(b) are also required in respect of Total Revenues.

<sup>4</sup> The revenue threshold is currently denominated in a single currency in line with the Statement. This raises a number of coordination issues related to currency fluctuations which are currently being discussed at the TFDE.

<sup>5</sup> As currently drafted, paragraph 2(b) requires that the prior period test and the average test are applied permanently on a rolling basis. However, this is an open issue and discussions at the TFDE are ongoing with regard to whether these tests could, alternatively, apply solely as an “entry test” in situations where a Group has not previously met the scope thresholds but, once met, the prior period test and the average test would no longer apply to that Group in later Periods. This alternative would reduce the instances where the average calculations apply, and prevent a Group that

3. For the purpose of sub-paragraphs (b)(ii) and (b)(iii) of paragraph 2<sup>6</sup>:
  - a. where a Group Merger occurs in the Period or any of the three Periods immediately preceding the Period (the “Merger Period”) the calculation of the Pre-Tax Profit Margin for the Period(s) prior to the Merger Period should be made by replacing “Group” in that definition with “Acquiring Group”, except where there is no “Acquiring Group” in which case “Group” is replaced with “Existing Group”; and
  - b. where a Group Demerger occurs in the Period or any of the three Periods immediately preceding the Period (the “Demerger Period”) the calculation of the Pre-Tax Profit Margin for the Period(s) prior to the Demerger Period should be made by replacing “Group” in that definition with “Demerging Group”.
4. Where a Group meets the conditions in sub-paragraphs (a) and (b) of paragraph 2 and conducts Extractive Activities or Regulated Financial Services, the Group is a Covered Group only if it meets the non-excluded global revenue test and non-excluded profitability test contained in Schedules [F] (*Exclusion of Revenues and Profits from Extractives*) and [G] (*Exclusion of Revenues and Profits from Regulated Financial Services*) of this Act, whichever applies, and any Group Entity of such Covered Group is subject to the obligations contained in Schedules [F] and [G]<sup>7</sup>, whichever applies.
5. Where the UPE of a Fragmented Group is owned directly or indirectly by an Excluded Entity, an Investment Fund or a Real Estate Investment Vehicle that has a Controlling Interest and the Group has Total Revenues of EUR 20 billion or less in a Period, the global revenue test in sub-paragraph (a) of paragraph 2 is deemed to be met in that Period if (*the anti-fragmentation rule*):<sup>8</sup>
  - a. the Group meets the profitability test in sub-paragraph (b) of paragraph 2 in the Period;

is ordinarily profitable and meets the profitability test from incurring extraordinary losses in one year and, as a result, being scoped out for multiple periods based on its average profitability.

<sup>6</sup> Commentaries will elaborate on the practical application of the prior period test and the average test in the case of either a Group Merger or Group Demerger. Broadly, the rules are designed such that the financial data from existing Consolidated Financial Statements is utilised rather than requiring retrospective recalculation of financial data for Amount A purposes where a Group Merger or Group Demerger occurs.

<sup>7</sup> The Extractives Exclusion excludes revenues and profits derived from Extractive Activities from the scope of Amount A. The Exclusion for Regulated Financial Services excludes revenues and profits derived from such regulated activities from the scope of Amount A. This means that the global revenue test and profitability test are re-applied to a Group after the removal of the excluded revenues and profits, as provided in Schedules F and G. If, after the reapplication of those tests, the Group is below either threshold, it is not in scope of Amount A.

<sup>8</sup> The anti-fragmentation rule is a targeted deterrent and anti-abuse rule aimed at countering potential planning opportunities that would otherwise be available to circumvent the global revenue test. It applies only where the UPE of a Group is controlled by an Excluded Entity, Investment Fund or Real Estate Investment Vehicle, where an incentive may exist for a Group to artificially bifurcate its holding structure (possibly more than once) in order to inappropriately create more than one Entity that meets the definition of UPE for Amount A purposes. Discussions are ongoing at the TFDE on the different conditions contained in this rule (including administration), and Commentaries will elaborate on its practical application.

- b. the sum of the Total Revenues of the Group and the other Fragmented Groups resulting from the same Internal Fragmentation<sup>9</sup> for the Period is greater than EUR 20 billion; and
  - c. it is reasonable to conclude, having regard to all relevant facts and circumstances, that failing the global revenue test in sub-paragraph (a) of paragraph 2 was one of the principal purposes of the Internal Fragmentation referred to in sub-paragraph (b).<sup>10</sup>
6. [Placeholder: This paragraph will provide the exceptional scope rules for determining when a disclosed segment reported in a Group's Consolidated Financial Statements is in scope of Amount A. Such circumstances will include a case where a disclosed segment meets the global revenue test and profitability test in paragraph 2 but, the Group, as a whole, meets the global revenue test only and fails the profitability test. The paragraph will cross-reference Schedule [E] (*Covered Segment*) which will contain the operative rules for applying Amount A to a disclosed segment.]
7. Where the UPE of a Group does not prepare Consolidated Financial Statements in accordance with a Qualifying Financial Accounting Standard, it must produce Consolidated Financial Statements, for the purposes of this Act, that would have been prepared if it had been required to prepare such statements in accordance with a Qualifying Financial Accounting Standard.<sup>11</sup>

## Title 9: Definitions

The definitions included in this Title apply for the purposes of this Act and its Schedules, unless explicitly stated otherwise.

### *Group and related definitions*

<sup>9</sup> The effect of sub-paragraph (b) of paragraph 5 is that the Total Revenues of all Groups that have been fragmented while remaining under the common control of the same Excluded Entity, Investment Fund or Real Estate Investment Vehicle are aggregated for applying the EUR 20 billion threshold. Where a restructuring occurs under the level of an Excluded Entity, Investment Fund or Real Estate Investment Vehicle that does not meet the definition of an Internal Fragmentation, the anti-fragmentation rule cannot apply.

<sup>10</sup> Commentaries will elaborate on the practical application of the principal purpose test, including through examples and guidance on the relevant facts and circumstances that would be relevant to the determination of whether failing the global revenue test was a principal purpose of the Internal Fragmentation.

<sup>11</sup> The intention of the rule in this paragraph is to require Groups that are close to meeting the scope thresholds to prepare Consolidated Financial Statements in accordance with a Qualifying Financial Accounting Standard to ensure that the operation of Amount A is based on consistent financial information. However, this rule may need further refining in order to ensure that it does not impose a disproportionate administrative burden on Groups that will clearly not come close to meeting the scope thresholds. Such a revision may include introducing a materiality threshold. Input from stakeholders is welcomed on the most appropriate approach to be adopted.



“Entity” means any legal person (other than a natural person) or an arrangement, including but not limited to a partnership or trust, that prepares, or is required to prepare, separate financial accounts.<sup>12</sup>

“Excluded Entity” means:<sup>13</sup>

- a. an Entity that is:
  - i. a Governmental Entity;
  - ii. an International Organisation;
  - iii. a Non-profit Organisation;
  - iv. a Pension Fund;
  - v. an Investment Fund that satisfies sub-paragraphs (a)(i) and (a)(ii) of the definition of UPE; or
  - vi. a Real Estate Investment Vehicle that satisfies sub-paragraphs (a)(i) and (a)(ii) of the definition of UPE.
- b. an Entity where at least 95% of the value of the Entity is owned (directly or through a chain of Excluded Entities) by one or more Excluded Entities referred to in sub-paragraphs (a)(i) through (vi) (other than a Pension Services Entity), and where that Entity:<sup>14</sup>
  - i. operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entity or Entities, or
  - ii. only carries out activities that are ancillary to those carried out by the Excluded Entity or Entities.

“Group Entity” means any Entity, other than an Excluded Entity, whose assets, liabilities, income, expenses and cash flows are, or would be, included in the Consolidated Financial Statements of a UPE.

“Group” means:

<sup>12</sup> Commentaries will clarify the different aspects of this definition, and their application. For example, the term “arrangement” is likely to be interpreted broadly and include any agreement, transaction or series of transactions between separate parties that is legally enforceable. However, a branch or place of business of an entity situated in another jurisdiction would not be an arrangement between separate parties for the purposes of the definition, even where that branch or place of business is treated as a permanent establishment in the other jurisdiction in accordance with an applicable tax treaty in force or, where there is no tax treaty in force, under domestic legislation.

<sup>13</sup> Consistent with the approach adopted under Pillar Two, certain Entities are Excluded Entities and, for Amount A purposes, are outside the main operative provisions of the rules. As a consequence, an Excluded Entity cannot be a Group Entity, and its revenues and profits are not part of the Revenues or Total Revenues of a Group, nor are they taken into account in the calculation of a Group’s Pre-Tax Profit Margin. Further, an Excluded Entity is exempt from the main administrative obligations under the Model Rules.

<sup>14</sup> Sub-paragraph (b) provides an extension of the definition of an Excluded Entity that covers Entities owned by an Excluded Entity. It recognises that Excluded Entities may be required, for regulatory or commercial reasons, to hold assets or carry out specific functions through separate controlled Entities. Commentaries will elaborate on the practical application of the ownership test where at least 95% of the value of the Entity must be owned by another Excluded Entity, and the activities test which ensures the Entity exclusively or almost exclusively hold assets or invest funds for Excluded Entities.

- a. the collection of Group Entities whose assets, liabilities, income, expenses and cash flows are, or would be, included in the Consolidated Financial Statements of a UPE; or
- b. an Entity, other than an Excluded Entity, that is not a part of another Group provided that the Entity satisfies the global revenue test and profitability test in paragraph 2 of Article 1.<sup>15</sup>

“Ultimate Parent Entity” (UPE) means:<sup>16 17</sup>

- a. an Entity that meets the following criteria:
  - i. it owns directly or indirectly a Controlling Interest in any other Entity;
  - ii. it is not owned directly or indirectly by another Entity with a Controlling Interest, unless that Entity is a Governmental Entity or a Pension Fund; and
  - iii. it is not a Governmental Entity or a Pension Fund.
- b. an Entity referred to in sub-paragraph (b) of the definition of Group.

### ***Consolidated Financial Statements and related definitions***

“Consolidated Financial Statements” means:<sup>18</sup>

- a. the independently audited financial statements prepared by the UPE under a Qualifying Financial Accounting Standard in which the assets, liabilities, income, expenses, and cash flows of the UPE and other Entities are presented as those of a single economic entity; or
- b. for purposes of an Entity referred to in sub-paragraph (b) of the definition of Group, the independently audited financial statements of that Entity.

[...]

<sup>15</sup> The definitions of Group Entity and Group are complementary, as the definition of Group is set by reference to a Group Entity. The definition of Group Entity combines a consolidation test and a specific exclusion for Excluded Entities. The consolidation test is met where the assets, liabilities, income, expenses and cash flows of an Entity are included in the Consolidated Financial Statements prepared by a UPE.

The definition of Group is extended to account for exceptional circumstances where a single Entity, not otherwise part of a Group, would meet the scope thresholds on a standalone basis. An Entity that is an Excluded Entity cannot meet the definition of Group under this extension because its revenues and profits would be excluded in any case.

<sup>16</sup> The definition of UPE is central to the operation of the Amount A rules and the scope criteria in Article 1. It is the starting point for identifying all Group Entities that comprise a Group. Controlling Interest is a defined term and is based on a line-by-line consolidation test for the purposes of the definition of UPE. The definition functions to identify an Entity as the UPE at the highest level at which there is a Controlling Interest (or where the highest-level Controlling Interest is held by a Governmental Entity or a Pension Fund, the highest level below that Entity).

<sup>17</sup> Work is ongoing to understand the application of the definition of UPE and other associated definitions to Dual-listed Arrangements and Stapled Structures to assess whether further revisions are needed.

<sup>18</sup> The definition of Consolidated Financial Statements has been modified since the publication of document on Tax Base Determinations (Pillar One – Amount A: Draft Model Rules for Tax Base Determinations 18 February 2022 – 4 March 2022): sub-paragraph (b) is a new addition to the definition in accordance with the addition of a stand-alone Entity in the definition of Group.

“Pre-Tax Profit Margin” of a Group for a Period is the number expressed as a percentage by dividing:

- a. the Financial Accounting Profit (or Loss) of the Group for the Period after making the Adjustments set out in paragraph 2 of Article 5 of Title 5 for the Period;  
by
- b. the Total Revenues of the Group for the Period.<sup>19</sup>

[...]

“Revenues” of a Group for a Period means the Total Revenues of the Group for the Period after the exclusion of revenues derived from Extractive Activities and Regulated Financial Services.<sup>20</sup>

“Total Revenues” of a Group for a Period means the revenues reported in the Consolidated Financial Statements of the Group for the Period prepared in accordance with a Qualifying Financial Accounting Standard, subject to the following adjustments<sup>21</sup>:

- a. exclude revenue of the Group for the Period derived from items in Article 5(2)(a)(ii) (Dividends) and Article 5(2)(a)(iii) (Equity Gain or Loss);
- b. exclude revenue for the Period derived from an Excluded Entity;
- c. adjust for any Eligible Restatement Adjustment of the Group for the Period in accordance with Article 5(2)(b) in instances where the Eligible Restatement Adjustment of the Group for the Period relates to amount(s) that are classified as revenue under a Qualifying Financial Accounting Standard; and
- d. adjust for revenue of the Group for the Period to align with the Group’s proportionate share of profit or loss derived from items under paragraph [x] of Title 9 (Joint Venture).<sup>22</sup>

### *Book-to-tax adjustments and related definitions*

<sup>19</sup> Commentaries will elaborate on the practical application of the Pre-Tax Profit Margin calculation with illustrative examples.

<sup>20</sup> The definition of Revenues is defined by reference to the definition of Total Revenues but excluding revenues derived from Extractive Activities carried out by the Group and Regulated Financial Services. Schedules F (*Exclusion of Revenues and Profits from Extractives*) and G (*Exclusion of Revenues and Profits from Regulated Financial Services*) will determine how such revenues are excluded.

<sup>21</sup> The starting point for the calculation of Total Revenues is revenues reported in the Group’s Consolidated Financial Statements prepared in accordance with a Qualifying Financial Accounting Standard. This means that the items of income included in Total Revenues are determined by the applicable Qualifying Financial Accounting Standard, subject to the specific adjustments provided.

<sup>22</sup> Under the definition of Total Revenues, where an arrangement meets the definition of Joint Venture, the revenues reported in the Consolidated Financial Statements of a Group are adjusted to reflect the Group’s share of revenues from the Joint Venture in proportion to its share of profit or loss. This adjustment is necessary as Qualifying Financial Accounting Standards do not require revenues derived from an interest in a Joint Venture to be reported in the revenue line of Consolidated Financial Statements. Instead, under the equity method, Qualifying Financial Accounting Standards only require the recognition of the profit or loss arising from the Group’s interest in the Joint Venture. Therefore, the adjustment under the definition of Total Revenues ensures equitable treatment such that the revenues from a Joint venture are taken into account for the purposes of the scope test.

[...]

**Other definitions**

“Acquiring Group” means the Group that existed prior to the Group Merger that includes the combining entity that is the acquirer for the purpose of a Qualifying Financial Accounting Standard.<sup>23</sup>

“Average” means<sup>24</sup> the value expressed as a percentage by:

- a. multiplying the Pre-Tax Profit Margin of each of the Period and the four Periods immediately preceding the Period, by the Total Revenues of that same Period;<sup>25</sup> and
- b. summing the results of (a), and dividing it by the sum of the Total Revenues of the Period and the four Periods immediately preceding the Period.

But:

- c. in the case of a Group Merger, where a Period is prior to the Merger Period, the Total Revenues of the Acquiring Group are used or, where there is no Acquiring Group, the

<sup>23</sup> The term Acquiring Group is relevant where an arrangement is undertaken that meets the definition of Group Merger under paragraph 3 of Article 1. Broadly, the rules are designed such that the financial data from existing Consolidated Financial Statements is utilised where there is a new UPE, rather than requiring retrospective recalculation of financial data for Amount A purposes where a Group Merger occurs. In such cases, the Acquiring Group’s Consolidated Financial Statements are used for the calculation of the Pre-Tax Profit Margin for the Periods prior to the Group Merger and the Total Revenues of the Acquiring Group should be used for the purpose of the Average calculation.

The definition of the Acquiring Group relies on the identification of the acquirer under a Qualifying Financial Accounting Standard, where it is necessary to identify the acquirer under the acquisition method. The acquirer is the Entity that gains control. Commentaries will elaborate on how the Acquiring Group is identified in the case of a Group Merger with practical examples.

<sup>24</sup> Commentaries will elaborate on the practical application of the Average calculation with illustrative examples. The definition of Average can be expressed algebraically as follows:

$$\frac{\sum_{n=-4}^0 x_n y_n}{\sum_{n=-4}^0 y_n}$$

Where,

$n$  = Period, with 0 being the current Period

$x_n$  = the Pre-Tax Profit Margin in Period  $n$ ;

$y_n$  = the Total Revenues in Period  $n$ .

But:

a. in the case of a Group Merger, where  $n$  is prior to the Merger Period,  $y_n$  is the Total Revenues of the Acquiring Group; and

b. in the case of a Group Demerger, where  $n$  is prior to the Demerger Period,  $y_n$  is the Total Revenues of the Demerging Group, which will be subject to the following calculation [...]

<sup>25</sup> The calculation in sub-paragraph (a) of the definition of Average requires that the Pre-Tax Profit Margin of each Period are weighted according to the respective Total Revenues of the same Period. The Average calculation is therefore a weighted average calculation.

Total Revenues of the Existing Group are used for the purposes (a) and (b) for that Period; and

- d. in the case of a Group Demerger, where a Period is prior to the Demerger Period, the Total Revenues of the Demerging Group are used for the purposes of (a) and (b) for that Period and will be subject to the following calculation:

$$\frac{A}{B} C_n$$

Where,

$n$  = Period, with 0 being the current Period

$A$  = the Total Revenues of the Demerged Group in the Demerger Period;

$B$  = the sum of Total Revenues of all Demerged Groups in the Demerger Period;

$C_n$  = the Total Revenues of the Demerging Group in Period  $n$ .

[...]

“Commencement Date” means [the date on which the Multilateral Convention (MLC) implementing Amount A comes into effect for [Jurisdiction name]].<sup>26</sup>

“Controlling Interest” means:

- a. an Ownership Interest in an Entity such that the interest holder:
  - i. is required to consolidate the assets, liabilities, income, expenses and cash flows of the Entity on a line-by-line basis in accordance with a Qualifying Financial Accounting Standard; or
  - ii. would have been required to consolidate the assets, liabilities, income, expenses, and cash flows of the Entity on a line-by-line basis if the interest holder had prepared Consolidated Financial Statements; and
- b. for the purposes of the anti-fragmentation rule in Article 1(5) of Title 2 and the definitions of Fragmented Group and Internal Fragmentation provided in paragraphs [x] and [x] of this Title, respectively, an Ownership Interest held by an Investment Fund or a Real Estate Investment Vehicle in an Entity, such that the interest holder has control under a Qualifying Financial Accounting Standard and is, or would be, required to measure its investment at fair value through profit or loss in accordance with that standard.<sup>27</sup>

<sup>26</sup> The rules on entry into effect of Amount A will first be discussed and agreed as part of the development of the Multilateral Convention (MLC). Bracketed language is used in the Model Rules until an approach is agreed under the MLC.

<sup>27</sup> The definition of Controlling Interest has been modified since the publication of document on Tax Base Determinations (Pillar One – Amount A: Draft Model Rules for Tax Base Determinations 18 February 2022 – 4 March 2022). The revised definition is taken from the GLoBE rules and is based on an Ownership Interest that meets a consolidation test. This test looks to consolidation on a line-by-line basis where Consolidated Financial Statements are prepared under a Qualifying Financial Accounting Standard, or if the interest holder had prepared Consolidated Financial Statements. Further, the definition is adapted for the purposes of the anti-fragmentation rule and applies only where the Ownership Interest is held by an Investment Fund or Real Estate Investment Vehicle. In this case it means

[...]

“Existing Group” means the Group that existed prior to the Group Merger and produced Consolidated Financial Statements.<sup>28</sup>

[...]

“Fragmented Group” means a Group, resulting from an Internal Fragmentation, with a UPE that is owned directly or indirectly by an Excluded Entity, an Investment Fund or a Real Estate Investment Vehicle with a Controlling Interest in the UPE.<sup>29</sup>

[...]

“Governmental Entity” means an Entity that meets all of the following conditions:

- a. it is part of or wholly-owned by a government (including any political subdivision or local authority thereof);
- b. it does not carry on a trade or business and has the principal purpose of:
  - i. fulfilling a government function; or
  - ii. managing or investing that government’s or jurisdiction’s assets through the making and holding of investments, asset management, and related investment activities for the government’s or jurisdiction’s assets;
- c. it is accountable to the government on its overall performance, and provides annual information reporting to the government; and
- d. its assets vest in such government upon dissolution and to the extent it distributes net earnings, such net earnings are distributed solely to such government with no portion of its net earnings inuring to the benefit of any private person.

[...]

“Group Demerger” means any transaction or arrangement where the Group Entities of a single Group (the “Demerging Group”) are separated into two or more Groups (each respective Group being a “Demerged Group”) that are no longer consolidated by the same UPE.<sup>30</sup>

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an interest gives the interest holder control under a Qualifying Financial Accounting Standard and is required to measure its investment at fair value through profit or loss.

<sup>28</sup> The definition of Existing Group is provided as an exception in the case of a Group Merger, where there is no Acquiring Group. In such cases, the Existing Group’s Consolidated Financial Statements are used for the calculation of the Pre-Tax Profit Margin for the Periods prior to the Group Merger and the Total Revenues of the Existing Group should be used for the purpose of the Average calculation. Commentaries will elaborate on how the Existing Group is identified in the case of a Group Merger with practical examples.

<sup>29</sup> The definition of Fragmented Group ensures that only those Groups that result from an Internal Fragmentation and remain under the control of an Excluded Entity will be taken into account for the purposes of aggregating Total Revenues under the anti-fragmentation rule.

<sup>30</sup> The definition of Group Demerger relies on a consolidation test. After the Group Demerger, the Group Entities of a single Group (the “Demerging Group”) will no longer be consolidated on a line-by-line basis by the same UPE, but are consolidated on a line-by-line basis by two or more UPEs of different Groups (each a “Demerged Group”). Where a Group Demerger occurs the profitability test is amended such that the Pre-Tax Profit Margin of the Demerging Group

[...]

“Group Merger” means any transaction or arrangement that is a business combination under a Qualifying Financial Accounting Standard in a Period where:

- a. an Entity or Entities that met the definition of UPE before the transaction or arrangement no longer meet that definition; and
- b. an Entity other than an Entity referred to in (a) is the UPE of a Group as a result of the transaction or arrangement.<sup>31</sup>

[...]

“Internal Fragmentation” means any arrangement, transaction or series of transactions applied to one or more Group Entities of a Group on or after [DATE],<sup>32</sup> and where:

- a. prior to the arrangement, transaction or series of transactions, the UPE of the Group is owned directly or indirectly by an Excluded Entity, an Investment Fund or a Real Estate Investment Vehicle that has a Controlling Interest; and
- b. following the arrangement, transaction or series of transactions, the Group is separated into two or more Groups each with a UPE owned directly or indirectly by the same Excluded Entity, Investment Fund or Real Estate Investment Vehicle that has a Controlling Interest (the Fragmented Groups).

[...]

“International Organisation” means any intergovernmental organisation (including a supranational organisation) or wholly-owned agency or instrumentality thereof that meets all of the following conditions:

- a. it is comprised primarily of governments;
- b. it has in effect a headquarters or substantially similar agreement (for example, arrangements that entitle the organisation’s offices or establishments in the jurisdiction (e.g. a subdivision, or a local, or regional office) to privileges and immunities) with the jurisdiction in which it is established; and
- c. law or its governing documents prevent its income inuring to the benefit of private persons.

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is used for the Periods prior to the Group Demerger. Secondly, the Total Revenues of the Demerging Group, subject to further adjustments, are used in the Average calculation for the Periods prior to the Group Demerger.

<sup>31</sup> The definition of Group Merger is drafted broadly and captures a wider set of transactions than cases which are sometimes colloquially referred to as a “true merger” or “merger of equals”. Instead, the definition looks to identify cases where, as a result of a business combination, the UPE of the Group does not have Consolidated Financial Statements that can be utilised for Periods prior to the Group Merger for the purposes of the prior period test and the average test. Where a Group Merger occurs the profitability test is amended such that the Pre-Tax Profit Margin of the Acquiring Group is used for the Periods prior to the Group Merger. Secondly, the Total Revenues of the Acquiring Group are used in the Average calculation for the Periods prior to the Group Merger.

<sup>32</sup> The reference to a date effectively operates as a “grandfathering” clause, so that taxpayers have certainty that the anti-fragmentation rule does not apply to holding structures in place before a set date. The latter date may not necessarily coincide with the date Amount A enters into effect, and could be set at an earlier time (e.g. release of the public consultation document, signing ceremony for the Multilateral Convention).

[...]

“Investment Fund” means an Entity that meets all of the following conditions:

- a. it is designed to pool assets (which may be financial and non-financial) from a number of investors (some of which are not connected);
- b. it invests in accordance with a defined investment policy;
- c. it allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively;
- d. it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;
- e. investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors;
- f. the Entity or its management is subject to a regulatory regime in the jurisdiction in which it is established or managed (including appropriate anti-money laundering and investor protection regulation); and
- g. it is managed by investment fund management professionals on behalf of the investors.

[...]

“Joint Venture” means an arrangement where all the parties, or a group of the parties, have joint control and rights to the net assets of the arrangement, and the financial results of the arrangement are reported in the Consolidated Financial Statement of a Covered Group under the equity method under a Qualifying Financial Accounting Standard.

[...]

“Non-profit Organisation” means an Entity that meets all of the following conditions:

- a. it is established and operated in its jurisdiction of residence:
  - i. exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, or other similar purposes; or
  - ii. as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
- b. substantially all of the income from the activities mentioned in sub-paragraph (a) is exempt from income tax in its jurisdiction of residence;
- c. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- d. the income or assets of the Entity may not be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than:
  - i. pursuant to the conduct of the Entity’s charitable activities;
  - ii. as payment of reasonable compensation for services rendered or for the use of property or capital; or



iii. as payment representing the fair market value of property which the Entity has purchased, and

e. upon termination, liquidation or dissolution of the Entity, all of its assets must be distributed or revert to a Non-profit Organisation or to the government (including any Governmental Entity) of the Entity's jurisdiction of residence or any political subdivision thereof;

but does not include any Entity carrying on a trade or business that is not directly related to the purposes for which it was established.

[...]

“Ownership Interest” means an equity interest that carries rights to the profits, capital or reserves of an Entity, determined as per the applicable Qualifying Financial Accounting Standard.

[...]

“Pension Fund” means:

- a. an Entity that is established and operated in a jurisdiction exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals:
  - i. regulated as such by that jurisdiction or one of its political subdivisions or local authorities; or
  - ii. those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of a group to which the Entity belongs; and
- b. a Pension Services Entity.

“Pension Services Entity” means an Entity that is established and operated exclusively or almost exclusively:

- a. to invest funds for the benefit of Entities referred to in sub-paragraph (a) of the definition of Pension Fund; or
- b. to carry out activities that are ancillary to those regulated activities carried out by the Entities referred to in sub-paragraph (a) of the definition of Pension Fund provided that they are members of the same group as the Entity.

“Period” means a reporting period with respect to which the UPE of a Group prepares Consolidated Financial Statements.

“Real Estate Investment Vehicle” means an Entity the taxation of which achieves a single level of taxation either in its hands or the hands of its interest holders (with at most one year of deferral), provided that that Entity holds predominantly immovable property and is itself widely held.

[\[Schedule \[E\]: Covered Segment\]](#)

[\[Schedule \[F\]: Exclusion of Revenues and Profits from Extractives\]](#)

[Schedule [G]: Exclusion of Revenues and Profits from Regulated Financial Services]