Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

The Multilateral Convention to Implement Amount A of Pillar One

OCTOBER 2023

OVERVIEW



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1. The Multilateral Convention in a nutshell

The **Multilateral Convention to implement Amount A of Pillar One (MLC)** is designed to enhance stability and certainty in the international tax system by:

- Co-ordinating a reallocation of taxing rights (Amount A) for market jurisdictions over a portion of the excess profit (i.e. profit in excess of 10% of revenue) of the largest and most profitable multinational enterprises (MNEs) operating in their market, with a corresponding obligation to relieve double taxation;
- Providing tax certainty to in-scope MNEs, with respect to both Amount A disputes and certain other tax disputes on existing rules; and
- Preventing the imposition of digital services taxes (DSTs) and other similar measures on all companies (whether or not they are within scope for Amount A).

Content of the MLC

Amount A

Amount A applies only to MNEs with global revenue over EUR 20 billion and total profits greater than 10% of their global revenue. The revenue threshold will fall to EUR 10 billion, contingent on successful implementation determined via a 7-year review (see below). Certain exclusions apply (extractives, regulated financial services, defence and certain domestically oriented businesses).

It reallocates 25% of the MNE's excess profit (i.e. group profit in excess of 10% of its revenue) to jurisdictions where the MNE's revenues are sourced (market jurisdictions). This allocation:

- is adjusted or eliminated to the extent that the market jurisdiction already taxes the excess profit of the MNE outside the MLC; and
- comes with a corresponding obligation on a jurisdiction to grant relief for double taxation.

Tax certainty

MNEs have access to a binding multilateral certainty process over whether they are within the MLC's scope and on their application of the MLC's provisions. There is also a tax certainty process (incl. mandatory and binding dispute resolution) for certain disputes on existing tax rules, to the extent that they relate to Amount A.

DSTs and relevant similar measures

Parties to the MLC commit not to impose digital services taxes (DSTs) and relevant similar measures on any company (whether or not within the scope of Amount A). A list of existing measures which must be removed is in Annex A of the MLC. After the MLC comes into force, jurisdictions will be able to gain certainty in advance as to whether a proposed measure would breach this commitment.

For the MLC to enter into force, it needs to be ratified by at least 30 jurisdictions including the headquarters jurisdictions of at least 60% of MNEs currently expected to be within Amount A's scope.

An **Explanatory Statement** (ES) accompanies the MLC and provides clarification on how each provision is intended to apply. It reflects the agreed understanding of the negotiators with respect to the MLC and is intended to form part of the context of the MLC as that term is used in customary international law for interpretation purposes. The MLC is also accompanied by an **Understanding on the Application of Certainty** (UAC) which contains further details on how aspects of the Amount A tax certainty framework will operate in practice.

Updated estimates of the economic and revenue impacts of Amount A are available at <u>https://oe.cd/5eN</u>.

Operation of the MLC

Entry into force

Requires ratification by 30 States accounting for at least 60% of the ultimate parent entities of MNEs initially expected to be in-scope for Amount A. Once these minimum conditions are met, the States that have ratified can decide when the MLC will enter into force.

The Conference of the Parties

The MLC establishes a 'Conference of the Parties' to make decisions or exercise functions required under the MLC, including with respect to interpretation and implementation.

Interaction with existing tax treaties

Existing bilateral tax treaties between Parties to the MLC will continue to apply, but will be superseded by the MLC to the extent needed to permit the application of Amount A. Tax treaties with Jurisdictions which are not Parties to the MLC will not be affected.

7-year review

The Conference of the Parties will carry out a review of the implementation of the MLC (based on predetermined criteria) seven years after entry into force. The scope revenues threshold will be reduced from EUR 20 billion to EUR 10 billion, unless the implementation of Amount A is not deemed to be successful by the Parties. In that case, the Parties will be required to address any identified implementation issues within two years to enable the lowering of the scope revenues threshold.

Layout of the Multilateral Convention

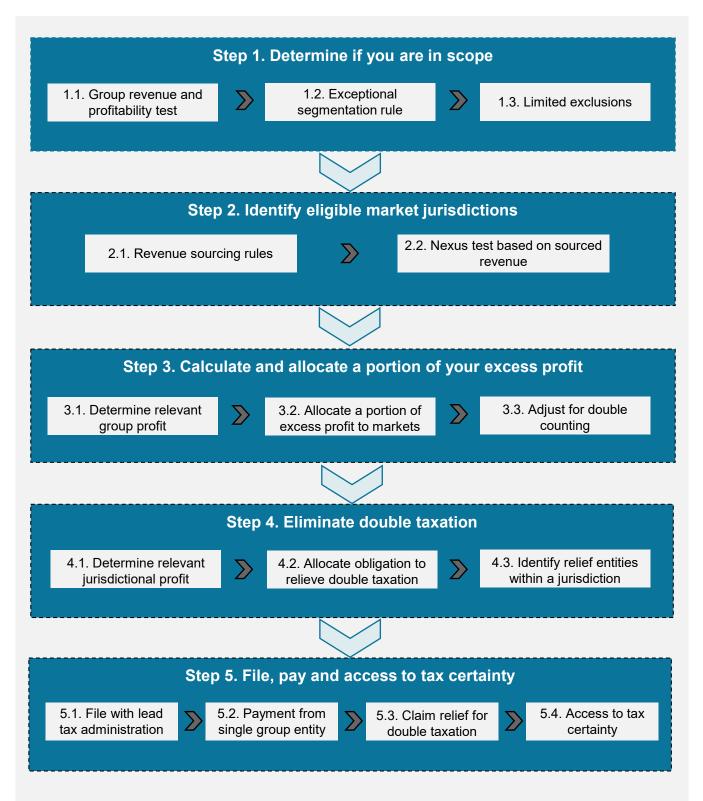
The MLC consists of 7 parts, 53 Articles, and 9 Annexes, as set out below. To clarify the approach taken in each provision of the MLC, an Explanatory Statement and an Understanding on the Application of Certainty provide further details.

PART I – General	Article 1 – Application and Personal Scope	
PART II – Definitions Annex B, Annex C	Article 2 – General Definitions Article 3 – Covered Group	
PART III – Allocation and Taxation of Profits Annex D	Article 4 – Taxation of Profits of a Covered Group Article 5 – Allocation of Profit Associated with Revenues in the Market Article 6 – Sources of Adjusted Revenues Article 7 – Sourcing Principles for Categories of Adjusted Revenues Article 8 – Nexus	
PART IV – Elimination of Double Taxation	Article 9 – Relief for Amount A Taxation Article 10 – Identification of the Specified Jurisdiction for a Covered Group Article 11 – Allocation of the Obligation to Eliminate Double Taxation with Respect to the Amount A Relief Amount Article 12 – Provision of Relief for Amount A Taxation to Relief Entities Article 13 – Identification of Relief Entities Entitled to Elimination of Double Taxation	
PART V – Administration and Certainty Annex E, Annex F, Annex G	Section 1 – Administration (Article 14 - 21) Section 2 – Tax Certainty Framework for Parts II to IV (Amount A) (Articles 22 - 32) Section 3 – Tax Certainty for Issues Related to Amount A (Articles 33 - 36) Section 4 – Exchange of Information and International Cooperation (Article 37)	
PART VI – Treatment of Specific Measures Enacted by Parties Annex A, Annex H	Article 38 – Removal and Standstill of Digital Services Taxes and Relevant Similar Measures Article 39 – Elimination of Amount A Allocations for Parties Imposing Digital Services Taxes and Relevant Similar Measures Article 40 – Treatment of Specific Measures in Scope of Tax Treaties	
PART VII – Final Provision Annex I	Article 41 – Signature and Ratification, Acceptance or Approval Article 42 – Territorial Application Article 43 – Review Process to Lower the Adjusted Revenues Threshold Article 44 – Amendment Article 45 – Reservations Article 46 – Relationship between this Convention and Existing Tax Agreements	Article 47 – Conference of the Parties Article 48 – Entry into Force Article 49 – Entry into Effect Article 50 – Withdrawal Article 51 – Termination Article 52 – Relation with Protocols Article 53 – Depositary

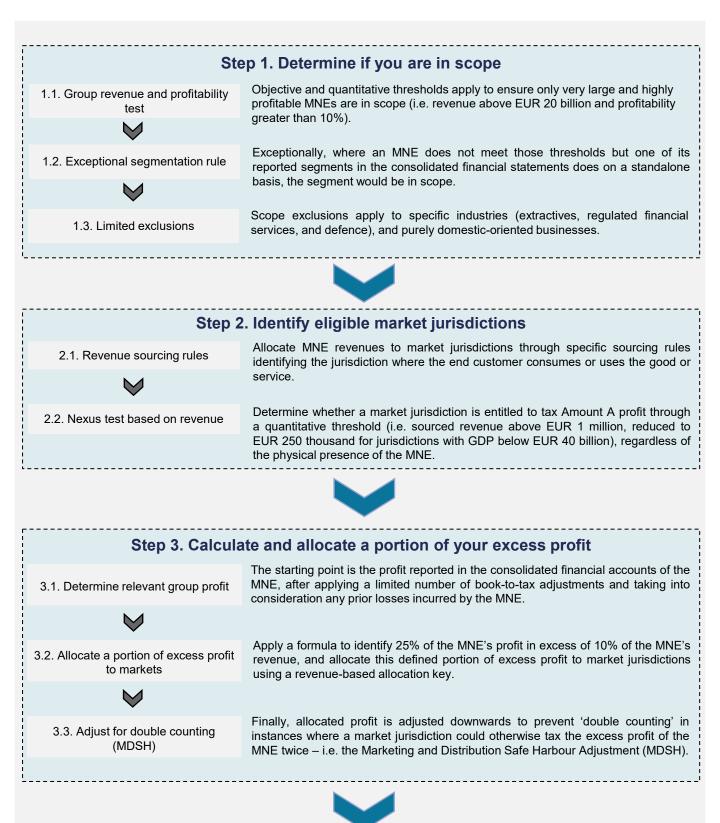
2. How Amount A works

Overview

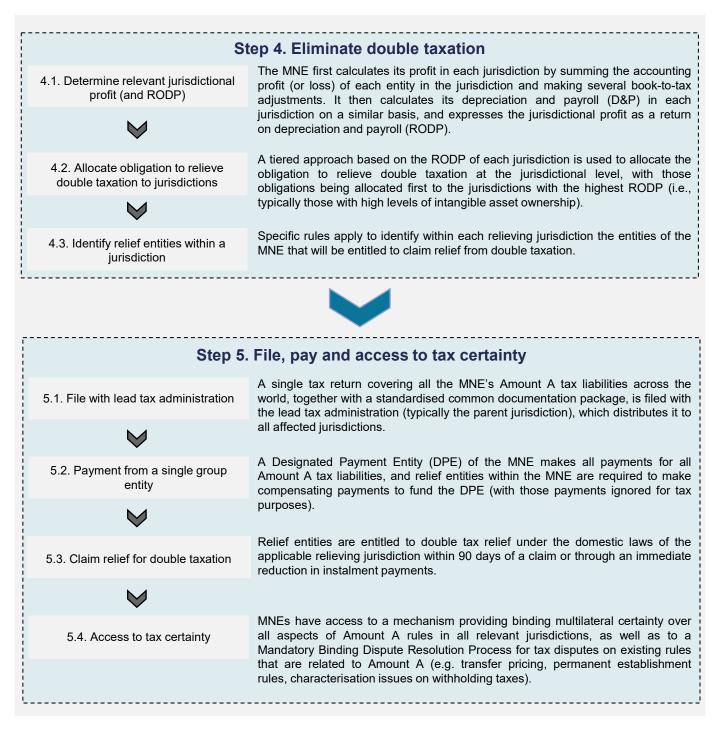
To comply with Amount A, MNEs will have to apply a set of rules that can be broken down into five basic steps (further details on each step are available below).



Detailed steps



Detailed steps (cont'd)



3. Selected issues

(a) What happens with DSTs and relevant similar measures?

Amount A comes with the removal and standstill of DSTs and relevant similar measures. These commitments in the MLC apply with respect to all companies, and are not limited to those that are inscope of Amount A. Any breach of these commitments leads to the denial of Amount A. Existing measures will be removed when Amount A comes into effect. Future measures will be addressed by a robust review mechanism, guaranteeing a timely decision of the Conference of the Parties.

What happens with existing DSTs?	The MLC (Annex A) includes a list of existing measures that the Parties commit to withdraw when Amount A starts applying.		
What happens with future DSTs or similar measures?	 How will future measures be qualified as a DST or Relevant Similar Measure? Three cumulative criteria to define the measures: 1. the tax is applied by reference to market-based criteria (e.g. location of customers and users); 2. it is ring-fenced to non-resident or foreign-owned businesses; 3. it is outside the scope of tax treaties. 	 Who determines whether it's a DST or Relevant Similar Measure? Determination of the measures is made by the Conference of the Parties. The MLC guarantees a decision is taken within 12 months. What happens in case the Conference of Parties decides that a measure is a DST or a Relevant Similar Measure? When the Conference of Parties determines that a measure is a DST or a Relevant Similar Measure, the party is denied Amount A allocation until the measure is withdrawn. 	
What about non-traditional		and similar types of nexus rules that are in DSTs under the MLC (third criteria of DST	

What about non-traditional nexus (e.g. Significant Economic Presence)? Significant Economic Presence concepts and similar types of nexus rules that are in scope of tax treaties are not treated as DSTs under the MLC (third criteria of DST above). However, because their effect and objectives overlap with Amount A, Parties to the MLC will not apply them to in-scope MNEs once the MLC comes into effect.



(b) How does the Tax Certainty Framework for Amount A work?

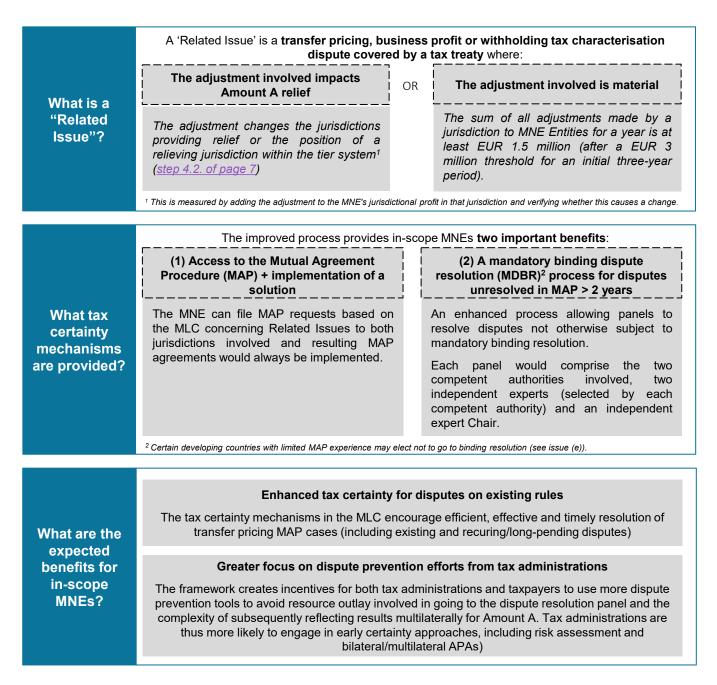
The Amount A Tax Certainty Framework contains three mechanisms to provide certainty over all aspects of Amount A. In each case, outstanding disagreements will be referred to a determination panel for a final resolution. This ensures that any MNE that submits a request for certainty obtains a binding certainty outcome unless it is considered to have withdrawn that request, or it is persistently late in providing information without explanation or acts in an uncooperative or non-transparent manner.

Advance certainty	An advance certainty review provides an MNE with binding multilateral certainty that its methodology for applying specific provisions of the MLC will be accepted for a specified number of years, subject to agreed critical assumptions continuing to apply. This certainty will also cover relevant elements of the MNE's internal control framework.
Scope certainty	A scope certainty review provides an out-of-scope MNE with binding multilateral certainty from Parties named in the request, that it is not in scope of Amount A. This removes the risk of unilateral compliance action in jurisdictions where the MNE sources revenues. A follow-up scope certainty review based on simplified documentation is available to extractives and regulated financial services groups that have already been reviewed.
Comprehensive certainty	A comprehensive certainty review provides an MNE with binding multilateral certainty over its application of rules on Amount A in all Parties to the MLC. This ensures a consistent treatment of the MNE across jurisdictions and the full elimination of double taxation.



(c) What is the Tax Certainty Process for "issues related to Amount A"?

Since Amount A will co-exist with the existing international tax rules, the Multilateral Convention (MLC) goes beyond the tax certainty framework for Amount A and provides in-scope MNEs with an enhanced tax certainty process for a broad range of disputes on existing tax treaty rules (especially transfer pricing and business profit attribution disputes that potentially affect Amount A calculations – termed "Related Issues"). This is delivered through a mandatory binding dispute resolution (MBDR) process for any "Related Issues" that are unresolved in a Mutual Agreement Procedure (MAP), ensuring that all those issues are resolved in an efficient, effective, and timely manner. This framework creates clear incentives for dispute prevention approaches while also guaranteeing that double taxation is eventually avoided, where dispute resolution becomes necessary.



(d) Do withholding taxes have any implications for Amount A?

To ensure a balanced reallocation system, and parity between all existing taxing rights on MNE's excess profit, the Amount A co-ordinated reallocation system takes into consideration withholding taxes (WHTs) that are similar to other corporate taxes on business profits. The implications of this are twofold: certain WHTs can potentially reduce the Amount A allocated to a market jurisdiction; they can also reduce the obligation of a jurisdiction to relieve double taxation.

1. Which WHTs have implications for the Amount A system?	 Only WHTs levied on cross-border deductible payments made to in-scope MNEs, whether paid by a member of the MNE or a third party, are relevant – as these reflect a primary level of taxation considered similar to other corporate income taxes, that have an impact on the allocation of existing taxing rights. WHTs on dividends, capital gains, and payments made to out-of-scope MNEs (e.g. extractives) are not relevant.
2. Possible consequences for Amount A allocations	 When a market jurisdiction collects the type of WHT described in 1., specific rules apply to prevent 'double counting'. Under the marketing and distribution safe harbour (MDSH) adjustment (<u>step 3.3 of page 6</u>), such WHT is first converted into a profit amount through a formula, and then added to the jurisdictional profit of the market jurisdiction that is the basis for the MDSH calculations (i.e. upward adjustment). As part of those calculations, specific rules apply to exclude the normal profit associated with the converted WHT (for example, where the MNE has no physical presence in the market, 60% of the converted amount is deemed normal profit excluded from the MDSH calculations).
3. Possible consequences for elimination of double taxation	 When a payment is subject to the type of WHT described in 1., the residence jurisdiction of the recipient/payee (member of an in-scope MNE) typically waives its taxing right over that income by providing double tax relief. To ensure that the residence jurisdiction is not required to provide relief twice for the same income of the MNE (one time under existing rules, and another time under Amount A rules), the WHT collected abroad is converted into a profit amount (through a formula) and then deducted from the jurisdictional profit that is the basis for allocating the obligation to relieve double taxation (i.e. downward adjustment) (<u>step 4.1. of page 7</u>). This downward adjustment to jurisdictional profit also feeds into the MDSH calculations (step 3.3. of page 6).



(e) What can Developing Countries expect from Amount A?

The Inclusive Framework consists of more than 140 countries and jurisdictions, with a wide diversity in membership including around 70 developing countries, participating on an equal footing. Their influence on the negotiation is reflected both in the general design of Amount A (see General design), as well as in specific rules that cater for their specific circumstances (see Specific rules). Overall, developing countries will gain revenue, while their administrative costs are expected to be limited (see Administration).

General design

- The scope of Amount A excludes extractives activities, thus shielding developing countries with natural resources from any reallocation of the related taxing rights.
- The overall design of Amount A, which reallocates taxing rights based on excess profits, benefits developing countries, where low levels of excess profits are generally booked.
- Overall, developing countries are expected to experience the greatest gains as a share of current corporate tax revenues (updated estimates of the economic and revenue impacts of Amount A are available at https://oe.cd/5eN).

Specific rules

To cater for their particular circumstances, specific treatments are provided to developing countries at numerous steps of the operation of Amount A.

Revenue sourcing and nexus	 Where MNEs are unable to determine which market a portion of their revenue should be allocated to (so-called "tail-end" revenue), it is allocated to developing countries by default (<u>step 2.1. of page 6</u>). The threshold of sales needed to entitle a jurisdiction to tax Amount A is low (EUR 1 million) and even lower (EUR 250k) for market economies with GDP below EUR 40 billion (<u>step 2.2 of page 6</u>).
Profit allocation (MDSH)	 De minimis threshold based on MNE's profit in a jurisdiction (i.e. EUR 50 million) under the marketing and distribution profits safe harbour (MDSH) should protect most developing countries from any reduction of their Amount A allocations (<i>step 3.3 of page 6</i>). Additional rules for low-income and lower-middle income economies further reduce or eliminate any MDSH impact on those countries (for example with respect to withholding taxes).
Elimination of double taxation	• <i>De minimis</i> threshold, which includes an absolute amount based on MNE's profit in a jurisdiction (i.e. EUR 50 million), together with the RODP metric used to allocate the obligation to relieve double taxation (<u>step 4.2. of page 7</u>), should ensure that developing countries generally do not bear the burden of Amount A (i.e. do not give up existing taxing rights).
Tax certainty	 Review panel composition rules ensure developing country representation (for Amount A issues) Many developing countries are entitled to an elective (instead of mandatory) binding dispute resolution process for "Related Issues" (<u>step 5.4 of page 7</u>).

Administration

- Amount A relies on formulas and quantitative metrics that limit factual determinations, and the compliance burden that goes with it.
- The streamlined compliance process (e.g. filing, payment) means the lead tax administration (in the headquarters jurisdiction) bears most of the compliance burden associated with Amount A (<u>step 5.1 and 5.2 of page 7</u>).
- Developing countries have a full right to participate in the multilateral tax certainty process, but they can also rely on the multilateral review process (where other market jurisdictions are well represented) to enforce Amount A, and decide to allocate their tax administration resources elsewhere.

The Multilateral Convention to Implement Amount A of Pillar One – Overview, October 2023



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