



# The Multilateral Convention to Implement Amount A of Pillar One

DECEMBER 2023

**FACTSHEETS** 



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#### **READERS' NOTICE**

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# 1. PROCESS MAP FOR APPLYING AMOUNT A



#### **Step 1. Scope Determination**

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1.2. Limited exclusions and adjustments

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## **Step 1. Scope Determination**

The first step is to determine whether an MNE is in scope of Amount A. Quantitative thresholds based on revenue and profitability ensure that Amount A only applies to the largest and most profitable MNEs.

Where an MNE as a whole does not meet the quantitative thresholds, but a disclosed segment reported in the MNE's consolidated financial statements would meet those thresholds on a standalone basis, that disclosed segment is brought into scope. In these cases, the Amount A rules are appropriately adapted to apply to the disclosed segment.

Finally, in instances where the MNE (or one of its disclosed

adjustments.

segments) meets the quantitative thresholds, four targeted exclusions or adjustments may apply.

The exclusions for Extractives and for Regulated Financial Services exclude the revenue and profits derived from the excluded activities from the scope of Amount A. Accordingly, these exclusions will in many cases exclude the whole MNE from Amount A scope. The adjustment for Defence and Autonomous Domestic Businesses (ADB), in contrast, exclude the relevant revenues and profits only from the computation of Amount A (not from scope, except if specific de minimis rules apply), with the consequence that the Amount A rules typically continue to apply to the rest of the MNE.

#### Step 1.1:

#### Group revenue and profitability test

(Articles 3 & 2, Annex B Sections 1 and 2, Annex C Section 4)

#### Determine whether the Group satisfies both revenue and profitability tests

#### Revenue test

# Adjusted Revenues exceeds EUR 20 billion – Adjusted Revenues are calculated based on the accounting revenues reported in the consolidated financial statements, excluding VAT/similar taxes and subject to limited



#### **Profitability test**

Pre-tax profit margin exceeds 10% (with an Averaging Mechanism)<sup>1</sup> – Pre-tax profit margin is equal to the relevant group profit (as per Step 3.1) ignoring prior losses, divided by the Adjusted Revenues.

<sup>1</sup> Where the Group was not in scope in two immediately preceding periods, two additional tests must be satisfied:

- i. Pre-tax profit margin greater than 10% in at least two of the four periods immediately preceding the period;
- ii. Weighted average pre-tax profit margin over the five periods ending in the current period exceeds 10%.



#### If the Group fails the profitability test, conduct the same tests at segment level

Where a disclosed segment reported by a group meets the scope thresholds on a standalone basis, each subsequent step will apply to the segment in isolation (Annex C Section 4).



#### Step 1.2:

# Limited exclusions and adjustments

(Article 3 & Annex C Sections 2-3, 5-6)

## Determine whether the Group or segment that meets tests in Step 1.1 is eligible for an exclusion or adjustment

## Regulated financial services

(Annex C Section 2)

Includes regulated financial institutions (e.g. banks, insurers, asset managers, broker / dealers)

## Extractives (Annex C Section 3)

Includes exploration, development or extraction activities. (e.g., large oil & gas and mining operations)

#### Autonomous domestic business (ADB)

(Annex C Section 5)

Includes jurisdictions in which a business is conducted autonomously from the rest of the Group<sup>2</sup>

### **Defence** (Annex C Section 6)

Includes supplies that have a defence purpose<sup>3</sup>

Revenues and profits related to these exclusions are excluded when applying scope tests in step 1.1 and all subsequent steps of the Amount A system.

Revenues and profits related to these adjustments are included when applying scope tests in Step 1.1 but are excluded for all subsequent steps of the Amount A system.

De minimis rules may however apply to exclude the full Group from scope (where profits not covered by these adjustments are minimal).

<sup>&</sup>lt;sup>2</sup> A jurisdiction would be ADB jurisdiction if (i) sourced revenues are within 95-105% of the third-party revenues in that jurisdiction and (ii) cross-border transactions less than 15% of the sum of the total revenues or expenses in that jurisdiction.

<sup>&</sup>lt;sup>3</sup> Defence purpose is determined by who the procuring party or user of the supply is, whether the supply is subject to export control regulation or whether disclosing information relating to the supply is prohibited by law.



# Step 2. Identification of Eligible Market Jurisdictions

The second step is to identify which market jurisdictions are eligible to tax a portion of the MNE's "excess" profits under Amount A.

It first requires the MNE to classify its consolidated revenue into categories (and sub-categories) based on the ordinary or predominant character of the underlying transactions. For each category and sub-category of revenue, a specific sourcing rule in Article 7 identifies the jurisdiction where the goods or services of the MNE are consumed or used (i.e. the market jurisdiction to which the revenues are allocated).

To apply the sourcing rule, Article 6 and Annex D require the MNE to use a 'reliable method'. The reliable method must be based on

information available to the MNE that is reliable (described in the rules as 'reliable indicators'), or, in cases where such information is not available, an allocation key. Allocation keys are provided in the rules for certain categories of revenue and are based on macroeconomic proxies such as GDP and final consumption expenditure.

Finally, a special purpose nexus test under Article 8 provides that only market jurisdictions with sourced revenue exceeding EUR 1 million are entitled to tax Amount A profit. To ensure that smaller economies can also benefit from Amount A, a lower revenue threshold of EUR 250 thousand applies where the jurisdiction's GDP is less than than EUR 40 billion.

#### Step 2.1:

Categorise the group revenues

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identify applicable source rule

(Article 7)

Determine the categories and sub-categories of the group's Adjusted Revenues based on the ordinary or predominant character of the underlying transactions

#### **Finished Goods**

**Digital Content** 

Components

Intangible Property

#### Services

(9 sub-categories covering both online services e.g., online advertising, cloud computing, etc, and non-online services, e.g., transport, consulting, etc)

#### **User Data**

Immovable Property

Government Grants

Non-customer revenues

### Identify applicable source rule (Article 7)

(Example 1)
Category: Finished
Goods
Source rule: place of
delivery to final
customer

(Example 2)
Category: online
advertising
Source rule: location of
viewers



Step 2.2:

Apply the source rule using a reliable method

(Article 6 & Annex D)

OR

Use default allocation keys, if a reliable method has not, or could not, be applied Reliable method involves the use of 'reliable indicators' and, in some cases, 'allocation keys'

Reliable indicators: Information available to the MNE that satisfies a reliability standard



Allocation key:
Specified in rules, based on a macroeconomic proxy, e,g,

- Different combinations of reliable indicators and the specified allocation key may be used within each category
- Allocation keys may be used if their use is specified in the rule and the MNE determines that no reliable indicators are available
- There is no requirement to apply reliable method on a transaction-by- transaction basis – revenues may be aggregated
- Approach can be confirmed through advance certainty
- Transition rules permit unrestricted use of allocation keys in initial Periods

(Example 1)
Source rule: place of delivery to final customer

MNE knows location of retail stores for 60% of its revenues and delivery address of final customers for 30% – use as reliable indicators



MNE demonstrates that remainder of revenues are in Region X– use regional allocation key (based on final consumption expenditure)

If a reliable method has not been applied or cannot be applied, use **default allocation key** to ensure all revenues are sourced (Article 6(4), operates as a backstop) – specified for each category, based on macroeconomic proxies, e.g. GDP



Step 2.3:

Determine nexus

(Article 8)

An MNE shall be treated as having nexus in a market jurisdiction if the aggregate Adjusted Revenues sourced in that jurisdiction (as per steps 2.1 and 2.2) is equal to or greater than:

(a) EUR 1 million

(b) EUR 250 000 if the Jurisdiction has a GDP of less than EUR 40 billion



# Step 3. Calculation and **Allocation of Profit**

The third step is to calculate the relevant portion of the "excess" profit of the MNE that is reallocated to market jurisdictions.

First, the relevant group profit is calculated, starting from the profit reported in the consolidated financial statements (CFS) of the MNE, applying a limited number of book-to-tax adjustments, and then taking into account any prior losses incurred by the MNE (including losses transferred to the MNE following a business reorganisation).

Next, 25% of the portion of the relevant group profit that exceeds 10% of the MNE's revenues is allocated among eligible market

jurisdictions in proportion to the amount of revenues the MNE derives from each eligible market jurisdictions.

Finally, the Marketing and Distribution Profits Safe Harbour (MDSH) adjustment reduces the profit amount allocated to a market jurisdiction to the extent that there would otherwise be 'double counting' - i.e. the eligible market jurisdiction already has taxing rights over the MNE's "excess" profit under existing rules. Instances of double counting are determined using quantitative metrics, and take into consideration withholding taxes (WHT) imposed by a market jurisdiction on cross-border deductible payments.

#### Step 3.1:

Determine the relevant group profit

(Annex B Section 2)

**Profit** reported in **CFS** 

#### **Excluded items:**

- Tax Expense (or Tax Income);
- · Dividends;
- · Equity Gain or Loss;
- Policy Disallowed Expenses; and
- · Profit (or Loss) of Excluded Entities.

#### Book-to-tax adjustments where necessary

#### Other adjustments:

- · Prior Period Errors and Changes in Accounting Principles;
- Asset Gain (or Loss) Spreading Adjustments;
- · Asset Fair Value or Impairment Adjustments; and
- · Acquired Equity Basis Adjustments.

Account for prior losses (including any transferred losses following a business reorganization)



#### Step 3.2:

Allocate a portion of "excess" profit (Amount A)

(Articles 2(d), 5(1))

#### Compute Amount A Profit of the Group

Group

Relevant group profit (step 3.1)

**Subtract** normal profit 10% x Adjusted Revenues of

Multiply by 25%

#### Allocate Amount A profit on basis of sourced revenues

- Profit amount allocated to a jurisdiction is proportionate to the aggregate Adjusted Revenue sourced in the jurisdiction.
- No allocations to Jurisdictions below nexus threshold (see step 2.3)



#### Step 3.3:

Adjust for double counting (Marketing and Distribution **Profits Safe** Harbour adjustment)

(Articles 5(1)(b),

#### Determine relevant jurisdictional profits in the market for MDSH

Begin with jurisdictional profits relevant to elimination of double taxation (as per step 4.1), and apply any relevant upward adjustment for withholding taxes (WHT)1

#### Apply de minimis threshold

Exclude jurisdictions with jurisdictional profit for MDSH lower than EUR 50 million

Identify jurisdictional excess profits by subtracting normal profit, incl. reduction factor for WHTs if relevant

Jurisdictional profit for MDSH (see above)

Reduction factor for WHTs2

Higher

- RODP metric: 10% of Group Revenue ÷ Group D&P x jurisdictional D&P (per step 4.1); or
- ROR metric: 3% multiplied by Adjusted Revenues sourced in the Jurisdiction.

#### Offset "Excess" Profit (if any) against Amount A allocations

Extent of the offset varies with marketing and distribution (M&D) intensity in the market jurisdiction<sup>3</sup>

90% offset for jurisdictions with predominantly M&D activities

35% offset for other jurisdictions4

<sup>1</sup> For specified withholding taxes on deductible payments to group entities, an upward adjustment applies for MDSH purposes (the tax collected by the market jurisdiction is converted into a profit amount and added to its jurisdictional profit).

<sup>2</sup> Where the jurisdictional profit in the market includes an upward adjustment for withholding taxes, specific reduction factors apply to subtract a deemed normal profit measure from that adjustment (e.g. 15% of the profit converted amount is excluded in instances where the MNE has a D&P to sales ratio in the jurisdiction equal to or greater than 75% of that of the group).

<sup>3</sup> The MNE's depreciation and payroll (D&P) to sales ratio is the metric used to identify jurisdictions where the MNE is considered to perform predominantly M&D activities (i.e. where jurisdiction D&P to Sales ratio is less than 75% of that of the group).

<sup>4</sup> This offset percentage is reduced to 25% where the jurisdiction is a low-income economy or lower-middle-income economy per World Bank classifications.



# **Step 4. Elimination of Double Taxation**

The fourth step ensures the elimination of double taxation that may arise from the interaction of Amount A with the existing international tax system.

The starting point is to determine the profit of the MNE for each jurisdiction, by pooling together the accounting profit (or loss) of all group entities in the jurisdiction and applying some book-to-tax adjustments (including loss carry forward). Then the depreciation and payroll (D&P) of the MNE in the jurisdiction is calculated on a similar basis (incl. adjustments to align with earlier book-to-tax adjustments), allowing the determination of a jurisdictional return on D&P (RODP).

Next, the jurisdictional RODP for each jurisdiction that passes a de

Aggregate the

accounting profit

(or loss) of all

Group Entities

located in each

jurisdiction<sup>1</sup>

minimis test is used to place it within a tier-system that will determine the amount of its obligation to relieve double taxation. Under this system, the obligation to relieve double taxation is allocated first to the jurisdictions with profits in the highest tiers, and then, if necessary to fully eliminate double taxation, to jurisdictions with profits in lower tiers.

Finally, each relieving jurisdiction has flexibility to determine the basis used to identify entities of an MNE in their jurisdiction that will be entitled to claim relief. Different options based on profitability are provided by the Multilateral Convention (MLC), including the possibility to use a different methodology agreed with the MNE.

#### Step 4.1:

Determine the RODP of each jurisdiction

(Annex B Sections 4-5)

#### **Determine jurisdictional profit**

#### Make book-to-tax adjustments where necessary

- Adjustments at step 3.1, including treatment of losses, are replicated with some adaptations:
- Further adjustments to achieve closer alignment with a CIT base (e.g., transfer pricing, taxable presence, flow-through entity adjustments);
- Downward adjustment for double tax relief provided for withholding taxes imposed abroad;2
- Deduction equal to any MDSH adjustment, if applicable (step 3.3).

Determine jurisdictional depreciation and payroll (D&P)

Aggregate the accounting D&P of all Group Entities in each jurisdiction

Make adjustments required to match jurisdictional D&P allocations with jurisdictional profit allocations above (e.g., attribute D&P of a Group Entity to a taxable presence).

<sup>1</sup> Accounting profit (or loss) per entity is the profit (or loss) in its financial statements determined in preparing Group consolidated financial statements and entity location is defined with reference to existing tax residence concepts.

<sup>2</sup> For specified withholding taxes on cross-border deductible payments, a downward adjustment applies to the profit of the payee group entity where double tax relief is provided in its jurisdiction of residence (i.e. the foreign withholding tax is converted into a deductible profit amount).

#### Step 4.2:

Allocate relief obligations to jurisdictions

(Articles 9-11)

#### De minimis exclusion

Relief obligation applies only to jurisdictions that:

- Are part of the smallest group of jurisdictions that makes up 95% of the aggregate of jurisdictional profits; or
- have jurisdictional profit (per step 4.1) of at least EUR 50m³

#### Place the jurisdiction in a tier-system based on its jurisdictional RODP

	RODP Thresholds		Allocation Mechanism
>	1500% x Group RODP4	Tier 1 Profit - Waterfall	For jurisdictions with Tier 1 profit, relief obligations are allocated using a "waterfall" approach. <sup>6</sup>
	150% x Group RODP	Tier 2 Profit -	Where Tier 1 profit is not sufficient to fully relieve double taxation:  *Jurisdictions with Tier 2 profit relieve double taxation on a pro-rata basis until either the
	The higher of Tier 3B	Tier 3A Profit - Pro rata	

10% of Group Revenue\_\_ ÷ Group D&P

threshold, or 40%5

- Pro rata

  No obligation to eliminate
- taxation on a pro-rata basis until either the Amount A profit of the group is fully relieved, or their jurisdictional RODP reaches 150% of Group RODP. •If Amount A allocations have not been fully

relieved in Tier 2, a similar process will apply at

- Tier 3A and then tier 3B if necessary.
- <sup>3</sup> Under a specific anti-avoidance provision, EUR 50m threshold is reduced to EUR 10m for jurisdictions with low effective tax rate and high RODP.
- <sup>4</sup> Group RODP compares group profit (as per step 3.1) to depreciation and payroll of the Group (as per CFS with limited adjustments).
- <sup>5</sup> 40% RODP backstop also applies at Tier 1 and Tier 2 (i.e., if 150% and/or 1500% of Group RODP is lower than 40%).
- <sup>6</sup> Under the waterfall approach, the highest RODP jurisdiction is allocated relief obligations until its RODP matches second highest RODP jurisdiction. Those two are allocated relief obligations until their RODP matches third highest RODP jurisdiction. This process continues until the jurisdictional RODP of Tier 1 jurisdictions reaches 1500% of Group RODP or when all amount A allocations have been relieved.

Step 4.3: Identify relief entities in each relieving jurisdiction (Article 13) Each jurisdiction must select one of the profit metrics available to allocate jurisdictional relief amounts to group entities:<sup>7</sup>

"Excess" profit (per Amount A rules) | Taxable profit (per domestic CIT rules) | Accounting profit (per CFS)

The selected metric is used to allocate the relief obligations of the jurisdiction (as per step 4.2) to group entities (or their taxable presence) located in the jurisdiction using the waterfall approach described in footnote 6 above, with adaptations to apply at entity level.

<sup>7</sup> The metric selected by the jurisdiction will apply to all MNEs that have relief amounts in that jurisdiction. The jurisdiction can however bilaterally agree with a particular MNE to apply another method to that MNE.

Jurisdictional RODP



# Step 5. Filing obligations, payment and claiming relief

The last step is for the MNE to fulfill its reporting and payment obligations and obtain relief from double taxation through each relief entity.

Amount A filing obligations are met through a single tax return and documentation package which covers all of the MNE's Amount A tax liabilities across the world (as well as the calculation of the corresponding obligations to relieve double taxation). This tax return and documentation package is generally filed with the lead tax administration (typically, the tax authority of the jurisdiction where the Ultimate Parent Entity (UPE) is located), which is then responsible for sharing the documentation with all other relevant jurisdictions.

Payment of Amount A tax is made directly to each market jurisdiction by the Designated Payment Entity (DPE), which is a single entity bearing the primary obligation to pay Amount A on behalf of the MNE Group (typically the Ultimate Parent Entity). A local entity can be made liable by a market jurisdiction for Amount A tax only if the DPE fails to meet its payment obligation (secondary liability).

To ensure the DPE is funded to meet the MNE Group's tax liability, the relief entities of the MNE Group are required to make a compensation payment to the DPE which is disregarded for tax purposes but constitute a condition for claiming double tax relief.

Double tax relief is provided at the level of each relief entity under the domestic laws of the applicable relieving jurisdiction, subject to a number of guardrails established in the MLC to ensure timely and effective relief.

#### Step 5.1:

Streamlined filing obligations

(Articles 14 & 15)

A standard template will be used by an MNE Group for filing the Amount A Tax Return and the Common Documentation Package, including information on:

Financial and tax data needed to compute the amount of income liable to taxation

Amount of income eligible for relief from double taxation for each Group Entity

Any request for a comprehensive certainty review

The standard template will be filed by the DPE¹ with the lead tax administration², and this filing will satisfy all Amount A tax filing obligations of the MNE Group. The only exception to this streamlined compliance is where the DPE also has a separate local tax liability in a jurisdiction.³

- <sup>1</sup> The DPE is generally the ultimate parent entity (UPE) of the group, unless it resides in a jurisdiction which is not a Party to the MLC.
- <sup>2</sup> The LTA is generally the administration of the jurisdiction where the DPE of the MNE group is resident.
- <sup>3</sup> This generally refers to instances where the DPE has a local permanent establishment in a jurisdiction, in which case it will meet its filing and payment obligations locally, subject to any domestic requirements.

End of period

Filing deadline between 9 and 12 months, as set by the lead tax administration, after the end of the period.



Step 5.2:

Streamlined payment of tax

(Articles 13 & 16)

#### Payment of tax by the DPE

DPE meets the payment obligations of the MNE Group directly to all market jurisdictions.



#### Compensation payment to the DPE

To fund the DPE, relief entities in the group must make a compensation payment<sup>4</sup> equal to the tax paid by the DPE with respect to the relief entity's portion of the Amount A relief

Payment of tax deadline 18 months after the end of the period.

- <sup>4</sup> These compensation payments are a condition to claim double tax relief, but are otherwise ignored for tax purposes (e.g., no tax deduction, no withholding tax).
- 5 However, MNE Groups may reduce these payments in line with a Covered Group's Amount A funding agreement.



Double Tax Relief process

(Articles 12 & 13)

#### Relief method

Relieving jurisdiction must choose between four relief methods:

- 1. Direct payment
- Refundable tax
   credit
- 3. Non-refundable tax credit
- Deduction (of profit amount)

#### Process

Relief is claimed by each relief entity (as per step 4.3) through the domestic tax process of the relieving jurisdiction.

#### Guardrails in the MLC

#### **Timing**

Relieving jurisdictions must provide relief:

- within 90 days after a valid claim is submitted;
   or
- through a reduction in their next tax instalment payment by the relevant amount of relief.

#### Carry forward

If relief cannot be fully utilised in the relevant period, the relieving jurisdiction is required to allow for the relief attribute to be carried forward for a minimum of three fiscal years.



# 2. AMOUNT A TAX CERTAINTY FRAMEWORK



## **Scope certainty**

A scope certainty review provides an MNE with binding multilateral certainty from listed parties specified in the request, on whether it is in-scope in a particular period. This addresses the risk of unilateral compliance action in jurisdictions where the MNE sells its products.

A follow-up scope certainty review based on simplified documentation is also available to extractives groups and groups that include one or more regulated financial institutions (RFS groups), subject to conditions. This is not reflected in the Process Map below. A timeline for a scope certainty outcome is provided on page 15.

#### A request for scope certainty can be submitted to the lead tax administration (LTA):

- by the deadline for filing an Amount A tax return, or
- within 90 days of the MNE being notified that a party will commence a domestic tax examination

#### Step 1:

A request for scope certainty

(Article 22)

When submitted, a request must be accompanied by a scope certainty documentation package, together with:

- a list of listed parties from which certainty is sought1
- payment of the applicable tax certainty user fee 2

After a request is accepted,3 all compliance activity with respect to Amount A for the period specified in the request shall be suspended in all listed parties, unless the MNE is considered to withdraw its request for certainty or a review concludes that the MNE is in-scope.

- 1 Where a party considers it should be included as a listed party, and demonstrates a reasonable basis for this view, it will be added to the
- <sup>2</sup> The user fee will be set so that total fees over time are equal to 50% of the aggregate costs of independent experts on determination panels.
- <sup>3</sup> After accepting the request, the LTA shall notify all parties to the MLC that a request for scope certainty has been accepted.

Step 2:

Determine

who will

undertake

the review

(Articles 24 & 25)

#### A review is undertaken by either:



#### A panel of tax administrations, if:

- the MNE is an extractives group or RFS group;
- the MNE has a disclosed segment; or
- the MNE resulted from an internal fragmentation
- it is the first time scope certainty was requested by the MNE;
- seven years have passed and a listed party proposes a panel, or
  - other specified circumstances apply

The **LTA** in all other circumstances

#### Panel composition:

- the LTA, and
- tax administration from six other listed parties4

<sup>4</sup> Where the MNE group is an extractives or RFS group, these shall include tax administrations from three listed parties in which an extractives group has a license to extract e.g., minerals, or an RFS group has at least 5% of the total headcount in regulated financial institutions of the group.

or



process (Article 26 & Annex F

#### Scope

Determines whether the MNE is an inscope MNE for the period specified in the request.

#### **Process**

- LTA exchanges the MNE's scope documentation package with all listed parties.
- A review may include one or more meetings or calls with the MNE, including requests for additional information.
- Other listed parties may submit comments or concerns to which should be addressed as part of the review.



#### A summary of the outcomes of a review is exchanged with listed parties for comment

#### Agreement

Where the LTA undertakes a review or a scope review panel reaches agreement on all issues, and either no objections are submitted by listed parties or all objections are withdrawn following consultation, the review ends with a scope certainty outcome for the period covered by the request, that is exchanged with and binding on all listed parties.

#### In-scope

The MNE will be required to file an Amount A tax return by the later of the usual filing deadline for the period and 180 days after being notified of this outcome.

#### Out-of-scope

No requirement to file a return.

#### No agreement

If a scope review panel does not reach agreement, or if objections are submitted by listed parties that are not withdrawn, issues are referred to a determination panel for resolution.5

See page 14 for the determination panel process.

#### Outcome of the review (Article 29)

Step 4:

<sup>5</sup> The list of outstanding issues and alternative outcomes is exchanged with all listed parties for comment.



## **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 number of years, subject to critical assumptions continuing to apply, and that relevant elements of the MNE's internal control framework are considered to be designed and operating effectively.

For out-of-scope MNEs, scope advance certainty is provided by parties proposed by the MNE ("listed parties") and may cover the categorization of revenues and costs for the purposes of rules on extractives groups and groups that include one or more regulated financial institutions (RFS

For in-scope MNEs, advance certainty is provided by parties in which the MNE meets the nexus threshold or that are required to provide relief for the elimination of double taxation ("affected parties") and may in addition cover the categorization of revenues and choice of reliable method for the purposes of revenue sourcing. A timeline for an advance certainty outcome is provided on page 15.

#### **Out-of-scope MNEs**

May submit a request for scope advance certainty provided by listed parties together with a request for scope certainty (see step 1 of page 11)

#### In-scope MNEs

May submit a request for advance certainty provided by affected parties together with a request for comprehensive certainty (see step 1 of page 13)

Request must be submitted to the lead tax administration (LTA) accompanied by an advance certainty documentation package and payment of a tax certainty user fee.1 After accepting the request, the LTA shall notify all listed parties or affected parties that a request for advance certainty has been accepted.

1 The user fee will be set so that total fees over time are equal to 50% of the aggregate costs of independent experts on determination panels.

#### Step 2: Establish Review Panel

Step 1:

Request

Advance

Certainty

(Articles 22(2)

& 23(2))

(Articles 24(2), (4) & 25)

#### A review is always undertaken by a panel of tax administrations

For **out-of-scope MNEs**, panel composition is identical to scope certainty (see step 2 of page 11)

For **in-scope MNEs**, panel composition is identical to comprehensive certainty (see step 2 of page 13)

A single panel undertakes both reviews (scope advance certainty and scope certainty, or advance certainty and comprehensive certainty) if the listed or affected parties are the same in both requests.

Step 3: Review process

(Article 26 & Annex F Section 1)

#### Scope of a review

For **out-of-scope MNEs**, a review determines:

- · whether the MNE's proposed approach to applying the extractives exclusion and/or the RFS exclusion reflects a correct application of the MLC: and
- whether relevant aspects of the MNE's internal control framework are designed and operating effectively

#### For **in-scope MNEs**, a review determines:

- · whether the MNE's proposed approach to applying revenue sourcing, the extractives exclusion and/or the RFS exclusion reflects a correct application of the MLC; and
- whether relevant aspects of the MNE's internal control framework are designed and operating effectively

#### **Process**

- The LTA exchanges the MNE's advance certainty documentation package with all listed/affected parties.
- A review may include one or more meetings or calls with the MNE, including requests for additional information.
- Support may be requested from a pool of internal control systems specialists from tax administrations of listed/affected parties.
- Other listed parties or affected parties may submit comments or concerns, which should be addressed as part of a review.

Step 4:

Outcome of

the review

(Article 29(6))

#### A summary of the outcomes of a review is exchanged with listed parties or affected parties for comment

#### Agreement



If a panel reaches agreement on all issues and either no objections are submitted or all objections are withdrawn following consultation:

- The review ends with an advance certainty outcome that is exchanged with and binding on all listed or affected parties, subject to agreed critical assumptions set by the panel continuing to be met;
- The first time scope advance certainty or advance certainty is requested, certainty applies to periods ending within 36 months of the start of the period specified in the request. For subsequent requests for certainty by the same MNE, this period can be extended to 60 months.

#### No agreement



If a panel did not reach agreement or if objections are submitted that are not withdrawn, issues are referred to a determination panel for resolution.2



See page 14 for the determination panel process.

<sup>&</sup>lt;sup>2</sup> The list of outstanding issues and alternative outcomes is exchanged with all listed or affected parties for comment.



## **Comprehensive certainty**

A comprehensive certainty review provides an in-scope MNE with binding multilateral certainty over all aspects of its application of the MLC for a period in all parties. This ensures consistent taxation of

the MNE across jurisdictions and the full elimination of double taxation. A timeline for a comprehensive certainty outcome is provided on page 15.

### Step 1:

comprehensive certainty (Article 23)

Request

#### A request for comprehensive certainty can be submitted to the lead tax administration (LTA):

- with an MNE's Amount A tax return and common documentation package (including a list of affected parties)<sup>1</sup>, or
- after filing an Amount A tax return and common documentation package, within 30 days of the MNE being notified that two or more parties will commence a multilateral tax examination over the application of Amount A.

A request must be accompanied by payment of the applicable tax certainty user fee.<sup>2</sup> After a request is accepted,<sup>3</sup> all compliance activity with respect to Amount A for the period specified in the request shall be suspended in all parties, unless the MNE is considered to have withdrawn its request for certainty.

- <sup>1</sup> Where a party considers that the MNE has revenues in its jurisdiction that meet the applicable nexus threshold and demonstrates a reasonable basis for this view, it will be added to the list of affected parties.
- <sup>2</sup> The user fee will be set so that total fees over time are equal to 50% of the aggregate costs of independent experts on determination panels.
- 3 After accepting the request, the LTA shall notify all parties to the MLC that a request for comprehensive certainty has been accepted.

#### A review is undertaken by either:



#### A panel of tax administrations, if:

it is the first time comprehensive certainty is requested by the MNE,

 five years have passed or there is a minimum change in the jurisdictions where Amount A profit or Amount A relief is allocated, and a panel is proposed by an affected party, or

other specified circumstances apply

or The LTA in all other circumstances

# Determine who will undertake a review

Step 2:

(Articles 23(3) & 25(5))

#### Panel composition:

(a) the LTA, and

(b) tax administrations from three affected parties providing relief for the elimination of double taxation, and

(c) tax administrations from three other affected parties, being: one from an affected party that is a specified low- or middle-income jurisdiction (i.e., low- or middle-income jurisdictions excluding OECD and G20 members); one from an affected party that is not a specified low- or middle-income jurisdiction; and another from another affected party that is not in (b).



A review covers all relevant aspects of the MLC for a period, except to the extent an advance certainty outcome applies.<sup>4</sup>

## Process The LTA exchanges the MNE's Amount A tax return and common documentation package with all affected parties.

Step 3: Review process

(Article 26)

Phase 15: confirms the accuracy of information upon which Amount A profit and Amount A relief are allocated (e.g., calculation of excess profits, application of exemptions, calculation of jurisdiction RODP etc.).

Phase 2: confirms that allocations of Amount
A profit and Amount A relief to affected
parties are correct.

A review may include one or more meetings or calls with the MNE, including requests for additional information. Other affected parties may submit comments or concerns, which should be addressed as part of a review.

- <sup>4</sup> Where advance certainty does apply, a review shall consider any information that could indicate an agreed approach has not been implemented or agreed critical assumptions are no longer met.
- <sup>5</sup> A review may progress directly from Phase 1 to Phase 2 or may seek agreement to the outcomes of Phase 1 and the resolution of disagreements before progressing to Phase 2.

#### A summary of the outcomes of a review is exchanged with affected parties for comment

#### V

#### Agreement

#### No agreement

Step 4:
Outcome of the review

(Article 29(3), (4))

Where the LTA undertakes a review or the review panel reaches agreement on all issues, and there are no objections by affected parties or all objections are withdrawn following consultation, the review ends with a comprehensive certainty outcome for the period covered by the request, that is exchanged with affected parties. All parties to the MLC, including those that are not affected parties, are bound by this outcome.

If a review panel does not reach agreement or if objections are submitted that are not withdrawn, issues are referred to a determination panel for resolution.<sup>6</sup>

V

See page 14 for the **determination** panel process

<sup>&</sup>lt;sup>6</sup> The list of outstanding issues and alternative outcomes is exchanged with all affected parties for comment.



# **Determination panel to** resolve disagreements

Advance certainty, scope certainty and comprehensive certainty are all supported by a binding determination panel process to resolve any disagreements that arise. Where a review panel or scope review panel conducting a review does not reach agreement on a matter, or if other affected parties or listed parties do not agree with the outcomes of a

review, a determination panel is formed which will choose from among the alternative outcomes available. The decision of the determination panel is binding on all relevant parties. A timeline for resolving disagreements involving a determination panel is provided on page 15.

#### A determination panel comprises seven members:

#### Step 1: Determination panel composition (Article 28)

#### Three independent experts

Selected at random from nominations by parties and vetted by a screening committee comprising tax officials.

#### Three government officials

Selected from affected parties or listed parties, as applicable.

#### One chair

May be an independent expert or government official, as agreed by the previously selected six panellists. Failing agreement by these six panellists, the chair would be an independent expert selected at random from nominations by



#### Step 2:

The lead tax administration provides the determination panel with:

- a list of issues that require resolution, together with the alternative outcomes it may choose from, as proposed by members of a review panel or scope review panel, listed parties or affected parties;
- any comments or explanations submitted by affected parties or listed parties, the documentation package provided by the MNE with its request for certainty (and any changes to this agreed as part of the review process); and
- any written explanation provided by the MNE as to the approach it took with respect to the issue where there is disagreement.



Information

provided to a

The determination panel endeavours to agree one alternative outcome presented to it by consensus (i.e. all members of the panel).1 If consensus is not reached, then the following "ranking system" applies:

- An alternative outcome that is considered to be the most accurate application of the MLC by at least four members of the determination panel is chosen.
- If no alternative outcome is considered to be the most accurate application of the MLC by at least four members of the determination panel, then all alternative outcomes to the issue will be ranked by each panel member in the order in which they consider that the outcomes reflect the most accurate application of the MLC.
- Annex F Section 2 of the MLC includes a process to eliminate alternative outcomes with the least support, until one of the remaining alternative outcomes is considered to be the most accurate application of the MLC by at least four determination panel members.

<sup>1</sup>The determination panel can only choose between the alternative outcomes presented to it and cannot agree a different outcome.



on all listed parties.

Scope certainty outcome

Exchanged with and binding

Where the MNE is found to be in-scope, it will be required to file an Amount A tax return by the later of the usual filing deadline for the period and 180 days after being notified of this outcome.

#### Advance certainty outcome

A certainty review concludes with a certainty outcome, reflecting the decisions of the determination panel.

- Exchanged with and binding on all listed or affected parties, subject to agreed critical assumptions set by the panel continuing to be met;
- The first advance certainty outcome applies to periods ending within 36 months of the start of the period specified in the request. For subsequent requests by the same MNE, this period can be extended to 60 months.

#### Comprehensive certainty outcome

- Exchanged with all affected parties.
- All parties to the MLC, including those that are not affected parties, are bound by this outcome.

#### Step 4: Outcome of the process (Articles 27(8) & 29)



# Timeframes for a certainty review

#### Scenario 11

The lead tax administration undertakes a review, or the review panel or scope review panel reaches agreement on all issues, and there are no objections by listed parties or affected parties.

Start of review<sup>2</sup>

Scope certainty – 180 days³ Advance certainty – 270 days Comprehensive certainty – 365 days⁴

Deadline for the end of the review stage

120 days<sup>5</sup>

Deadline for comments and objections

NB: There are no scenarios where certainty can be

delayed beyond the timeframes provided in the MLC

Under Scenario 1, certainty is provided within the following periods after the review commences:

- Scope certainty 300 days (c.10 months)
- Advance certainty 390 days (c.13 months)
- Comprehensive certainty 485 days (c.16 months)

Scenario 21

Objections are raised by listed parties or affected parties, but these are withdrawn following consultation including input from the MNE.

Deadline for comments and objections

90 days

Deadline for consideration of objections and consultation with relevant listed/affected parties

Under Scenario 2, certainty is provided within the following periods after the review commences:

- Scope certainty 390 days (c.13 months)
- Advance certainty 480 days (c.16 months)
- Comprehensive certainty 575 days (c.19 months)

Scenario 31

The review panel or scope review panel does not reach agreement on all issues, or there are objections by listed parties or affected parties that are not withdrawn, and resolution by a determination panel is needed.

Deadline for consideration of objections and consultation with relevant listed/affected parties<sup>6</sup>

120 days<sup>5</sup>

Deadline for comments on issues where there are objections and alternative outcomes

120 days<sup>5</sup>

Deadline for a determination panel to deliver its decisions

Under scenario 3, certainty is provided within the following periods after the review commences:<sup>6</sup>

- Scope certainty 540-630 days (c.18-21 months)
- Advance certainty 630-720 days (c.21-24 months)
- Comprehensive certainty 725-815 days (c.24-27 months)

#### Notes

- 1. All timeframes for a review stage are increased by 90 days for the first time certainty is requested. They may also be extended by a total of 30 days where a member of a review panel or scope review panel has been unable to reach a decision on a particular issue and requires such an increase, or by a period equal to any delay caused by the MNE.
- 2. These timeframes begin from the point where a review commences. The timeframe between a request for certainty being submitted and a review commencing is determined by a number of factors set out in the MLC.
- 3. The timeframe for a scope certainty review is increased by 90 days where the MNE is an extractives group or regulated financial services group, where it may have a disclosed segment or where it resulted from an internal fragmentation. The timeframe for a scope certainty review is also increased by 90 days where an advance certainty outcome applies but it is determined that one or more critical assumptions applicable to that outcome no longer applies.
- I. The timeframe for a comprehensive certainty review assumes that a review progresses directly from the first phase to the second phase. The timeframe for a comprehensive certainty review is increased by 90 days where an advance certainty outcome applies but it is determined that one or more critical assumptions applicable to that outcome no longer applies.
- The 120 days for the deadlines for comments and for a determination panel to deliver its decisions include 30 days for the lead tax administration to make documents available to listed parties/affected parties or the determination panel, as applicable.
- Where a review panel or scope review panel does not reach agreement on all issues, but no further objections are raised by listed parties or affected parties, the 90 days provided for consideration of objections and consultation will not apply.



# 3. TAX CERTAINTY FOR ISSUES RELATED TO AMOUNT A



# Dispute resolution for issues related to Amount A

Since Amount A will co-exist with the existing international tax rules, the MLC provides also in-scope MNEs with improved tax certainty processes for issues related to Amount A (hereafter "Related Issues").

"Related Issues" cover a broad range of disputes on existing tax treaty rules, namely: transfer pricing, business profit or withholding tax characterisation disputes that have an impact on Amount A. A dispute has an impact on Amount A for this purpose if:

- the adjustment involved could change the jurisdictions that eliminate double taxation with respect to Amount A or the tier for relief; or
- all adjustments made by a jurisdiction during a year amount to at least EUR 1.5 million.

There are also exclusions that correspond to exclusions from Amount A and an option for qualifying developing countries to make binding resolution of unresolved MAP issues 'elective'.

The related improved tax certainty processes include:

- access to the mutual agreement procedure (MAP); and
- for unresolved MAP cases, after two years, a mechanism ensuring timely resolution in a mandatory and binding manner (where no similar mechanism already exists)

This framework creates clear incentives for dispute prevention approaches while also guaranteeing that double taxation is eventually avoided, where dispute resolution becomes necessary.

A "Related issue" is a transfer pricing, business profit or withholding tax characterisation dispute covered by a tax treaty where the adjustment involved either: 1

OR

Step 1

Determine if a dispute on existing tax treaty rules involving an in-scope MNE is a 'Related Issue'

(Article 34)

(a) impacts the allocation of the obligation to relieve double taxation arising from Amount A (see step 4.2. on page 8)

Condition (a) is met if there is a change in the jurisdictions providing relief or the RODP tier of a relieving jurisdiction (see step 4.2.), if the full adjustment has been added to the MNE's jurisdictional profit of the adjusting jurisdiction for the year of adjustment.

(b) materially impacts the calculation of the MNEs profit in a jurisdiction for Amount A purposes (see step 4.1. on page 8)

Condition (b) is met where the aggregate quantum of all adjustments asserted by a jurisdiction concerning a member of the MNE during a year is at least EUR 1.5 million (after a EUR 3 million threshold for an initial three-year period).

<sup>1</sup>As "Related Issues" are only relevant for in-scope MNEs, disputes involving MNEs/segments that are excluded from Amount A as per the rules described on page 5 (steps 1.1 and 1.2) are also excluded from "Related Issue".



#### (a) Overview

The MLC provides two mechanisms to ensure timely and effective resolution of "Related Issues":

1. The Mutual Agreement Procedure (Article 33)

>

2. A mandatory binding dispute resolution (MDBR)<sup>3</sup> process (Article 35)

Apply improved tax certainty processes

Step 2 (a)

(Articles 33, 35, 36 & Annex G) A standalone MAP provision is provided in the MLC, in addition to MAP under existing instruments that do not include mandatory binding dispute resolution. This provision allows:

- Filing of MAP requests to both competent authorities, ensuring access to MAP;
- Implementation of all MAP agreements notwithstanding domestic time-limits; and
- Possibility of bilateral/multilateral advance pricing arrangements (APAs) where not possible under existing treaties.

An enhanced process that allows "Related Issues" that are both

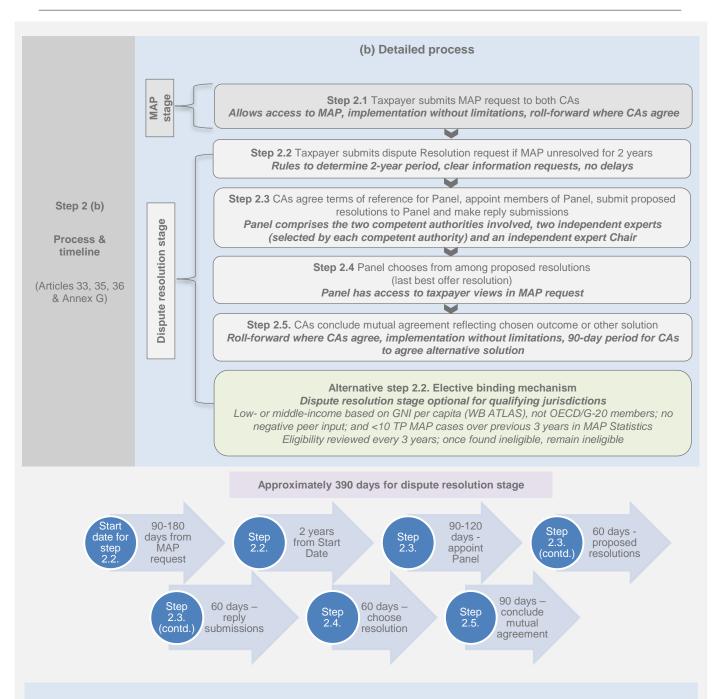
- unresolved in MAP for more than two years; and
- not otherwise subject to mandatory binding resolution under existing instruments (tax treaties or EU instruments)

to be resolved by an independent expert majority panel in a mandatory and binding manner. This process is subject to clear time-limits, and represent a significant improvement compared to existing processes.

NB: For qualifying developing countries, an elective binding dispute resolution process (Article 36) replaces the mandatory binding dispute resolution process under Article 35.



# Dispute resolution for issues related to Amount A



#### **Key expected benefits for in-scope MNEs**

- Encourages tax administrations to focus on dispute prevention to avoid resource outlay ensuring more predictability with respect to adjustments made to in-scope MNEs and more focus on risk assessment, APAs and other such processes
- Ensures that where disputes arise despite these efforts, they are handled in the most efficient, effective and timely manner, with several procedural features that address issues noted by taxpayers in existing procedures
- Allow in-scope MNEs to leverage this process to seek to resolve transfer pricing/business profit treaty disputes, including
  those that have remained unresolved in MAP over the years
- Allows developing countries with limited MAP experience to develop experience in MAP and then, engage in MAP arbitration on an elective basis before moving to mandatory, binding resolution once there is sufficient experience in MAP



# 4. REMOVAL AND STANDSTILL OF DIGITAL SERVICE TAXES AND RELEVANT SIMILAR MEASURES



# **DSTs** and relevant similar measures

The removal and standstill of DSTs and relevant similar measures is an integral part of the MLC rules on Amount A. These commitments apply with respect to all companies, not only the companies that are in-scope of Amount A. The MLC contains a list of existing measures that must be withdrawn by Parties when Amount A starts applying. It also includes a review process within the Conference of the Parties (CoP) designed to ensure that

based criteria (e.g. location of

customers and users);

Amount A allocations are denied for any Jurisdiction that is determined to have applied a DST or relevant similar measure in the future. Separately, the MLC includes provisions addressing additional measures (such as "significant economic presence" nexus rules) that are not DSTs (because they are within the scope of tax treaties), but that overlap with the purpose of Amount A.

Withdrawal of existing **DSTs** (Article 38)

The MLC (Annex A) includes a list of existing measures that the Parties commit to withdraw when Amount A starts applying.

**Definition of DSTs and Exclusions** (Article 39)

DSTs and relevant similar measures are defined by three cumulative criteria: 1. Application depends on market-

2. Ring-fenced to nonresident or foreign-owned businesses:



3. Outside the scope of tax treaties.

Definition also contains explicit exclusions for: Consumption taxes, transaction taxes that apply on a perunit or per-transaction basis, and rules to address artificial avoidance of permanent establishments.

#### **Review Process in the** CoP

(Annex H)

#### Stage 1

(maximum duration of 6 months)

Stage 2

(maximum duration of

6 months)

A jurisdiction contemplating a measure A jurisdiction other than the enacting Party or (enacting Party) (requesting Party) submits a written request to the Depositary to convene a meeting of CoP

CoP endeavours to reach a decision by consensus (the enacting Party and, if different, the requesting Party do not take part to the vote)

- Depositary notifies the Parties within one month of receiving a request a.
- The enacting Party submits a self-assessment of the measure to the Depositary.
- Depositary convenes the meeting of the CoP.
- CoP endeavours to decide by consensus

If Consensus is not reached CoP establishes Ad hoc advisory panel\* \*consists of the enacting Party, the requesting Party, the Party who thinks the measure is DST, and 5 other designated members Ad hoc advisory panel examines the

measure and submits recommendation to CoP

Panel recommendation adopted unless a majority of Parties supports the opposite If Consensus is reached

If CoP decides the measure is a DST or relevant similar measure

→ Denial of Amount A

Retroactive denial up to 3 years - Default rule

CoP decision - If measure existed before MLC and was not listed in Annex A - If request from the enacting Party - If CoP decides so

Denial only from

the date of the

Review process also applies for determining whether a measure enacted by a subnational entity of a Party is a DST or relevant similar measure.

If the CoP decides that the subnational measure is a DST or relevant similar measure, then:

**Subnational measures** (Annex H)

- the Party needs to make best efforts to remove the subnational measure and submit the report to the CoP, and
- the CoP publishes its decision with the report, although Amount A allocation is not denied.

Specific measures inscope of tax treaties (Article 40)

There are some measures in scope of tax treaties that apply irrespective of physical presence, such as Significant Economic Presence (SEP) legislations. Because their intent overlaps with the intent of Amount A, Parties must not apply them to in-scope MNEs. They can, however, apply them to other companies.

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The Multilateral Convention to Implement Amount A of Pillar One – Factsheets, December 2023



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