

PUBLIC CONSULTATION DOCUMENT

Pillar One – Amount A: Extractives Exclusion

14 April - 29 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 Economy¹ (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.

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 covers the Schedule of the Model Rules that will govern the Extractives Exclusion. The Schedule for the Exclusion for Regulated Financial Services, and the Schedule on Segmentation, are not contained in this document, and will be released for public consultation later as standalone documents.

Model Rules on Extractives Exclusion

The Extractives Exclusion will exclude from the scope of Amount A the profits from Extractive Activities. The definition of Extractive Activities contains two elements: a “product test” and an “activities test”, both of which must be satisfied. This means that the exclusion applies where the Group derives revenue from the sale of Extractive Products and the Group has carried out the relevant Exploration, Development or Extraction. This approach reflects the policy goal of excluding the economic rents generated from location-specific extractive resources that should only be taxed in the source jurisdiction, while not undermining the comprehensive scope by limiting the exclusion in respect of profits generated from activities taking place beyond the source jurisdiction, or later in the production and manufacturing chain.

¹ <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm>.

The Schedule for the Extractives Exclusion contained in this document provides a description and explanation of the envisaged draft rules. Other than the definitions for the scope of the Extractives Exclusion, which are presented in draft Model Rules format, this document is in narrative format. This is because other parts of the Model Rules on Amount A, on which corresponding provisions for the Extractives Exclusion would be based, are pending finalisation.

The relevant sections on Scope (currently Title 2), as well as relevant definitions (currently included in Title 9), and which were the subject of an earlier public consultation document² released on 4 April 2022 are included in the footnotes, where relevant and for context. In addition, explanatory footnotes are included in the document to assist public commentators in reviewing the substantive proposal, and to note where further material is expected to be included in Commentary.

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 allowing it to be 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 document is intended to illustrate the framework for the Extractives Exclusion, further changes may be made to the conceptual framework, as well as then being translated into Model Rules format. 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 described in this document. While comments are invited on any aspect of the rules, input will be most helpful where it explains the practical challenges in applying the rules as described, and the additional guidance or compliance simplifications that would be needed to effectively apply the Extractives Exclusion.

Interested parties are invited to send their comments on this discussion draft no later than 29 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 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.

² <https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-a-scope.pdf>.

Schedule [F]: Extractives Exclusion

Overview

1. The Extractives Exclusion will exclude from the scope of Amount A the profits from Extractive Activities. This first section provides an overview of the seven steps that a Group covered by the Extractives Exclusion would follow to apply Amount A as a whole. For simplicity, these rules will be contained in one Schedule of the Model Rules, Schedule F. Steps 2 and 3 are specific to the Extractives Exclusion, and it is these parts on which public comments are invited.

Application of the Extractives Exclusion

2. The Extractives Exclusion would be applied taking the following steps:

3. **Step 1:** Apply the general scope rules. This is the first step for any Group to be in scope of Amount A. This means that a Group would only be potentially in-scope of Amount A where either the Group on a consolidated basis (including activities covered by the exclusion), or a disclosed segment (where the exceptional segmentation rules apply), has more than EUR 20 billion of Revenue³ and a profit margin above 10%.⁴ In applying the general Amount A scope provisions, the Group would also need to take into account the effect of the averaging mechanism (see public consultation document on these scope rules released on 4 April 2022 and relevant provisions contained in the Annex). If the Group (or disclosed segment, if applicable) does not meet both of these scope thresholds, it is not in scope of Amount A and need not continue. Only if the Group (or disclosed segment, where applicable) has more than EUR 20 billion of revenue, and a profit margin above 10% (including after the application of the averaging mechanism) does it then continue to Step 2.

4. **Step 2:** Re-determine whether the EUR 20 billion Revenue threshold is met, by testing only the in-scope (i.e. non-Extractives Activities) revenue. If this is not above EUR 20 billion, the Group is not in scope. If it is above EUR 20 billion, continue to Step 3.

³ As outlined in the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the Amount A revenue threshold will be: “reduced to 10 billion euros, 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.” In this document, the EUR 20 billion threshold is used, without prejudice to this part of the Statement.

⁴ In accordance with the general rules, revenues and profits derived from a Joint Venture will be taken into account when applying the scope thresholds. The revenues reported in the Consolidated Financial Statements of a Group does not include revenues derived from Joint Ventures which are accounted for under the equity method. To account for Joint Venture revenues, the rules on tax base provides an adjustment for the Group’s proportionate share of revenues in a relevant Joint Venture. Whereas, profits derived from a Joint Venture are recognised in a Group’s Financial Accounting Profit (or Loss) and are consequently included in the Adjusted Profit Before Tax without the need for specific adjustments. Accordingly, in testing whether its revenue and profits qualify for the Extractives Exclusion, the Group would need to include its attributable share of revenue and profit from such Joint Ventures.

5. **Step 3:** Re-determine whether the 10% profitability threshold is met, by isolating the Extractives profits, and testing the profit margin of the remaining in-scope profits. If this profit margin is below 10%, the Group is out of scope. If it is above 10%, continue to Step 4. Work is ongoing in considering how the application of the Extractives Exclusion can be simplified, particularly for Groups that exceed the revenue threshold, but whose in-scope profit margin is consistently below the 10% profitability threshold. In addition, work is underway to consider whether an initial transition period is needed, while Groups adjust their systems to comply with the requirements.
6. **Step 4:** Apply the rules for nexus and revenue sourcing. The nexus threshold will only be met where the in-scope revenues sourced to a jurisdiction exceed the agreed nexus revenue threshold. Revenue covered by the Extractives Exclusion shall not be taken into account for the purpose of applying the nexus test. The general Amount A revenue sourcing rules will apply to the in-scope revenue of a Group that is covered by the Extractives Exclusion.
7. **Step 5:** Apply the rules for the determination and allocation of taxable profit to a Jurisdiction for a Period. This will be the same as the ordinary profit allocation formula that applies for Amount A. The profits that are covered by the Extractives Exclusion will not be taken into account for the purposes of applying the Marketing and Distribution Profits Safe Harbour.
8. **Step 6:** The mechanism to eliminate double taxation will not result in the profits that are covered by the Extractives Exclusion being used to eliminate double taxation arising from Amount A. These profits will be excluded from the mechanism to eliminate double taxation.
9. **Step 7:** File the necessary documentation for the purposes of administration and reporting. Documentation requirements will be set out in the relevant provisions on administration. The process for filing this documentation as part of the tax certainty process will be set out in the relevant provisions on tax certainty.
10. Steps 2 and 3, which are the operative provisions specific to the Extractives Exclusion, are discussed in further detail below.

Step 2: Identify Extractives Activities and apply the Revenue Threshold to in-scope revenue

11. The Revenue threshold for Amount A is designed to apply to consolidated group revenue, and it has been set at EUR 20 billion (as applied at Step 1). The purpose of Step 2 is to re-apply the Revenue threshold, looking at the in-scope revenue.⁵
12. This test is applied by taking the consolidated Group revenue figure,⁶ and subtracting third party revenue derived from Extractives Activities. The Extractive Activities definition contains a dual test: a product test (i.e. “the sale of an Extractive Product”) and an activities test (i.e. “conduct Exploration, Development or Extraction”), both of which must be satisfied. In other words, the Group must derive revenue from the exploitation of the Extractive Products and the Group must also have carried out the Exploration, Development or Extraction. This means that revenue from commodity trading only (without having conducted the relevant extractive activity), or revenue from performing extraction services only (without owning the Extractive Product) will not qualify for the exclusion.

⁵ As defined in Title 9, Revenues of the Group for a Period means the Total Revenues after the exclusion of revenues derived from Extractive Activities. Extractive Activities, defined below, means that the Group derives revenue from the sale of an Extractive Product and conducts Exploration, Development or Extraction.

⁶ Or the revenue of a disclosed segment, if the exceptional segmentation rules are the basis on which the Group met the scope threshold in Step 1.

13. The test in Step 2 is intentionally designed to be straightforward and to achieve parity with the ordinary application of the Amount A rules. This is because the ordinary test and this Step 2 would both use the same revenue figure of EUR 20 billion as tested against third party revenue, instead of having Extractives Groups tested against both third party revenue and intra-group revenue.

14. It is anticipated that this part of the test will be relevant for a number of Groups, and as such it is intended to provide a filtering function using a rule that is relatively easy to apply and document, and to be reviewed by tax administrations. However, it is recognised that because of the design of the definition of Extractive Activities, which sets the boundary of the exclusion at points at which there may not be identifiable third party revenue (i.e. when the scope of the exclusion for a Group is at a point where there is intra-Group revenue, or deemed revenue on the basis of the Internationally Recognised Reference Price or the backstop provision), it is possible that some Groups may not have third party revenue derived from Extractives Activities which could be subtracted from the consolidated Group revenue. Such Groups would proceed to Step 3.

15. This approach is preferable to requiring a more granular breakdown of the Extractive Activities revenue based on the definitions above, which would require a more involved compliance process for all Groups to identify the intra-group and deemed revenue figures (even for Groups for which the result of excluding third party revenues would be that the Group was out of scope at this point). It would also result in the identification of more revenue than was represented in the Consolidated Financial Statements because it would add up (rather than net-out) intra-group transactions, and which may make it more likely that the Group exceeded the EUR 20 billion threshold.

16. The test would use the following definitions:

17. “**Extractive Activities**” means that the Group derives revenue from the sale of an Extractive Product and conducts Exploration, Development or Extraction.

18. “**Extractive Product**” means:

- a) any solid, liquid or gas that is extracted from the earth’s crust and is in the form in which it exists upon its recovery or severance from its natural state. It includes Minerals, Mineraloids and Hydrocarbons and similar materials extracted from the earth’s crust; or
- b) a product resulting from the Qualifying Processing of such material; or
- c) a license to explore for or exploit Minerals, Mineraloids and Hydrocarbons; or
- d) Exploration and Development assets.⁷

19. “**Mineral**” means any inorganic substance that exhibits crystalline characteristics, in solid form, occurring naturally in or on the earth’s crust or in or under water and which was formed by or subjected to a geological process, and includes clay, gems, gravel, metal, ore, rock, sand, soil, stone and any such substance occurring in an ore body, ore deposit, or in a stockpile or tailings.

20. “**Mineraloid**” means any substance that does not exhibit crystalline characteristics whether in solid, liquid, or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes but is not limited to amber, coal, obsidian and opals, and any such substance occurring in an ore body, ore deposit, or in a stockpile or tailings.

21. “**Hydrocarbon**” means any organic compound consisting entirely of carbon and hydrogen molecules that is in solid, liquid or gaseous form occurring naturally in or on the earth or in or under water

⁷ The Commentary will explain that this includes licenses granted by the State, by a private person that owns the natural resource, or the transfer or rights between two companies.

and which was formed by or subjected to a geological process and includes crude oil, tar sands, heavy oils and natural gas occurring in a subsurface oil and gas reservoir, deposit, or in a stockpile.

22. “**Exploration**” means the process of searching for and assessing an Extractive Product resource deposit or reservoir.

23. “**Development**” means the process of drilling, excavating and constructing the Exploration and Extraction facilities and the supporting infrastructure.

24. “**Extraction**” means the removal of an Extractive Product from its natural site or from mine tailings and includes the Qualifying Processing and Transportation of such Extractive Products.

25. “**Qualifying Processing**” means processing undertaken to concentrate, isolate, purify, refine or liberate an Extractive Product as defined in paragraph 18a) from its natural state to produce a basic commodity.

- a) Qualifying Processing includes transformation and processing of hydrocarbons into a liquefied state, including liquefied natural gas (LNG) and liquefied petroleum gas (LPG); processing of bitumen from oil sands, oil shale and heavy oil to a stage that is not beyond the crude oil stage or its equivalent;
- b) Qualifying Processing for mining and metals includes activities which result in the production of minerals, mineraloids and metals including the casting of metals;
- c) Qualifying Processing does not include extrusion, fabrication or activities to produce alloys, steel, jewellery, petrol, gasoline, diesel, kerosene and similar refined hydrocarbons, lubricants, chemicals, plastics and plastic polymers;⁸
- d) For all other cases, Qualifying Processing is deemed to include processing activities up to and including, but not beyond, the Delineation Point.

26. “**Transportation**” means the physical movement and incidental storage of an Extractive Product to the delivery location to fulfil delivery terms set out in sales contracts and includes physical movement by airplane, automobile, helicopter, pipeline, ship, train, or truck.⁹

27. The “**Delineation Point**” is the deemed end point of excluded Extractive Activities. The Delineation Point is the earliest point at which one of the following tests is met:

- a) Where there is a sale¹⁰ of the Extractive Product made from the Group to an Independent Party;
- or

⁸ The Commentary would explain that this is a “backstop” provision. It applies in the event that all processing takes place within the Group, and within the same jurisdiction as the extraction, and there is no relevant Internationally Recognised Reference Price for the Extractive Product. In such cases, for policy coherence and to ensure a level playing field, the exclusion stops at the point established by the backstop provision, which is where the product is no longer closely tied to the inherent character of the Extractive Product itself, and moves into more typical manufacturing phase for later stage products. See also paragraph 27d).

⁹ The Commentary would explain that the reference to ‘the delivery location to fulfil delivery terms set out in sales contracts’ reflects that transportation of an Extractive Product to market can either be performed by the producer or the customer. Where the transportation is performed by a producer and set out in the sales contract, the revenues earned for the transportation are included within the calculation of the extractive exclusion, and notwithstanding that the Delineation Point may have been triggered.

¹⁰ The Commentary would explain that the term ‘sale’ means where the sale of an Extractive Product results in a transfer of title of the Extractive Product to another legal entity. For example, tolling arrangements where processing services are provided to the producer are reflected as service costs from the perspective of the producer and appear

- b) Where there is an Intra-Group transaction transferring¹¹ the Extractive Product from the State where Extraction takes place to another State; or
- c) Where there is an Internationally Recognised Reference Price used for pricing the Extractive Product and the Extractive Product meets the specifications established by the Internationally Recognised Reference Price.¹² Where this sub-paragraph applies, the deemed Revenue amount for the purposes of identifying the excluded revenue and for applying the profitability test is calculated as follows:

*Revenue = Internationally Recognised Reference Price * Quantity of Extractive Product*

- d) Where none of sub-paragraphs 27a), 27b) or 27c) apply, the deemed Revenue amount for the purposes of identifying the excluded revenue and for applying the profitability test is calculated as follows:

*Revenue = Market value of the Extractive Product * Quantity of Extractive Product*

- e) Where there is convergence with one or more tests under the Delineation Point, the application of the test is established by the test that appears first in the order of the sub-paragraphs above.
- f) Notwithstanding sub-paragraph (b), an Intra-Group transaction transferring the Extractive Product from the State where the Extraction takes place is deemed to not have been transferred to another State if the activities performed in the other State would have been Qualifying Processing had they occurred in the first State and it is performed within [X] kilometres of the State border where the Extraction takes place.

28. “**Internationally Recognised Reference Price**” means a physical and financial price index that:¹³

- a) Represents the global or regional benchmark price of a physical commodity; and
- b) Is used predominantly by market participants to buy and sell physical commodities that meet the specifications established by the index; and
- c) Is transparent and accessible by market participants, government and regulators; and
- d) Includes [Brent Oil, West Texas Intermediate, and London Metals Exchange].¹⁴

as expenses in financial statements. Such a transaction would not constitute a sale for the purposes of this sub-paragraph.

¹¹ The Commentary would explain that the term ‘transferring’ has been used in this sub-paragraph, as there may be instances where there is no actual intragroup sales contract. In such cases, therefore the term ‘sale’ would not be appropriate.

¹² The Commentary would explain that “meeting the specifications” of the International Recognised Reference Price requires the Extractive Product to meet both the quality specifications, and other factors relevant to the construction of the International Recognised Reference Price, such as locality. For example, the North American Henry Hub Natural Gas price cannot be used to price gas that is produced in Asia, even if the Asian-produced gas meets the quality specifications established by the Henry Hub index.

¹³ The Commentary would also give examples of how this test applies. All four conditions must be met for a price index or benchmark to qualify as an Internationally Recognised Reference Price. It would not be the case that the mere existence of a price index for a general category of Extractive Product would automatically qualify the index as an Internationally Recognised Reference Price. For example, a price index that is constructed by a price reporting agency but is not commonly used by a large proportion of market participants would not qualify as an Internationally Recognised Reference Price, as it would fail the condition outlined in sub-paragraph 28b).

¹⁴ These will be updated following the public consultation.

29. “**Independent Party**” means an Entity in which the Group holds less than a 25% ownership interest.

30. “**Intra-Group**” means between the Group and an Entity that is not an Independent Party.

31. “**State**” means a country or national territory that is a jurisdiction for tax purposes, and is comprised of the land territory, internal waters, territorial sea and the airspace above them, as well as the maritime areas over which it has sovereign rights or jurisdiction for the purposes of exploration, exploitation and preservation of natural resources whether living or non-living pursuant to international law..

Step 3: Identifying excluded and in-scope profits

32. Groups that meet the general scope provisions in Step 1, and also have above EUR 20 billion of in-scope third party revenues after the application of Step 2, will need to identify the profits derived from Extractive Activities and exclude these from Amount A. They will also need to identify the remaining profits from in-scope activities to test whether these profits surpass the profitability threshold of 10%.

33. This is a more complex part of the Extractives Exclusion, which may include identifying intra-Group revenue and performing cost allocations. This is necessary to accurately identify the profits and profitability of Extractives Activities, and the profits and profitability of non-Extractives Activities. This level of accuracy is necessary in order to ensure that no residual profits from Extractives Activities are allocated to market jurisdictions under Amount A. It also ensures that Groups which perform activities across the extractives value chain are not disadvantaged by the fact that they ultimately generate profits from third parties which are in a large-part attributable to the Extractives Activities. The result is to effectively treat the in-scope part of the Group as a standalone business from the Extractives part of the Group, and this also ensures a level playing field with Groups that are not engaged in Extractives Activities but are engaged in similar later-stage activities (e.g. refining or manufacturing).

34. First, the Group must identify its in-scope profits, using either the Disclosed Operating Segment approach or, where this approach is not applicable (either because the Group does not have Disclosed Operating Segments or where it cannot reliably attribute revenue and costs as described below), the Entity-level approach. Once the in-scope profits are identified, the profitability test is re-applied.

35. In either case, a vertically integrated Group must ensure that profits from Extractives Activities are not removed from the calculation more than once. For example, where there is an “upstream” segment which predominantly derives revenue from Extractives Activities, and a “downstream” segment which predominantly derives revenue from manufacturing of other products but which have purchased the Extractive Products from the upstream segment to be used as a core component of those products, it must not again remove a portion of the extractives revenue from that downstream segment.

Identifying profits using the Disclosed Operating Segment Approach

36. In order to rely on the Disclosed Operating Segment approach, the Group must meet two conditions:

- First, the Group must determine whether its disclosed segments predominantly generate revenue that is excluded, or predominantly generate in-scope revenue; and
- Second, the Group must undertake a cost allocation exercise to ensure costs are appropriately and reliably allocated between the segments (as per paragraphs 38 – 40 below).

37. Under the first step of the Disclosed Operating Segment Approach, a Group must apply the Delineation Point (see paragraph 27 above) to determine whether any of the Group’s disclosed operating segments in its Consolidated Financial Statements are made up of at least [75% - 85%] of excluded

revenues (i.e. including third party, intra-group and deemed revenue). This revenue threshold approach is referred to as the “predominance test.” This is further supported by a cap of [EUR 1 billion] of in-scope revenue per segment. Where at least [75% – 85%] of a segment’s revenues are excluded revenues and the in-scope revenues do not exceed [EUR 1 billion], the entire segment qualifies for the Extractives Exclusion and no further work is required to identify the profits and profitability of the in-scope revenue in that segment.

38. Segments that have at least [75 – 85%] of in-scope revenue are in-scope segments. For the purpose of this predominance test, in-scope revenue is calculated as the segment revenue minus the excluded revenue reflected in the segment as defined by the Delineation Point. As a simplification, the profit margin of this segment would be used as the starting point for the profit margin of the in-scope activities (i.e. even though a small portion may relate to Extractives Activities). The only additional adjustment which is necessary is to allocate “unallocated costs” (e.g. corporate overheads) that are not allocated to any disclosed segment in the Group’s Consolidated Financial Statements. It is envisaged, as part of the segmentation rules, that this will be performed using objective criteria. Where the resulting profit margin using this approach exceeds 10%, then the profit margin is multiplied against the actual in-scope revenue (i.e. the non-excluded revenue and not the total revenue) of the disclosed operating segment, which will provide the actual in-scope profits. This approach ensures that only in-scope profits are reallocated for the purposes of Amount A and no Extractive Activities profits are inadvertently captured.

39. Segments that have less than [75% – 85%] of excluded revenue and/or where the in-scope revenues exceed [EUR 1 billion], but less than [75 – 85%] of in-scope revenue (hereafter referred to as a “mixed segment”), will not satisfy either of the predominance tests. These are considered to be in-scope segments, but with further work required to identify the profit margin (instead of using the profit margin of the segment as a proxy). Here, the Group must calculate the amount of in-scope revenue in such segments. This is calculated as the segment revenue minus the excluded revenue reflected in the segment as defined by the Delineation Point.

40. For mixed segments, in order to identify the profits and profit margin, a Group must reliably allocate expenses to each such segment and calculate the profits of each in-scope such segment. For a mixed segment, this will involve two types of adjustments: First, unallocated costs that are not allocated to any disclosed segment in the Group’s Consolidated Financial Statements must be allocated. This adjustment is consistent with the adjustment described in the previous paragraph for a segment which satisfies the predominance test. Second, an additional adjustment must be carried out in respect of a mixed segment in order to appropriately allocate costs between the part of the segment falling in-scope and the part which relates to excluded activities. Hence, this second adjustment is an inter-segment adjustment. In doing so, it must follow the segment accounting and / or management accounting principles that would have applied had it decided to publish the in-scope portion of the segment as a separate disclosed operating segment.

41. Where a Group has two or more disclosed operating segments that are in-scope (either mixed segments or wholly in scope segments), it would be required to combine the in-scope portions of the segments before calculating the profit margin threshold for in-scope profits. The combined consolidated in-scope profits of these in-scope segments will form the basis of the profit before tax amount.

42. The tax base adjustments required to calculate Amount A tax base are applied to the in-scope profits. The resulting Adjusted Profit Before Tax amount is used as the numerator in the profit margin calculation. The denominator is the in-scope Revenue amount reflected in the in-scope segments.

43. While this is still a complex exercise, the advantage of the Disclosed Operating Segment Approach is that it provides an advanced starting point from which to make these adjustments and can potentially remove entire segments from the need to calculate the profits and profitability, and that there is a simplified profit margin proxy approach for segments that are predominantly in-scope.

Identifying profits using the Entity-level approach

44. Where a Group is not able to reliably allocate expenses across segments and calculate segment profits, or otherwise cannot meet the conditions in paragraph 36 above for using the disclosed operating segments, the Group must use the Entity-level approach.

45. An Entity-level test broadly follows the same principles applied in the Disclosed Operating Segment Approach, but on an Entity level rather than a segment level. Each Entity within a Group will also be subject to a predominance test when applying the Delineation Point to determine the extent of excluded revenues derived by that entity. If an entity has at least [75% – 85%] of excluded revenues and the in-scope revenues of that Entity do not exceed the [EUR 1 billion] cap, the entire Entity would qualify for the Extractives Exclusion.

46. Any Entity in the Group that did not meet this threshold would be identified as an “in-scope” entity. The Group must calculate the amount of in-scope revenue in such Entities. This is calculated as the total revenue of the Entity minus the excluded revenue as defined by the Delineation Point.

47. Rather than require the calculation of profit and profitability on an entity by entity approach, the Group would combine the in-scope entities into one consolidated bespoke segment for Amount A purposes. In doing so, it must follow the segment accounting and / or management accounting principles that would have applied had it decided to publish the remaining in-scope portion of those entities as one combined disclosed operating segment. It would use those principles to apportion its expenses, including indirect and unallocated costs such as interest expense and corporate overheads, to its in-scope revenue, and determine its in-scope profits.

48. The Group would make the relevant tax base adjustments as agreed in the rules for calculating the tax base. The resulting Adjusted Profit Before Tax amount is used as the numerator in the profit margin calculation. The denominator is the in-scope Revenue amount.

Reapplication of the profitability threshold

49. Having applied the disclosed operating segment approach or the entity approach as above, the Group would always reapply the profitability test and would not be subject to Amount A where its in-scope profit margin is below 10%.

50. If after the reapplication of the threshold profitability test, the in-scope profit margin is above 10%, the averaging mechanism would apply again to the disclosed operating segments / bespoke in-scope segment consisting of in-scope entities. However, it is recognised that the bespoke segments would only be created for the purposes of Amount A, and further thought is being given as to how to apply the averaging mechanism in the first years of the application of Amount A.

51. Similarly, a Group would also calculate and carry forward losses relating to its disclosed operating segments / bespoke in-scope segment consisting of in-scope entities. The calculation of historic losses would be calculated in the same way as the calculation of profits described above, that is, in line with accounting principles; but again, recognising the particular challenge of applying these rules in the context of bespoke segments, further consideration is being given as to how to apply this rule.

52. If after the application of the averaging mechanism and losses to the in-scope segment / disclosed operated segment, the profit margin is above 10%, those remaining profits are in scope of Amount A.

Annex: Scope Rules and Definition of Revenue

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.
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 are greater than EUR 20 billion (*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*).
3. For the purpose of sub-paragraphs (b)(ii) and (b)(iii) of paragraph 2:
 - 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], whichever applies.

Title 9: Definitions

5. “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.
6. “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:
 - 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).
7. “Extractive Activities” means that the Group derives revenue from the sale of an Extractive Product and conducts Exploration, Development or Extraction, as defined in Schedule [F].